LIBERTY DOCUMENTS

WITH CONTEMPORARY EXPOSITION AND CRITICAL COMMENTS DRAWN FROM VARIOUS WRITERS

Selected and Prepared
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LONGMANS, GREEN, AND CO.
91 AND 93 FIFTH AVENUE, NEW YORK
LONDON AND BOMBAY
1901

PREFACE

THE design of this book is to direct students to the evolution of constitutional government from the time of the declared policy of Henry I. towards his subjects to the present day. Its broader purpose is stated in detail in the Introduction, but a few brief words of explanation and acknowledgments of criticism and assistance give occasion for this Preface.

The following chapters are the result of informal lectures given before my classes at the State Normal School in Lowell, Massachusetts, where we have for several years followed a course of study in Constitutional History (as given in the Outlines in the Appendix of this volume). In preparing students for the profession of public school teaching, I have deemed it wise to impress them with the underlying principles of citizenship and government, and to prove to them that the love of liberty is a noble inheritance of the past.

In the special study of these written bulwarks of our freedom my aim has been to further the interest in original documents by comparing the details of the different articles, by discussing their bearing, by pointing out the development of constitutional history, and by noting the evolution of one document of liberty from the preceding one. The book makes no pretensions to exhaustive exposition, either of the documents discussed or of the critical material cited. It is meant as an aid to teacher and pupil whose time for historical research is limited, and it is but suggestive of the possibilities of further intensive study.

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Includes Samuel Johnson (1775) (attributed to 'anonymous'). Plain state argument.

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The outline on Constitutional History has served its purpose with my own classes, and in the ninth grade of our grammar department of the Practice School it is used as the basis for more detailed work. The fact that a large majority of the pupils who are to be benefited by public instruction finish their technical education with the last year in the grammar schools makes it imperative that a course in American institutions and politics be presented which shall make intelligible to them the great race movement of which they are an integral part.

At the same time that I offer this work to my fellows in the profession, I beg to acknowledge my gratitude to those friends who have assisted me with aid, advice, and criticism. Professor Albert Bushnell Hart, of Harvard University, Cambridge, and Judge Samuel P. Hadley, of Lowell, Mass., have guided me materially in my research for contemporaneous and latter-day comments. Mr. Henry A. Clapp, of the Supreme Court of Massachusetts, has given most generously of his time in making translations from certain Latin texts. The Hon. James O. Lyford, naval officer of customs, Boston, Mass., has added to the varied suggestions and services of years by following the work of the outline with critical interest. I am indebted to the Librarians of the Harvard Library, Massachusetts State Library, and the Lowell City Library for their courteous liberality in the use of books.

I take this opportunity to thank the various authors and publishers of copyright works from which material has been drawn, for permission to reprint the passages desired. The full titles of these works, with publishers' names, are given in Appendix D at the end of this volume.

MABEL HILL.

LOWELL, MASS., November, 1900.

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LIBERTY DOCUMENTS

CHAPTER I

CORONATION OATH AND CHARTER OF HENRY I. (1101)

SUGGESTIONS

THIS Charter was published by Henry I. on his accession to the Crown. Copies were despatched to the several counties and deposited in the principal monasteries. The Charter is in form an amplification of his Coronation Oath, the exact words of which are found in the form used at the Coronation of King Ethelred II. [978–1016].

Before reading the Coronation Oath and Charter of Liberties of Henry I. the elementary history of Teutonic migration should be examined critically, and the causes which led the Teuton to settle in Britain should be noted.

The partial amalgamation of the Teutonic people with the Celtic aborigines in Britain during the period of the Heptarchy; the strong characteristics of love of liberty and freedom of government which mark the race throughout its political history, and which are discoverable in their primitive institutions; the development of the land tenure; and the feudal system as individualized by William I. in organizing Norman rule in England;—each of these essential historical conditions must be examined before this document and Henry's policy can be fully understood.

The charter itself demands attention before other documents can be considered, because it contains, though possibly unnoticeable at the first reading, the great doctrine of the future — *the equality in rights of freemen.*

For Topics covering such expository reading note *Essentials in Early Teutonic History*, Appendix A.

DOCUMENTS

The Coronation Oath (1100)

In the name of Christ I promise these three things to the Christian people over whom I rule. In the first place that I will endeavour and use all material means in order that the Church of God and all the people of Christ may enjoy a true peace under our government for all time; next, that I will interdict

William Stubbs; *Select Charters*, 95, translated by Henry A. Clapp, Clerk Sup. Jud. Ct. of Mass. (1900)

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robbery and all forms of injustice; third, that in all judicial proceedings I will advance justice and mercy, in order that to me and you the gracious and merciful God may extend his mercy.

The Charter of Henry I. at his Coronation (1101)

The Statutes of the Realm, I. 1, translated by Henry A. Clapp. (1900)

In form an amplification of the covenant made by the king in his coronation oath. This is the only legislative enactment during the reign of Henry I. See Magna Charta, Art. I

In the year of the Incarnation of our Lord one thousand one hundred and one. Henry, son of King William, after the death of his brother William, by the grace of God King of the English, to all the faithful sends greeting.

1. Know ye that I have been, by the mercy of God and by the barons in council, crowned king of this same kingdom of all England; and since the kingdom has been oppressed by unjust exactions I, through the fear of God and the love I have towards you, do in the first place make free the holy church of God, so that I will neither sell nor put to rent, nor upon the death of an archbishop or of a bishop or of an abbot will I accept anything from the demesne of the church or from its men until a successor has taken the place. And all evil customs by which the kingdom of England has been unjustly oppressed I will do away with, — which evil customs I herein indicate:

The Vassals: see Magna Charta, Art. ii

"Men" wherever used in this charter means "feudal dependents."

2. If any one of my barons, or of my earls, or of any other vassal who hold their estates of me shall die, his heir shall not redeem his land as he did in the time of my brother, but shall relieve said land by just and lawful reliefs. In like manner the men of my barons shall relieve their lands from those of whom they hold, by a just and lawful relief.

Relief," a payment in money to the king by the incoming heir upon admission into an inheritance. This was demanded by Henry I., as by his predecessors. But the promise here made is a return to the equitable old custom instead of the cruel exactions made in the reigns of Wm. I. and Wm. II.

3. And if any of my barons, or of any other of my men, shall wish to give in marriage his daughter, or his sister, or his niece or other female relations, let him consult me in the matter; but neither will I receive anything from him for the permission nor will I forbid him to give her in marriage unless he shall wish to join her to one of my enemies. And if upon the death of a baron, or of any other of my men, a daughter shall survive as his heir I will give her in marriage with her lands, after taking counsel of my barons. And if, upon the death of a man, his wife shall survive and shall be without children she shall have her dowry and right to marry, and I will not give her in marriage to any husband except in accordance with her wish.

Marriage: see Magna Charta, Art. viii.

4. If a wife with children shall survive her husband, such a one shall have her dowry and right to marry whilst she properly preserves her relation (to the king as lord paramount), and I will not give her in marriage except in accordance with her wish. And the guardian of the estate and the children shall be either the wife or some one of the near kindred who ought justly so to be. And I direct that my barons conduct themselves in like manner towards the sons, daughters, or wives of their men.

"Common tribute" (*monetagium*) was a payment by the subjects to prevent depreciation or change of coinage.

5. The common *tribute* for *mintage* which was collected through cities and counties and which was not known in the time of King Edward, this shall not be from henceforth, and I altogether forbid it. If any one, whether an officer of the mint or another, be taken with false money about him, let due justice be done in the matter.

6. All suits and dues which were owing to my brother I forgive, excepting my just rents, and excepting those which were agreed upon for the inheritances of others or for those properties which more justly pertained to others. And if any one has agreed to give anything on account of his own inheritance, that I forgive, together with all reliefs which were agreed to be given for actual inheritances.

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See Magna Charta, Art. xxvii.

7. And if any of my barons or feudal dependents shall fall sick, according as he shall give away or shall arrange to give away his money, I concede that it shall be given. But if, prevented by military service or physical infirmity, he shall not give away his money or arrange to give it, his wife or children or relatives and lawful heirs shall divide it up for the good of his soul as shall seem best to them.

The estate was to be distributed as the deceased ought to distribute it, — a portion to the church included.

See Magna Charta, Art. xx.

8. If any of my barons or feudal dependents shall incur a forfeiture, he shall not give surety in the way of an arbitrary mulct of money as he did in the time of my father or my brother, but according to the mode of forfeiture he shall make reparation as he would have made it before my father's time, in the time of my other predecessors. But if he shall have been convicted of treason or an infamous crime, as shall be just so he shall make reparation.

9. All murders previous to the day of my coronation I pardon, and for those which shall be committed henceforth just reparation shall be made according to the law of King Edward.

The only unpopular clause in the charter.

10. The forests I have, with the general consent of my barons in council, retained in my own possession as my father held them.

William I.

11. To soldiers who hold their lands by knightly service I give such lands as of my own gift, all arable portions of the same to be free from all amercement and other burdens, that as they are thus substantially relieved they may keep themselves well furnished both with horses and arms for my service and the defence of my kingdom.

12. I establish and henceforth undertake to maintain a firm peace in all my kingdom.

Edward the Confessor, 1042.

13. I give back to you the law of King Edward, with those emendations which my father with the council of his barons made upon it.

This article is really intended to protect the

14. If any one has taken aught from my property or the property of another since the death of my brother William, let it all be restored at once without other amends; and if any one hereafter shall retain anything thus taken, he shall make heavy restitution above what shall be found to have been taken.

privileges of the people.

Note the few witnesses compared with Magna Charta.

WITNESSES: —

Maurice bishop of London,
Gundolf bishop,
William bishop elect,
Henry earl,
Simon earl
Walter Giffard,
Robert de Montfort,
Roger Bigot,
Henry de Portous,

at London when I was crowned.

This charter was renewed by Stephen and Henry II., and served in John's reign as the text upon which the barons founded their claim for restoration of "ancient liberties."

CONTEMPORARY EXPOSITION

WILLIAM OF MALMESBURY (1135)

. . . He (Henry) was elected king: though some trifling dissensions had first arisen among the nobility, which were allayed chiefly through the exertions of Henry, Earl of Warwick. . . .

He immediately promulgated an edict throughout England, annulling the illegal ordinances of his brother, and of Ranulph; he remitted taxes; released prisoners; drove the flagitious from court; restored the nightly use of lights within the palace, which had been omitted in his brother's time; and renewed the operation of the ancient laws, confirming them with his own oath, and that of the nobility, that they might not be eluded.

A joyful day then seemed to dawn on the people, when the light of fair promise shone forth after such repeated clouds of distress.

WILLIAM OF MALMESBURY, *Chronicles of the Kings of England*. (Giles's Translation) V. 125.

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ROGER OF WENDOVER (1235)

To induce them (the barons) to espouse his cause and make him king, he promised them to revise and amend the laws by which England had been oppressed in the time of his deceased brother. To this the clergy and people replied that, if he would confirm to them by charter all the liberties and customs which were observed in the reign of the holy King Edward, they would accede to his wishes and make him their king. This Henry readily engaged to do, and, confirming the same by an oath, he was crowned king at Westminster, on the day of the Annunciation of St. Mary, with the acclamations of the clergy and people; after which he caused these principles to be reduced to writing, to the honour of the holy church and the peace of his people. . . .

There were as many of these charters made as there are counties in England, and by the king's orders they were placed in the abbeys of each county for a memorial.

ROGER OF WENDOVER, *Flowers of History*. (Giles's Translation) I. 448.

CRITICAL COMMENT

HALLAM (1818)

Nor does the charter of Henry I., though so much celebrated, contain anything specially expressed but a remission of unreasonable reliefs, wardships, and other feudal burdens. It proceeds, however, to declare that he gives his subjects the laws of Edward the Confessor, with the emendations made by his father with consent of his barons. . . .

The people had begun to look back to a more ancient standard of law. The Norman conquest, and all that ensued upon it, had endeared the memory of their Saxon government. Its disorders were forgotten, or rather were less odious to a rude nation, than the coercive justice by which they were afterward restrained. Hence it became the favourite cry to demand the laws of Edward the Confessor; and the Normans themselves, as they grew dissatisfied with the royal administration, fell into

these English sentiments. But what these laws were, or more properly, perhaps, these customs, subsisting in the Confessor's age, was not very distinctly understood.

So far, however, was clear, that the vigorous feudal servitudes, the weighty tributes upon poorer freemen, had never prevailed before the conquest. In claiming the laws of Edward the Confessor, our ancestors meant but the redress of grievances which tradition told them had not always existed.

HENRY HALLAM, *Europe During the Middle Ages*. I. 340.

STUBBS (1873)

The understanding to govern well was made not only with the archbishop as the first constitutional adviser of the crown, but with the whole nation; it was embodied in a charter addressed to all the faithful, and attested by the witan who were present, the paucity of whose names may perhaps indicate the small number of powerful men who had as yet adhered to him. . . . The form of the charter forcibly declares the ground which he was taking. . . . Perhaps the most significant articles of the whole document are those by which he provided that the benefit of the feudal concessions shall not be engrossed by the tenants in chief: 'in like manner shall the men of my barons relieve their lands at the hand of their lords by a just and lawful relief.'

WILLIAM STUBBS, *Constitutional History of England*. I. 330.

J. R. GREEN (1874)

Henry's charter is important, not merely as the direct precedent for the Great Charter of John, but as the first limitation which had been imposed on the despotism established by the conquest.

J. R. GREEN, *Short History of the English People*. Chap. II., Sec. VI., p. 91.

POLLOCK AND MAITLAND (1895)

During the whole Norman period there was very little legislation. . . . It seems probable that Rufus set the example of granting charters of liberties to the people at large. In 1093, sick and in terror of death, he set his seal to some document

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that has not come down to us. Captives were to be released, debts forgiven, good and holy laws maintained. . . . Henry at his coronation, compelled to purchase adherents, granted a charter full of valuable and fairly definite concessions. He was going back to his father's ways. (William I.) . . . Above all the *laga Eadwardi* as amended by William I. was to be restored.

POLLOCK AND MAITLAND, *History of English Law.* I. 73.

RANSOME (1895)

Henry's charter is a very important document, for it shows us what were the chief grievances of which nobles and clergy complained, and the way in which they might be remedied.

CYRIL RANSOME, *Advanced History of England.* 112.

GARDINER (1895)

The charter of Henry I., which had been produced at St. Paul's the year before (1213), was again read, and all present swore to force John to accept it as the rule of his own government. . . .

Magna Charta, or the Great Charter, as the articles were called after John confirmed them, was won by a combination between all classes of freemen, and it gave rights to them all.

S. R. GARDINER, *Student's History of England.* 181.

CHAPTER II

MAGNA CHARTA (1215)

SUGGESTIONS

THIS Charter, signed by King John, June 15th, 1215, was the result of the struggle between the king and the barons. Through the winter of 1215, the barons had presented themselves in arms before the king, and preferred their claims — a resumption of the old English customs and common law, against which the king was openly defiant. At Easter the barons again renewed their demands. London, Exeter, Lincoln — one by one — city and county joined the barons in defiance of the king. Unconditional submission followed the discussion of the document; it was agreed upon and signed in a single day. One copy of it still remains in the British Museum.

As Magna Charta forms the basis of all later English and American written statements of free institutions, the document as a whole should be read with care, although many of its articles have ceased to have a direct relation with present history. Each article illuminates the legal and constitutional status of the thirteenth century, and should be examined with that point in mind. Articles 36, 39, and 40, the two fundamental principles of all later constitutional government, should be committed to memory, since they are many times referred to throughout this volume.

For Outlines and Material, see Appendix A.

DOCUMENT

Magna Charta (1215)

THE GREAT CHARTER OF KING JOHN, GRANTED JUNE 15, A. D. 1215.

John, by the Grace of God, King of England, Lord of Ireland, Duke of Normandy, Aquitaine, and Count of Anjou, to his Archbishops, Bishops, Abbots, Earls, Barons, Justiciaries, Foresters, Sheriffs, Governors, Officers, and to all Bailiffs, and

The Statutes of the Realm, I. 9–13, transliterated from E. S. Creasy (1853).

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his faithful subjects, greeting. Know ye, that we, in the presence of God, and for the salvation of our soul, and the souls of all our ancestors and heirs, and unto the honour of God and the advancement of Holy Church, and amendment of our Realm, by advice of our venerable Fathers, Stephen, Archbishop of Canterbury, Primate of all England and Cardinal of the Holy Roman Church; Henry, Archbishop of Dublin; William, of London; Peter, of Winchester; Jocelin, of Bath and Glastonbury; Hugh, of Lincoln; Walter, of Worcester; William, of Coventry; Benedict, of Rochester — Bishops: of Master Pandulph, Sub-Deacon and Familiar of our Lord the Pope; Brother Aymeric, Master of the Knights-Templars in England; and of the noble Persons, William Marescall, Earl of Pembroke; William, Earl of Salisbury; William, Earl of Warren; William, Earl of Arundel; Alan de Galloway, Constable of Scotland; Warin FitzGerald, Peter FitzHerbert, and Hubert de Burgh, Seneschal of Poitou; Hugh de Neville, Matthew FitzHerbert, Thomas Basset, Alan Basset, Philip of Albiney, Robert de Roppell, John Mareschal, John FitzHugh, and others, our liegemen, have, in the first place, granted to God, and by this our present Charter confirmed, for us and our heirs for ever:

Note the great increase of the baronage between 1101 and 1215.

The Church: see Henry I.'s Charter, Art. I.

1. That the Church of England shall be free, and have her whole rights, and her liberties inviolable; and we will have them so observed that it may appear thence that the freedom of elections, which is reckoned chief and indispensable to the English Church, and which we granted and confirmed by our Charter, and obtained the confirmation of the same from our Lord the Pope Innocent III., before the discord between us and our barons, was granted of mere free will; which Charter we shall observe, and we do will it to be faithfully observed by our heirs for ever.

Reliefs: see Henry I.'s Charter, Art. II.

2. We also have granted to all the freemen of our kingdom, for us and for our heirs for ever, all the underwritten liberties, to be had and holden by them and their heirs, of us and our heirs for ever: If any of our earls, or barons, or others, who hold of us in chief by military service, shall die, and at the time of his death his heir shall be of full age, and owe a relief, he shall have his inheritance by the ancient relief — that is to say, the heir or heirs of an earl, for a whole earldom, by a hundred pounds; the heir or heirs of a baron, for a whole barony, by a hundred pounds; the heir or heirs of a knight, for a whole knight's fee, by a hundred shillings at most; and whoever oweth less shall give less, according to the ancient custom of fees.

Earl's or Baron's relief, £100. Knight's relief, £5.

Wardship: see Henry I.'s Charter, Art. III.

3. But if the heir of any such shall be under age, and shall be in ward, when he comes of age he shall have his inheritance without relief and without fine.

4. The keeper of the land of such an heir being under age, shall take of the land of the heir none but reasonable issues, reasonable customs, and reasonable services, and that without destruction and waste of his men and his goods; and if he commit the custody of any such lands to the sheriff, or any other who is answerable to us for the issues of the land, and he shall make destruction and waste of the lands which he hath in custody, we will take of him amends, and the land shall be committed to two lawful and discreet men of that fee, who shall answer for the issues to us, or to him to whom we shall assign them; and if we sell or give to any one the custody of any such lands, and he therein make destruction or waste, he shall lose the same custody, which shall be committed to two lawful and discreet men of that fee, who shall in like manner answer to us as aforesaid.

5. But the keeper, so long as he shall have the custody of the land, shall keep up the houses, parks, warrens, ponds, mills, and other things pertaining

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to the land, out of the issues of the same land; and shall deliver to the heir, when he comes of full age, his whole land, stocked with ploughs and carriages, according as the time of wainage shall require, and the issues of the land can reasonably bear.

6. Heirs shall be married without disparagement, and so that before matrimony shall be contracted, those who are near in blood to the heir shall have notice.

7. A widow, after the death of her husband, shall forthwith and without difficulty have her marriage and inheritance; nor shall she give anything for her dower, or her marriage, or her inheritance, which her husband and she held at the day of his death; and she may remain in the mansion house of her husband forty days after his death, within which time her dower shall be assigned.

See Henry I.'s Charter, Art. III.

8. No widow shall be distrained to marry herself, so long as she has a mind to live without a husband; but yet she shall give security that she will not marry without our assent, if she hold of us; or without the consent of the lord of whom she holds, if she hold of another.

9. Neither we nor our bailiffs shall seize any land or rent for any debt so long as the chattels of the debtor are sufficient to pay the debt; nor shall the sureties of the debtor be distrained so long as the principal debtor has sufficient to pay the debt; and if the principal debtor shall fail in the payment of the debt, not having wherewithal to pay it, then the sureties shall answer the debt; and if they will they shall have the lands and rents of the debtor, until they shall be satisfied for the debt which they paid for him, unless the principal debtor can show himself acquitted thereof against the said sureties.

The Jews were the king's bondsmen: this is the beginning of legislation against Jews.

10. If any one have borrowed anything of the Jews, more or less, and die before the debt be satisfied, there shall be no interest paid for that debt, so long as the heir is under age, of whomsoever he may hold; and if the debt falls into our hands, we will only take the chattel mentioned in the deed.

11. And if any one shall die indebted to the Jews, his wife shall have her dower and pay nothing of that debt; and if the deceased left children under age, they shall have necessaries provided for them, according to the tenement of the deceased; and out of the residue the debt shall be paid, saving, however, the service due to the lords, and in like manner shall it be done touching debts due to others than the Jews.

12. NO SCUTAGE OR AID SHALL BE IMPOSED IN OUR KINGDOM, UNLESS BY THE GENERAL COUNCIL OF OUR KINGDOM; except for ransoming our person, making our eldest son a knight, and once for marrying our eldest daughter; and for these there shall be paid no more than a reasonable aid. In like manner it shall be concerning the aids of the City of London.

Note the liberty given to London.

13. And the City of London shall have all its ancient liberties and free customs, as well by land as by water; furthermore, we will and grant that all other cities and boroughs, and towns and ports, shall have all their liberties and free customs.

The aids given by citizens at this time to the Barons gained them this clause, and became the germ of Parliamentary representation in House of Commons.

14. AND FOR HOLDING THE GENERAL COUNCIL OF THE KINGDOM CONCERNING THE ASSESSMENT OF AIDS, EXCEPT IN THE THREE CASES AFORESAID, AND FOR THE ASSESSING OF SCUTAGES, WE SHALL CAUSE TO BE SUMMONED THE ARCHBISHOPS, BISHOPS, ABBOTS, EARLS, AND GREATER BARONS OF THE REALM, SINGLY BY OUR LETTERS. AND FURTHERMORE, WE SHALL CAUSE TO BE SUMMONED GENERALLY, BY OUR SHERIFFS AND BAILIFFS, ALL OTHERS WHO HOLD OF US IN CHIEF, FOR A CERTAIN DAY, THAT IS TO SAY, FORTY DAYS BEFORE THEIR MEETING AT LEAST, AND TO A CERTAIN PLACE; AND IN ALL LETTERS OF SUCH SUMMONS WE WILL DECLARE THE CAUSE OF

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SUCH SUMMONS. AND, SUMMONS BEING THUS MADE, THE BUSINESS SHALL PROCEED ON THE DAY APPOINTED, ACCORDING TO THE ADVICE OF SUCH AS SHALL BE PRESENT, ALTHOUGH ALL THAT WERE SUMMONED COME NOT.

Note the principle of the government: — An hereditary sovereign, bound to summon and consult a parliament of the whole realm.

15. We will not for the future grant to any one that he may take aid of his own free tenants, unless to ransom his body, and to make his eldest son a knight, and once to marry his eldest daughter; and for this there shall be only paid a reasonable aid.

Services.

16. No man shall be distrained to perform more service for a knight's fee, or other free tenement, than is due from thence.

The Ct. of Com. Pleas met at Westminster from this time on.

17. Common pleas shall not follow our court, but shall be holden in some place certain.

Novel disseisin = dispossession. Mort d'ancestor = death of the ancestor; that is, in cases of disputed succession to land. Darrein Presentment = last presentation to a benefice.

18. Trials upon the Writs of Novel Disseisin, and of Mort d'ancestor, and of Darrein Presentment, shall not be taken but in their proper counties, and after this manner: We, or if we should be out of the realm, our chief justiciary, will send two justiciaries through every county four times a year, who, with four knights of each county, chosen by the county, shall hold the said assizes in the county, on the day, and at the place appointed.

The word Assize here means "an assembly of knights or other substantial persons, held at a certain time and place where they sit with the Justice. 'Assisa' or 'Assize' is also taken for the court, place, or time at which the writs of Assize are taken." These assizes, though obsolete, were not annulled until about 1823. See Henry I.'s Charter, Art. VIII.

19. And if any matters cannot be determined on the day appointed for holding the assizes in each county, so many of the knights and freeholders as have been at the assizes aforesaid shall stay to decide them as is necessary, according as there is more or less business.

20. A freeman shall not be amerced for a small offence, but only according to the degree of the offence; and for a great crime according to the heinousness of it, saving to him his contenement; and after the same manner a merchant, saving to him his merchandise. And a villein shall be amerced after the same manner, saving to him his wainage, if he falls under our mercy; and none of the aforesaid amerciaments shall be assessed but by the oath of honest men in the neighbourhood.

Contenement: "That by which a person subsists and which is essential to his rank in life."

21. Earls and barons shall not be amerced but by their peers, and after the degree of the offence.

Clauses 20–21–22 were intended to prevent tyrannical extortions.

22. No ecclesiastical person shall be amerced for his lay tenement, but according to the proportion of the others aforesaid, and not according to the value of his ecclesiastical benefice.

23. Neither a town nor any tenant shall be distrained to make bridges or embankments, unless that anciently and of right they are bound to do it.

Distrained = compelled.

24. No sheriff, constable, coroner, or other our bailiffs, shall hold "Pleas of the Crown."

This article marks an era in history of criminal law by securing trial of all serious crimes before King's Justices.

25. All counties, hundreds, wapentakes, and trethings, shall stand at the old rents, without any increase, except in our demesne manors.

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Usually one third to the wife and one third to the heirs. See Henry I.'s Charter, Art. VII.

26. If any one holding of us a lay fee die, and the sheriff, or our bailiffs, show our letters patent of summons for debt which the dead man did owe to us, it shall be lawful for the sheriff or our bailiff to attach and register the chattels of the dead, found upon his lay fee, to the amount of the debt, by the view of lawful men, so as nothing be removed until our whole clear debt be paid; and the rest shall be left to the executors to fulfil the testament of the dead; and if there be nothing due from him to us, all the chattels shall go to the use of the dead, saving to his wife and children their reasonable shares.

27. If any freeman shall die intestate, his chattels shall be distributed by the hands of his nearest relations and friends, by view of the Church, saving to every one his debts which the deceased owed to him.

28. No constable or bailiff of ours shall take corn or other chattels of any man unless he presently give him money for it, or hath respite of payment by the good-will of the seller.

29. No constable shall distrain any knight to give money for castle-guard, if he himself will do it in his person, or by another able man, in case he cannot do it through any reasonable cause. And if we have carried or sent him into the army, he shall be free from such guard for the time he shall be in the army by our command.

30. No sheriff or bailiff of ours, or any other, shall take horses or carts of any freeman for carriage, without the assent of the said freeman.

31. Neither shall we nor our bailiffs take any man's timber for our castles or other uses, unless by the consent of the owner of the timber.

Confiscation of the lands of felons was not wholly abrogated until 1870.

32. We will retain the lands of those convicted of felony only one year and a day, and then they shall be delivered to the lord of the fee.

33. All kydells (wears) for the time to come shall be put down in the rivers of Thames and Medway, and throughout all England, except upon the sea-coast.

To prevent private appropriation to fish in public waters. The purport of this was to prevent enclosures of common fishing rights. These wears are now called "kettles" or "kettle-nets" in Kent and Cornwall.

34. The writ which is called *præcipe*, for the future, shall not be made out to any one, of any tenement, whereby a freeman may lose his court.

Protection of local jurisdiction of Court baron.

35. There shall be one measure of wine and one of ale through our whole realm; and one measure of corn, that is to say, the London quarter; and one breadth of dyed cloth, and russets, and haberjeets, that is to say, two ells within the lists; and it shall be of weights as it is of measures.

36. Nothing from henceforth shall be given or taken for a writ of inquisition of life or limb, but it shall be granted freely, and not denied.

The basis of security for Personal Liberty and forerunner of Habeas Corpus, 1679.

37. If any do hold of us by fee-farm, or by socage, or by burgage, and he hold also lands of any other by knight's service, we will not have the custody of the heir or land, which is holden of another man's fee by reason of that fee-farm, socage, or burgage; neither will we have the custody of the fee-farm, or socage, or burgage, unless knight's service was due to us out of the same fee-farm. We will not have the custody of an heir, nor of any land which he holds of another by knight's service, by reason of any petty serjeanty by which

Socage = lands held by tenure of inferior office in husbandry. Formal delivery of some small weapon as a token of the king's ownership of land.

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he holds of us, by the service of paying a knife, an arrow, or the like.

38. No bailiff from henceforth shall put any man to his law upon his own bare saying, without credible witnesses to prove it.

Law — i. e. his oath.

39. NO FREEMAN SHALL BE TAKEN OR IMPRISONED, OR DISSEISED, OR OUTLAWED, OR BANISHED, OR ANY WAYS DESTROYED, NOR WILL WE PASS UPON HIM, NOR WILL WE SEND UPON HIM, UNLESS BY THE LAWFUL JUDGMENT OF HIS PEERS, OR BY THE LAW OF THE LAND.

See the Seal of the Supreme Court of Massachusetts. This vital principle of personal liberty antedates Magna Charta, and was defined more clearly in "Habeas Corpus," and Trial by Jury. Called by Creasy the "crowning glories" of the Great Charter.

40. WE WILL SELL TO NO MAN, WE WILL NOT DENY TO ANY MAN, EITHER JUSTICE OR RIGHT.

41. All merchants shall have safe and secure conduct, to go out of, and to come into England, and to stay there and to pass as well by land as by water, for buying and selling by the ancient and allowed customs, without any unjust tolls; except in time of war, or when they are of any nation at war with us. And if there be found any such in our land, in the beginning of the war, they shall be attached, without damage to their bodies or goods, until it be known unto us, or our chief justiciary, how our merchants be treated in the nation at war with us; and if ours be safe there, the others shall be safe in our dominions.

The trading class begins to show power at this time.

42. It shall be lawful, for the time to come, for any one to go out of our kingdom, and return safely and securely by land or by water, saving his allegiance to us; unless in time of war, by some short space, for the common benefit of the realm, except prisoners and outlaws, according to the law of the land, and people in war with us, and merchants who shall be treated as is above mentioned.

See Article 41.

43. If any man hold of any escheat as of the honour of Wallingford, Nottingham, Boulogne, Lancaster, or of other escheats which be in our hands, and are baronies, and die, his heir shall give no other relief, and perform no other service to us than

The return of an estate to a lord, either on failure of

he would to the baron, if it were in the baron's hand; and we will hold it after the same manner as the baron held it.

tenant's issue or on his committing felony.

44. Those men who dwell without the forest from henceforth shall not come before our justiciaries of the forest, upon common summons, but such as are impleaded, or as sureties for any that are attached for something concerning the forest.

Before Magna Charta, attendance at the Forest Court was compulsory.

45. We will not make any justices, constables, sheriffs, or bailiffs, but of such as know the law of the realm and mean duly to observe it.

46. All barons who have founded abbeys, which they hold by charter from the kings of England, or by ancient tenure, shall have the keeping of them, when vacant, as they ought to have.

47. All forests that have been made forests in our time shall forthwith be disforested; and the same shall be done with the water-banks that have been fenced in by us in our time.

48. All evil customs concerning forests, warrens, foresters, and warreners, sheriffs and their officers, water-banks and their keepers, shall forthwith be inquired into in each county, by twelve sworn knights of the same county chosen by creditable persons of the same county; and within forty days after the said inquest be utterly abolished, so as never to be restored: so as we are first acquainted therewith, or our justiciary, if we should not be in England.

49. We will immediately give up all hostages and charters delivered unto us by our English subjects, as securities for their keeping the peace, and yielding us faithful service.

50. We will entirely remove from their bailiwicks the relations of Gerard de Atheyes, so that for the future they shall have no bailiwick in England; we will also remove Engelard de Cygony, Andrew, Peter, and Gyon, from the Chancery; Gyon de Cygony, Geoffrey de Martyn, and his brothers;

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Philip Mark, and his brothers, and his nephew, Geoffrey, and their whole retinue.

51. As soon as peace is restored, we will send out of the kingdom all foreign knights, cross-bowmen, and stipendiaries, who are come with horses and arms to the molestation of our people.

52. If any one has been dispossessed or deprived by us, without the lawful judgment of his peers, of his lands, castles, liberties, or right, we will forthwith restore them to him; and if any dispute arise upon this head, let the matter be decided by the five-and-twenty barons hereafter mentioned, for the preservation of the peace. And for all those things of which any person has, without the lawful judgment of his peers, been dispossessed or deprived, either by our father King Henry, or our brother King Richard, and which we have in our hands, or are possessed by others, and we are bound to warrant and make good, we shall have a respite till the term usually allowed the crusaders; excepting those things about which there is a plea depending, or whereof an inquest hath been made, by our order before we undertook the crusade; but as soon as we return from our expedition, or if perchance we tarry at home and do not make our expedition, we will immediately cause full justice to be administered therein.

53. The same respite we shall have, and in the same manner, about administering justice, disafforesting or letting continue the forests, which Henry our father, and our brother Richard, have afforested; and the same concerning the wardship of the lands which are in another's fee, but the wardship of which we have hitherto had, by reason of a fee held of us by knight's service; and for the abbeys founded in other fee than our own, in which the lord of the fee says he has a right; and when we return from our expedition, or if we tarry at home, and do not make our expedition, we will immediately do full justice to all the complainants in this behalf.

54. No man shall be taken or imprisoned upon the appeal of a woman, for the death of any other than her husband.

55. All unjust and illegal fines made by us, and all amerciaments imposed unjustly and contrary to the law of the land, shall be entirely given up, or else be left to the decision of the five-and-twenty barons hereafter mentioned for the preservation of the peace, or of the major part of them, together with the aforesaid Stephen, Archbishop of Canterbury, if he can be present, and others whom he shall think fit to invite; and if he cannot be present, the business shall notwithstanding go on without him; but so that if one or more of the aforesaid five-and-twenty barons be plaintiffs in the same cause, they shall be set aside as to what concerns this particular affair, and others be chosen in their room, out of the said five-and-twenty, and sworn by the rest to decide the matter.

56. If we have disseised or dispossessed the Welsh of any lands, liberties, or other things, without the legal judgment of their peers, either in England or in Wales, they shall be immediately restored to them; and if any dispute arise upon this head, the matter shall be determined in the Marches by the judgment of their peers; for tenements in England according to the law of England, for tenements in Wales according to the law of Wales, for tenements of the Marches according to the law of the Marches: the same shall the Welsh do to us and our subjects.

57. As for all those things of which a Welshman hath, without the lawful judgment of his peers, been disseised or deprived of by King Henry our father, or our brother King Richard, and which we either have in our hands or others are possessed of, and we are obliged to warrant it, we shall have a respite till the time generally allowed the crusaders; excepting those things about which a suit is de-

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pending, or whereof an inquest has been made by our order, before we undertook the crusade: but when we return, or if we stay at home without performing our expedition, we will immediately do them full justice, according to the laws of the Welsh and of the parts before mentioned.

58. We will without delay dismiss the son of Llewellin, and all the Welsh hostages, and release them from the engagements they have entered into with us for the preservation of the peace.

59. We will treat with Alexander, King of Scots, concerning the restoring his sisters and hostages, and his right and liberties, in the same form and manner as we shall do to the rest of our barons of England; unless by the charters which we have from his father, William, late King of Scots, it ought to be otherwise; and this shall be left to the determination of his peers in our court.

There was a close union between baronage and citizens from 1213 to 1217.

60. All the aforesaid customs and liberties, which we have granted to be holden in our kingdom, as much as it belongs to us, all people of our kingdom, as well clergy as laity, shall observe, as far as they are concerned, towards their dependents.

61. And whereas, for the honour of God and the amendment of our kingdom, and for the better quieting the discord that has arisen between us and our barons, we have granted all these things aforesaid; willing to render them firm and lasting, we do give and grant our subjects the underwritten security, namely, that the barons may choose five-and-twenty barons of the kingdom, whom they think convenient; who shall take care, with all their might, to hold and observe, and cause to be observed, the peace and liberties we have granted them, and by this our present Charter confirmed in this manner; that is to say, that if we, our justiciary, our bailiffs, or any of our officers, shall in any circumstance have failed in the performance of them towards any person, or shall have broken through

The immediate abuses were easily swept away, the hostages restored to their homes, the foreigners banished from the country. But

any of these articles of peace and security, and the offence be notified to four barons chosen out of the five-and-twenty before mentioned, the said four barons shall repair to us, or our justiciary, if we are out of the realm, and, laying open the grievance, shall petition to have it redressed without delay: and if it be not redressed by us, or if we should chance to be out of the realm, if it should not be redressed by our justiciary within forty days, reckoning from the time it has been notified to us, or to our justiciary (if we should be out of the realm), the four barons aforesaid shall lay the cause before the rest of the five-and-twenty barons; and the said five-and-twenty barons, together with the community of the whole kingdom, shall distrain and distress us in all the ways in which they shall be able, by seizing our castles, lands, possessions, and in any other manner they can, till the grievance is redressed, according to their pleasure; saving harmless our own person, and the persons of our Queen and children; and when it is redressed, they shall behave to us as before. And any person whatsoever in the kingdom may swear that he will obey the orders of the five-and-twenty barons aforesaid in the execution of the premises, and will distress us, jointly with them, to the utmost of his power; and we give public and free liberty to any one that shall please to swear to this, and never will hinder any person from taking the same oath.

it was less easy to provide means for the control of a King whom no man could trust. Green's *Short History*, 129.

62. As for all those of our subjects who will not, of their own accord, swear to join the five-and-twenty barons in distraining and distressing us, we will issue orders to make them take the same oath as aforesaid. And if any one of the five-and-twenty barons dies, or goes out of the kingdom, or is hindered any other way from carrying the things aforesaid into execution, the rest of the said five-and-twenty barons may choose another in his room, at their discretion, who shall be sworn in like manner as the

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rest. In all things that are committed to the execution of these five-and-twenty barons, if, when they are all assembled together, they should happen to disagree about any matter, and some of them, when summoned, will not or cannot come, whatever is agreed upon, or enjoined, by the major part of those that are present shall be reputed as firm and valid as if all the five-and-twenty had given their consent; and the aforesaid five-and-twenty shall swear that all the premises they shall faithfully observe, and cause with all their power to be observed. And we will procure nothing from any one, by ourselves nor by another, whereby any of these concessions and liberties may be revoked or lessened; and if any such thing shall have been obtained, let it be null and void; neither will we ever make use of it either by ourselves or any other. And all the ill-will, indignations, and rancours that have arisen between us and our subjects, of the clergy and laity, from the first breaking out of the dissensions between us, we do fully remit and forgive: moreover, all trespasses occasioned by the said dissensions, from Easter in the sixteenth year of our reign till the restoration of peace and tranquillity, we hereby entirely remit to all, both clergy and laity, and as far as in us lies do fully forgive. We have, moreover, caused to be made for them the letters patent testimonial of Stephen, Lord Archbishop of Canterbury, Henry, Lord Archbishop of Dublin, and the bishops aforesaid, as also of Master Pandulph, for the security and concessions aforesaid.

63. Wherefore we will and firmly enjoin, that the Church of England be free, and that all men in our kingdom have and hold all the aforesaid liberties, rights, and concessions, truly and peaceably, freely and quietly, fully and wholly to themselves and their heirs, of us and our heirs, in all things and places, for ever, as is aforesaid. It is also sworn, as well on our part as on the part of the barons, that all

the things aforesaid shall be observed in good faith, and without evil subtilty. Given under our hand, in the presence of the witnesses above named, and many others, in the meadow called Runingmede, between Windsor and Staines, the 15th day of June, in the 17th year of our reign.

CONTEMPORARY EXPOSITION

ROGER OF WENDOVER (1235)

A. D. 1215, which was the seventeenth year of the reign of King John; he held his court at Winchester at Christmas for one day, after which he hurried to London, and took up his abode at the New Temple, and at that place the above-mentioned nobles came to him in gay military array, and demanded the confirmation of the liberties and laws of King Edward (the Confessor), with other liberties granted to them and to the kingdom and church of England, as were contained in the charter, and above mentioned laws of Henry the First; they also asserted that, at the time of his absolution at Winchester, he had promised to restore those laws and ancient liberties, and was bound by his own oath to observe them. The king, hearing the bold tone of the barons in making this demand, much feared an attack from them, as he saw that they were prepared to battle; he, however, made answer that their demands were a matter of importance and difficulty, and he therefore asked a truce till the end of Easter, that he might, after due deliberation, be able to satisfy them as well as the dignity of his crown. . . .

The barons then delivered to the messengers a paper, containing in great measure the laws and ancient customs of the kingdom, and declared that, unless the king immediately granted them and confirmed them under his own seal, they would, by taking possession of his fortresses, force him to give them sufficient satisfaction as to their before-named demands. The archbishop with his fellow-messengers then carried the paper to the king, and read to him the heads of the paper one by one throughout. The king, when he heard the purport of these heads, derisively said, with the greatest indignation, "Why,

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amongst these unjust demands, did not the barons ask for my kingdom also? Their demands are vain and visionary, and are unsupported by any plea of reason whatever." And at length he angrily declared with an oath, that he would never grant them such liberties as would render him their slave. The principal of these laws and liberties, which the nobles required to be confirmed to them, are partly described above in the charter of King Henry, and partly are extracted from the old laws of King Edward, as the following history will show in due time. . . .

King John, when he saw that he was deserted by almost all, so that out of his regal superabundance of followers he scarcely retained seven knights, was much alarmed lest the barons would attack his castles and reduce them without difficulty, as they would find no obstacle to their doing so; and he deceitfully pretended to make peace for a time with the aforesaid barons, and sent William Marshal, earl of Pembroke, with other trustworthy messengers, to them, and told them that, for the sake of peace, and for the exaltation and honour of the kingdom, he would willingly grant them the laws and liberties they required; he also sent word to the barons by these same messengers, to appoint a fitting day and place to meet and carry all these matters into effect. The king's messengers then came in all haste to London, and without deceit reported to the barons all that had been deceitfully imposed on them; they in their great joy appointed the 15th of June for the king to meet them, at a field lying between Staines and Windsor. Accordingly, at the time and place pre-agreed on, the king and nobles came to the appointed conference, and when each party had stationed themselves apart from the other, they began a long discussion about terms of peace and the aforesaid liberties. . . .

At length, after various points on both sides had been discussed, King John, seeing that he was inferior in strength to the barons, without raising any difficulty, granted the underwritten laws and liberties, and confirmed them by his charter as follows.

Roger Wendover, *Flowers of History* (Giles's translation, 1849). II. 304.

CRITICAL COMMENT

COKE (1628).

This parliamentary charter hath divers appellations in law. It is called Magna Charta, not for the length or largeness of it . . . . but it is called the Great Charter, in respect of the great weightiness and weighty greatness of the matter contained in it in few words, being the fountain of all fundamental law; and therefore it may truly be said of it, that it is *magnum in parvo*.

Sir Edward Coke, *First Institute of the Laws of England*. I. 22.

BURKE (1774)

Magna Charta, if it did not give us originally the House of Commons, gave us at least a House of Commons of weight and consequence.

Edmund Burke, *Works*. II. 53.

HALLAM (1818)

As this was the first effort towards a legal government, so is it beyond comparison the most important event in our history, except that revolution without which its benefits would rapidly have been annihilated. . . . It (the Great Charter) is still the keystone of English liberty. All that has since been obtained is little more than as confirmation or commentary. . . . The essential clauses of Magna Charta are those which protect the personal liberty and property of all freemen by giving security from arbitrary imprisonment and arbitrary spoliation. . . . From this era a new soul was infused into the people of England. Her liberties at the best long in abeyance, became a tangible possession, and those indefinite aspirations for the laws of Edward the Confessor, were changed into a steady regard for the Great Charter.

Henry Hallam, *Europe during the Middle Ages*. Chap. VIII. 341–342.

PALGRAVE (1832)

By far the greatest portions of the written or statute laws of England consist of the declaration, the reassertion, repetition,

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or the re-enactment of some older law or laws, either customary or written, with addition or modifications. The new building has been raised upon the old ground-work: the institutions of one age have always been modelled and formed from those of the preceding, and their lineal descent has never been interrupted or disturbed.

SIR JAMES PALGRAVE, *English Commonwealth*. I. 6.

MACKINTOSH (1832)

Whoever in any future age or yet unborn nation may admire the felicity of the expedient which converted the power of taxation into the shield of liberty, by which discretionary and secret imprisonment was rendered impracticable, and portions of the people were trained to exercise a larger share of judicial power than ever was allotted to them in any other civilized State, in such a manner as to secure, instead of endangering, public tranquillity; whoever exults at the spectacle of enlightened and independent assemblies, which, under the eye of a well informed nation, discuss and determine the laws and policy likely to make communities great and happy; whoever is capable of comprehending all the effects of such institutions with all their possible improvements upon the mind and genius of a people, — is sacredly bound to speak with reverential gratitude of the authors of the Great Charter. To have produced it, to have preserved it, to have matured it, constitute the immortal claim of England upon the esteem of mankind. Her Bacons and Shakespeares, her Miltons and Newtons, with all the truth which they have revealed, and all the generous virtue which they have inspired, are of inferior value when compared with the subjection of men and their rulers to the principles of justice, if, indeed, it be not more true that these mighty spirits could not have been formed except under equal laws, nor roused to full activity without the influence of that spirit which the Great Charter breathed over their forefathers.

SIR JAMES MACKINTOSH, *History of England*. I. 221.

STUBBS (1873)

The Great Charter closes one epoch and begins another. On the one hand it is the united act of a nation that has been learning union; the enunciation of rights and liberties, the needs and uses of which have been taught by long years of training and by a short but bitter struggle: on the other hand it is the watchword of a new political party, the starting-point of a new contest.

WILLIAM STUBBS, *Constitutional History of England*. II. 1.

J. R. GREEN (1874)

An island in the Thames between Staines and Windsor had been chosen as the place of conference: the King encamped on one bank, while the barons covered the marshy flat, still known by the name of Runnymede, on the other. Their delegates met in the island between them, but the negotiations were a mere cloak to cover John's purpose of unconditional submission. The Great Charter was discussed, agreed to, and signed in a single day. One copy of it still remains in the British Museum, injured by age and fire, but with the royal seal still hanging from the brown, shrivelled parchment. It is impossible to gaze without reverence on the earliest monument of English freedom which we can see with our own eyes and touch with our own hands, the great Charter to which from age to age patriots have looked back as the basis of English liberty. But in itself the Charter was no novelty, nor did it claim to establish any new constitutional principles. The Charter of Henry the First formed the basis of the whole, and the additions to it are for the most part formal recognitions of the judicial and administrative changes introduced by Henry the Second. But the vague expressions of the older charters were now exchanged for precise and elaborate provisions. The bonds of unwritten custom which the older grants did little more than recognize had proved too weak to hold the Angevins; and the baronage now threw them aside for the restraints of written law. It is in this way that the Great Charter marks the transition from the age of traditional rights, preserved in the nation's memory and officially declared by the Primate, to the age of written

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legislation, of Parliaments and Statutes, which was soon to come. The Church had shown its power of self-defence in the struggle over the interdict, and the clause which recognized its rights alone retained the older and general form. But all vagueness ceases when the Charter passes on to deal with the rights of Englishmen at large, their right to justice, to security of person and property, to good government. "No freeman," ran the memorable article that lies at the base of our whole judicial system, "shall be seized or imprisoned, or dispossessed, or outlawed, or in any way brought to ruin: we will not go against any man nor send against him, save by legal judgment of his peers or by the law of the land." "To no man will we sell," runs another, "or deny, or delay, right or justice." The great reforms of the past reigns were now formally recognized; judges of assize were to hold their circuits four times in the year, and the King's Court was no longer to follow the King in his wanderings over the realm, but to sit in a fixed place. But the denial of justice under John was a small danger compared with the lawless exactions both of himself and his predecessor. Richard had increased the amount of the scutage which Henry II. had introduced, and applied it to raise funds for his ransom. He had restored the Danegeld, or land tax, so often abolished, under the new name of "carucage," had seized the wool of the Cistercians and the plate of the churches, and rated moveables as well as land. John had again raised the rate of scutage, and imposed aids, fines, and ransoms at his pleasure without counsel of the baronage. The Great Charter met this abuse by the provision on which our constitutional system rests. With the exception of the three customary feudal aids which still remained to the Crown, "no scutage or aid shall be imposed in our realm save by the Common Council of the realm;" and to this Great Council it was provided that prelates and the greater barons should be summoned by special writ, and all tenants in chief through the sheriffs and bailiffs, at least forty days before. . . . But it was less easy to provide means for the control of a King whom no man could trust, and a council of twenty-five barons was chosen from the general body of their order to enforce on John the observance of the Charter, with the right of declaring war on the King should its

provisions be infringed. Finally, the Charter was published throughout the whole country, and sworn to at every hundred-mote and town-mote by order from the King.

J. R. GREEN, *Short History of the English People.* 128–130.

BAGEHOT (1872)

Many most important enactments of that period (and the fact is most characteristic) are declaratory acts. They do not profess to enjoin by inherent authority what the law shall in future be, but to state and mark what the law is; they are declarations of immemorial custom, not precepts of new duties. Even in the "Great Charter" the notion of new enactments was secondary, it was a great mixture of old and new; it was a sort of compact defining what was doubtful in floating custom.

WALTER BAGEHOT, *English Constitution.* 280.

TASWELL-LANGMEAD (1879)

Three great political documents, in the nature of fundamental compacts between the Crown and the Nation, stand out as prominent landmarks in English Constitutional history. Magna Charta, the Petition of Right, and the Bill of Rights constitute, in the words of Lord Chatham, "the Bible of the English Constitution." In each of these documents whether it be of the 13th or of the 17th century is observable the common characteristic of professing to introduce nothing new. Each professed to assert rights and liberties which were already old, and sought to redress grievances which were for the most part themselves innovations upon the ancient liberties of the people. In its practical combination of conservative instincts with liberal aspirations, in its power of progressive development and self-adaptation to the changing political and social wants of each successive generation, have always lain the peculiar excellence and at the same time the surest safeguard, of our Constitution.

The Great Charter of Liberties was the outcome of a movement of all the freemen of the realm, led by their natural leaders, the barons. Far from being a 'mere piece of class legislation,' extorted by the barons alone for their own special interests, it

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is in itself a noble and remarkable proof of the sympathy and union then existing between the aristocracy and all classes of the commonalty.

J. P. TASWELL-LANGMEAD, *English Constitutional History*. 85.

RUDOLF VON GNEIST (1889)

This charter of liberties differed from those prevalent on the continent, especially in the fact that the Prelates and vassals do not think of themselves alone, but also extend the necessary securities to the classes below them. . . . Magna Charta was a pledge of reconciliation between all classes. Its existence and ratification maintained, for centuries, the notion of fundamental rights as applicable to all classes, in the consciousness that no liberties could be upheld by the superior classes for any length of time, without guarantees of personal liberty for the humbler also.

RUDOLF VON GNEIST, *History of the English Parliament*, translated by A. H. Keane. 29–103.

POLLOCK AND MAITLAND (1895)

Every one of its brief sentences is aimed at some different object and is full of future law.

POLLOCK AND MAITLAND, *History of English Law*. I. 150.

GARDINER (1895)

It was a good security if it could be maintained. . . . So little was John trusted that it was thought necessary . . . to establish a body of twenty-five, — twenty-four barons and the Mayor of London, — which was to guard against any attempt of the king to break his word. . . . In other words, there was to be a permanent organization for making war upon the king.

GARDINER, *Student's History of England*. 183.

RANSOME (1895)

One of the best features of the charter was the way in which every right granted to a baron was carefully extended to include the case of the simple freeman. . . . These provisions and many

others which concerned every class of the population form the substance of the Great Charter, which has ever since been regarded by Englishmen as the foundation of their liberties. In later times it took the position in popular esteem which had hitherto been held by the "laws of Henry I.," or the "laws of King Edward," and has been confirmed over and over again.

CYRIL RANSOME, *Advanced History of England*. 176–177.

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CHAPTER III

THE SUMMONS TO PARLIAMENT (1295)

SUGGESTIONS

THE importance of the "Summons" is chiefly prospective. It takes a place among documents more famous because it is typical of a large class of constitutional services.

This summons, together with similar writs, was issued by order of the Crown. The king had found himself early in 1295 in very difficult circumstances. In June he issued writs of summons to the members of Parliament to meet at Westminster in August; this meeting lasted but two days, and as no representative of the Commons was summoned to this assembly, it is more properly styled a session of a Great Council. No attempt was made in it to raise money, but it was probably arranged that a grant should be asked for in the next session. With this in view, writs were issued on the 30th of September to the Ecclesiastical representatives. On the 1st of October, the writs were issued to the baronage. On the 3rd of October the writs to the sheriffs are dated; and by these each sheriff is directed to return two knights elected by the counties, and two citizens or burghers for each city or borough within his shire.

By such writs of summons a perfect representation of the three estates was secured, and a parliament constituted, on the model of which every succeeding assembly bearing that name was formed.

One may well pause at this point to look back upon the Witenagemot of the Teutonic system of government and look forward to the assembly body of the Congress of the United States.

For Outlines and Material, see Appendix A.

DOCUMENT

Summons to Parliament (Oct. 3rd, 1295)

Report on the Dignity of a Peer, App. i., p. 66, translated

The King to the Sheriff of Northamptonshire:

Whereas, in order to make provision of remedies against the dangers which at this time menace the realm, we desire to take counsel with the earls, barons, and other noblemen of our kingdom, and for that reason have commanded them to meet us on the Sunday next after the feast of Saint Martin in the winter next ensuing, at Westminster, for the discussing, ordaining and doing of whatsoever may be best for the obviating of such dangers,

We do hereby firmly command and enjoin you that there be chosen without delay from the aforesaid county two knights, and from every city of that county two citizens, from every borough two burgesses, all men of superior discretion and ability in affairs, and that you have them come to us at the day and place aforesaid;

In order that said knights shall have, in behalf of themselves and the body of the county aforesaid, full and sufficient power, and that said citizens and burgesses shall have, in behalf of themselves and the body of the cities and boroughs aforesaid both separately and collectively, full and sufficient power, for doing what shall then be ordained by the common counsel in the premises; so, that the business aforesaid shall in no wise remain unaccomplished for want of such power.

And have you there the names of the knights, citizens, and burgesses, and this writ.

Witness the King at Canterbury the third day of October.

Note by Henry A. Clapp (1900). Note the difference between this summons and the charter of Henry I. Art. i.

Note Magna Charta, Art. xiv.

Note the increase of power in House of Commons.

CONTEMPORARY EXPOSITION

THOMAS CROMWELL (1523)

Maister Creke, as hertelye as I can I *commende* me and in the same wise thanke you (for your) gentill and louyng *letteres* to me at sundrye tymys sent, and when as I accordinglye haue not in lykewise remembrid and rescribid it hath been For that I haue not hade anything to wryt of to *your aduauncement*. Whom I assure you yf it were in my lyttyl power I coulde be well contentyd to *preferre* as ferre as any *one* man lyuyng. But at this *present* I being at sum layser entending to re-

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membre and also remanerate the olde acquayntaunces and to renew *our* not forgoten sundrye *communycacions* supposing ye desyre to know the *newes* curraunt in thes *partyes* for it is said that *newes* refresshith the spy(rit) of lyfe, wherfor ye shall onderstonde that bw long tyme I amongst other haue Indured a parlyament which contenwid by the space of xvij hole *wekks* wher we communyd of warre pease stryffe contencyon debatte murmure grudge Riches pouerte penwrre trowth falshode Justyce equyte discayte opprescyon Magnanymte act yuyte force attem praunce Treason murder Felonye consyli . . . and also how a *commune* welth myght be edifyed and a(lso) contenwid *within our* Realme. Howbeyt, in conclusyon, we haue d(one) as *our predecessors* haue been wont to doo, that ys to say, as well as we myght and lefte wher we begann. Ye shall also onderstond the Duke of Suthfolke Furnysshyd *with* a gret armye goyth ouer in all goodbye haste (whit)her I know not, when I know I shall aduertyse yow. Whe haue in *our parlyament* grantyd onto the *Kinges* highness a ryght large subsyde, the lyke wherof was neur grantyd in this realme. All your *frendes* to my knowlage be in good helth and specially they that ye wott of: ye know what I meaoe. I thinke it best to wryt in parables becaus(e) I am in doubt. Maister Vawhan Fareth well and so doth Maister Munkeaste(r). Maister Woodall is merye *withowt* a wyffe and *commendyth* hym to you: and so ys also Nycholas Longmede which hath payd *William* Wilfforde. And thus as well f(are) ye as I woolde myself at London the xvij daye of August by *your* Frende to all his possible power.

Thomas Crumwell.

Add: To his (esp)ecial and entyrelye belouyd frende John Creke be this youyn Bylbowe in Biscaye.

Ralph C. Merrill, *Life of Thomas Cromwell* (MS.), in the College Office of Harvard University.

the coppy of the *Kynges letter*

In my herty wyse I recomendeme unto you these shalbe forasmoche as the *Kynges* plesur and *comandement* ys that Robert Derknall and John Bryges schulbe electe and chosyn Citezin or burgesses for that cite by reson wherof my lorde chaunceler and I by owyr *letteres* written onto you aduertysed you therof and ye the same little or nothynge regardynge but ratther *contemny* haue closen othyr at *your* owne wylles and *comandement* in that behalfe wherat the *kynges* highnes dothe not a lytell marvell wherefore in advoydyng of ferther dysplesur, that mygte therby ensue I require you on the *kynges* behalfe that notwythstondynge seyd eleccion ye *procede* to a new and electe thosse other, accordynge to the tenure of the former *letteres* to you dyrectyd for that purpose *without* faylyng so to do as the *kynges* truste and expecion is in you and as ye entende to avoide hys highness displesur at your parell and yf any persone wyll obstynately gaynsay the same I require you to aduertise me therof that I maye ordre hym as the *kynges* plesur shalbe in that case to *commande* thus fare ye well at the rolles the viii † day of May.

Your louynge frende,

Thomas Crumwell.

Add: To my ryzth louynge *frendes* the mayr sheeyffe and *cominaltie* of the Cite of *Cannterbury* and to *euery* of them.

[This official letter was written by Thomas Cromwell to the "Magistrates" (i. e., Town Council) of Canterbury, May 18, 1536. It is in the MS. Life of Cromwell, cited above.]

CRITICAL COMMENT

HALLAM (1818)

To grant money was therefore the main object of their meeting; and if the exigencies of the administration could have been relieved without subsidies, the citizens and burgesses might still have sat at home, and obeyed the laws which a council of prelates and barons enacted for their government. But it is a difficult question, whether the king and the peers designed to make room for them, as it were, in legislation; and whether the power of the purse drew after it immediately, or only by degrees, those indispensable rights of consenting to laws which they now possess.

Henry Hallam, *Middle Ages.* 370.

† Altered to this from "xx."

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STUBBS (1873)

The design, as interpreted by the result, was the creation of a national parliament, composed of the three estates, organized on the principle of concentrating local agency and machinery in such a manner as to produce unity of national action, and thus to strengthen the hand of the king, who personified the nation. This design was perfected in 1295. It was not the result of compulsion, but the consummation of a growing policy. Edward did not call his parliament . . . on the spur of a momentary necessity, or as a new machinery invented for the occasion and to be thrown aside when the occasion was over, but as a perfected organization, the growth of which he had for twenty years been doing his best to guide.

WILLIAM STUBBS, *Constitutional History of England.* II. 305.

TASWELL-LANGMEAD (1879)

From 1265 to 1295 was a transitionary period: and it is only from the latter year that we can date the regular and complete establishment of a perfect representation of the Three Estates in Parliament. . . . The position of the kingdom was still critical, and Edward seems to have felt that he required to be backed up by the whole nation, supporting him as well by their common counsel and approval as by a general and adequate grant of an aid. He accordingly, on the 30th of September, summoned a parliament to meet at Westminster in the November following, so constituted as to represent and have the power to tax the whole nation.

T. P. TASWELL-LANGMEAD, *English Constitutional History.* 200–207.

J. K. HOSMER (1890)

It was in the autumn of 1295 that he (Edward I.) performed his most memorable act, the last formal step which established fully the representation of the Commons. . . . The forward steps which the nation took, sometimes, to be sure, in spite of him, but sometimes under his guidance, were most momentous. The Great Charter was again and again confirmed, until it became as fixed as the hills, in the national life. . . . In 1297, it was clearly established that there can be no taxation without

representation,—a principle upon which, five hundred years later, stood the Americans of '76. . . . Parliament, too, stood forth, a well defined and organized expositor of the national will.

J. K. HOSMER, *Anglo-Saxon Freedom.* 60, 61.

BOUTMY (1891)

In 1295, the custom of summoning two knights from each county had become fixed. . . . From that time forward no Parliament was formally constituted without a summons addressed to each of these two classes. During the same period another element had been admitted to the assembly. The principal towns, those especially which possessed charters, had been convoked in 1265 by Simon de Montfort; thirty years later a royal ordinance called upon them to send two inhabitants, citizens, or burgesses, as representatives, and after that year they received regularly a summons to Parliament. The year 1295 is therefore a date of capital importance. The beginning of the fourteenth century found Parliament consisting of all the essentials of a truly national assembly, and representing even more completely than at the present day (for certain elements have been lost by exclusion or disuse) the various components of the English nation.

ÉMILE BOUTMY, *English Constitution.* 65, 66.

FREEMAN (1892)

One may certainly doubt whether Edward, when he summoned a baron to Parliament, meant positively to pledge himself to summon that baron's heirs for ever and ever or even necessarily to summon the baron himself to every future parliament. The facts are the other way: the summons still for a while remains irregular. But the perpetual summons, the hereditary summons, gradually became the rule, and that rule may in a certain sense be said to date from 1295, the year from which so many things parliamentary date.

EDWD. FREEMAN, *House of Lords,* in *Fourth Series of Historical Essays.* 454.

RANSOME (1896)

In this assembly were represented each of what were beginning to be known as the three estates of the realm, the

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clergy, the nobility, and the commonalty. . . . Thirty years had elapsed since the citizens and burgesses had been called to Simon de Montfort's convention in 1265. Since then it had been no uncommon thing to summon knights and burgesses to parliament, but the exact constitution of the assembly was by no means definitely settled. . . . This is, therefore, the first real parliament in which they had ever taken part. . . . The meeting of the Model Parliament of 1295 was a memorable day for England, and marks the beginning of a new era of parliamentary government.

CYRIL RANSOME, *Advanced History of England*. 219, 220.

S. R. GARDINER (1896)

Edward, attacked on two sides, threw himself for support on the English nation. Towards the end of 1295 he summoned a Parliament which was in most respects the model for all succeeding Parliaments. It was attended not only by bishops, abbots, earls, and barons, by two knights from every shire, and two burgesses from every borough, but also by representatives of the chapters of cathedrals and of the parochial clergy.

S. R. GARDINER, *Student's History of England*. 218.

G. B. ADAMS (1900)

If the burgesses were certain to be admitted into the older institution there was nothing in that fact or in any other circumstance of the time that determined the form and character which the new institution was to assume, and this was a question of vital importance for the future. Upon it depended the existence of the constitution quite as much as upon the survival and the broadened significance of the ideas of the Magna Carta. In this particular the decisive period, the danger period, was that which extended from 1254 to 1295. We have a right, I think, to make 1295 the date of the beginning of Parliament. To be sure there was nothing whatever about the parliament of 1295 considered by itself alone which indicated that it was to be any more truly the model parliament than any one of the different experimental forms of the preceding forty years. It possessed more of the features of the *curia regis* than of a later parliament; the whole question of

estates and of organization was still unsettled; the struggle for the supremacy of the new parliament over the survivals of the old *curia regis* had still to be fought out in the following century, but as a historical fact the parliament of 1295 was the model parliament. The age of experimenting was over. In all the creative fundamental principles, both of constitution and of powers, Parliament was in existence as a different thing institutionally from the old *curia regis*. The later development was a perfection of details, an application of established principles to a constantly enlarging range of cases, not a work of new creation.

GEO. B. ADAMS, *Critical Periods of English constitutional History*, in *American Historical Review* (July, 1900). 656.

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CHAPTER IV

CONFIRMATIO CHARTARUM (1297)

SUGGESTIONS

IN events which led to this Charter we trace two distinct forces, each of them the result of accumulating influence, but timed by an extraordinary coincident, through the King's necessities, the treasury was utterly drained. King Edward, from sheer want, was driven to tyrannous extortion, when planning his second attack on France with the aid of Flanders. The Church and Baronage alike defied him. Bohun, Earl of Hereford, and Bigod, Earl of Norfolk, headed the opposition. Edward found himself powerless to move, and in a burst of feeling owned that he had taken their substance without due warrant of law. Still in want of money, he appealed to the barons, but they in turn demanded redress of grievances and the confirmation of Magna Charta. In August, Edward proceeded to Ghent, leaving his son, Edward, Prince of Wales, as Regent. As soon as the King had departed, the Earls seized the opportunity to press their demands. Entering the Exchequer, they peremptorily forbade the Barons there to levy the aid, the grant of which they asserted had been illegally obtained, until the charters had been confirmed. Supported by a large military following, and backed up by the citizens of London, they were masters of the situation, and the young Prince and his Council found it necessary to yield. The Confirmatio Chartarum, which, although a statute, is drawn up in the form of a charter, was passed on the 10th of October, 1297, in a Parliament at which knights of the shire attended as representatives of the Commons, as well as the lay and clerical Baronage. It was immediately sent over to King Edward at Ghent, and there confirmed by him on the 5th of November following.

In Confirmatio Chartarum, as in Magna Charta, we find a culmination of influences bringing about a document which has a vital place in the organization of all future government. Such charters are "the rallying-point of the oppressed and the offended," and no student of American liberty can appreciate intelligently the struggle from 1765 to 1776 without an insight into the historic beginnings of "*Taxation without representation.*"

For Outlines and Material, see Appendix A.

DOCUMENT

"Confirmatio Chartarum" of Edward I. (1297)

The *Statutes of the Realm*, i. 123, 124, translated by William Stubbs, *Select Charters*, 486, 487.

I. Edward, by the grace of God, King of England, Lord of Ireland, and Duke Guyan, to all those that these present letters shall hear or see, greeting. Know ye that we to the honour of God and of holy Church, and to the profit of our realm, have granted for us and our heirs, that the Charter of Liberties and the Charter of the Forest, which were made by common assent of all the realm, in the time of King Henry our father, shall be kept in every point without breach. And we will that the same charters shall be sent under our seal as well to our justices of the forest as to others, and to all sheriffs of shires, and to all our other officers, and to all our cities throughout the realm, together with our writs in the which it shall be contained, that they cause the foresaid charters to be published, and to declare to the people that we have confirmed them in all points, and that our justices, sheriffs, mayors, and other ministers which under us have the laws of our land to guide, shall allow the said charters pleaded before them in judgment in all their points; that is to wit, the Great Charter as the common law, and the Charter of the Forest according to the Assize of the Forest, for the wealth of our realm.

The gist of Magna Charta and of the Charter of the Forest appears in this article; by this statute the prerogative of levying internal taxes was given up.

II. And we will that if any judgment be given from henceforth, contrary to the points of the charters aforesaid, by the justices or by any other our ministers that hold plea before them against the points of the charters, it shall be undone and holden for nought.

The remedy against arbitrary judgment lay in the law of Art. ii.

III. And we will that the same charters shall be sent under our seal to cathedral churches throughout our realm, there to remain, and shall be read before the people two times by the year.

IV. And that all archbishops and bishops shall pronounce the sentence of great excommunication

Arts. iii. and iv. limit the authority of the Church.

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against all those that by word, deed, or counsel do contrary to the foresaid charters, or that in any point break or undo them. And that the said curses be twice a year denounced and published by the prelates aforesaid. And if the prelates or any of them be remiss in the denunciation of the said sentences, the Archbishops of Canterbury and York for the time being, as is fitting, shall compel and distrein them to make that denunciation in form aforesaid.

V. And for so much as divers people of our realm are in fear that the aids and tasks which they have given to us beforetime towards our wars and other business, of their own grant and goodwill, howsoever they were made, might turn to a bondage to them and their heirs, because they might be at another time found in the rolls, and so likewise the prises taken throughout the realm by our ministers; we have granted for us and our heirs, that we shall not draw such aids, tasks, nor prises into a custom, for anything that hath been done heretofore, or that may be found by roll or in any other manner.

Articles v., vi., and vii. contain the essence of the principle, "No taxation without representation."

VI. Moreover we have granted for us and our heirs, as well to archbishops, bishops, abbots, priors, and other folk of holy Church, as also to earls, barons, and to all the commonalty of the land, that for no business from henceforth will we take such manner of aids, tasks, nor prises, but by the common consent of the realm, and for the common profit thereof, saving the ancient aids and prises due and accustomed.

VII. And for so much as the more part of the commonalty of the realm find themselves sore grieved with the maletote of wools, that is to wit, a toll of forty shillings for every sack of wool, and have made petition to us to release the same; we, at their requests, have clearly released it, and have granted for us and our heirs that we shall not take such thing nor any other without their common assent and good

Beginning of a system by which taxes in foreign trade were made subject to Parliament.

will; saving to us and our heirs the custom of wools, skins, and leather granted before by the commonalty aforesaid. In witness of which things we have caused these our letters to be made patents. Witness Edward our son at London, the 10th day of October, the five and twentieth year of our reign.

And be it remembered that this same charter, in the same terms, word for word, was sealed in Flanders under the king's great seal, that is to say, at Ghent, the 5th day of November in the 25th year of the reign of our aforesaid lord the king, and sent into England.

CONTEMPORARY EXPOSITION

BARTHOLOMEW DE COTTON (1297)

His majesty the King conceded to all who owed him service and to all holders of twenty measures of land that they should not be held to go with him into Flanders except for the performance of promises and of military service due said King.

BARTHOLOMEW DE COTTON, *Historia Anglicana*, translated by H. A. Clapp (1900). 327.

CRITICAL COMMENT

HALLAM (1818)

That famous statute, inadequately denominated the confirmation of the charters, because it added another pillar to our Constitution, is not less important than the great charter itself. Hitherto the King's prerogative of levying money. . . . had passed unquestioned. Some impositions, that especially on the export of wool, affected all the King's subjects. It was now the moment to enfranchise the people, and give that security to private property which Magna Charta had given to personal liberty.

HENRY HALLAM, *Middle Ages*. 354.

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MACAULAY (1849)

That the King could not impose taxes without the consent of parliament is admitted to have been, from time immemorial, a fundamental law of England. It was among the articles which John was compelled by the Barons to sign. Edward I. ventured to break through the rule, but able, powerful, and popular as he was, he encountered an opposition to which he found it expedient to yield. He covenanted, accordingly in express terms, for himself and for his heirs, that they would never again levy any aid without the assent and good will of the estates of the realm.

MACAULAY, *History of England*. I. 25.

STUBBS (1873)

The charters were confirmed by *inspeximus* on the 12th; the King on the 5th of November at Ghent confirmed both the charters and the new articles. These articles are the summary of the advantages gained at the termination of the struggle of eighty-two years, and in words they amount to very little more than a reinsertion of the clauses omitted from the Great Charter of John. The "Confirmatio Cartarum" is one of the most curious phenomena of our national history, whether it be regarded as the result of an occasional crisis, or as the decision, no longer to be delayed, of a struggle of principles. . . . The forces which seized that opportunity were ready, and were the result of a long series of causes and the working of principles which must sooner or later have made an opportunity for themselves. Such a crisis, if they had separately attempted to bring it about, might have changed the dynasty, or subverted the relations of church and state, crown and parliament, but accepted as it came, it brought about a result singularly in harmony with what seems from history and experience to be the natural direction of English progress.

WILLIAM STUBBS, *Constitutional History of England*. II. 150, 151.

TASWELL-LANGMEAD (1879)

The "Confirmatio Chartarum," which, although a statute, is drawn up in the form of a charter, was passed on the 10th of October, 1297, in a Parliament at which Knights of the Shire attended as representatives of the Commons, as well as lay and clerical baronage. . . . The "Confirmatio Chartarum" was not merely a re-issue of Magna Charta and the Charter of the Forest, — but the enactment of a series of new provisions intended to deprive the Crown in the future of its assumed right of arbitrary taxation. . . . The exclusive right of Parliament to impose taxation, though often infringed by the illegal exercise of prerogative, became from this time an axiom of the Constitution.

T. P. TASWELL-LANGMEAD, *English Constitutional History*. 216, 217.

FEILDEN (1882)

The reign of Edward I. is marked by the admission of the Commons to Parliament, and by the partial surrender on the part of the Crown of its claims to arbitrary taxation. In 1297, Humphrey Bohun, Earl of Hereford, Roger Bigod, Earl of Norfolk, and Archbishop Winchelsey, representing baronial and clerical interests, extorted from Edward the Confirmatio Chartarum.

H. ST. C. FEILDEN, *Short Constitutional History of England*. 18.

RUDOLF VON GNEIST (1889)

This Confirmatio Chartarum, in French and Latin text, represents, in fact, a fundamental law comparable with Magna Charta, and to the credit of the Crown in contrast with the events of 1215. . . . The main point . . . was that the right constantly contended for since Magna Charta in 1215 of signifying an assent to the taxes, had after a lapse of a century been at last achieved, and this on a broad footing of the land-owning classes, which in fact pay them.

RUDOLF VON GNEIST, *History of the Eng. Parliament*, translated by A. H. Keane. I. 159.

HANNIS TAYLOR (1889)

Not until eighty years after the issuance of the Great Charter did the nation finally win, through the Confirmatio Cartarum, a permanent constitutional guarantee that taxes should never be imposed by the unaided force of the royal authority. . . .

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In the parliament of 1295 the three estates appeared in person or by representatives: the lay and spiritual baronage represented themselves, the inferior clergy and the commons, each as an estate of the realm, appeared through their chosen representatives. Two years after the national assembly was thus constituted, the long struggle of the nation for the right to tax itself was closed at the end of the "Barons' War" by the Confirmatio Cartarum, wherein Edward I. was made to promise the clergy, the barons and "all the commonalty of the land, that for no business from henceforth will we take such manner of aids, tasks, nor prizes, but by the common assent of the realm, and for the common profit thereof, saving the ancient aids and prizes due and accustomed."

HANNIS TAYLOR, *Origin and Growth of the English Constitution.* II. 11–13.

CHAPTER V

LEGAL FORMS AND JURY TRIALS (1429)

SUGGESTIONS

THE Statute 8 Henry VI. 12 is chosen as the type of the many statutes enacted in the Lancastrian Period. Referred to by Sir John Fortescue (whose interpretation of the English laws of the fifteenth century forms a running commentary upon the government of his day) this statute seems particularly worthy of place amongst our documents. This is the earliest mention, in a statute, of the system of trial by jury — "Inquest to be taken of lawful men."

The system of judicature is too technical and too far-reaching to be developed as a correlation of constitutional government, but it is well to give a cursory glance at Curia Regis, the Laws of Henry II., and the growth of Trial by Jury, that the principle of "liberty of the subject" may here be shown to have a legal as well as a moral support in the history of Anglo-Saxon government.

Throughout the earlier study, suggested by the topics in the Appendix, the development of the court and trial by jury are constantly referred to as a basis for research.

For Outlines and Material, see Appendix A.

DOCUMENT

Statutes: 8 Henry VI. Cap. 12 (1429)

No Judgment or Record shall be reversed for any Writ, Process, &c., rased. What Defects in Records may be amended by the Judges, and what not. *The Statutes at Large*, i., 550, 551.

Item, our Lord the King had ordained and established by the authority of this present parliament, That for error assigned, or to be assigned, in any record, process, or warrant of attorney, original writ or judicial, panel or return, in any places of the same rased or interlined, or in any addition, Assured dignity of a warrant or writ.

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subtraction, or diminution of words, letters, titles, or parcel of letters, found in any such record, process, warrant of attorney, writ, panel, or return, which rasings, interlinings, addition, subtraction, or diminution, at the discretion of the King's judges of the courts and places, in which the said records or process by writ of error, or otherwise, be certified, do appear suspected, no judgment nor record shall be reversed nor adnulled.

Changes to be made by judges if needful.

II. And that the King's judges of the courts and places in which any record, process, word, plea, warrant of attorney, writ, panel, or return, which for the time shall be, shall have power to examine such records, process, words, pleas, warrants of attorney, writs, panels, or return, by them and their clerks, and to reform and amend (in affirmance of the judgments of such records and processes) all that which to them in their discretion seemeth to be misprision of the clerks in such record, processes, word, plea, warrant of attorney, writ, panel, and return; (2) except appeals, indictments of treason and of felonies, and the outlawries of the same, and the substance of the proper names, surnames, and additions, left out in original writs and writs of exigent, according to the statute another time made the first year of King Henry, father to our lord the King that now is, and in other writs containing proclamation; (3) so that by such misprision of the clerk no judgment shall be reversed nor adnulled. (4) And if any record, process, writ, warrant of attorney, return, or panel be certified defective, otherwise than according to the writing which thereof remaineth in the treasury, courts, or places from whence they be certified, the parties in affirmance of the judgments of such record and process shall have advantage to alledge, that the same writing is variant from the said certificate, and that found and certified, the same variance shall be by the said judges reformed and amended according to the first writing.

Exceptions: records not to be amended in certain cases.

Judges' right to correct variance between record and certificate of same.

III. And moreover it is ordained, that if any record, or parcel of the same writ, return, panel, process, or warrant of attorney in the King's courts of chancery, exchequer, the one bench or the other, or in his treasury, be willingly stolen, taken away, withdrawn, or avoided by any clerk, or by other person, because whereof any judgment shall be reversed; that such stealer, taker away, withdrawer, or avoider, their procurators, counsellors, and abettors, thereof indicted, and by process thereupon made thereof duly convict by their own confession, or by inquest to be taken of lawful men, whereof the one half shall be of the men of any court of the same courts, and the other half of other, shall be judged for felons, and shall incur the pain of felony. (2) And that the judges of the said courts of the one bench or of the other, have power to hear and determine such defaults before them, and thereof to make due punishment as afore is said.

Punishment for embezzling a record to be felony.

IV. Provided always, That if any such record, process, writ, or warrant of attorney, panel, or return, or parcel of the same, be now, or hereafter shall be exemplified in the King's chancery under the great seal, and such exemplification there of record inrolled without any rasing in the same place in the exemplification and the inrollment of the same, that another time for any error assigned, or to be assigned in the said record, process, writ, warrant of attorney, panel, or return, in any letter, word, clause, or matter of the same varying, or contrary to the said exemplification and the inrollment, there shall be no judgment of the said records and process reversed nor adnulled.

Power of the Great Seal.

CONTEMPORARY EXPOSITION

FORTESCUE (1450)

The way of proceeding in civil cases.

Twelve Good and true Men being sworn, as in the Manner above related, legally qualified, that is, having over and besides

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their Moveables, Possessions in Land sufficient (as was said) wherewith to maintain their Rank and Station; neither suspected by, nor at Variance with either of the Parties; all of the Neighbourhood; there shall be read to them, in English, by the Court, the (a) Record and Nature of the Plea, at length, which is depending between the Parties; and the Issue thereupon shall be plainly laid before them, concerning the Truth of which, those who are so sworn, are to certify the Court: Which done, each of the Parties, by (b) Themselves or their Counsel, in Presence of the Court, shall declare and lay open to the Jury all and singular the Matters and Evidences, whereby they think they may be able to inform the Court concerning the Truth of the Point in Question; after which each of the Parties has a Liberty to produce before the Court all such Witnesses as they please, or can get to appear on their Behalf; who being charged upon their Oaths, shall give in Evidence all that they know touching the Truth of the Fact, concerning which the Parties are at Issue: And, if Necessity so require, the Witnesses may be heard and examined apart, till they shall have deposed all that they have to give in Evidence, so that what the One has declared shall not inform or induce another Witness of the same Side, to give his Evidence in the same Words, or to the very same Effect. The whole of the Evidence being gone thro', the Jurors shall confer together, at their Pleasure, as they shall think most convenient, upon the Truth of the Issue before them; with as much deliberation and Leisure as they can well desire, being all the While in the Keeping of an Officer of the Court, in a Place assigned them for that Purpose, Lest any One should attempt by indirect Methods to influence them as to their Opinion, which they are to give in to the Court. Lastly, They are to return into Court and certify the Justices upon the Truth of the Issue so joined, in the Presence of the Parties (if they please to be present) particularly the Person who is Plaintiff in the Cause; what the Jurors shall so certify in the Laws of England, is called (c) the Verdict. In Pursuance of which Verdict, the Justices shall render and form their Judgment. Notwithstanding, if the (d) Party, against whom such Verdict is obtained, complain that He is thereby aggrieved, He may sue out a Writ of Attaint, both against the Jury, and also against the Party

who obtained it: in Virtue of which, if it be found upon the Oath of (e) Twenty-four Men (returned in Manner before observed, chosen and sworn in due Form of Law, who ought to have much better Estates than those who were first returned and sworn) that those, who were the Original Panel and sworn to try the Fact, have given a Verdict, f (15), contrary to Evidence, and their Oath; Every One of the first Jury shall be (g) committed to the Publick Gaol, their Goods shall be confiscated, their Possessions seised into the King's Hands, their Habitations and Houses shall be pulled down, their Woodlands shall be selled, their Meadows shall be plowed up, and they themselves shall ever thenceforward be esteemed, in the Eye of the Law, Infamous, and in no Case whatsoever, h (16), are they to be admitted to give Evidence in any Court of Record: The Party, who suffered in the former Trial, shall be restored to every Thing they gave against Him, thro' Occasion of such their False Verdict: And, who then (tho' He should have no Regard to Conscience or Honesty) being so charged upon his Oath, would not declare the Truth from the bare Apprehensions and Shame of so Heavy a Punishment, and the very great Infamy which attends a contrary Behaviour: And, if perhaps, one or more amongst them should be so unthinking or daring, as to prostitute their Character, yet the rest of the Jurors, probably, will set a better Value on their Reputations than to suffer either their Good Name or Possessions to be destroyed and seised in such a Manner: (i) Now, is not this Method of coming at the Truth better and more effectual, than that Way of Proceeding, which the Civil Laws prescribe? No one's Cause or Right is, in this Case, lost, either by Death or Failure of Witnesses. The (k) Jurors returned are well known; they are not procured for Hire; They are not of Inferior Condition; neither Strangers, nor People of Uncertain Characters, whose Circumstances or Prejudices may be unknown. The (k) Witnesses or Jurors are of the Neighbourhood, able to live of themselves, of Good Reputation and unexceptionable Characters, not brought before the Court by either of the Parties, but (l) chosen and returned by a proper Officer, a worthy, disinterested and indifferent Person, and obliged under a Penalty to appear upon the Trial. (k) They are well acquainted with all

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the Facts which the Evidences depose, and with their several Characters. (m) What need of more Words? There is nothing omitted which can discover the Truth of the Case at Issue, nothing which can in any Respect be concealed from, or unknown to a Jury who are so appointed and returned, I say, as far as it is possible for the Wit of Man to devise.

SIR JOHN FORTESCUE, *De Laudibus Legis Angliæ*. XXVI. (civl. 1450).

SAINT-GERMAIN (1518)

Doctor. If one of the twelve men of an inquest know the very truth of his own knowledge, and instructeth his fellows thereof, and they will in no wise give credence to him, and thereupon, because meat and drink is prohibited them, he is given to that point, that either he must assent to them, and give their verdict against his own knowledge and against his own conscience, or die for lack of meat, how may the law then stand with conscience, that will drive an innocent to that extremity, to be either forsworn, or to be famished and die for want of meat?

Student. I take not the law of the realm to be, that the jury after they be sworn may not eat nor drink till they be agreed of the verdict, but truth it is there is a maxime and an old custom in the law that they shall not eat nor drink after they be sworn till they have given their verdict, without the assent and license of the justices and that is ordained by the law for eschewing divers inconveniences that might follow thereupon, and that specially if they should eat or drink at the costs of the parties; and therefore if they do contrary, it may be laid in arrest of the judgment; but with the assent of the justices they may both eat and drink, as if any of the jurors fall sick before they be agreed of the verdict, so sore that he may not commune of the verdict, then by the assent of the justices he may have meat and drink, and also such other things as be necessary for him.

CHRISTOPHER SAINT-GERMAIN, *The Doctor and The Student*. 158.

CRITICAL COMMENT

BLACKSTONE'S COMMENTARIES (1765)

The learned judge has displayed much erudition in the beginning of this chapter to prove the antiquity of the trial by jury; but the trials referred to by the authors there cited, and even the *judicium parium* [the judgment of peers] mentioned in the celebrated chapter of *Magna Charta*, are trials which were something similar to that by a jury, rather than instances of a trial by jury according to the present established form. The *judicium parium* seems strictly the judgment of a subject's equals in the feudal courts of the king and barons. And so little appears to be ascertained by antiquarians respecting the introduction of the trial in criminal cases by two juries, that although it is one of the most important, it is certainly one of the most obscure and inexplicable, parts of the law of England. The unanimity of twelve men, so repugnant to all experience of human conduct, passions, and understandings, could hardly in any age have been introduced into practice by a deliberate act of the legislature.

But that the life, and perhaps the liberty and property, of a subject should not be affected by the concurring judgment of a less number than twelve, where more were present, was a law founded in reason and caution, and seems to be transmitted to us by the common law, or from immemorial antiquity. The grand assize might have consisted of more than twelve, yet the verdict might have been given by twelve or more; and if twelve did not agree, the assize was afforced, — that is, others were added till twelve did concur. . . . This was a majority, and not unanimity. A grand jury may consist of any number from twelve to twenty-three inclusive, but a presentment ought not to be made by less than twelve. . . . The same is true also of an inquisition before the coroner. In the high court of parliament and the court of the lord high steward a peer may be convicted by the greater number; yet there can be no conviction unless the greater number consists at least of twelve. . . . Under a commission of lunacy the jury was seventeen, but twelve joined in the verdict. . . . A jury upon a writ of inquiry may be more than twelve. In all these cases, if twelve only appeared, it followed as a necessary consequence that to act with effect they must have been unanimous. Hence this may be suggested as a conjecture respecting the origin of the unanimity of juries, that, as less than twelve — if twelve or more were present — could pronounce no effective

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verdict, when twelve only were sworn, their unanimity became indispensable.

Sir William Blackstone, *Commentaries on the Laws of England*. III. 376.

GEORGE SPENCE (1846)

The exercise of the control last adverted to on the part of the judges was the foundation of that system of rules in regard to evidence which has since constituted so large and important a branch of the law of England.

The practice of receiving evidence openly at the bar immediately led to another remarkable result — namely, the great extension of the duty of an advocate. "In earlier times — upon criminal as well as civil inquiries — the jury after they had been sworn and merely charged by the court as to the points at issue, retired to consult together in secret without hearing either witnesses or counsel at the bar. But now the scene was totally changed; witnesses were examined and cross-examined in open court; the floodgates of forensic eloquence were opened, and full scope given to the advocate to exercise his ingenuity and powers of persuasion on the jurors, to whose discretion the power of judging on matters of fact was now intrusted."

Another important consequence followed — when the jury in an assize gave or were presumed to give their verdict upon facts within their knowledge, if they came to a wrong decision they must usually have been guilty of perjury. When they became judges of the facts upon evidence, the liability to attaint would have been as unreasonable and unjust as in the case of an ordinary jury: it therefore virtually fell into disuse. Thenceforth the means of correcting error and mistake on the part of a jury, was left without adequate remedy by the courts of law until the seventeenth century, when the practice of granting new trials was introduced, which I shall have occasion again to advert to in tracing the equitable jurisdiction of the Court of Chancery (1).

The last change in the institution of jury trial is of comparatively modern introduction; it is the limiting the functions of the jury to that of being judges of fact upon evidence laid before them. The principles, Mr. Starkie observes, which warranted this change are obvious; it was found that the

cause of truth suffered more from the prejudices which the residence of jurors in the neighbourhood of the disputed fact were likely to engender, than was gained from knowledge and means of judging so acquired (2). Other inconveniences arose from the rules as to the Venue, so that, after various modifications as to the number of persons from the hundred or vicinage that were to be put upon the jury by the Stat. 4 & 5 Anne, c. 16, and 24 Geo. II., c. 18, the law requiring jurors to be returned from the vicinage or hundred was abolished in all civil actions and it was directed that they should be summoned from the body of the county. By a decision of the Court of Queen's Bench in the first year of Queen Anne, it was held that if a jury gave a verdict of their own knowledge, they ought so to inform the Court, that they might be sworn as witnesses. This, and another case in the reign of George I. put an end to all remains of the ancient functions of juries as recognitors. The question, therefore, adds Mr. Starkie, When did the trial by jury begin? admits of no definite answer, otherwise than by referring to the different transitions to which allusion has been made (3).

George Spence, *Equitable Jurisdiction of the Court of Chancery*. I. 129.

FORSYTH (1852)

The rise and growth of the Jury system is a subject which ought to interest not only the lawyer but all who value the institutions of England, of which this is one of the most remarkable, being until recently a distinctive feature of our jurisprudence. . . . Trial by Jury does not owe its existence to any positive law: — it is not the creature of an Act of Parliament establishing the form and defining the functions of the new tribunal. It arose, as I hope to show, silently and gradually out of the usages of a state of society which has forever passed away. . . . Few subjects have exercised the ingenuity and baffled the research of the historian more than the origin of the jury. . . . I believe it to be capable almost of demonstration, that the English jury is of indigenous growth, and was not copied or borrowed from any of the tribunals that existed on the continent. . . .

The first mention of the trial by assise in our existing

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statutes occurs in the Constitutions of Clarendon, A. D. 1164, where it was provided that if any dispute arose between a layman and a clerk as to whether a particular tenement was the property of the church or belonged to a lay fief, this was to be determined before the chief justiciary of the kingdom, by the verdict of twelve lawful men. . . . The problem is to discover what was the origin and constitution of the jurata. . . .

I conclude that, in the earliest times, disputes respecting lands were decided by the voice of the community of the county or hundred, as the case might be, where the parties lived, that afterwards a select number was substituted for the whole, who gave their testimony upon oath, and therefore were called the 'jurata;' and that this suggested to Henry II. and his councillors the idea of the assise, which was nothing but the jurata in a technical form, and limited to milites, or knights who were summoned by a writ of the sheriff in virtue of a precept from the king. . . .

As the use of juries became more frequent, and the advantages of employing them in the decision of disputes more manifest, the witnesses who formed the secta of a plaintiff began to give their evidence before them, and, like the attesting witnesses to deeds, furnished them with that information which in theory they were supposed to possess previously respecting the cause of quarrel. . . .

In the time of Fortescue, who was lord chancellor in the reign of Henry VI., with the exception of the requirement of personal knowledge in the jurors derived from near neighbourhood of residence, the jury system had become in all its essential features similar to what now exists. . . .

In England, the jury and the witnesses were for many years the same, so that it was only just that they should be punished if they wilfully gave their evidence, that is their verdict, contrary to what they knew to be the truth. And this seems to have been too common. In the tenth year of the reign of Henry VI. a petition was presented to the Commons, complaining of the disherisons and injustice committed in assises and other inquests by perjured jurors, and praying that in a writ of attaint the plaintiff may recover his damages against the petit jury, and every member thereof, as well as against the defendant, and that no juror might serve on an attaint unless he had an estate of five pounds a year in the county.

WILLIAM FORSYTH, *History of Trial by Jury*. 1–185.

J. R. GREEN (1874)

The Wars of the Roses did far more than ruin one royal house or set up another on the throne. If they did not utterly destroy English freedom, they arrested its progress for more than a hundred years. They found England, in the words of Commines, "among all the world's lordships of which I have knowledge, that where the public weal is best ordered, and where least violence reigns over the people." A King of England — the shrewd observer noticed — "can undertake no enterprise of account without assembling his Parliament, which is a thing most wise and holy, and therefore are these kings stronger and better served" than the despotic sovereigns of the Continent. The English kingship, as a judge, Sir John Fortescue, could boast when writing at this time, was not an absolute but a limited monarchy; the land was not a land where the will of the prince was itself the law, but where the prince could neither make laws nor impose taxes save by his subjects' consent. At no time had Parliament played so constant and prominent a part in the government of the realm. At no time had the principles of constitutional liberty seemed so thoroughly understood and so dear to the people at large. The long Parliamentary contest between the Crown and the two Houses since the days of Edward the First had firmly established the great securities of national liberty — the right of freedom from arbitrary taxation, from arbitrary legislation, from arbitrary imprisonment, and the responsibility of even the highest servants of the Crown to Parliament and to the law. But with the close of the struggle for the succession this liberty suddenly disappears. We enter on an epoch of constitutional retrogression in which the slow work of the age that went before it was rapidly undone. Parliamentary life was almost suspended, or was turned into a mere form by the overpowering influence of the Crown. The legislative powers of the two Houses were usurped by the royal Council.

J. R. GREEN, *Short History of the English People*. 289, 290.

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TASWELL-LANGMEAD (1879)

The use of a Jury, both for criminal presentment and civil inquest, is mentioned for the first time in our statute law in the Constitutions of Clarendon. The way in which the jury is therein referred to seems to imply that it had already grown into general use and favour. When one could be found to accuse a powerful layman amenable to the Bishop's jurisdiction, the sheriffs, at the Bishop's request, were directed to "swear twelve lawful men of the neighbourhood to tell the truth, according to their conscience," and the same statute declared that "by the recognition of twelve lawful men," the Chief Justice should decide all disputes as to the lay or clerical tenure of land.

It was in the Grand Assize (the exact date of which is unknown) that the principle of recognition by jury, having gradually grown into familiar use in various civil matters, was applied by Henry II., in an expanded and technical form, to the decision of suits to try the right to land. It is described by Glanvill as a Royal boon conferred on the people, with the counsel and consent of the *proceres*, to relieve freeholders from the hardship of defending the title to their lands by the doubtful issue of trial by battle. By the Grand Assize the defendant was allowed his choice between wager of battle and the recognition (i. e., knowledge) of a jury of twelve sworn knights of the vicinage summoned for that purpose by the sheriff.

In actions not seeking to determine the absolute right to land, but dealing with the seisin only (of which the "assize of novel disseisin" was the most important), the sheriff himself chose twelve knights or freeholders (legales homines) of the vicinage, who were sworn to try the question. In both cases the recognitors were sworn to found their verdict upon their own knowledge, gained either by eye-witness or by the words of their fathers, or by such words as they are bound to have as much confidence in as if they were their own. The proceeding by assize was in fact merely the sworn testimony of a certain number of persons summoned to give evidence upon matters within their own knowledge. They were themselves the only witnesses. If all were ignorant of the facts, a fresh jury had to be summoned; if some of them only were ignorant,

or if they could not agree, others were to be added — a process subsequently called afforcing the jury — until a verdict could be obtained from twelve unanimous witnesses.

The remedy by Assize was subsequently improved by several Acts of Parliament, particularly 13 Ed. I. c. 25; and as all actions on the assize were tried in the King's Court or in that of the Justices Itinerant, the jurisdiction of the County and Hundred Courts began, from this period, rapidly to decline.

By the Assize of Clarendon the principle of Recognition by jury was extended to criminal cases. It was ordained that in every county twelve lawful men of each hundred, with four lawful men from each township, should be sworn to present all reputed criminals of their district in each County court. The persons so presented were to be at once seized and sent to the water ordeal. This was simply a reconstitution or revival, in an expanded form, of the old English institution analogous to a Grand Jury, which, as we have seen, had existed at least since the time of King Ethelred II.

By the Articles of Visitation issued under Richard I. in 1194, as instructions to the Itinerant Justices, the election and constitution of the Jury of Presentment established by Henry II. was further regulated, and assimilated to the system already in use for nominating the recognitors of the Grand Assize. From this developed Jury of Presentment our present Grand Jury has historically descended.

The establishment of this system of combined presentment and ordeal had the effect of abolishing, in all criminal cases, the ancient practice of compurgation by the oath of friends, the "manifest fountain of unblushing perjury."

In the year 1215 the ordeal was abolished throughout Christendom by the fourth Lateran Council, and there remained only, for criminal trials in England, the Grand Jury and the Combat. But the Combat was not applicable unless an injured prosecutor, or "appellant," came forward to demand it; and as the Grand Jury was found inadequate to secure perfect justice, the practice (which had been introduced even before the abolition of ordeal) gradually grew up of allowing a second, or Petit Jury to affirm, or traverse, the testimony of the first set of inquest men. This became the general usage in the reign of

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Henry III. Still for a long time no prisoner was compellable to plead, that is, he might refuse to be tried by the jury: but in this case he was remanded to prison, and from the date of the Statute of Westminster I. (3 Edward I.) was liable to the barbarous punishment called *peine forte et dure*, which was only abolished so late as the reign of George III.

It is important to bear in mind that in Trial by Jury as permanently established, both in Civil and Criminal Cases, by Henry II., the function of the Jury long continued very different from that of the modern tribunal. The jurymen were still mere recognitors, deciding simply on their own knowledge or from tradition, and not upon evidence produced before them; and it was for this reason that they were always selected from the hundred or vicinage in which the question arose.

The later development, common to the Civil and Criminal Jury alike, by which the jurors gradually changed from witnesses into judges of fact, the proof of which rested exclusively on the evidence of others, has now to be considered. The number of the recognitors was at first undefined, but when Glanvill wrote, under Henry II., twelve appears to have been the usual, though not the invariable, number mentioned in the King's writs. We have seen that it was necessary that twelve jurymen should concur in their verdict, and this result, in Civil cases at least, was procured by "afforcing" the jury, that is, adding other recognitors from the vicinage who were acquainted with the matter. But the difficulty of procuring a verdict of twelve, caused for a time the verdict of a majority to be received. In the reign of Edward III., however, the necessity for a unanimous verdict of twelve was re-established.

Under Henry III., special witnesses (such as the witnesses to a deed) were sometimes summoned together with, and formed part of, the Jury.

In the Year Books of 23rd Edward III. mention is made of witnesses being adjoined to the Jury to give them their testimony, but without having any voice in the verdict. This is the first indication of the Jury deciding on evidence formally produced in addition to their own knowledge, and forms *the connecting link between the ancient and the modern Jury*.

Early in the reign of Henry IV. a further advance was made.

All evidence was required to be given at the bar of the court, so that the Judges might be enabled to exclude improper testimony.

From this change flowed two important consequences: (1) From the exercise of control on the part of the Judges sprang up the whole systems of rules as to evidence. (2) The practice of receiving evidence openly at the bar of the Court produced a great extension of the duty of an advocate. Henceforward "witnesses were examined and cross-examined in open court; the floodgates of forensic eloquence were opened, and full scope given to the advocate to exercise his ingenuity and power of persuasion on the jurors, to whose discretion the power of judging on matters of fact were now intrusted."

In the treatise of Chief Justice Fortescue, "De Laudibus Legum Angliæ," written soon after the year 1450, we have clear evidence that the mode of procedure before juries by vivâ voce evidence was the same as at present.

But Juries were still for a long time entitled to rely on their own knowledge in addition to the evidence. In the first year of Queen Anne, the Court of Queen's Bench decided that if a Jury gave a verdict of their own knowledge, they ought so to inform the Court, that they might be sworn as witnesses. This, and a subsequent case in the reign of George I., at length put an end to all remains of the ancient functions of Juries as Recognitors.

In the same way the ancient rule requiring jurors to be returned from the vicinage or hundred, which arose when jurymen were themselves the witnesses, was, after various modifications, abolished in all Civil actions in the reign of George II., and it was directed that juries should be summoned from the body of the county.

T. P. TASWELL-LANGMEAD, *English Constitutional History*. 136–141.

HANNIS TAYLOR (1889)

No attempt to outline the form which the English constitutional system assumed during the fourteenth and fifteenth centuries should fail to embrace some allusion to the accounts given of that system by Sir John Fortescue, the great Lancastrian lawyer, who attended Queen Margaret in her exile

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on the Continent, where he seems to have undertaken, for a time at least, the political education of the heir-apparent. From the De Laudibus Legum Angliae, which was designed to instruct the prince how he should rule over the English; from the De Dominio Regali et Politico, a Treatise on Absolute and Limited Monarchy, and in particular on the Monarchy of England; and from the De Natura Legis Naturae, it is possible to draw something like a definite idea of the extent to which the English kingship had become limited towards the end of the fifteenth century by the growth of the parliament on the one hand, and by growth of the system of legal administration on the other. Under the influence of mediæval political ideas, the writer divides all governments into three classes; the first of which he describes as regal government (dominium regale), the second as political government (dominium politicum), and the third as government of a mixed nature, regal and political (dominium regale et politicum). To the third class England belongs. . . .

In England the king "cannot by himself or his ministers lay taxes, subsidies, or any imposition of what kind soever, upon the subject; he cannot alter the laws, or make new ones, without the express consent of the whole kingdom in parliament assembled." Sir John, who had been chief justice of the king's bench, while explaining how the liberties of the nation as a whole were protected by the parliamentary system, did not forget to point out how the life, liberty, and property of the individual subject were guarded by the system of legal administration. In the account given of the provisions made for the local administration of justice, a careful statement is contained of the procedure in jury trials both in civil and criminal cases. In a civil case the issue is tried by an impartial jury taken from the neighbourhood; in a capital case the jury is not only selected impartially from the neighbourhood, but the defendant is given a large number of challenges, for which he need assign no cause or reason. "In a prosecution carried on in this manner there is nothing cruel, nothing inhuman; an innocent person cannot suffer in life or limb; he has no reason to dread the prejudice or calumny of his enemies; he will not, can not, be put to the rack to gratify

their will and pleasure. In such a constitution, under such laws, every man may live safely and securely."

Thus by the middle of the fifteenth century the personal and political rights of the English people, which had long before been defined in statutes and charters, were permanently and practically guaranteed to the nation as a whole by the parliamentary system on the one hand and to the individual subject by the jury system on the other.

HANNIS TAYLOR, *Origin and Growth of the English Constitution.* I. 560–562.

STEVENS (1894)

And later on, jurors without information were separated from those possessing it, the former becoming judges of evidence only, and the latter witnesses; a decision being given by the former upon the testimony of the latter, and the law in the case being decided by the presiding official in the king's name. By 1450 we have distinct evidence that the mode of procedure was the same as that in modern use, though in occasional instances the ancient functions of jurors lingered as late as to the accession of the House of Hanover.

C. E. STEVENS, *Sources of the Constitution of the United States.* 237.

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CHAPTER VI

PETITION OF RIGHT (1628)

SUGGESTIONS

THIS document — Petition of Right — was the result of the struggle between King Charles I. and the members of Parliament. A Committee of Grievances, members of the third Parliament (March to June, 1628), met together to consider what steps should be taken to restore ancient laws and liberties. For two months the attention of both Houses, either in conference or in separate debate, was almost exclusively devoted to this important subject.

The King attempted to satisfy the House of Commons by a simple confirmation of Magna Charta, but Sir Edward Coke warned the House to proceed by Bill. In fact the far-famed Petition may be said to have thriven under the especial tutelage of Sir Edward Coke: the part assigned to him was the application of reasons for the laws and precedents which had been quoted in favour of the contentions of Parliament. When Charles I. suggested confirming Magna Charta without additions, paragraphs, or explanations, Coke said — "Let us put up a Petition of Right: not that I distrust the King, but that I cannot take his trust but in a parliamentary way."

The Petition of Right was then drawn up by the Commons. After much discussion on the part of both the House of Lords and the House of Commons the petition was passed without any material alteration. On the 2nd of June, 1628, the King attended in the House of Lords to give his answer to the Bill. To the great surprise of Peers and Commoners, the King returned a long and equivocal answer, amounting almost to a refusal to pass the Bill. The Commons gave vent to their ill-humour by impeaching Dr. Mainwaring, one of the Royal Councillors, and were proceeding to censure the favourite, Buckingham, when, on June 7th, the King signed the great contract in the usual form.

This great constitutional compact between the Crown and the People demands peculiar investigation. The documents earlier cited have had no masterful personality standing behind them. The history of this document is closely connected with the heroes of the Puritan era, and the personal preferences and legal theories of Pym,

Hampden, Sir John Eliot, and Sir Edward Coke are expressed in almost every word in the petition. The close connection between the British subject at home and in the colonies, even at this early period in colonial history, should be taken into consideration. The dominant spirit of "redress," as emphatically expressed in 1628, was the cornerstone of all later petitions addressed to royal authority.

For Outlines and Material, see Appendix A.

DOCUMENT

Petition of Right (June 7, 1628)

The Petition exhibited to his Majesty by the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, concerning divers Rights and Liberties of the Subjects, with the King's Majesty's royal answer thereunto in full Parliament.

The Statutes of the Realm, v. 23–24, translated by William Stubbs, *Select Charters*, 505–507.

TO THE KING'S MOST EXCELLENT MAJESTY,

Famous Third Parliament, when Charles I. is forced to sign the "Petition of Right."

Humbly show unto our Sovereign Lord the King, the Lords Spiritual and Temporal, and Commons in Parliament assembled, that whereas it is declared and enacted by a statute made in the time of the reign of King Edward I., commonly called *Statutum de Tallagio non concedendo*, that no tallage or aid shall be laid or levied by the king or his heirs in this realm, without the good will and assent of the archbishops, bishops, earls, barons, knights, burgesses, and other the freemen of the commonalty of this realm; and by authority of parliament holden in the five-and-twentieth year of the reign of King Edward III., it is declared and enacted, that from thenceforth no person shall be compelled to make any loans to the king against his will, because such loans were against reason and the franchise of the land; and by other laws of this realm it is provided, that none should be charged by any charge or imposition, called a benevolence, nor by such like charge; by which the statutes before mentioned, and other the good laws and statutes of this realm, your subjects have inherited this freedom, that they should

"Declaratory statute" declaring former acts illegal.

The so-called "statute" has been termed a compendium of Confirmatio Chartarum.

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not be compelled to contribute to any tax, tallage, aid, or other like charge not set by common consent, in parliament:

"Benevolences" first enacted in the reign of Edward IV. (1473): they were analogous to forced loans in preceding reigns.

II. Yet nevertheless of late divers commissions directed to sundry commissioners in several counties, with instructions, have issued; by means whereof your people have been in divers places assembled, and required to lend certain sums of money unto your Majesty, and many of them, upon their refusal so to do, have had an oath administered unto them not warrantable by the laws or statutes of this realm, and have been constrained to become bound and make appearance and give utterance before your Privy Council, and in other places, and others of them have been therefore imprisoned, confined, and sundry other ways molested and disquieted; and divers other charges have been laid and levied upon your people in several counties by lord lieutenants, deputy lieutenants, commissioners for musters, justices of peace and others, by command or direction from your Majesty or your Privy Council, against the laws and free customs of the realm.

Magna Charta's Habeas Corpus.

III. And whereas also by the statute called "The Great Charter of the liberties of England," it is declared and enacted that no freeman may be taken or imprisoned or be disseised of his freeholds or liberties, or his free customs, or be outlawed or exiled, or in any manner destroyed, but by the lawful judgment of his peers, or by the law of the land.

This statute, "liberty of the subject," grew out of Magna Charta, Art. xxxix.

IV. And in the eight-and-twentieth year of the reign of King Edward III., it was declared and enacted by authority of parliament, that no man, of what estate or condition that he be, should be put out of his lands or tenements, nor taken, nor imprisoned, nor disherited, nor put to death without being brought to answer by due process of law.

V. Nevertheless, against the tenor of the said statutes, and other the good laws and statutes of your realm to that end provided, divers of your subjects have of late been imprisoned without any cause showed; and when for their deliverance they were brought before your justices, by your Majesty's writs of *habeas corpus*, there to undergo and receive as the court should order, and their keepers commanded to certify the causes of their detainer, no cause was certified, but that they were detained by your Majesty's special command, signified by the lords of your Privy Council, and yet were returned back to several prisons, without being charged with anything to which they might make answer according to the law.

These subjects were also members of Parliament, imprisoned for utterances on the floor of the House of Commons.

VI. And whereas of late great companies of soldiers and mariners have been dispersed into divers counties of the realm, and the inhabitants against their wills have been compelled to receive them into their houses, and there to suffer them to sojourn against the laws and customs of this realm, and to the great grievance and vexation of the people:

Billeting soldiers and mariners was valid only in the time of war.

VII. And whereas also by authority of parliament, in the five-and-twentieth year of the reign of King Edward III., it is declared and enacted, that no man shall be forejudged of life or limb against the form of the Great Charter and the law of the land; and by the said Great Charter, and other the laws and statutes of this your realm, no man ought to be adjudged to death but by the laws established in this your realm, either by the customs of the same realm or by acts of parliament: and whereas no offender of what kind soever is exempted from the proceedings to be used, and punishments to be inflicted by the laws and statutes of this your realm: nevertheless of late time divers commissions under your Majesty's great seal have issued forth, by which certain persons have been assigned and appointed commissioners with power and authority to proceed within the land, according to the justice of martial law, against such soldiers or mariners, or

Martial Law was contrary to statute 25

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Edward III.'s, though Elizabeth and Charles I. did not hesitate to apply martial law to civilians in times of peace.

other dissolute persons joining with them, as should commit any murder, robbery, felony, mutiny, or other outrage or misdemeanour whatsoever, and by such summary course and order as is agreeable to martial law, and as is used in armies in time of war, to proceed to the trial and condemnation of such offenders, and them to cause to be executed and put to death according to the law martial.

VIII. By pretext whereof some of your Majesty's subjects have been by some of the said commissioners put to death, when and where, if by the laws and statutes of the land they had deserved death, by the same laws and statutes also they might, and by no other ought to have been, judged and executed.

IX. And also sundry grievous offenders, by colour thereof claiming an exemption, have escaped the punishments due to them by the laws and statutes of this your realm, by reason that divers of your officers and ministers of justice have unjustly refused or forborne to proceed against such offenders according to the same laws and statutes, upon pretence that the said offenders were punishable only by martial law, and by authority of such commissions as aforesaid; which commissions, and all other of like nature, are wholly and directly contrary to the said laws and statutes of this your realm.

X. They do therefore humbly pray your most excellent Majesty, that no man hereafter be compelled to make or yield any gift, loan, benevolence, tax, or such like charge, without common consent by act of parliament; and that none be called to make answer, or take such oath, or to give attendance, or be confined, or otherwise molested or disquieted concerning the same or for refusal thereof; and that no freeman, in any such manner as is before mentioned, be imprisoned or detained; and that your Majesty would be pleased to remove the said soldiers and mariners, and that your people may not

be so burdened in time to come; and that the foresaid commissions, for proceeding by martial law, may be revoked and annulled; and that hereafter no commissions of like nature may issue forth to any person or persons whatsoever to be executed as aforesaid, lest by colour of them any of your Majesty's subjects be destroyed or put to death contrary to the laws and franchise of the land.

XI. All which they most humbly pray of your most excellent Majesty as their rights and liberties, according to the laws and statutes of this realm; and that your Majesty would also vouchsafe to declare, that the awards, doings, and proceedings, to the prejudice of your people in any of the premises, shall not be drawn hereafter into consequence or example; and that your Majesty would be also graciously pleased, for the further comfort and safety of your people, to declare your royal will and pleasure, that in the things aforesaid all your officers and ministers shall serve you according to the laws and statutes of this realm, as they tender the honour of your Majesty, and the prosperity of this kingdom.

[Which Petition being read the 2nd of June, 1628, the king's answer was thus delivered unto it.

The King willeth that right be done according to the laws and customs of the realm; and that the statutes be put in due execution, that his subjects may have no cause to complain of any wrong or oppressions, contrary to their just rights and liberties, to the preservation whereof he holds himself as well obliged as of his prerogative.

This form was unusual and was therefore thought to be an evasion; therefore on June 7 the king gave a second answer in the formula usual for approving bills: *Soit droit fait comme il est désiré.*]

Soit droit fait comme il est désiré.

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CONTEMPORARY EXPOSITION

CHARLES FIRST (1628)

The profession of both Houses, in time of hammering this petition, was no ways to entrench upon my prerogative, saying they had neither intention or power to hurt it; therefore it must needs be conceived I granted no new, but only confirmed the ancient liberties of my subjects, yet to show the clearness of my intentions, that I have neither repented nor mean to recede from anything I have promised you, I do here declare that those things which have been done whereby men had some cause to suspect the liberty of the subjects to be entrenched upon — which indeed was the first and true ground of the petition — shall not hereafter be drawn into example for your prejudice; and in time to come, in the word of a king, you shall not have the like cause to complain.

CHARLES FIRST'S SPEECH AT PROROGATION OF PARLIAMENT, June 26th, 1628, *Parliamentary History.*

CRITICAL COMMENT

HALLAM (1827)

The principal matters of complaint taken up by the Commons in this session (Parliament, 1628) were, the exaction of money under the name of loans; the commitment of those who refused compliance, and the late decision of the king's bench remanding them a habeas corpus; the billeting of soldiers on private persons, which had occurred in the last years, whether for convenience or for purposes of intimidation and annoyance; and the commissions to try military offenders by martial law. . . . These four grievances or abuses form the foundation of the Petition of Right.

HENRY HALLAM, *Constitutional History of England.* VII. 286.

NUGENT (1831)

The government went on, oppressing at home, and blundering in all its measures abroad. A war was foolishly undertaken against France, and more foolishly conducted. Buckingham led an expedition against Rhé, and failed ignominiously. In the meantime, soldiers were billeted on the people. Crimes, of which ordinary justice should have taken cognizance, were punished by martial law. Nearly eighty gentlemen were imprisoned for refusing to contribute to the forced loan. The lower people, who showed any signs of insubordination, were pressed into the fleet or compelled to serve in the army. Money, however, came in slowly; and the king was compelled to summon another Parliament. In the hope of conciliating his subjects, he set at liberty the persons who had been imprisoned for refusing to comply with his unlawful demands. Hampden regained his freedom; and was immediately re-elected burgess for Wendover.

Early in 1628 the Parliament met. During its first session, the Commons prevailed on the king, after many delays and much equivocation, to give, in return for five subsidies, his full and solemn assent to that celebrated instrument — the second great charter of the liberties of England — known by the name of the Petition of Right. By agreeing to this act, the king bound himself to raise no taxes without the consent of Parliament, to imprison no man except by legal process, to billet no more soldiers on the people, and to leave the cognizance of offences to the ordinary tribunals.

In the summer this memorable Parliament was prorogued. It met again in January, 1629.

Buckingham was no more. That weak, violent, and dissolute adventurer, who, with no talents or acquirements but those of a mere courtier, had, in a great crisis of foreign and domestic politics, ventured on the part of prime minister, had fallen during the recess of Parliament, by the hand of an assassin. Both before and after his death, the war had been feebly and unsuccessfully conducted. The king had continued, in direct violation of the Petition of Right, to raise tonnage and poundage, without the consent of Parliament. The troops had again been billeted on the people; and it was clear to the Commons that the five subsidies which they had given, as the price of the national liberties, had been given in vain.

LORD NUGENT, *Memorials of Hampden* in *Edinburgh Review.* LIV. 516–517.

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land, nor for any military service within the kingdom; save that they may take order for the forming, training, and exercising of the people in a military way, to be in readiness for resisting of foreign invasions, suppressing of sudden insurrections, or for assisting in execution of the laws; and may take order for the employing and conducting of them for those ends; provided that, even in such cases, none be compellable to go out of the county he lives in, if he procure another to serve in his room. 2. That, after the time herein limited for the commencement of the First Representative, none of the people may be at any time questioned for anything said or done in relation to the late wars or public differences, otherwise than in execution or pursuance of the determinations of the present House of Commons, against such as have adhered to the King, or his interest, against the people; and saving that accomptants for public moneys received, shall remain accountable for the same. 3. That no securities given, or to be given, by the public faith of the nation, nor any engagements of the public faith for satisfaction of debts and damages, shall be made void or invalid by the next or any future Representatives; except to such creditors as have, or shall have, justly forfeited the same: and saving, that the next Representative may confirm or make null, in part or in whole, all gifts of lands, moneys, offices, or otherwise, made by the present Parliament to any member or attendant of either House. 4. That, in any laws hereafter to be made, no person, by virtue of any tenure, grant, charter, patent, degree or birth, shall be privileged from subjection thereto, or from being bound thereby, as well as others. 5. That the Representative may not give judgment upon any man's person or estate, where no law hath before provided; some only in calling to account and punishing public officers for abusing or

Perpetuity of the country's obligations.

Dignity of Common Law.

failing in their trust. 6. That no Representative may in any wise render up, or give, or take away, any of the foundations of common right, liberty, and safety contained in this Agreement, nor level men's estates, destroy property, or make all things common; and that, in all matters of such fundamental concernment, there shall be a liberty to particular members of the said representatives to enter their dissents from the major vote.

Ninthly. Concerning religion, we agree as followeth. 1. It is intended that the Christian Religion be held forth and recommended as the public profession in this nation, which we desire may, by the grace of God, be reformed to the greatest purity in doctrine, worship and discipline, according to the Word of God; the instructing the people thereunto in a public way, so it be not compulsive; as also the maintaining of able teachers for that end, and for the confutation or discovering of heresy, error, and whatsoever is contrary to sound doctrine, is allowed to be provided for by our Representatives; the maintenance of which teachers may be out of a public treasury, and, we desire, not by tithes: provided, that Popery or Prelacy be not held forth as the public way or profession in this nation. 2. That, to the public profession so held forth, none be compelled by penalties or otherwise; but only may be endeavoured to be won by sound doctrine, and the example of a good conversation. 3. That such as profess faith in God by Jesus Christ, however differing in judgment from the doctrine, worship or discipline publicly held forth, as aforesaid, shall not be restrained from, but shall be protected in, the profession of their faith and exercise of religion, according to their consciences, in any place except such as shall be set apart for the public worship; where we provide not for them, unless they have leave, so as they abuse not this liberty to the civil injury of others, or to act-

Relation of the government to Christian Religion.

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MACAULAY (1849)

The king called a third Parliament, and soon perceived that the opposition was stronger and fiercer than ever. He now determined on a change of tactics. Instead of opposing an inflexible resistance to the demands of the Commons, he, after much altercation and many evasions, agreed to a compromise which, if he had faithfully adhered to it, would have averted a long series of calamities. The parliament granted an ample supply. The king ratified, in the most solemn manner, that celebrated law which is known by the name of the Petition of Right, and which is the second great charter of the liberties of England. By ratifying that law, he bound himself never again to raise money without the consent of the Houses, never again to imprison any person, except in due course of law, and never again to subject his people to the jurisdiction of courts martial.

The day on which the royal sanction was, after many delays, solemnly given to this great act, was a day of joy and hope. The Commons, who crowded the bar of the House of Lords, broke forth into loud acclamations as soon as the clerk had pronounced the ancient form of words by which our princes have, during many ages, signified their assent to the wishes of the estates of the realm. Those acclamations were re-echoed by the voice of the capital and of the nation; but, within three weeks, it became manifest that Charles had no intention of observing the compact into which he had entered. The supply given by the representatives of the nation was collected. The promise by which that supply had been obtained was broken. A violent contest followed. The parliament was dissolved with every mark of royal displeasure.

Thomas Babington Macaulay, *History of England*. I. 66.

CREASY (1859)

On the 2nd of June, A. D. 1628, the peers were assembled, the Commons summoned, and the king appeared in the House of Lords to give his answer in Parliament to the bill. But, to the surprise of all men, Charles, instead of using the well-known ancient form of words by which such a bill receives the royal assent, addressed the Parliament and told them, "the king willeth that right be done according to the laws and customs of the realm, and that the statutes be put in due execution, that his subjects may have no cause to complain of any wrong or oppression contrary to their just rights and liberties; to the preservation whereof he holds himself in conscience as well obliged, as of his prerogative."

The Commons returned highly incensed with this evasive circumlocution. They forthwith began to assail the favourites of the Crown, and impeached a Dr. Mainwaring who had preached a sermon, which had afterwards been printed by the king's command, in which discourse the right divine of kings to deal as they pleased with their subjects' property on emergencies, whether parliament consented or not, and the duty of passive obedience in the subject, were only and unreservedly maintained. The Commons procured the trial and condemnation of this satellite of arbitrary power, and were proceeding to assail others higher in Charles's councils, when the king's obstinacy at length gave way, and the Petition of Right received the royal assent in the customary form of Norman French, and this second great solemn declaration of the liberties of Englishmen was declared to be the law of the land, amidst the general rejoicings of the nation.

E. S. Creasy, *Rise and Progress of the English Constitution*. 259.

HANNIS TAYLOR (1889)

Side by side with Eliot, Coke, and Phelips now stood Sir Thomas Wentworth, who did yeoman's service in the popular cause in a great oration in which, after reviewing all the questions in controversy, except those involving the subject of religion, he demanded that there should be no more forced loans, no more illegal imprisonments, no more compulsory employments abroad, no billeting of soldiers without the assent of the householder, — thus outlining the substance of the great statute, afterwards known as the Petition of Right, which derived its form from Coke.

Hannis Taylor, *Origin and Growth of the English Constitution*. II. 268.

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RUDOLF VON GNEIST (1889)

The Petition of Right is treated in later Constitutional State Law as a third Magna Charta, because by it a whole series of glaring administrative abuses are declared illegal in the most unequivocal terms.

RUDOLF VON GNEIST, *History of the English Parliament*. 253.

GARDINER (1889)

The Petition of Right is memorable as the first statutory restriction of the powers of the Crown since the accession of the Tudor dynasty. Yet, though the principles laid down in it had the widest possible bearing, its remedies were not intended to apply to all questions which had arisen or might arise between the Crown and the Parliament, but merely to those which had arisen since Charles's accession. Parliament had waived, for the present at least, the consideration of Buckingham's misconduct. It had also waived the consideration of the question of Impositions.

The motives of the Commons in keeping silence on the Impositions were probably twofold. In the first place, they probably wished to deal separately with the new grievances, because in dealing with them they would restrain the King's power to make war without Parliamentary consent. In the second place, they had a Tonnage and Poundage Bill before them. Such a Bill had been introduced into each of the preceding Parliaments, but in each case an early dissolution had hindered its consideration, and the long debates on the Petition of Right now made it impossible to proceed farther with it in the existing session. Yet, for three years the King had been collecting Tonnage and Poundage, just as he collected the Impositions, that is to say, as if he had no need of a Parliamentary grant. The Commons therefore proposed to save the right of Parliament by voting Tonnage and Poundage for a single year, and to discuss the matter at length the following session. When the King refused to accept this compromise they had some difficulty in choosing a counter-move. They were precluded from any argument from ancient statute and precedent, because the judges in Bates's case had laid down

the law against them, and they therefore had recourse to the bold assertion that the Petition of Right had settled the question in their favour. Charles answered by proroguing Parliament, and took occasion in so doing to repudiate the doctrine which they advanced.

SAMUEL R. GARDINER, *The Constitutional Documents of the Puritan Revolution*. XXIII.–XXIV.

J. K. HOSMER (1890)

At first, feeble and fitful, the opposition gathered force, developing under Charles I. into a stern battle between King and that conservative element of the people who were determined to uphold the ancient ways. The King was forced by the Petition of Right, in 1628, to admit that his arbitrary course was wrong. It was a profession of the lips, not the heart.

J. K. HOSMER, *Anglo-Saxon Freedom*. 107.

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CHAPTER VII

ENGLISH WRITTEN CONSTITUTIONS (1648–1653)

SUGGESTIONS

DURING the year 1647, Oliver Cromwell tried his best to come to an understanding with King Charles I. A constitutional scheme known as the Heads of the Proposals was drawn up by Ireton, and presented in the name of the army to the King. The wisdom of the Proposals was not accepted, and many of the agitators, finding that the king grew more hostile to Oliver Cromwell and his party, advanced a still more democratic constitution known as the *Agreement of the People*. This document was presented to Parliament, and an attempt to force it upon the officers was made with threats of mutiny in the army if not accepted. But the immediate action on the part of the King at this time turned the thoughts of the agitators, as well as the whole body of the army, from constitutional law to royal intelligence. The army lost all patience with King and Parliament. The Agreement of the People was set aside, and all thoughts were turned to the attention of the King.

The new Constitution devised by Lambert and embodied in the *Instrument of Government*, was the document accepted by the council of officers who succeeded the "Little Parliament" as a legislative power. This council was driven by necessity to the step from which they had shrunk before, that of convening a parliament on the reformed basis of representation. The new Constitution was undoubtedly popular. The "Instrument" was taken as the ground work of the new Constitution, and the Assembly proceeded at once to settle the Government on a parliamentary basis, by discussing the document clause by clause.

The two documents here presented were neither of them operative, but they are here inserted because they are early attempts to draw up written constitutions for England, with limitations, checks, and balances; and because their underlying ideas were carried out in some colonial charters and governments, and eventually reappeared in the state and federal constitutions.

For Outlines and Material, see Appendix A.

DOCUMENTS

The Agreement of the People (1649)

An Agreement of the People of England, and the Places therewith incorporated, for a secure and present Peace, upon grounds of common Right, Freedom, and Safety.

Transliterated from *The Parliamentary History of England.* (Hansard, 1808), III. 1267–1278.

Having, by our late labours and hazards, made it appear to the world at how high a rate we value our just freedom; and God having so far owned our cause as to deliver the enemies thereof into our hands, we do now hold ourselves bound, in mutual duty to each other, to take the best care we can for the future, to avoid both the danger of returning into a slavish condition and the chargeable remedy of another war: for as it cannot be imagined that so many of our countrymen would have opposed us in this quarrel if they had understood their own good, so may we hopefully promise to ourselves, that when our common rights and liberties shall be cleared, their endeavours will be disappointed that seek to make themselves our masters. Since therefore our former oppressions and not-yet-ended troubles have been occasioned either by want of frequent national meetings in council, or by the undue or unequal constitution thereof, or by rendering those meetings ineffectual, we are fully agreed and resolved, God willing, to provide, that hereafter our Representatives be neither left to an uncertainty for times nor be unequally constituted, nor made useless to the ends for which they are intended. In order whereunto we declare and agree,

The spirit of liberty, carried even to the sword.

Infrequency of Parliaments began in the Tudor Period, but became amazingly increased during reign of James I.

First. That, to prevent the many inconveniences apparently arising from the long continuance of the same persons in supreme authority, this present Parliament end and dissolve upon, or before, the last day of April, 1649.

Secondly. That the people of England (being

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Note use of word Representatives; later adopted by the Federal convention, 1787.

at this day very unequally distributed by counties, cities, and boroughs, for the election of their Representatives) be indifferently proportioned; and, to this end, that the Representative of the whole nation shall consist of 400 persons, or not above; and in each county, and the places thereto subjoined, there shall be chosen, to make up the said Representative at all times, the several numbers here mentioned, viz.: . . . and, having first caused this Agreement to be publicly read in the audience of the people, shall proceed unto, and regulate and keep peace and order in the elections; and, by poll or otherwise, openly distinguish and judge of the same; and thereof, by certificate or writing under the hands and seals of himself, and six or more of the electors, nominating the person or persons duly elected, shall make a true return into the Parliament Records within twenty-one days after the election, under pain for default thereof, or, for making any false return, to forfeit £100 to the public use; and also cause indentures to be made, and unchangeably sealed and delivered, between himself and six or more of the said electors, on the one part, and the persons, or each person, elected severally, on the other part, expressing their election of him as a representer of them according to this Agreement, and his acceptance of that trust, and his promise accordingly to perform the same with faithfulness, to the best of his understanding and ability, for the glory of God and good of the people. This course is to hold for the first Representative, which is to provide for the ascertaining of these circumstances in order to future representatives.

The list of districts is here omitted.

The Legislative Body.

Fourthly. That 150 members at least be always present in each sitting of the Representative, at the passing of any law or doing of any act whereby the people are to be bound; saving, that the number of sixty may make a House for debates or resolutions that are preparatory thereunto.

The Executive Body.

Fifthly. That each Representative shall, within 20 days after their first meeting, appoint a Council of State for the managing of public affairs, until the 10th day after the meeting of the next Representative, unless that next Representative think fit to put an end to that trust sooner. And the same Council to act and proceed therein, according to such instructions and limitations as the Representative shall give, and not otherwise.

Extra Sessions limited in extent of time.

Sixthly. That in each interval between biennial representatives, the Council of State, in case of imminent danger or extreme necessity, may summon a Representative to be forthwith chosen, and to meet; so as the Session thereof continue not above eighty days; and so as it dissolve at least fifty days before the appointed time for the next biennial Representative; and upon the fiftieth day so preceding it shall dissolve of course, if not otherwise dissolved sooner.

Modern doctrine of separation of powers.

Seventhly. That no member of any Representative be made either receiver, treasurer, or other officer, during that employment, saving to be a member of the Council of State.

Eighthly. That the representatives have, and shall be understood to have, the supreme trust in order to the preservation and government of the whole; and that their power extend, without the consent or concurrence of any other person or persons, to the erecting and abolishing of Courts of Justice and public offices, and to the enacting, altering, repealing and declaring of laws, and the highest and final judgment, concerning all natural or civil things, but not concerning things spiritual or evangelical. Provided that, even in things natural and civil, these six particulars next following are, and shall be, understood to be excepted and reserved from our representatives, viz. 1. We do not empower them to impress or constrain any person to serve in foreign war, either by sea or

Duties of the Representatives defined respecting public affairs.

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ual disturbance of the public peace on their parts.

Exclusion of Roman Catholic church.

Nevertheless, it is not intended to be hereby provided, that this liberty shall necessarily extend to Popery or Prelacy. 4. That all laws, ordinances, statutes, and clauses in any law, statute, or ordinance to the contrary of the liberty herein provided for, in the two particulars next preceding concerning religion, be, and are hereby, repealed and made void.

To prevent military despotism.

Tenthly. It is agreed, that whosoever shall, by force of arms, resist the orders of the next or any future Representative (except in case where such Representative shall evidently render up, or give, or take away the foundations of common right, liberty, and safety, contained in this Agreement), he shall forthwith, after his or their such resistance, lose the benefit and protection of the laws, and shall be punishable with death, as an enemy and traitor to the nation. Of the things expressed in this Agreement: the certain ending of this Parliament, as in the first Article; the equal or proportionable distribution of the number of the representers to be elected, as in the second; the certainty of the people's meeting to elect for Representatives biennial, and their freedom in elections; with the certainty of meeting, sitting and ending of Representatives so elected, which are provided for in the third Article; as also the qualifications of persons to elect or be elected, as in the first and second particulars under the third Article; also the certainty of a number for passing a law or preparatory debates, provided for in the fourth Article; the matter of the fifth Article, concerning the Council of State, and of the sixth, concerning the calling, sitting and ending of Representatives extraordinary; also the power of Representatives to be, as in the eighth Article, and limited, as in the six reserves next following the same: likewise the second and third Particulars under the ninth Article concerning

religion, and the whole matter of the tenth Article; all these we do account and declare to be fundamental to our common right, liberty, and safety: and therefore do both agree thereunto, and resolve to maintain the same, as God shall enable us. The rest of the matters in this Agreement we account to be useful and good for the public; and the particular circumstances of numbers, times, and places, expressed in the several Articles, we account not fundamental; but we find them necessary to be here determined, for the making the Agreement certain and practicable, and do hold these most convenient that are here set down; and therefore do positively agree thereunto. By the appointment of his Excellency the Lord-General and his General Council of Officers.

This document was completed on Jan. 15, 1649, and presented to the Rump Parliament five days later.

JOHN RUSHWORTH, Sec.

The Instrument of Government (1653)

Translit.: *The Parl. Hist. of Eng.* (Hansard, 1808), III. 1417–1426.

The government of the Commonwealth of England, Scotland, and Ireland, and the dominions thereunto belonging.

An attempt to establish an executive on a constitutional and not a military basis.

I. That the supreme legislative authority of the Commonwealth of England, Scotland, and Ireland, and the dominions thereunto belonging, shall be and reside in one Person, and the people assembled in Parliament; the style of which person shall be the Lord Protector of the Commonwealth of England, Scotland, and Ireland.

The council were appointed by the Protector, but were irremovable by him save by consent of the vote of the members.

II. That the exercise of the chief Magistracy and the administration of the government over the said countries and dominions, and the people thereof, shall be in the Lord Protector, assisted with a council, the number whereof shall not exceed 21, nor be less than 13.

III. That all writs, processes, commissions, patents, grants, and other things, which now run in the name and style of the 'Keepers of the Liberty

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of England by Authority of Parliament,' shall run in the name and style of the Lord Protector, from whom, for the future, shall be derived all magistracy and honours in these three nations; and have the power of pardons (except in case of murders and treason) and benefit of all forfeitures for the public use; and shall govern the said countries and dominions in all things by the advice of the council, and according to these presents and the laws.

Commander-in-chief of army and navy by consent of Council.

IV. That the Lord Protector, the Parliament sitting, shall dispose and order the militia and forces, both by sea and land, for the peace and good of the three nations, by consent of Parliament; and that the Lord Protector, with the advice and consent of the major part of the council, shall dispose and order the militia for the ends aforesaid in the intervals of Parliament.

International relationship with advice of Council.

V. That the Lord Protector, by the advice aforesaid, shall direct in all things concerning the keeping and holding of a good correspondency with foreign kings, princes, and states; and also, with the consent of the major part of the council, have the power of war and peace.

Note Common Law and Magna Charta.

VI. That the laws shall not be altered, suspended, abrogated, or repealed, nor any new law made, nor any tax, charge, or imposition laid upon the people, but by common consent in Parliament, save only as is expressed in the thirtieth article.

Triennial summons of a single chamber of Parliament.

VII. That there shall be a Parliament summoned to meet at Westminster upon the third day of September, 1654, and that successively a Parliament shall be summoned once in every third year, to be accounted from the dissolution of the present Parliament.

VIII. That neither the Parliament to be next summoned, nor any successive Parliaments, shall, during the time of five months, to be accounted from the day of their first meeting, be adjourned, prorogued, or dissolved, without their own consent.

IX. That as well the next as all other successive Parliaments, shall be summoned and elected in manner hereafter expressed; that is to say, the persons to be chosen within England, Wales, the Isles of Jersey, Guernsey, and the town of Berwick-upon-Tweed, to sit and serve in Parliament, shall be, and not exceed, the number of four hundred. The persons to be chosen within Scotland, to sit and serve in Parliament, shall be, and not exceed, the number of thirty; and the persons to be chosen to sit in Parliament for Ireland shall be, and not exceed, the number of thirty.

X. That the persons to be elected to sit in Parliament from time to time, for the several counties of England, Wales, the Isles of Jersey and Guernsey, and the town of Berwick-upon-Tweed, and all places within the same respectively, shall be according to the proportions and numbers hereafter expressed: that is to say, . . .

The list is omitted. The ordinances of this document are the sole attempt, *actually put into operation*, at a general reform of the parliamentary franchise, until we reach the Reform Bill of 1832.

XI. That the summons to Parliament shall be by writ under the Great Seal of England, directed to the sheriffs of the several and respective counties, with such alteration as may suit with the present government, to be made by the Lord Protector and his council, which the Chancellor, Keeper, or Commissioners of the Great Seal shall seal, issue, and send abroad by warrant from the Lord Protector. If the Lord Protector shall not give warrant for issuing of writs of summons for the next Parliament, before the first of June, 1654, or for the Triennial Parliaments, before the first day of August in every third year, to be accounted as aforesaid; that then the Chancellor, Keeper, or Commissioners of the Great Seal for the time being, shall, without any warrant or direction, within seven days after the said first day of June, 1654, seal, issue, and send abroad writs of summons (changing therein what is to be changed as aforesaid) to the several and respective sheriffs of England, Scotland, and

See Summons to Parliament. Chap. III.

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Ireland, for summoning the Parliament to meet at Westminster, the third day of September next; and shall likewise, within seven days after the said first day of August, in every third year, to be accounted from the dissolution of the precedent Parliament, seal, issue, and send forth abroad several writs of summons (changing therein what is to be changed) as aforesaid, for summoning the Parliament to meet at Westminster the sixth of November in that third year. That the said several and respective sheriffs, shall, within ten days after the receipt of such writ as aforesaid, cause the same to be proclaimed and published in every market-town within his county upon the market-days thereof, between twelve and three of the clock; and shall then also publish and declare the certain day of the week and month, for choosing members to serve in Parliament for the body of the said county, according to the tenor of the said writ, which shall be upon Wednesday five weeks after the date of the writ; and shall likewise declare the place where the election shall be made: for which purpose he shall appoint the most convenient place for the whole county to meet in; and shall send precepts for elections to be made in all and every city, town, borough, or place within his county, where elections are to be made by virtue of these presents, to the Mayor, Sheriff, or other head officer of such city, town, borough, or place, within three days after the receipt of such writ and writs; which the said Mayors, Sheriffs, and officers respectively are to make publication of, and of the certain day for such elections to be made in the said city, town, or place aforesaid, and to cause elections to be made accordingly.

Manner of summoning.

XII. That at the day and place of elections, the Sheriff of each county, and the said Mayors, Sheriffs, Bailiffs, and other head officers within their cities, towns, boroughs, and places respectively, shall take

view of the said elections, and shall make return into the chancery within twenty days after the said elections, of the persons elected by the greater number of electors, under their hands and seals, between him on the one part, and the electors on the other part; wherein shall be contained, that the persons elected shall not have power to alter the government as it is hereby settled in one single person and a Parliament.

XIII. That the Sheriff, who shall wittingly and willingly make any false return, or neglect his duty, shall incur the penalty of 2000 marks of lawful English money; the one moiety to the Lord Protector, and the other moiety to such person as will sue for the same.

Punishment for illegalities.

XIV. That all and every person and persons, who have aided, advised, assisted, or abetted in any war against the Parliament, since the first day of January, 1641 (unless they have been since in the service of the Parliament, and given signal testimony of their good affection thereunto) shall be disabled and incapable to be elected, or to give any vote in the election of any members to serve in the next Parliament, or in the three succeeding Triennial Parliaments.

Disloyalty in England.

XV. That all such, who have advised, assisted, or abetted the rebellion of Ireland, shall be disabled and incapable for ever to be elected, or give any vote in the election of any member to serve in Parliament; as also all such who do or shall profess the Roman Catholic religion.

Disloyalty in Ireland.

Roman Catholic religion.

XVI. That all votes and elections given or made contrary, or not according to these qualifications, shall be null and void; and if any person, who is hereby made incapable, shall give his vote for election of members to serve in Parliament, such person shall lose and forfeit one full year's value of his real estate, and one full third part of his personal estate; one moiety thereof to the Lord Protector, and the

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other moiety to him or them who shall sue for the same.

Eligibility of representatives.

XVII. That the persons who shall be elected to serve in Parliament, shall be such (and no other than such) as are persons of known integrity, fearing God, and of good conversation, and being of the age of twenty-one years.

Electorate.

XVIII. That all and every person and persons seised or possessed to his own use, of any estate, real or personal, to the value of £200, and not within the aforesaid exceptions, shall be capable to elect members to serve in Parliament for counties.

XIX. That the Chancellor, Keeper, or Commissioners of the Great Seal, shall be sworn before they enter into their offices, truly and faithfully to issue forth, and send abroad, writs of summons to Parliament, at the times and in the manner before expressed: and in case of neglect or failure to issue and send abroad writs accordingly, he or they shall for every such offence be guilty of high treason, and suffer the pains and penalties thereof.

XX. That in case writs be not issued out, as is before expressed, but that there be a neglect therein, fifteen days after the time wherein the same ought to be issued out by the Chancellor, Keeper, or Commissioners of the Great Seal; that then the Parliament shall, as often as such failure shall happen, assemble and be held at Westminster, in the usual place, at the times prefixed, in manner and by the means hereafter expressed; that is to say, that the sheriffs of the several and respective counties, sheriffdoms, cities, boroughs, and places aforesaid, within England, Wales, Scotland, and Ireland, the Chancellor, Masters, and Scholars of the Universities of Oxford and Cambridge, and the Mayor and Bailiffs of the borough of Berwick-upon-Tweed, and other places aforesaid respectively, shall at the several courts and places to be appointed as aforesaid, within thirty days after the said fifteen days,

The Parliament gathered together in 1654 under the mandate of this frame of government brought together for the first time representatives from England, Scotland, and Ireland, in the form in which they sit to-day.

cause such members to be chosen for their said several and respective counties, sheriffdoms, universities, cities, boroughs, and places aforesaid, by such persons, and in such manner, as if several and respective writs of summons to Parliament under the Great Seal had issued and been awarded according to the tenor aforesaid: that if the sheriff, or other persons authorized, shall neglect his or their duty herein, that all and every such sheriff and person authorized as aforesaid, so neglecting his or their duty, shall, for every such offence, be guilty of high treason, and shall suffer the pains and penalties thereof.

Qualification article.

XXI. That the clerk, called the clerk of the Commonwealth in Chancery for the time being, and all others, who shall afterwards execute that office, to whom the returns shall be made, shall for the next Parliament, and the two succeeding Triennial Parliaments, the next day after such return, certify the names of the several persons so returned, and of the places for which he and they were chosen respectively, unto the Council; who shall peruse the said returns, and examine whether the persons so elected and returned be such as is agreeable to the qualifications, and not disabled to be elected: and that every person and persons being so duly elected, and being approved of by the major part of the Council to be persons not disabled, but qualified as aforesaid, shall be esteemed a member of Parliament, and be admitted to sit in Parliament, and not otherwise.

XXII. That the persons so chosen and assembled in manner aforesaid, or any sixty of them, shall be, and be deemed the Parliament of England, Scotland, and Ireland; and the supreme legislative power to be and reside in the Lord Protector and such Parliament, in manner herein expressed.

XXIII. That the Lord Protector, with the advice of the major part of the Council, shall at any other

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The Protector's ordaining power.

time than is before expressed, when the necessities of the State shall require it, summon Parliaments in manner before expressed, which shall not be adjourned, prorogued, or dissolved without their own consent, during the first three months of their sitting. And in case of future war with any foreign State, a Parliament shall be forthwith summoned for their advice concerning the same.

Prototype of the Massachusetts Constitution of 1780 and Federal Constitution of 1787.

XXIV. That all Bills agreed unto by the Parliament, shall be presented to the Lord Protector for his consent; and in case he shall not give his consent thereto within twenty days after they shall be presented to him, or give satisfaction to the Parliament within the time limited, that then, upon declaration of the Parliament that the Lord Protector hath not consented nor given satisfaction, such Bills shall pass into and become laws, although he shall not give his consent thereunto; provided such Bills contain nothing in them contrary to the matters contained in these presents.

Method of choosing Council.

XXV. That Henry Lawrence, Esq., &c., or any seven of them, shall be a Council for the purposes expressed in this writing: and upon the death or other removal of any of them, the Parliament shall nominate six persons of ability, integrity, and fearing God, for every one that is dead or removed; out of which the major part of the Council shall elect two, and present them to the Lord Protector, of which he shall elect one; and in case the Parliament shall not nominate within twenty days after notice given unto them thereof, the major part of the Council shall nominate three as aforesaid to the Lord Protector, who out of them shall supply the vacancy; and until this choice be made, the remaining part of the Council shall execute as fully in all things, as if their number were full. And in case of corruption, or other miscarriage in any of the Council in their trust, the Parliament shall appoint seven of their number, and the Council six, who,

together with the Lord Chancellor, Lord Keeper, or Commissioners of the Great Seal for the time being, shall have power to hear and determine such corruption and miscarriage, and to award and inflict punishment, as the nature of the offence shall deserve, which punishment shall not be pardoned or remitted by the Lord Protector; and, in the interval of Parliaments, the major part of the Council, with the consent of the Lord Protector, may, for corruption or other miscarriage as aforesaid, suspend any of their number from the exercise of their trust, if they shall find it just, until the matter shall be heard and examined as aforesaid.

XXVI. That the Lord Protector and the major part of the Council aforesaid may, at any time before the meeting of the next Parliament, add to the Council such persons as they shall think fit, provided the number of the Council be not made thereby to exceed twenty-one, and the quorum to be proportioned accordingly by the Lord Protector and the major part of the Council.

The Protectorate supported by a military force.

XXVII. That a constant yearly revenue shall be raised, settled, and established for maintaining of 10,000 horse and dragoons, and 20,000 foot, in England, Scotland and Ireland, for the defence and security thereof, and also for a convenient number of ships for guarding of the seas; besides £200,000 per annum for defraying the other necessary charges of administration of justice, and other expenses of the Government, which revenue shall be raised by the customs, and such other ways and means as shall be agreed upon by the Lord Protector and the Council, and shall not be taken away or diminished, nor the way agreed upon for raising the same altered, but by the consent of the Lord Protector and the Parliament.

System of auditors dates from 1341.

XXVIII. That the said yearly revenue shall be paid into the public treasury, and shall be issued out for the uses aforesaid.

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Lessening power of the Army.

XXIX. That in case there shall not be cause hereafter to keep up so great a defence both at land or sea, but that there be an abatement made thereof, the money which will be saved thereby shall remain in bank for the public service, and not be employed to any other use but by consent of Parliament, or, in the intervals of Parliament, by the Lord Protector and major part of the Council.

Control of finances in hands of Parliament.

XXX. That the raising of money for defraying the charge of the present extraordinary forces, both at sea and land, in respect of the present wars, shall be by consent of Parliament, and not otherwise: save only that the Lord Protector, with the consent of the major part of the Council, for preventing the disorders and dangers which might otherwise fall out both by sea and land, shall have power, until the meeting of the first Parliament, to raise money for the purposes aforesaid; and also to make laws and ordinances for the peace and welfare of these nations where it shall be necessary, which shall be binding and in force, until order shall be taken in Parliament concerning the same.

Forfeitures.

XXXI. That the lands, tenements, rents, royalties, jurisdictions and hereditaments which remain yet unsold or undisposed of, by Act or Ordinance of Parliament, belonging to the Commonwealth (except the forests and chases, and the honours and manors belonging to the same; the lands of the rebels in Ireland, lying in the four counties of Dublin, Cork, Kildare, and Carlow: the lands forfeited by the people of Scotland in the late wars, and also the lands of Papists and delinquents in England who have not yet compounded), shall be vested in the Lord Protector, to hold, to him and his successors, Lords Protectors of these nations, and shall not be alienated but by consent in Parliament. And all debts, fines, issues, amercements, penalties and profits, certain and casual, due to the

Keepers of the liberties of England by authority of Parliament, shall be due to the Lord Protector, and be payable into his public receipt, and shall be recovered and prosecuted in his name.

Article of Succession: elective, not hereditary ruler. Manner of said election.

XXXII. That the office of Lord Protector over these nations shall be elective and not hereditary; and upon the death of the Lord Protector, another fit person shall be forthwith elected to succeed him in the Government; which election shall be by the Council, who, immediately upon the death of the Lord Protector, shall assemble in the Chamber where they usually sit in Council; and, having given notice to all their members of the cause of their assembling, shall, being thirteen at least present, proceed to the election; and, before they depart the said Chamber, shall elect a fit person to succeed in the Government, and forthwith cause proclamation thereof to be made in all the three nations as shall be requisite; and the person that they, or the major part of them, shall elect as aforesaid, shall be, and shall be taken to be, Lord Protector over these nations of England, Scotland and Ireland, and the dominions thereto belonging. Provided that none of the children of the late King, nor any of his line or family, be elected to be Lord Protector or other Chief Magistrate over these nations, or any the dominions thereto belonging. And until the aforesaid election be past, the Council shall take care of the Government, and administer in all things as fully as the Lord Protector, or the Lord Protector and Council are enabled to do.

Oliver Cromwell, Protector.

XXXIII. That Oliver Cromwell, Captain-General of the forces of England, Scotland and Ireland, shall be, and is hereby declared to be, Lord Protector of the Commonwealth of England, Scotland and Ireland, and the dominions thereto belonging, for his life.

XXXIV. That the Chancellor, Keeper or Commissioners of the Great Seal, the Treasurer,

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Admiral, Chief Governors of Ireland and Scotland, and the Chief Justices of both the Benches, shall be chosen by the approbation of Parliament; and, in the intervals of Parliament, by the approbation of the major part of the Council, to be afterwards approved by the Parliament.

Tolerance of Religion.

XXXV. That the Christian religion, as contained in the Scriptures, be held forth and recommended as the public profession of these nations; and that, as soon as may be, a provision, less subject to scruple and contention, and more certain than the present, be made for the encouragement and maintenance of able and painful teachers, for the instructing the people, and for discovery and confutation of error, hereby, and whatever is contrary to sound doctrine; and until such provision be made, the present maintenance shall not be taken away or impeached.

XXXVI. That to the public profession held forth none shall be compelled by penalties or otherwise; but that endeavours be used to win them by sound doctrine and the example of a good conversation.

XXXVII. That such as profess faith in God by Jesus Christ (though differing in judgment from the doctrine, worship or discipline publicly held forth) shall not be restrained from, but shall be protected in, the profession of the faith and exercise of their religion; so as they abuse not this liberty to the civil injury of others and to the actual disturbance of the public peace on their parts: provided this liberty be not extended to Popery or Prelacy, nor to such as, under the profession of Christ, hold forth and practise licentiousness.

Intolerance toward Roman Catholicism.

Spirit of freedom.

XXXVIII. That all laws, statutes and ordinances, and clauses in any law, statute or ordinance to the contrary of the aforesaid liberty, shall be esteemed as null and void.

XXXIX. That the Acts and Ordinances of Parliament made for the sale or other disposition of the lands, rents and hereditaments of the late King, Queen, and Prince, of Archbishops and Bishops, &c., Deans and Chapters, the lands of delinquents and forest-lands, or any of them, or of any other lands, tenements, rents and hereditaments belonging to the Commonwealth, shall nowise be impeached or made invalid, but shall remain good and firm; and that the securities given by Act and Ordinance of Parliament for any sum or sums of money, by any of the said lands, the excise, or any other public revenue; and also the securities given by the public faith of the nation, and the engagement of the public faith for satisfaction of debts and damages, shall remain firm and good, and not be made void and invalid upon any pretence whatsoever.

XL. That the Articles given to or made with the enemy, and afterwards confirmed by Parliament, shall be performed and made good to the persons concerned therein; and that such appeals as were depending in the last Parliament for relief concerning bills of sale of delinquent's estates, may be heard and determined the next Parliament, any thing in this writing or otherwise to the contrary notwithstanding.

XLI. That every successive Lord Protector over these nations shall take and subscribe a solemn oath, in the presence of the Council, and such others as they shall call to them, that he will seek the peace, quiet and welfare of these nations, cause law and justice to be equally administered; and that he will not violate or infringe the matters and things contained in this writing, and in all other things will, to his power and to the best of his understanding, govern these nations according to the laws, statutes and customs thereof.

XLII. That each person of the Council shall, before they enter upon their trust, take and subscribe an oath, that they will be true and faithful

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in their trust, according to the best of their knowledge; and that in the election of every successive Lord Protector they shall proceed therein impartially, and do nothing therein for any promise, fear, favour or reward.

CONTEMPORARY EXPOSITION

OLIVER CROMWELL (1653)

I suppose the Summons that hath been instrumental to bring you hither gives you well to understand the occasion of your being here. Howbeit, I have something farther to impart to you, which is an Instrument drawn-up by the consent and advice of the principal Officers of the Army; which is a little (as we conceive) more significant than the Letter of the Summons. We have that here to tender you; and somewhat likewise to say farther for our own exoneration: which we hope may be somewhat farther for your satisfaction. And withal seeing you sit here somewhat uneasily by reason of the scantness of the room and heat of the weather, I shall contract myself with respect thereunto. . . .

"But indeed" that is contained in the Paper here in my hand, which will be offered presently to you to read. But having done that, we have done upon such ground of necessity as we have "now" declared, which was not a feigned necessity but a real, — "it did behove us," to the end we might manifest to the world the singleness of our hearts and our integrity who did these things, Not to grasp at the power ourselves, or keep it in military hands, no not for a day; but, as far as God enabled us with strength and ability, to put it into the hands of Proper Persons that might be called from the several parts of the Nation. This necessity; and I hope we may say for ourselves, this integrity of concluding to divest the Sword of all power in the Civil Administration, — hath been that that hath moved us to put You to this trouble "of coming hither:" and having done that, truly we think we cannot, with the discharge of our own consciences, but offer somewhat to you on the devolving of the burden on your shoulders. It hath been the practice of others who have, voluntarily and out of a sense of duty,

divested themselves, and devolved the Government into new hands; I say, it hath been the practice of those that have done so; it hath been practised, and is very consonant to reason, to lay "down," together with their Authority, some Charge "how to employ it," (as we hope we have done), and to press the duty "of employing it well:" concerning which we have a word or two to offer you. . . .

I have only this to add. The affairs of the Nation lying on our hands to be taken care of; and we knowing that both the Affairs at Sea, the Armies in Ireland and Scotland, and the providing of things for the preventing of inconveniences, and the answering of emergencies, did require that there should be no Interruption, but that care ought to be taken for these things; and foreseeing likewise that before you could digest yourselves into such a method, both for place, time and other circumstances, as you shall please to proceed in, some time would be required, — which the Commonwealth could not bear in respect to the managing of things: I have, within a week "past," set-up a Council of State, to whom the managing of affairs is committed. Who, I may say, very voluntarily and freely, before they see how the issue of things will be, have engaged themselves in business; eight or nine of them being Members of the House that late was. — I say I did exercise that power which, I thought, was devolved upon me at that time; to the end affairs might not have any interval "or interruption." And now when you are met, it will ask some time for the settling of your affairs and your way. And, "on the other hand," a day cannot be lost, or "left vacant," but they must be in continual Council till you take farther order. So that the whole matter of their consideration also which regards them is at your disposal, as you shall see cause. And therefore I thought it my duty to acquaint you with thus much, to prevent distractions in your way: That things have been thus ordered; that your affairs will "not stop, but" go on, "in the meanwhile," — till you see cause to alter this Council; they having no authority or continuance of sitting, except simply until you take farther order.

CARLYLE, *Life of Cromwell, First Speech to the Sixth Parliament.* III. 43, 70.

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CRITICAL COMMENT

HALLAM (1827)

They appointed a commission to consider the reformation of the law, in consequence of repeated petitions against many of its inconveniences and abuses; who, though taxed of course with dilatoriness by the ardent innovators, suggested many useful improvements, several of which have been adopted in more regular times, though with too cautious delay. They proceeded rather slowly and reluctantly to frame a scheme for future parliaments; and resolved that they should consist of 400, to be chosen in due proportion by the several counties, nearly upon the model suggested by Lilburne, and afterwards carried into effect by Cromwell. . . .

It was now the deep policy of Cromwell to render himself the sole refuge of those who valued the laws, or the regular ecclesiastical ministry, or their own estates, all in peril from the mad enthusiasts who were in hopes to prevail. These he had admitted into that motley convention of one hundred and twenty persons, sometimes called Barebone's parliament, but more commonly the little parliament, on whom his council of officers pretended to devolve the government, mingling them with a sufficient proportion of a superior class whom he could direct.

HENRY HALLAM, *The Constitutional History of England*. II. 241, 242, 243.

MACAULAY (1849)

The name of king was hateful to the soldiers. Some of them were indeed unwilling to see the administration in the hands of any single person. The great majority, however, were disposed to support their general as elective first magistrate of a commonwealth, against all factions which might resist his authority; but they would not consent that he should assume the regal title, or that the dignity, which was the just reward of his personal merit, should be declared hereditary in his family. All that was left to him was, to give to the new republic a constitution as like the constitution of the old monarchy as the army would bear. . . .

His plan bore from the first, a considerable resemblance to the old English constitution; but in a few years, he thought it safe to proceed further, and to restore almost every part of the ancient system under new names and forms. The title of king was not revived, but the kingly prerogatives were intrusted to a lord high protector. The sovereign was called, not His Majesty, but His Highness. He was not crowned and anointed in Westminster Abbey, but was solemnly enthroned, girt with a sword of state, clad in a robe of purple, and presented with a rich Bible, in Westminster Hall. His office was not declared hereditary; but he was permitted to name his successor.

THOMAS BABINGTON MACAULAY, *History of England*. I. 104.

BAGEHOT (1872)

The second period of the British Constitution begins with the accession of the House of Tudor, and goes down to 1688; it is in substance the history of the growth, development, and gradually acquired supremacy of the new great council. . . . The steps were many, but the energy was one — the growth of the English middle-class, using that word in its most inclusive sense, and its animation under the influence of Protestantism. . . . A still stronger anti-Papal spirit entered into the middle sort of Englishmen, and added to that force, fibre, and substance which they have never wanted, an ideal warmth and fervour which they have almost always wanted. Hence the saying that Cromwell founded the English Constitution. Of course, in seeming, Cromwell's work died with him; his dynasty was rejected, his republic cast aside; but the spirit which culminated in him never sank again, never ceased to be a potent, though often latent and volcanic force in the country.

WALTER BAGEHOT, *English Constitution*. 282.

J. R. GREEN (1874)

The dissolution of the Convention replaced matters in the state in which its assembly had found them; but there was still the same general anxiety to substitute some sort of legal rule for the power of the sword. The Convention had named

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during its session a fresh Council of State, and this body at once drew up, under the name of the Instrument of Government, a remarkable Constitution, which was adopted by the Council of Officers. They were driven by necessity to the step from which they had shrunk before, that of convening a Parliament on the reformed basis of representation, though such a basis had no legal sanction. The House was to consist of four hundred members from England, thirty from Scotland, and thirty from Ireland. The seats hitherto assigned to small and rotten boroughs were transferred to larger constituencies, and for the most part to counties. All special rights of voting in the election of members were abolished, and replaced by a general right of suffrage, based on the possession of real or personal property to the value of two hundred pounds. Catholics and "Malignants" as those who had fought for the King were called, were excluded for the while from the franchise. Constitutionally all further organization of the form of government should have been left to this Assembly; but the dread of disorder during the interval of its election, as well as a longing for "settlement," drove the Council to complete their work by pressing the office of "Protector" upon Cromwell. . . . The powers of the new Protector indeed were strictly limited. Though the members of the Council were originally named by him, each member was irremovable save by consent of the rest: their advice was necessary in all foreign affairs, their consent in matters of peace and war, their approval in nominations to the great offices of state, or the disposal of the military or civil power. With this body too lay the choice of all future Protectors. To the administrative check of the Council was added the political check of the Parliament. Three years at the most were to elapse between the assembling of one Parliament and another. Laws could not be made, nor taxes imposed but by its authority, and after the lapse of twenty days the statutes it passed became laws even if the Protector's assent was refused to them. The new Constitution was undoubtedly popular; and the promise of a real Parliament in a few months covered the want of any legal character in the new rule. The Government was generally accepted as a provisional one, which could only acquire legal authority from the ratification of its acts in the coming session; and the desire to settle it on such a Parliamentary basis was universal among the members of the new Assembly which met in the autumn at Westminster.

J. R. GREEN, *Short History of the English People*. 585, 586.

TASWELL-LANGMEAD (1879)

In this connection it has been observed, that the significance of the Commonwealth consists before all else in the fact that England for the first time in its history showed the world what a strong resolute government, freed from the fetters of the mediæval parliamentary State, and a government which, in respect of broad views and absence of prejudice, was far in advance of its time, could achieve both without and within.

T. P. TASWELL-LANGMEAD, *English Constitutional History*. 508.

HANNIS TAYLOR (1889)

As early as October, 1647, the levellers had embodied their new conception of government in the draft of a constitution entitled "The Agreement of the People," which proposed, first, that the constituencies should be "more indifferently proportioned according to the number of inhabitants;" second, that the existing parliament should be dissolved on September 30, 1648; third, that all future parliaments should be triennial; fourth, that a single elected chamber should be supreme in all things not "expressly or impliedly reserved by the represented to themselves." This prototype of all constitutions, state and federal, as they exist to-day in the United States, was to draw its authority from a direct acceptance by the people, who reserved to themselves, by express constitutional limitations upon the powers granted, certain rights, among which the agreement pointedly named the absolute right to religious liberty and due process of law. . . .

The scheme of government embodied in the "Instrument" undertook to impose a twofold limitation upon the powers of the chief of state, whom it designated as lord protector. The supreme executive power was vested in him, acting with the advice of a council of state whose members, though originally

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appointed by him, were irremovable save by the consent of the rest. With the *advice* of the council the protector could treat with foreign states, with its *consent* he could make peace and war, while in it alone was vested the power to choose all future protectors. The supreme legislative power was vested in the protector, and a parliament consisting of a single chamber to be composed of four hundred members from England, thirty from Scotland, and thirty from Ireland, according to the plan formulated by Vane at the close of the Long Parliament, but which that body failed to enact into law. No statutes were to be passed nor taxes imposed without the consent of this assembly, and all of its enactments were to become law within twenty days even without the protector's consent, unless he could persuade the house of the reasonableness of his objections. It was not to be adjourned, prorogued, or dissolved without its own consent within the first five months after its meeting, and a new parliament was to be assembled every three years. Every person possessed of real or personal property of the value of two hundred pounds had the right to vote for members, and all were eligible as electors or as members except malignants, delinquents, and Roman Catholics. Religious liberty was guaranteed to all Christians except prelatists, papists, and those who taught licentiousness under the name of religion. As the new chamber thus provided for was not to meet until the third of the following September, the protector was authorized in the mean time to raise all money necessary for the public service, and to make ordinances, which should have the force of law until the subjects embraced in them could be provided for by parliamentary enactments. Under this provision, which gave to the protector a wide scope for the exercise of his administrative genius, he issued before the parliament met sixty-four ordinances, which embraced all the more important questions then pressing for solution in church and state.

HANNIS TAYLOR, *The Origin and Growth of the English Constitution.* II. 341–349.

S. R. GARDINER (1889)

On January 15, 1649, whilst the King's fate was still in suspense, the Council of the Army set forth a document known as

the Agreement of the People. It was a sketch of a written Constitution for a Republican Government based on the Heads of the Proposals [see this paper in Gardiner's *Constitutional Documents*, page 232], omitting everything that had reference to the King. The Heads of the Proposals had contemplated the retention of the Royal authority in some shape or another, and had been content to look for security to Acts of Parliament, because, though every Act was capable of being repealed, it could not be repealed without the consent both of the King and the Houses, and the Houses might be trusted to refuse their consent to the repeal of any Act which checked the despotism of the King; whilst the King could be trusted to refuse his consent to the repeal of any Act which checked the despotism of the Houses. With the disappearance of Royalty the situation was altered. The despotism of Parliament was the chief danger to be feared, and there was no possibility of averting this by Acts of the Parliament itself. Naturally, therefore, arose the idea of a written Constitution, which the Parliament itself would be incompetent to violate. According to the proposed scheme, the existing Parliament was to be dissolved on April 30, 1649. After this there was to be a biennial Parliament without a House of Lords, a redistribution of seats, and a rating franchise. For seven years all who had adhered to the King were to be deprived of their votes, and during the first and second Parliaments only those who had by contributions or by personal service assisted the Parliament, or who had refrained from abetting certain combinations against Parliament, were to be capable of being elected, whilst those who had actually supported the King in the war were to be excluded for fourteen years. Further, no official was to be elected. There was to be a Council for "managing public affairs." Further, six particulars were set down with which Parliament could not meddle, all laws made on those subjects having no binding force.

As to religion, there was to be a public profession of the Christian religion "reformed to the greatest purity of doctrine," and the clergy were to be maintained "out of a public treasury," but "not by tithes." This public religion was not to be "Popery or Prelacy." No one was to be compelled to conformity, but all religions which did not create disturbances were

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to be tolerated. It was not, however, to be understood "that this liberty shall necessarily extend to Popery or Prelacy," a clause, the meaning of which is not clear, but which was probably intended to leave the question open to Parliament to decide. The Article on Religion was, like the six reserved particulars, to be out of the power of Parliament to modify or repeal.

The idea of reserving certain points from Parliamentary action was one which was subsequently adopted in the American Constitution, with this important difference, that the American Constitution left a way open by which any possible change could be effected by consulting the nation; whilst the Agreement of the People provided no way in which any change in the reserved powers could be made at all. In short, the founders of the American Constitution understood that it was useless to attempt to bind a nation in perpetuity, whilst the English Council of the Army either did not understand it, or distrusted the nation too far to make provision for what they knew must come in time. . . .

That the execution of the King made the difficulties in the way of the establishment of a Republic greater than they had been, it is impossible to deny; but the main difficulties would have existed even if the King had been deposed instead of executed. There are two foundations upon which government must rest if it is to be secure, the traditional continuity which is derived from the force of habit, and the national support which is derived from the force of will. The Agreement of the People swept the first aside, and only trusted the latter to a very limited extent.

The Instrument of Government was intended to suit a Constitutional Government carried on by a Protector and a single House. The Protector therefore stepped into the place of the King, and there were therefore clauses inserted to define and check the power of the Protector, which may fitly be compared with those of the Heads of the Proposals. The main difference lay in this, that the Heads of the Proposals were intended to check a King who, at least for some time to come, was to be regarded as hostile to the Parliament, whereas the Instrument of Government was drawn up with the sanction of the Protector, and therefore took it for granted that the Protector was

not to be guarded against as a possible enemy. His power however was to be limited first by his Council of State, and secondly by Parliament.

Parliament was to be elected and to meet, not as according to the Agreement of the People, once in two, but once in three years, and to remain in session at least five months. It was to be elected in accordance with a scheme for the redistribution of seats based on that set forth in the Agreement of the People, the Protector and Council having leave to establish constituencies in Scotland and Ireland, which were now to send members to the Parliament of Westminster. It was the first attempt at a parliamentary union between the three countries carried out at a time when such a union was only possible, because two of the countries had been conquered by one. Instead of the old freehold franchise, or of the rating franchise of the Agreement of the People, there was the franchise in the counties to be given to the possessors of real or personal estate to the value of £200. As nothing was said about the boroughs, the right of election would remain in those who had it under the Monarchy, that is to say, it would vary according to the custom of each borough. In those boroughs in which the corporations elected, the feeling by this time would be likely to be anti-Royalist. The disqualification clauses were less stringently drawn than in the Agreement of the People, but all who had abetted the King in the war were to be deprived of their votes at the first election and of the right of sitting in the first four Parliaments. Those who had abetted the Rebellion in Ireland, or were Roman Catholics, were permanently disqualified from sitting or voting. . . .

The clauses relating to the power of Parliament in matters of finance seem to have been modelled on the old notion that "the King was to live of his own" in ordinary times. A constant yearly revenue was to be raised for supporting an army of 30,000 men — now regarded as a permanent charge — and for a fleet sufficient to guard the seas as well as £200,000 for the domestic administration. The total amount, and the sources of the necessary taxation, were to be settled by the Protector and Council; Parliament having no right to diminish it without the consent of the Protector. With respect to

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war expenses, they were to be met by votes of Parliament, except that in the intervals of Parliament the Protector and Council might raise money to meet sudden emergencies from war till the Parliament could meet, which the Protector and Council were bound to summon for an extraordinary session in such an emergency. . . .

The functions of the Council were of considerable importance. In all important matters the Protector had to act by its advice, and when Parliament was not in session it was to join him in passing Ordinances which were to be obeyed until in the next session Parliament either confirmed them or disallowed them. On the death of the Protector it was the Council which was to elect his successor. . . .

The Instrument of Government suffered not only under the vice of ignoring the probable necessity of its amendment in the future, but also under the vice of having no support either in traditional loyalty nor in national sanction. If, however, we pass over these all-important faults, and discuss it from the purely constitutional point of view, it is impossible not to be struck with the ability of its framers, even if we pronounce their work to be not entirely satisfactory. It bears the stamp of an intention to steer a middle course between the despotism of a "single person" and the despotism of a "single House." Parliament had supreme rights of legislation, and the Protector was not only sworn to administer the law, but every illegal act would come before the courts of law for condemnation. Parliament, too, had the right of disapproving the nominations to the principal ministerial offices, and of voting money for conducting operations in time of war. Where it fell short of the powers of modern Parliaments was in its inability to control administrative acts, and in its powerlessness to refuse supplies for the carrying on of the government in time of peace. A modern Parliament can exercise these powers with safety, because if it uses them foolishly a government can dissolve it and appeal to the nation, whereas Cromwell, who was but the head of a party in the minority, and whose real strength rested on the army, did not venture to appeal to the nation at large, or even to appeal too frequently to the constituencies who were to elect his Parliament.

The real constitutional safeguard was intended to be in the Council of State. Ultimately, after the death of the Councillors named in the Instrument, the Council of State would indirectly represent the Parliament, as no one would have a place on it whose name had not been one of six presented by Parliament. In the Council of State, the Protector would be in much the same position as a modern Prime Minister in his Cabinet, except that each member of the Council held his position for life, whereas a modern Prime Minister can obtain the resignation of any member of the Cabinet with whom he is in strong disagreement. On the other hand, the greater part of the members of a modern Cabinet are heads of executive departments, and thus have a certain independent position of their own. In some respects indeed, the relations between the Protector and the Council were more like those between an American President and the Senate in executive session, than those between an English Prime Minister and the Cabinet. The members of the American Senate are entirely independent of the President, as the members of the Council of the Protectorate were entirely independent of the Protector when once they had been chosen. On the other hand, the two bodies differed in a most important particular. The tendency of the American Senate, which is never officially brought into personal contact with the President, is to be antagonistic to the President. The tendency of the Council of State, which was in daily contact with the Protector, was to work with him instead of against him. It was not, however, in consequence of its merits or demerits as a constitutional settlement that the Instrument of Government failed. It broke down because the first Parliament summoned under it refused to acknowledge its binding force, and claimed to be a constituent as well as a legislative body.

S. R. GARDINER, *Introduction to Constitutional Documents of the Puritan Revolution*, lii. lix.

J. K. HOSMER (1890)

On the 20th, the agreement of the People was formally presented. . . . In 1647, Ireton, to whom the bold and masterly elaboration was for the most part due, had not been ready for so radical a step, and had left the council abruptly, as we have

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seen, at the suggestion of laying by the King; but in the Army now, rank and file and chiefs stood together. The paper consisted of ten articles. . . . Except the 8th article, relating to the religious establishment, which, judged by modern ideas, is narrow, there is nothing here not most thoroughly reasonable. Ireton himself, like Cromwell and Vane, was ready for the broadest toleration, including even Jews, infidels, and Pagans; but even in the Rump there were prejudices that must be humoured. On the 6th of February it was resolved: "That the House of Peers in Parliament is useless and dangerous, and ought to be abolished," and on the following day, "that the office of the King. . . . is unnecessary, burdensome, and dangerous to the liberty, safety, and public interest of the People of this nation, and therefore ought to be abolished." The old order was thus completely swept away, and England was a Republic. The English reforms already gained in the nineteenth century, and still in progress at the present hour, were all anticipated: all too, that is most essential in the American system had been formulated.

Thus we see that popular government, the heritage from the ancient Saxon time, seemed likely to have in the days of the Ironsides a most complete and memorable revival. It is to be noticed that it came about as something into which people were forced, rather than something which they voluntarily embraced. Eliot, Pym, and Hampden never conceived for England of a polity in which King and Lords should be swept away. It was the rank and file of the Army, the plain people, the tradesmen of the towns; or rather, since the towns in great majority became Presbyterian, it was the small farmers, the yeomen, from whom proceeded the first assertion of a complete right to self-government. Their own leaders at first held back, in some cases denouncing so thorough a sweep. At last, however, Cromwell, Ireton, Vane, and Milton stood thoroughly with the men, — justifying themselves in their course by the belief that they undertook no new thing, but only restored the essentials of that most ancient freedom that had been so deeply overlaid.

JAMES K. HOSMER, *A Short History of Anglo-Saxon Freedom.* 152–155.

BORGEAUD (1892)

At the culminating point of the Puritan Revolution, when Cromwell, swept on by the democratic movement, is compelled to follow it if he would become its master, a curious constitutional project is seen coming to the surface. This is the "Agreement of the People" presented by the army to the House of Commons, for its approval and eventual submission to the people. The idea of its authors, clearly stated in the document itself, and discussed in the pamphlets of the day, was the establishment of a supreme law, placed beyond the reach of Parliament, defining the powers of that body and expressly declaring the rights which the nation reserved to itself and which no authority might touch with impunity. This popular compact was to receive the personal adhesion of the citizens, according to a special procedure therein provided. Its promulgation depended upon its acceptance by the people.

CHARLES BORGEAUD, *Adoption and Amendment of Constitutions in Europe and America*, translated by C. D. Hazen. 5–6.

BORGEAUD (1894)

This manifesto contains the outline of a complete constitution. When we read it and summarize the demands it contains, we are astounded to find that it is nearly two centuries and a half old. The principles which it lays down are, for the most part, the very principles which contemporary democracy has first succeeded in establishing, or is still demanding. The sovereignty of the people: supreme power vested in a single representative assembly; the executive entrusted by an assembly to a council of state, elected for the term of one legislature; biennial parliaments; equitable and proportionate distribution of seats: extension of the right of voting, and of election to all citizens dwelling in the electoral districts who are of full age, and neither hired servants nor in receipt of relief: the toleration of all forms of Christianity: the suppression of state interference in church government; the limitation of the powers of the representative assembly, by fundamental laws embodied in the constitution, especially with regard to the civil liberties guaranteed to citizens — these are the principles

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proclaimed by the English democrats in January, 1648–49. . . . This document bears the significant title of "An Agreement of the People of England." It was presented to Parliament, not in order that Parliament might publish it of its own authority, but that it might approve it and submit it to the nation. . . . It was a real constitutional Charter, founded on the direct acceptance of the people, and placed above the reach of the representative Assembly — a constitution in the sense in which the word is understood by the democracies of the United States and Switzerland to-day.

When the roll containing the Agreement of the People was presented to the House of Commons, the address was listened to with all the respect due to the rank of those who bore it, and a vote of thanks was passed with great solemnity. The reading of the Agreement itself, however, was put off to a more convenient season. Business of the greatest importance was then occupying the minds of some of its members. On that very day began the trial of the King.

It is remarkable, however, that certain reforms which had formerly been demanded by the democratic party, or brought forward in the Agreement of the People, were carried out during the Protectorate; for example, the judicial reforms and the reforms in the system of parliamentary representation.

The Instrument of Government which was elaborated in 1653 by the Council of Officers, was a written Constitution, the first, and down to the present time the only one ever possessed by modern England.

CHARLES BORGEAUD, *Rise of Modern Democracy in Old and New England*, translated by Mrs. Birkbeck Hill. 38–98.

RANSOME (1895)

Three days later, a new constitution, devised by Lambert and embodied in the *Instrument of Government*, was accepted by the council of officers. In it the executive and legislative powers were distributed between a Protector, a council of state, and a parliament. Cromwell was named Protector, and was to be general by sea and land. He was, however, to decide questions of war and peace by the advice of the council

of state, and in case of war, parliament was to be immediately summoned. The members of the council of state were also named in the instrument: and the chief were Lambert, Desborough, Montague, Skippon, Antony Ashley Cooper, and six others. On the death of any of these, the vacancy was to be filled up by the Protector from a list of six names chosen by parliament. All legislative power was reserved to parliament, but the Protector might suspend the coming into operation of any act for twenty days. Parliaments were to be elected by the new constituencies proposed by the Long Parliament, in accord with the *Agreement of the People*. They were to be held every third year; but no parliament was to be dissolved till it had sat five months. By these arrangements it was hoped to combine the freedom of republican institutions with the practical efficiency of a single sovereign acting through a cabinet. In reality, except when parliament was sitting, it gave almost unlimited power to the Protector. Cromwell at once accepted the post of Protector, and was solemnly inaugurated in Westminster Hall, Lambert taking the leading share in the ceremony.

CYRIL RANSOME, *An Advanced History of England*. 600.

MEDLEY (1898)

From 1642 to 1660 the English Constitution was practically in abeyance; but the expedients which were evoked to fill the void, formed no unimportant element in the future development of the constitution. For, in the first place, the period of the Commonwealth was distinguished by an attempt to change the whole current of English history. As things have worked themselves out, we have a constitution which contains no fundamental laws unalterable by the three Estates in Parliament assembled, but leaves that body the legal sovereign with control of the executive. But had the constitutions projected under the Commonwealth been permanent, the development of our system would have been hampered, if not checked, by fundamental laws, and the written constitution would have been sovereign instead of Parliament; while the executive and legislature would have existed independently of each other, as in the United States at the present day. In the second place,

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Cromwell was perhaps chiefly hindered by his conservatism. For he fell back on old expedients, and tried, as far as might be, to reproduce the old constitution without those links of historical association which had bound its several parts together, and with that balance of powers which his training in the ranks of the parliamentary party had led him to regard as the ideal. Thus the *Instrument of Government* set up an executive of a Protector and Council with co-ordinate authority, and a Parliament of one chamber independent of the Council, unable on the one hand to alter the constitution, and on the other hand to be itself adjourned or dissolved for five months without its own consent.

DUDLEY JULIUS MEDLEY, *A Student's Manual of English Constitutional History*. 305–306.

CHAPTER VIII

HABEAS CORPUS ACT (1679)

SUGGESTIONS

THE document for the Habeas Corpus Act is intituled "an act for the better securing of the liberty of the subject and for prevention of imprisonments beyond the seas." Various attempts have been made unsuccessfully to obtain the passage of two Bills, one to give a more expeditious use of the writs of Habeas Corpus in Criminal matters — the other to prevent imprisonment in jails beyond the seas.

The old principle of relief from arbitrary arrest laid down in Magna Charta, and applied throughout the succeeding constitutions, always lacked a short and easy process of establishing the fact of illegal detention. At length in 1679 this famous act was passed; although defective in the promises as to bail and common law and falsehood, this statute stands as one of the most important landmarks of human liberty. It should be studied in its relation to the growth of the liberty of the subject.

For Outlines and Material, see Appendix A.

DOCUMENT

Habeas Corpus Act (1679)

Extracts from the Provisions of the *Statute*, 31° *Car.* II. *c.* 2.

1. That on complaint and request in writing by or on behalf of any person committed and charged with any *crime* (unless committed for treason or felony expressed in the warrant; or as accessory, or on suspicion of being accessory, before the fact, to any petit-treason or felony; or upon suspicion of such petit-treason or felony, plainly expressed in the warrant; or unless he is convicted or charged in execution by legal process), the lord chancellor or any of the twelve judges, in vacation, upon viewing a

Transliteration from *The Statutes of the Realm*, V, 925–928. See Appendix (B) for full text Note Magna Charta, Art. 39–40.

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copy of the warrant, or affidavit that a copy is denied, shall (unless the party has neglected for two terms to apply to any court for his enlargement) award a *habeas corpus* for such prisoner, returnable immediately before himself or any other of the judges; and upon the return made shall discharge the party, if bailable, upon giving security to appear and answer to the accusation in the proper court of judicature.

There are various kinds made use of in England; and the same, and still others, in the United States.

2. That such writs shall be endorsed, as granted in pursuance of this act, and signed by the person awarding them.

3. That the writ shall be returned and the prisoner brought up, within a limited time according to the distance, not exceeding in any case twenty days.

Blackstone counts this a "high prerogative."

4. That officers and keepers neglecting to make due returns, or not delivering to the prisoner or his agent within six hours after demand a copy of the warrant of commitment, or shifting the custody of a prisoner from one to another, without sufficient reason or authority, (specified in the act,) shall for the first offence forfeit £100 and for the second offence £200 to the party grieved, and be disabled to hold his office.

5. That no person, once delivered by *habeas corpus*, shall be recommitted for the same offence, on penalty of £500.

6. That every person committed for treason or felony shall, if he requires it the first week of the next term, or the first day of the next session of *oyer* and *terminer*, be indicted in that term or session, or else admitted to bail; unless the king's witnesses cannot be produced at that time; and if acquitted, or if not indicted and tried in the second term or session, he shall be discharged from his imprisonment for such imputed offence; but that no person, after the assizes shall be open for the county in which he is detained, shall be removed by *habeas corpus*, till after the assizes are ended; but shall be left to the justice of the judges of assize.

7. That any such prisoner may move for and obtain his habeas corpus, as well out of the chancery, or exchequer, as out of the king's bench or common pleas; and the lord chancellor or judges denying the same, on sight of the warrant or oath that the same is refused, forfeit severally to the party grieved the sum of £500.

8. That this writ of *habeas corpus* shall run into the counties palatine, cinque ports, and other privileged places, and the islands of Jersey and Guernsey.

This act, as expressed in early writs, was so often broken in reign of Charles I., that it brought about the parliamentary inquiry ending in the Petition of Right, 1628.

9. That no inhabitant of England (except persons contracting, or convicts praying, to be transported; or having committed some capital offence in the place to which they are sent) shall be sent prisoner to Scotland, Ireland, Jersey, Guernsey, or any places beyond the seas, within or without the king's dominions; on pain that the party committing, his advisers, aiders, and assistants, shall forfeit to the party grieved a sum not less than £500 to be recovered with treble costs; shall be disabled to bear any office of trust or profit; shall incur the penalties of praemunire; and shall be incapable of the king's pardon.

Broken in the Transportation Act in reign of George III.

CONTEMPORARY EXPOSITION

BISHOP BURNET (1724)

It was carried by an odd artifice in the House of Lords. Lord Grey and Lord Norris were named to be the tellers. Lord Norris being a man subject to vapours, was not at all times attentive to what he was doing, so, a very fat lord coming in, Lord Grey counted him for ten as a jest at first, but seeing Lord Norris had not observed it, he went on with this misreckoning of ten; so it was reported to the house, and declared that they who were for the bill were the majority, though it indeed went on the other side; and by this means the bill was past.

GILBERT BURNET, *History of His Own Time*. I. 485.

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crease of bribery, time Geo. III. This act first enforced in 1407.

(9.) That the freedom of speech, and debates or proceedings in Parliament, ought not to be impeached or questioned in any court or place out of Parliament.

(10.) That excessive bail ought not to be required, nor excessive fines imposed; nor cruel and unusual punishments inflicted.

(11.) That jurors ought to be duly impanelled and returned, and jurors which pass upon men in trials for high treason ought to be freeholders.

See Magna Charta, Art. xxxvi.

(12.) That all grants and promises of fines and forfeitures of particular persons before conviction are illegal and void.

(13.) And that for redress of all grievances, and for the amending, strengthening, and preserving of the laws, Parliament ought to be held frequently.

And they do claim, demand, and insist upon all and singular the premises, as their undoubted rights and liberties; and that no declarations, judgments, doings or proceedings, to the prejudice of the people in any of the said premises, ought in any wise to be drawn hereafter into consequence or example.

To which demand of their rights they are particularly encouraged by the declaration of his Highness the Prince of Orange, as being the only means for obtaining a full redress and remedy therein.

Having therefore an entire confidence that his said Highness the Prince of Orange will perfect the deliverance so far advanced by him, and will still preserve them from the violation of their rights, which they have here asserted, and from all other attempts upon their religion, rights, and liberties:

This is the first official statement that the

II. The said Lords Spiritual and Temporal, and Commons, assembled at Westminster, do resolve, that William and Mary, Prince and Princess of Orange, be, and be declared, King and Queen of England, France, and Ireland, and the dominions thereunto belonging, to hold the crown and royal diguity of the said kingdoms and dominions to them

the said Prince and Princess during their lives, and the life of the survivor of them; and that the sole and full exercise of the regal power be only in, and executed by, the said Prince of Orange, in the names of the said Prince and Princess, during their joint lives; and after their deceases, the said Crown and royal dignity of the said kingdoms and dominions to be to the heirs of the body of the said Princess; and for default of such issue to the Princess Anne of Denmark, and the heirs of her body; and for default of such issue to the heirs of the body of the said Prince of Orange. And the Lords Spiritual and Temporal, and Commons, do pray the said Prince and Princess to accept the same accordingly.

crown of England can be conferred by Parliament.

III. And that the oaths hereafter mentioned be taken by all persons of whom the oaths of allegiance and supremacy might be required by law, instead of them; and that the said oaths of allegiance and supremacy be abrogated.

New oath of allegiance, with supremacy oath.

"I, A. B., do sincerely promise and swear, That I will be faithful and bear true allegiance to their Majesties King William and Queen Mary:

"So help me God."

"I, A. B., do swear, That I do from my heart abhor, detest, and abjure as impious and heretical that damnable doctrine and position, that Princes excommunicated or deprived by the Pope, or any authority of the See of Rome, may be deposed or murdered by their subjects, or any other whatsoever. And I do declare, That no foreign prince, person, prelate, state, or potentate hath, or ought to have, any jurisdiction, power, superiority, preeminence, or authority, ecclesiastical or spiritual, within this realm:

Supremacy.

"So help me God!"

IV. Upon which their said Majesties did accept the Crown and royal dignity of the kingdoms of England, France, and Ireland, and the dominions thereunto belonging, according to the resolution

Agreement between Crown and Parliament.

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CRITICAL COMMENT

BLACKSTONE'S COMMENTARIES (1765)

The oppression of an obscure individual gave birth to the famous *habeas corpus* act (31 Car. II. c. 2) which is frequently considered as another *magna carta* of the kingdom; and by consequence and analogy has also in subsequent times reduced the general method of proceeding on these writs . . . to the true standard of law and liberty.

SIR WM. BLACKSTONE, *Commentaries on the Laws of England.* B. III. 135–136.

CREASY (1859)

The Habeas Corpus Act also, which was passed in this reign (31 Car. II. c. 2), is of great constitutional value, though it by no means introduced any new principle into our system, or formed any such epoch in the acquisition of the national liberties as some writers represent. But it made the remedies against arbitrary imprisonment short, certain, and obtainable at all times and in all cases. . . .

These enactments, and especially the Habeas Corpus Act, make the name of Charles II. figure creditably in our statute-book, and there is one judicial decision of this reign which established a constitutional principle of the highest value, or rather which put an end to a long-continued abuse of the most perilous character.

E. S. CREASY, *Rise and Progress of the English Constitution.* 269, 272.

R. C. HURD (1877)

It was not to bestow an immunity from arbitrary imprisonment, which is abundantly provided in Magna Carta (if indeed it is not much more ancient), that the statute of Charles II. was enacted; but to cut off the abuses by which the government's lust of power, and its servile subtlety of crown lawyers, had impaired so fundamental a privilege.

ROLLIN C. HURD, *Right of Personal Liberty.* 84.

PATERSON (1877)

On May 27, 1679, the Habeas Corpus Act passed, and, after the lapse of two centuries, it has been found by experience to have made the machinery revolve so promptly and cut so clearly into the marrow of all the mischiefs attending the possession of might, regardless of right, that no king or minister, led away with the dream of power, has since sought seriously to baffle or disable it. . . . It is now a familiar code, and represents a whole armoury of strength, for every line and syllable of which each citizen would fight to the last, as for his household gods. Holt said every man should be concerned for Magna Charta. And the Habeas Corpus Act is only a natural sequel and development of Magna Charta. No dictator, whether single-handed or hydra-headed, can long breathe the same air with those who have caught the secret of its power. It appeals to the first principles of security, and to the law of nature, if any such there be. Its whole essence is nothing else than this. Every human being, who is not charged with or convicted of a known crime, is entitled to personal liberty.

JAMES PATERSON, *Liberty of the Subject, Security of the Person.* II. 207–8.

TASWELL-LANGMEAD (1879)

It was subject, however, to three defects. (1) It fixed no limit on the amount of bail which might be demanded. (2) It only applied to commitments on Criminal or supposed Criminal charges; all other cases of unjust imprisonment being left to the *habeas corpus* at Common Law as it subsisted before this enactment. (3) It did not guard against falsehoods in the return. The first of these defects was remedied in 1689, by the Bill of Rights, which declared "that excessive bail ought not to be required." The other two (notwithstanding a serious attempt in 1757 to render the *habeas corpus* at Common Law more efficient) subsisted down to the year 1816 when they were at length removed by 'An Act for more effectually securing the liberty of the subject.' (56 Geo. III. c. 100.)

T. P. TASWELL-LANGMEAD, *English Constitutional History.* 521.

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DICEY (1885)

The right to the writ of *Habeas Corpus* existed at common law long before the passing in 1679 of the celebrated Habeas Corpus Act (31 Car. II. cap. 2), and you may wonder how it has happened that this and the subsequent Act (56 Geo. III. cap. 100) are treated and (for practical purposes) rightly treated, as the basis on which rests an Englishman's security for the enjoyment of his personal freedom. The explanation is, that prior to 1679 the right to the writ was often, under various pleas and excuses, made of no effect. The aim of the Habeas Corpus Act has been to meet all the devices by which the effect of the writ can be evaded, either on the part of the judges, who brought to issue the same, and if necessary discharge the prisoner, or on the part of the gaoler or the person who has the prisoner in custody. The earlier Act of Charles the Second applies to persons imprisoned on a charge of crime. The later Act of George the Third applies to persons deprived of their liberty otherwise than on a criminal accusation.

ALBERT V. DICEY, *Introduction to the Study of the Law of the Constitution.* 207, 208.

MAY (1887)

The writ of Habeas Corpus is unquestionably the first security of civil liberty. It brings to light the cause of every imprisonment, approves its lawfulness, or liberates the prisoner. It exacts obedience from the highest courts; Parliament itself submits to its authority. No right is more justly valued. It protects the subject from unfounded suspicions, from the aggressions of power, and from abuses in the administration of justice. Yet this protective law, which gives every man security and confidence in times of tranquillity, has been suspended, again and again, in periods of public danger or apprehension. Rarely, however, has this been suffered without jealousy, hesitation, and remonstrance; and whenever the perils of the state have been held sufficient to warrant this sacrifice of personal liberty, no minister or magistrate has been suffered to tamper with the law at his discretion. Parliament alone, convinced of the exigency of each occasion, has suspended, for a time, the rights of individuals, in the interests of the state.

SIR THOMAS ERSKINE MAY, *The Constitutional History of England.* II. 252, 253.

HANNIS TAYLOR (1889)

To put an end forever to every device, plea, or excuse by which the right to the actual benefits of the writ had been formerly made abortive, was finally passed the Habeas Corpus Act of 1679, the essence of which is that the chancellor and all of the judges are charged with the duty upon a proper application to direct the writ even he privileged places, including the islands of Jersey and Guernsey, requiring any person who is imprisoned to be actually and speedily brought before the court, together with the cause of the imprisonment, to the end that such court may either set him free, bail him, or remand him for a speedy trial, as justice may require.

HANNIS TAYLOR, *Origin and Growth of the English Constitution.* II. 382.

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CHAPTER IX

THE BILL OF RIGHTS (1689)

SUGGESTIONS

IN the second session of the Convention Parliament, which reassembled on the 25th of October, 1689, the Declaration of Right, which embodied the fundamental principles of the English Constitution and of the ancient franchises of the English nation, was confirmed with some slight but important amendments in a regular act of the Legislature. This Act is known as the Bill of Rights. The Convention Parliament had met on the 22nd of January, 1688, and a week later, the Commons passed their celebrated Resolution, in which, as James II. had abdicated the throne, it was deemed inconsistent with the safety of the kingdom that a Protestant government should be in the hands of a "Popish Prince." After conferences between William and the political leaders, as well as between the two Houses, it was resolved that a Committee of the Commons should consider what steps it might be advisable to take to secure law and liberty against the aggressions of future sovereigns.

The Declaration of Right was accordingly drawn up.

In studying the Bill of Rights it is necessary to understand thoroughly the reaction against Puritanism after the Restoration and the subsequent revival of Protestant feeling produced by James II.'s policy toward the church and the government. The position of William of Orange on the continent, both as military hero and political governor, must also be taken into consideration. All later Bills of Rights take their key-note from this famous document, of which Taswell-Langmead speaks as "the third great charter of English liberty and the coping-stone of the Constitutional Building."

For Outlines and Material see Appendix A.

DOCUMENT

The Bill of Rights Oct. 25 (1689)

The Statutes of the Realm. VI. 142–145.

AN ACT FOR DECLARING THE RIGHTS AND LIBERTIES OF THE SUBJECT, AND SETTLING THE SUCCESSION OF THE CROWN.

Whereas the Lords Spiritual and Temporal, and Commons, assembled at Westminster, lawfully, fully, and freely representing all the estates of the people of this realm, did upon the Thirteenth day of February, in the year of our Lord One Thousand Six Hundred Eighty-eight, present unto their Majesties, then called and known by the names and style of William and Mary, Prince and Princess of Orange, being present in their proper persons, a certain Declaration in writing, made by the said Lords and Commons, in the words following, viz.: —

Based upon the Declaration of Right which accompanied the offer of the Crown to William and Mary. Feb. 13, 1689.

"Whereas the late King James II., by the assistance of divers evil counsellors, judges, and ministers employed by him, did endeavour to subvert and extirpate the Protestant religion, and the laws and liberties of this kingdom: —

(1.) By assuming and exercising a power of dispensing with and suspending of laws, and the execution of laws, without consent of Parliament.

In early times the dispensing power had been considered legal.

(2.) By committing and prosecuting divers worthy prelates, for humbly petitioning to be excused from concurring to the said assumed power.

(3.) By issuing and causing to be executed a commission under the Great Seal for erecting a court, called the Court of Commissioners for Ecclesiastical Causes.

(4.) By levying money for and to the use of the Crown by pretence of prerogative, for other time and in other manner than the same was granted by Parliament.

Compare the following grievances with the Declaration of Independence.

(5.) By raising and keeping a standing army within this kingdom in time of peace, without consent of Parliament, and quartering soldiers contrary to law.

(6.) By causing several good subjects, being Protestants, to be disarmed, at the same time when Papists were both armed and employed contrary to law.

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(7.) By violating the freedom of election of members to serve in Parliament.

(8.) By prosecutions in the Court of King's Bench for matters and causes cognizable only in Parliament; and by divers other arbitrary and illegal causes.

(9.) And whereas of late years, partial, corrupt, and unqualified persons have been returned, and served on juries in trials, and particularly diverse jurors in trials for high treason, which were not freeholders.

(10.) And excessive bail hath been required of persons committed in criminal cases, to elude the benefit of the laws made for the liberty of the subjects.

(11.) And excessive fines have been imposed; and illegal and cruel punishments inflicted.

(12.) And several grants and promises made of fines and forfeitures, before any conviction or judgment against the persons upon whom the same were to be levied.

All which are utterly and directly contrary to the known laws and statutes, and freedom of this realm.

And whereas the said late King James II. having abdicated the government, and the throne being thereby vacant, his Highness the Prince of Orange (whom it hath pleased Almighty God to make the glorious instrument of delivering this kingdom from Popery and arbitrary power) did (by the advice of the Lords Spiritual and Temporal, and diverse principal persons of the Commons) cause letters to be written to the Lords Spiritual and Temporal, being Protestants, and other letters to the several counties, cities, universities, boroughs, and cinque ports, for the choosing of such persons to represent them, as were of right to be sent to Parliament, to meet and sit at Westminster upon the two-and-twentieth day of January, in this year one thousand six hundred eighty and eight, in order to such an establishment, as that their religion, laws, and liberties might not again be in danger of being subverted; upon which letters elections have been accordingly made.

Summons to the Convention Parliament.

And thereupon the said Lords Spiritual and Temporal, and Commons, pursuant to their respective letters and elections, being now assembled in a full and free representation of this nation, taking into their most serious consideration the best means for attaining the ends aforesaid, do in the first place (as their ancestors in like case have usually done), for the vindicating and asserting their ancient rights and liberties, declare: —

(1.) That the pretended power of suspending of laws, or the execution of laws, by regal authority, without consent of Parliament, is illegal.

(2.) That the pretended power of dispensing with laws, or the execution of laws by regal authority, as it hath been assumed and exercised of late, is illegal.

(3.) That the commission for erecting the late Court of Commissioners for Ecclesiastical causes, and all other commissions and courts of like nature, are illegal and pernicious.

(4.) That levying money for or to the use of the Crown by pretence of prerogative, without grant of Parliament, for longer time or in other manner than the same is or shall be granted, is illegal.

(5.) That it is the right of the subjects to petition the King, and all commitments and prosecutions for such petitioning are illegal.

(6.) That the raising or keeping a standing army within the kingdom in time of peace, unless it be with consent of Parliament, is against law.

(7.) That the subjects which are Protestants may have arms for their defence suitable to their conditions, and as allowed by law.

From 1695 to 1728, effort to enforce these articles.

(8.) That election of members of Parliament ought to be free.

Great in-

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and desire of the said Lords and Commons contained in the said declaration.

V. And thereupon their Majesties were pleased, that the said Lords Spiritual and Temporal, and Commons, being the two Houses of Parliament, should continue to sit, and with their Majesties' royal concurrence make effectual provision for the settlement of the religion, laws and liberties of this kingdom, so that the same for the future might not be in danger again of being subverted; to which the said Lords Spiritual and Temporal, and Commons, did agree and proceed to act accordingly.

See Declaration of Independence.

VI. Now in pursuance of the premises, the said Lords Spiritual and Temporal, and Commons, in Parliament assembled, for the ratifying, confirming, and establishing the said declaration, and the articles, clauses, matters, and things therein contained, by the force of a law made in due form by authority of Parliament, do pray that it may be declared and enacted, That all and singular the rights and liberties asserted and claimed in the said declaration are the true, ancient, and indubitable rights and liberties of the people of this kingdom, and so shall be esteemed, allowed, adjudged, deemed, and taken to be, and that all and every the particulars aforesaid shall be firmly and strictly holden and observed, as they are expressed in the said declaration; and all officers and ministers whatsoever shall serve their Majesties and their successors according to the same in all times to come.

VII. And the said Lords Spiritual and Temporal, and Commons, seriously considering how it hath pleased Almighty God, in his marvellous providence, and merciful goodness to this nation, to provide and preserve their said Majesties' royal persons most happily to reign over us upon the throne of their ancestors, for which they render unto Him from the bottom of their hearts their humblest

thanks and praises, do truly, firmly, assuredly, and in the sincerity of their hearts, think, and do hereby recognize, acknowledge, and declare, that King James II. having abdicated the Government, and their Majesties having accepted the Crown and royal dignity aforesaid, their said Majesties did become, were, are, and of right ought to be, by the laws of this realm, our sovereign liege Lord and Lady, King and Queen of England, France, and Ireland, and the dominions thereunto belonging, in and to whose princely persons the royal state, crown, and dignity of the same realms, with all honours, styles, titles, regalities, prerogatives, powers, jurisdictions, and authorities to the same belonging and appertaining, are most fully, rightfully, and entirely invested and incorporated, united, and annexed.

Limitations in settlement of Crown.

VIII. And for preventing all questions and divisions in this realm, by reason of any pretended titles to the Crown, and for preserving a certainty in the succession thereof, in and upon which the unity, peace, tranquillity, and safety of this nation doth, under God, wholly consist and depend, the said Lords Spiritual and Temporal, and Commons, do beseech their Majesties that it may be enacted, established, and declared, that the Crown and regal government of the said kingdoms and dominions, with all and singular the premises thereunto belonging and appertaining, shall be and continue to their said Majesties, and the survivor of them, during their lives, and the life of the survivor of them. And that the entire, perfect, and full exercise of the regal power and government be only in, and executed by, his Majesty, in the names of both their Majesties, during their joint lives; and after their deceases the said Crown and premises shall be and remain to the heirs of the body of her Majesty: and for default of such issue, to her Royal Highness the Princess Anne of Denmark, and the heirs of her

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body; and for default of such issue, to the heirs of the body of his said Majesty: And thereunto the said Lords Spiritual and Temporal, and Commons, do, in the name of all the people aforesaid, most humbly and faithfully submit themselves, their heirs and posterities, forever: and do faithfully promise, That they will stand to, maintain, and defend their said Majesties, and also the limitation and succession of the Crown herein specified and contained, to the utmost of their powers, with their lives and estates, against all persons whatsoever that shall attempt anything to the contrary.

See Act of Settlement.

IX. And whereas it hath been found by experience, that it is inconsistent with the safety and welfare of this Protestant kingdom, to be governed by a Popish prince, or by any king or queen marrying a Papist, the said Lords Spiritual and Temporal, and Commons, do further pray that it may be enacted, That all and every person and persons that is, are, or shall be reconciled to, or shall hold communion with, the See or Church of Rome, or shall profess the Popish religion, or shall marry a Papist, shall be excluded, and be for ever incapable to inherit, possess, or enjoy the Crown and Government of this realm, and Ireland, and the dominions thereunto belonging, or any part of the same, or to have, use, or exercise any regal power, authority, or jurisdiction within the same; and in all and every such case or cases the people of these realms shall be and are hereby absolved of their allegiance; and the said Crown and Government shall from time to time descend to, and be enjoyed by, such person or persons, being Protestants, as should have inherited and enjoyed the same, in case the said person or persons so reconciled, holding communion, or professing, or marrying, as aforesaid, were naturally dead.

Exclusion clause.

X. And that every King and Queen of this realm, who at any time hereafter shall come to and

succeed in the Imperial Crown of this kingdom, shall, on the first day of the meeting of the first Parliament, next after his or her coming to the Crown, sitting in his or her throne in the House of Peers, in the presence of the Lords and Commons therein assembled, or at his or her coronation, before such person or persons who shall administer the coronation oath to him or her, at the time of his or her taking the said oath (which shall first happen), make, subscribe, and audibly repeat the declaration mentioned in the statute made in the thirteenth year of the reign of King Charles II., intituled "An act for the more effectual preserving the King's person and Government, by disabling Papists from sitting in either House of Parliament." But if it shall happen, that such King or Queen, upon his or her succession to the Crown of this realm, shall be under the age of twelve years, then every such King or Queen shall make, subscribe, and audibly repeat the said declaration at his or her coronation, or the first day of meeting of the first Parliament as aforesaid, which shall first happen after such King or Queen shall have attained the said age of twelve years.

Future Declaration.

XI. All which their Majesties are contented and pleased shall be declared, enacted, and established by authority of this present Parliament, and shall stand, remain, and be the law of this realm for ever; and the same are by their said Majesties, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in Parliament assembled, and by the authority of the same, declared, enacted, or established accordingly.

Enacting Clause.

XII. And be it further declared and enacted by the authority aforesaid, That from and after this present session of Parliament, no dispensation by *non obstante* of or to any statute, or any part thereof, shall be allowed, but that the same shall be held void and of no effect, except a dispensation be

Dispensing power removed.

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allowed of in such statute, and except in such cases as shall be specially provided for by one or more bill or bills to be passed during this present session of Parliament.

XIII. Provided that no charter, or grant, or pardon granted before the three-and-twentieth day of October, in the year of our Lord One thousand six hundred eighty-nine, shall be any ways impeached or invalidated by this Act, but that the same shall be and remain of the same force and effect in law, and no other, than as if this Act had never been made.

CONTEMPORARY EXPOSITION

BISHOP BURNET (1724)

There was a bill of great importance sent up by the Commons to the Lords: . . . it was a bill, declaring the rights and liberties of England, and the succession to the Crown, as had been agreed by both houses of parliament, to the king and queen and their issue. . . . The bill passed without opposition in the beginning of the next session, which I mention here that I might end this matter all at once.

GILBERT BURNET, *History of His Own Time*. 533.

CRITICAL COMMENT

LUFFMAN (1792)

The Constitution of England, as established under the sacred authority of Magna Charta, had, at the crisis which produced the Bill of Rights, become very much impaired by the many encroachments which some of the succeeding kings from the time of John made upon its equitable form. . . . The moment that the Declaration of Right was made on the behalf of the English People and acknowledged by the Prince of Orange and his consort as the supreme law, in future to be observed, at that instant the constitution was renovated, the power of the crown was acknowledged to flow from its only

natural source, the people, and a reciprocal interest, proceeding from allegiance on one part and protection on the other, formed the guarantee of the monarch's prerogative and the people's freedom.

J. LUFFMAN, *Citizen and Goldsmith*, a pamphlet.

GUIZOT (1842)

All England, except a very small party, was at this time arrayed against James; and it seems very certain, that, under some form or other, the revolution of 1688 must have been accomplished. But at this crisis causes even superior to the internal state of England conduced to this event. It was European as well as English. It is at this point that the English revolution links itself, by facts, and independently of the influence of its example, to the general course of European civilization.

GUIZOT, *General History of Civilization from the Fall of the Roman Empire to the French Revolution*. 285.

MACAULAY (1849)

This revolution, of all revolutions the least violent, has been of all revolutions the most beneficent. It finally decided the great question whether the popular element which had, ever since the age of Fitzwalter and De Montfort, been found in the English polity, should be destroyed by the monarchical element, or should be suffered to develop itself freely, and to become dominant. The strife between the two principles had been long, fierce, and doubtful. It had lasted through four reigns. It had produced seditions, impeachments, rebellions, battles, sieges, proscriptions, judicial massacres. Sometimes liberty, sometimes royalty, had seemed to be on the point of perishing. During many years one half of the energy of England had been employed in counteracting the other half. The executive power and the legislative power had so effectually impeded each other that the state had been of no account in Europe. The king-at-arms, who proclaimed William and Mary before Whitehall Gate, did in truth announce that this great struggle was over; that there was entire union between the throne and the Parliament; that England, long dependent and degraded, was again a power

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of the first rank; that the ancient laws by which the prerogative was bounded would thenceforth be held as sacred as the prerogative itself, and would be followed out to all their consequences; that the executive administration would be conducted in conformity with the sense of the representatives of the nation; and that no reform which the two houses should, after mature deliberation, propose, would be obstinately withstood by the sovereign. The Declaration of Rights, though it made nothing law which had not been law before, contained the germ of the law which gave religious freedom to the Dissenter, of the law which secured the independence of the judges, of the law which limited the duration of Parliaments, of the law which placed the liberty of the press under the protection of juries, of the law which prohibited the slave-trade, of the law which abolished the sacramental test, of the law which relieved the Roman Catholics from civil disabilities, of the law which reformed the representative system, of every good law which has been passed during a hundred and sixty years, of every good law which may hereafter, in the course of ages, be found necessary to promote the public weal, and to satisfy the demands of public opinion.

T. B. MACAULAY, *History of England.* III. 518.

J. R. GREEN (1874)

The Declaration of Rights was turned into the Bill of Rights by the Convention which had now become a Parliament, and the passing of this measure in 1689 restored to the monarchy the character which it had lost under the Tudors and Stuarts. . . . Since their day [William and Mary] no English sovereign has been able to advance any claims to the crown save a claim which has rested on a particular clause in a particular Act of Parliament. . . . An English monarch is now as much the creature of an Act of Parliament as the petty tax-gatherer in his realm.

J. R. GREEN, *Short History of the English People.* 688–689.

TASWELL-LANGMEAD (1879)

The Revolution of 1688 marks at once a resting-place and a fresh point of departure in the history of the English Constitution. The Bill of Rights was a summing up, as it were, and

final establishment of the Legal bases of the Constitution. With Magna Charta and the Petition of Right it forms the Legal Constitutional Code to which no additions of equal importance (except the Constitutional provisions of the Act of Settlement to be presently noticed) have since been made by Legislative enactment. Political progress has indeed, from time to time, left its mark on the statute-book, in laws the importance of which can hardly be exaggerated. But even the greatest of these enactments . . . have been of the nature of amendments to the machinery of the Constitution, supplying defects and correcting abuses, rather than alterations in the great Constitutional principles finally established by the Revolution.

T. P. TASWELL-LANGMEAD, *English Constitutional History.* 550.

HANNIS TAYLOR (1889)

Ten days after the accession of William and Mary, the royal assent was given to a bill which declared the convention a parliament, "notwithstanding any fault of writ or writs of summons;" and on the 20th of August, after seven months of active work, it took a recess until the 19th of October. Then it was that the act was passed which turned the Declaration of Right into a formal Bill of Rights, whereby two somewhat important additions were made to the original instrument.

. . . . . .

The Declaration of Right thus put forth was a summing up in a dogmatic form of that code of positive law regulating the prerogatives of the crown, the privileges of parliament, and the liberty of the subject now generally known as "The Law of the Constitution," as distinguished from that body of political maxims, of silent understandings, undefined either by common or statute law, which have been invented since the beginning of the reign of William III.

HANNIS TAYLOR, *Origin and Growth of the English Constitution.* II. 413–415.

J. K. HOSMER (1890)

The monarchy as limited in the thirteenth century had come down to the seventeenth century. Parliament had behind it a past of four hundred years. The constitution was not

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formulated, but its principles, scattered throughout time-honoured statutes, were engraven on the hearts of Englishmen. No one of its principles was based upon precedents more ancient or more frequent than that Kings reigned by a right in no respect differing from that by which knights-of-the-shire exercised authority in behalf of their constituents. The Bill of Rights simply affirmed this principle. Not a single new right was given to the people; the whole body of English law was unchanged; all was conducted in obedience to the ancient formalities.

J. K. HOSMER, *Anglo-Saxon Freedom*. 169.

STEVENS (1894)

The Bill of Rights of the time of William and Mary finally declares, "that levying money for or to the use of the crown by pretence of prerogative without grant of Parliament for longer time, or in other manner than the same is or shall be granted, is illegal." It is not too much to say, that the principle lies at the foundation of all others in the English constitution, and is a chief source of modern liberties.

C. E. STEVENS, *Sources of the Constitution*. 114.

RANSOME (1895)

The Declaration of Right, which afterwards was turned into an act of parliament under the title of the Bill of Rights, is one of the most important documents in English history. It brought to a close the great struggle between the king and the parliament, which had lasted nearly one hundred years, by defining the law on a number of disputed points, all of which had, during this period, been matters of protest on the side of the parliament. After taking, one by one, the chief unconstitutional acts of James II., it proceeded to make the following declarations: . . .

The effect of the Revolution was threefold. In the first place, it destroyed the Stuart theory of the divine right of kings, enunciated in its crudest form by Filmer in his *de Patriarchâ*, by setting up a king and queen who owed their position to the choice of parliament. In the second, it gave an opportunity for reasserting the principles of the English constitution which it had been the aim of the Stuarts to set aside. In the third, it began what may be called the reign of Parliament. Up to the Revolution there is no doubt that the guiding force in directing the policy of the nation had been the will of the king. Since the Revolution the guiding force has been the will of the parliament.

CYRIL RANSOME, *Advanced History of England*. 664, 665.

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CHAPTER X

ACT OF SETTLEMENT

SUGGESTIONS

THE Act of Settlement itself reads, "An act for the further limitation of the Crown and better securing the Rights and Liberties of the Subject." The Constitutional Provisions are the articles most important; they settled the question of the succession once and for all time. In 1701 the death of William III.'s only son, a lad of twelve years, brought matters to a climax. Tories and Whigs, alike, deemed it imperative to act immediately and unanimously. Thus, by pressure of events, the two Houses passed the famous Act of Settlement by which, in case of the death of both Anne and William without heirs, the crown was settled upon Sophia, the granddaughter of James I. The whole question of the Hanoverian Succession was thus placed outside of the political party factions of that reign, and all succeeding ones.

Although the Bill of Rights was supposed in itself to settle the question of succession, it was deemed wise in the reign of Queen Anne to draw up the Act of Settlement, a statute important, not only on account of the group of constitutional provisions embodied in it, but also as the "Title deed" of the reigning dynasty, and a veritable "Original Contract between the Crown and the People." In studying the period to which the document forms the central thought, too much stress cannot be laid upon the responsibility taken by the government for the support of the Established Church, and its doctrines. The History of the Anglican Church does not fall within the field of this volume, but the vitality of State and Church are one.

For Outlines and Material, see Appendix A.

DOCUMENT

Constitutional Provisions in the Act of Settlement (1700–1701)

Transliterated from the *Statutes of the Realm*. VII. 747–750.

1. That whosoever shall hereafter come to the possession of this Crown shall join in communion with the Church of England as by law established.

2. That in case the Crown and Imperial dignity of this realm shall hereafter come to any person not being a native of this kingdom of England, this nation be not obliged to engage in any war for the defence of any dominions or territories which do not belong to the Crown of England, without the consent of Parliament.

3. That no person who shall hereafter come to the possession of this Crown shall go out of the dominions of England, Scotland, or Ireland, without consent of Parliament. — Repealed in the first year of George I.'s reign.

4. That from and after the time that the further limitation by this Act shall take effect, all matters and things relating to the well governing of this kingdom, which are properly cognisable in the Privy Council by the laws and customs of this realm, shall be transacted there, and all resolutions taken thereupon shall be signed by such of the Privy Council as shall advise and consent to the same. — Repealed by 4 Anne, c. 8, 6 Anne, c. 7.

5. That, after the said limitation shall take effect as aforesaid, no person born out of the kingdoms of England, Scotland, or Ireland, or the dominions thereunto belonging (although to be naturalized or made a denizen — except such as are born of English parents), shall be capable to be of the Privy Council, or a member of either House of Parliament, or to enjoy any office or place of trust, either civil or military, or to have any grant of lands, tenements, or hereditaments, from the Crown, to himself, or to any other or others in trust for him. — This article helped to complete the parliamentary constitution of the Bill of Rights.

6. That no person who has an office or place of profit under the King, or receives a pension from the Crown, shall be capable of serving as a member of the House of Commons. — Repealed in the fourth year of Anne's reign.

7. That, after the said limitation shall take effect as aforesaid, judges' commissions be made *quamdiu se bene gesserint*, and their salaries ascertained and established; but upon the address of both Houses of Parliament, it may be lawful to remove them. — This article aided the future independence of the justices No longer were they dependentupon

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the king's presence, but upon "good behavior."

8. That no pardon under the Great Seal of England be pleadable to an impeachment by the Commons in Parliament.

CONTEMPORARY EXPOSITION

BISHOP BURNET (1724)

The matter that occasioned the longest and warmest debates in both houses was an act abjuring the pretended Prince of Wales, and forswearing to the king by the title of rightful and lawful king, and to his heirs, according to the act of settlement. . . . The design of this act was to discover to all, both at home and abroad, how unanimously the nation concurred in abjuring the pretended Prince of Wales.

GILBERT BURNET, *History of His Own Time*. 698.

CRITICAL COMMENT

BLACKSTONE'S COMMENTARIES (1765)

The absolute rights of every Englishman, which taken in a political and extensive sense, are usually called their liberties, and as they are founded on nature and reason, so they are co-eval with our form of government. . . . The vigour of our free constitution has always delivered the nation from embarrassments . . . and their fundamental articles have been, from time to time, asserted in Parliament as often as they were thought to be in danger. . . . First, by the Great Charter of Liberties, which was obtained sword in hand from King John. . . . Afterwards by the Statute called Confirmatio Chartarum whereby the Great Charter is directed to be allowed as the common law. . . . Then after a long interval, by the Petition of Right, which was a parliamentary declaration of the liberties of the people. . . . By the many salutary laws, particularly the Habeas Corpus Act, passed under Charles II. To these succeeded the Bill of Rights . . . which declaration concludes in these remarkable words; "and they do claim, demand, and insist upon all and singular the premises, as their undoubted rights and liberties." . . . Lastly, these liberties were again

asserted at the commencement of the present century in the Act of Settlement, whereby the crown was limited to his present Majesty's illustrious house; and some new provisions were added at the same fortunate era, for better securing our religion, laws, and liberties, which the statute declares to be "the birthright of the people of England," according to the ancient doctrine of the common law.

SIR WM. BLACKSTONE, *Commentaries on the Laws of England*. I. 127–129.

DICEY (1885)

The descent of the Crown was varied and finally fixed under the Act of Settlement (12 & 13 Will. III. c. 2); the Queen occupies the throne under a parliamentary title: her claim to reign depends upon and is the result of a statute. This is a proposition which at the present day no one is inclined either to maintain or to dispute; but a glance at the Statute-book shows that not two hundred years ago Parliament had to insist strenuously upon the principle of its own lawful supremacy.

ALBERT V. DICEY, *Introduction to the Study of the Law of the Constitution*. 41.

RANSOME (1895)

The circumstance that the Act of Settlement was passed by a parliament in which the Tories were predominant, turned out to be of great importance, for it committed the Tories, as a party, to the principle of the Hanoverian succession, and as it was an arrangement heartily approved by the Whigs, the matter was thus placed outside the lines of party politics.

CYRIL RANSOME, *Advanced History of England*. 699.

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CHAPTER XI

SPIRIT OF COLONIAL RIGHTS (1721-1765)

SUGGESTIONS

As we approach the intensive study of the Colonial period, no one English statute or New England charter stands out peculiarly as representative of the spirit of political freedom, which was a product of the system of government in the American Colonies. *The Defence of the New England Charters*, too long to use in full, touches upon many subjects not purely constitutional.

Jeremiah Dummer was an able exponent of New England's principles. The existing difficulties which had arisen are as well set forth in his "Defence" as in any one document of the period. The contemporary exposition gathered about this document is not in itself so closely critical of the articles of the document as with its spirit. From this time until after the formation of the Articles of Confederation it is the general movement of the times, and not the precise criticism of any one document which dominates the thought of the contemporary writer.

For Outlines and Material, see Appendix A.

DOCUMENT

Extracts from "A Defence of the New-England Charters" (1721)

A Defence of the New England Charters, 1721, 3–74.

by Jer[emiah] Dummer.

To the Right Honourable, the Lord Carteret, one of His Majesty's Principal Secretaries of State.

Puritan Emigration, 1628.

Invited and encouraged by these advantages, a considerable number of persons dissenting from the discipline of the established church, though agreeing with it in doctrine, removed into those remote regions, upon no other view than to enjoy the liberty of their consciences without hazard to themselves, and offence to others. Thus the colonies went on

increasing and flourishing, in spite of all difficulties, till the year 1684, when the city of London lost its charter, and most of the other corporations in England, influenced by fear or flattery, complimented King Charles with a surrender of theirs. In this general ruin of charters at home, it could not be expected that those in America should escape. It was then that a *quo warranto* was issued against the governour and company of the Massachusets Bay, and soon after a judgment was given against them in Westminster Hall. At the same time Sir Edmund Andros, then the King's governour of New England, did by order from court repair to Hartford, the capital of Connecticut, with armed attendants, and forcibly seized their charter for the King. Rhode Island, finding there was no remedy to be had, made a vertue of necessity, and peaceably resigned theirs. But as soon as the news arrived of the happy revolution in England, these two last mentioned governments reassumed their charters, and put themselves under the old form of administration, in which they have continued ever since. The government of the Massachusets, cautious of offending their superiours at home, and considering there was a judgment against them in the court of Chancery, though most unfairly and illegaly obtained, did not think it adviseable to make this step; but sent agents to court to supplicate, in a humble manner, the restoration of their charter. To what mismanagement, or other cause it was owing, that they did not obtain it, and that this loyal corporation was the only one either in Old or New England that did not recover its lost liberty under our late glorious deliverer King William, 'tis now too late, and therefore to no purpose, to enquire. A new charter was ordered, which the province now has, and is not much more than the shadow of the old one.

Magna Charta, Art. XIII.

The story of the "Charter-Oak" based upon the incident that the charter was carried off and concealed when about to be taken.

Accomplished easily upon removal of Andros in 1690.

She was too strong and too proud to adopt the conciliatory course of Conn. and R. I.

[Herewith follow the Propositions set forth in the "Defence," and such charges as were brought against the colonists: —]

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1st Prop. That the charter governments have a good and undoubted right to their respective charters.

2nd Prop. That these governments have by no misbehaviour forfeited their charters.

The subjects abroad claim the privilege of Magna Charta, which says that no man shall be fined above the nature of his offence, and whatever his miscarriage be, a "salvo contenemento fuo" is to be observed by the judge. If, therefore, they have committed faults, let them be chastized, not destroyed. Let not their corporations be dissolved for any other cause than a failure of their allegiance.

Charge 1. That they have neglected the defence of the inhabitants.

Charge 2. That they have exercised arbitrary power.

Charge 3. That the Acts of Trade are disregarded.

Charge 4. That they have made laws repugnant to the laws of Great Britain.

Charge 5. That the charter colonies will grow great and formidable.

3rd Prop. That it is not the interest of the Crown to resume the charters, if forfeited.

4th Prop. That it seems inconsistent with justice to disfranchize the charter colonies by an act of Parliament.

CONTEMPORARY EXPOSITION

ANONYMOUS, "PLAIN STATE OF THE ARGUMENT" (1724)

. . . It would be inconsistent to say that a King has any power at all, but what is derived ultimately from the People through the Parliament.

Whatever deeds the King executes as King: whatever government he settles; whatever charters he grants must, upon this account, be subject to the inspection, the controul, the

alteration which Parliament from time to time may think fit to make.

The settling a colony, is effected by the King's granting a charter to a number of people, to inhabit and cultivate a part of some new acquired dominions, which hitherto has not had a regular government from Great-Britain. But it would be absurd to the highest degree to suppose a King to be able to establish laws in a colony which a Parliament could not alter. If he could, he might also make the same colony independent; or, in other words, he might alienate, that is, dispose of a part of the British Empire. Thus, if charters granted by the King are not liable to the controul of a Parliament, a King of Great-Britain might make himself absolute over all new-conquered, new-ceded, or new-discovered countries. He might fix what terms he pleased, or put the charters into what hands, and for as long a time as he thought best. It must then I think be allowed as a certain position that whatever charters our colonies had granted to them, they are necessarily subject to the Jurisdiction of Parliament. This is equally true whether the Jurisdiction of Parliament is expressed in the charter or not.

The King it is allowed has altered and withdrawn charters. Of course, what the King by his delegated power can legally do, the Parliament by their *supreme jurisdiction* may undoubtedly effect.

The King issues proclamations, and grants charters to all new colonies. He determines the mode of government, causes duties to be laid on wares, and taxes to be raised for the support of the government of each Province. But if Parliament chooses to alter the modes both of taxation and government, I cannot see the shadow of a reason against the legality of their doing it. It may be at any distance of time, and as the state of the provinces demands. In the first settling a colony, it is sufficient that the King exerts his delegated power, and allows the provinces to assess themselves in a particular manner. But, when provinces grow large, populous and powerful, the supreme jurisdiction of Parliament should always establish the mode of government which is to be pursued.

A Plain State of the Argument between Great Britain and her Colonies. 4–9.

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ANONYMOUS "PROPOSALS" (1757)

The first settlements of most of our Colonies in *America* were made by private Adventurers; many of the Colonies were afterwards incorporated by Charters or Privileges granted by the Crown, with a Power to make Laws, and to establish Courts of Justice, Forms of Judicature, and the Manner of Proceeding, and in some Respects to establish their own Form of Government, under this Limitation, that the Laws or Statutes passed by them, should not be repugnant, but as near as possible agreeable to the Laws of *England*.

And whereas in those remote Colonies situate near many barbarous Nations, the Incursions of the Savages, as well as other Enemies, Pirates, and Robbers, might probably annoy them; the said Corporations were authorized and impowered to levy, muster, and train all Sorts of Men, of what Condition soever, and to pursue their Enemies as well by Sea as by Land, even without the Limits of their respective Provinces.

It is also proper to mention, that there are several other Colonies that are more immediately dependant on the Crown, both with Respect to their Laws and Constitutions; yet it has been the Pleasure of the Crown, to allow them a kind of legislative Power, under particular Restraints and Limitations.

Now as all those Colonies may in some Particulars be considered, with respect to each other, as so many independant States, yet they ought to be considered as one with respect to their Mother Country; and therefore a Union of the Colonies, for their general Defence, so framed as to oblige them to act jointly, and for the Good of the Whole, can only be made by the Wisdom of our Legislature; and without such an Union, it is impossible to make the Colonies act with Force and Vigour, or to oppose the united Force of the *French*, altho' much inferior in Point of Number.

There is another Thing highly worthy of Attention, *viz.* that tho' the Charter Governments are entitled to make Bye Laws for the better ordering their own Domestic Affairs, yet they are not entitled to make Laws which may have a general Effect, either in obstructing the Trade of this Kingdom, or in laying Restraints and Difficulties on the neighbouring Colonies: For as their Power in a Legislative Capacity originally flows from

the Crown, under certain Limitations and Restrictions, particularly that of not passing any Laws, but such as are consistent with the Constitution and Laws of this Kingdom, the Intention of the Crown must have been, that the Fitness and Expediency of such Laws should be only cognizable and determinable by the Crown, or by the Legislature in this Kingdom, as it is conceived the Colonies cannot be proper Judges in their own Case: Yet to such Excess have some of the Charter Governments proceeded, particularly *Rhode Island* and *Connecticut*, that they have enacted Laws, that no Law shall take Effect in their Colonies, unless it be first authenticated or enacted into a Law by them; and thus they have made themselves Judges of the Fitness and Expediency of their own Laws, by not transmitting them to the proper Boards at Home: Their Charters indeed are injudiciously silent on this Head, yet the Thing is in itself not only fit and reasonable, but absolutely necessary.

And therefore if the Affairs of the Colonies are taken into Consideration in Parliament, it is humbly conceived, that it would be highly fit and proper to regulate this Matter, in order to prevent the many Incroachments, which several of the Colonies have made with respect to Trade, and in the issuing of Paper Bills of Currency, which hath often had a publick and a general Effect, and greatly injured the Trade and Commerce of this Kingdom; and in Case of an Union amongst the Colonies for their mutual Defence, it would make it impossible for them to make good the Supplies necessary to support the Charge of the Troops which may be sent from one Colony to the Support of another, especially as their Bills of Currency differ greatly in Value, and that they have no regular Course of Exchange between one Province and another: besides, in new Countries they cannot have those Resources which may be had in Countries where Trade and the Course of Exchanges are regularly established.

Proposals for Uniting the English Colonies on the Continent of America. 14–17.

GOVERNOR POWNALL (1765)

Every subject, born within the realm, under the freedom of the Government of Great Britain, or by adoption admitted to

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the same, has an essential, indefeasible right to be governed, under such a mode of government as has the unrestrained exercise of all those powers which form the freedom and rights of the constitution; and therefore "the crown cannot establish any colony upon, — or contract it within a narrower scale than the subject is entitled to, by the great charters of England." The government of each colony must have the same powers, and the same extent of powers, that the government of Great Britain has, — and must have while it does not act contrary to the laws of Great Britain, the same freedom and independence of legislature, as the parliament of Great Britain has. This right (they say) is founded not only in the general principles of the rights of a British subject, but is actually declared, confirmed, or granted to them in the commissions and charters which gave them the particular frame of their respective constitutions.

THOMAS POWNALL, *The Administration of the Colonies*, pamphlet.

ANONYMOUS, "AMERICA'S APPEAL" (1775)

III. *Let us consider the Rights of the AMERICANS subsequent to their Charters and Colony Constitutions.*

As there are certain rights of men, which are unalienable even by themselves; and others which they do not mean to alienate, when they enter into civil society. And as power is naturally restless, aspiring and insatiable; it therefore becomes necessary in all civil communities (either at their first formation or by degrees) that certain great first principles be settled and established, determining and bounding the power and prerogative of the ruler, ascertaining and securing the rights and liberties of the subjects, as the foundation stamina of the government; which in all civil states is called the constitution, on the certainty and permanency of which, the rights of both the ruler and the subjects depend; nor may they be altered or changed by ruler or people, but by the whole collective body, or a major part at least, nor may they be touched by the legislator; for the moment that alters essentially the constitution, it annihilates its own existence, its constitutional authority. Not only so, but on supposition the legislator might alter it; such a stretch

of power would be dangerous beyond conception; for could the British parliament alter the original principles of the constitution, the people might be deprived of their liberties and properties, and the parliament become absolute and perpetual; and for redress in such case, should it ever happen, they must resort to their native rights, and be justified in making insurrection. For when the constitution is violated, they have no other remedy; but for all other wrongs and abuses that may possibly happen, the constitution remaining inviolate, the people have a remedy thereby.

. . . If, therefore, they were to be considered as English subjects, by the constitution of that kingdom, they had right to enjoy all these privileges; if not as English subjects, then they were theirs without being beholden therefor. In either view, therefore, they were entitled to have and enjoy all the rights, liberties, and privileges, which, by their several constitutions, were granted and confirmed to them, antecedent thereto. And their constitutions are the original compacts, containing the first great principles, or stamina of their governments; combining the members, connecting and subordinating them to the King as their supreme head and liege Lord; also prescribing the forms of their several governments, determining and bounding the power of the crown over them, within proper limits, and ascertaining and securing their rights, jurisdictions and liberties; and are not to be compared to the charters of corporations in England (although they are to be deemed sacred) which are royal favours granted to particular corporations, beyond what are enjoyed by the subjects in common; if they should be forfeited and taken away the membe[r]s will still retain the great essential rights of British subjects, and these original compacts were made and entered into by the King, not only for himself, but expressly for his heirs and successors on the one part, and the colonies, their successors and assigns on the other; whereby the connection was formed, not only between the parties then in being, but between the crown and the colonies, through all successions of each; and those compacts are permanent and perpetual, as unalterable as Magna Charta, or the primary principles of the English constitution: nor can they be vacated or changed by the king, any

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more than by the colonies, nor be forfeited by one more than the other; for they are mutually obligatory on both, and are the ligaments and bonds that connect the colonies with the king of Great-Britain, and the king with them: cut, therefore, and dissolve them, and the colonies will become immediately disunited from the crown, and the crown from them. Should the original parties to these constitutions awake in their tomb, and come forth (on a controversy that would awake the dead, could the dead be waked) and with united voice testify, that this was their original, true intent and meaning, would it not be awfully striking and convincing? But we have greater evidence; we have their original declaration, made in that day, deliberately reduced to writing, and solemnly ratified and confirmed, which is as follows: "We do, for us, our heirs and successors, grant to, &c. and their successors, by these presents, that these our letters patent, shall be firm, good, and effectual in the law, to all intents, constructions, and purposes whatever, according to our true intent and meaning herein before declared, as shall be construed, reputed, and adjudged most favourable on the behalf, and for the best benefit and behoof of the grantees, &c., notwithstanding any omissions therein, or any statute, act, ordinance, provision, proclamation, or restriction heretofore made, had, enacted, ordained, or provided, or any other matter, cause, or thing whatsoever, to the contrary thereof, in any wise notwithstanding."

America's Appeal to the Impartial World. 22–23, 24–26.

CRITICAL COMMENT

WALSH (1819)

It is a remarkable trait in the history of the New England settlers, that they did not seek, and appear to have been even unwilling to receive assistance from the mother country. . . .

While the people of New England were providing for their own safety, with consummate judgment, and performing prodigies of valour in innumerable rencounters with the enemy, they had not even the consolation of escaping the reproach of pusillanimity, from the mother country. The court of James II. besides withholding assistance, on the pretext that it was not

implored, taxed them with *wanting hearts* to make use of their means of defence. A part of the nation concurred in this injustice; which, even at this distance of time, causes the breast to swell with indignation, when the bold expeditions of these colonists, the prodigal effusion of their blood, and the hardships of their warfare, are passed in review. This emotion is not allayed, as we read, in descending through their history, that on the occasion of the bill, introduced into the British Parliament, in 1715, for the destruction of all the charter governments, the first of the charges brought against them was, "the having neglected the defence of the inhabitants!" . . .

. . . In fact, in the very height of the calamity — at the moment when New England was putting forth all her strength for the retention of the soil, — the merchants and manufacturers of the mother country were clamorous, and the committee of plantations tasked, for measures of rigour against her, on the ground that her "inhabitants had encouraged foreigners to traffic with them, and supplied *the other plantations* with those foreign productions which ought only to have been sent to England." . . .

. . . At a very early period, the mother-country cast the reproach which she has constantly repeated, against the colonists, of provoking the Indian wars, and acquiring the dominion of the Indian territory by fraud as well as force. Dummer's Defence of the Charters, written at the commencement of the last century, treats of this "unworthy aspersion," as the honest author styles it, and as he proves it to be by unanswerable suggestions. With respect to New England particularly, what he asserts is susceptible of abundant evidence — that "she sought to gain the natives by strict justice in her dealings with them, as well as by all the endearments of kindness and humanity;" that "she did not commence hostilities, nor even take up arms of defence, until she found by experience that no other means would prevail" — and, "that nothing could oblige the Indians to peace and friendship, after they conceived a jealousy of the growing powers of the English." The congress of the New England league was particularly authorized, to prescribe rules for the conduct of the colonists towards the natives; and its legislation on this head, was tempered with as much for-

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bearance and mercy, as a due regard for self-preservation would possibly admit.

ROBERT WALSH, *An Appeal from the Judgments of Great Britain respecting the United States of America.* 80–85.

MARSHALL (1824)

In Massachusetts, peace abroad was the signal for dissension at home. Independent in her opinions and habits, she had been accustomed to consider herself rather as a sister kingdom, acknowledging one common sovereign with England, than as a colony. The election of all the branches of the legislature, a principle common to New England, contributed, especially while the mother country was occupied with her own internal divisions, to nourish these opinions and habits. Although the new charter of Massachusetts modified the independence of that colony, by vesting the appointment of the governor in the crown, yet the course of thinking which had prevailed from the settlement of the country, had gained too much strength to be immediately changed; and Massachusetts sought, by private influence over her chief magistrate, to compensate herself for the loss of his appointment. With this view, it had become usual for the general court to testify its satisfaction with his conduct by presents; and this measure was also adopted in other colonies. . . .

In the midst of these contests, governor Shute, who had privately solicited and obtained leave to return to England, suddenly embarked on board the Sea Horse man of war, leaving the controversy concerning the extent of the executive power, to devolve on the lieutenant governor.

The house of representatives persisted in asserting its control over objects which had been deemed within the province of the executive; but its resolutions were generally negatived by the council. This produced some altercation between the two branches of the legislature; but they at length united in the passage of a resolution desiring their agent in England to take the best measures for protecting the interests of the colony, which were believed to be in danger from the representations of governor Shute. . . .

Meanwhile the complaints of governor Shute against the house of representatives were heard in England. Every question was decided against the house. In most of them, the existing charter was deemed sufficiently explicit; but, on two points, it was thought advisable to have explanatory articles. These were, the right of the governor to negative the appointment of the speaker, and the right of the house on the subject of adjournment. An explanatory charter therefore passed the seals, affirming the power claimed by the governor to negative a speaker, and denying to the house of representatives the right of adjourning itself for a longer time than two days. This charter was submitted to the general court, to be accepted or refused; but it was accompanied with the intimation that, in the event of its being refused, the whole controversy between the governor and house of representatives would be laid before Parliament. The conduct of the representatives had been so generally condemned in England, as to excite fears that an act to vacate the charter, would be the consequence of a parliamentary inquiry. The temper of the house too had undergone a change. The violence and irritation which marked its proceedings in the contest with governor Shute had subsided; and a majority determined to accept the New charter.

JOHN MARSHALL, *A History of the Colonies Planted by the English on the Continent of North America.* 217–222.

THWAITES (1891)

For many years the New England charters were in imminent danger of annulment, the purpose apparently being to place the colonies under a vice-regal government. Those of Connecticut and Rhode Island were the liberal documents granted to them early in their career; electing their own governors, they were practically independent of the mother-country, and the general movement against the charters had these two especially in view. From 1701 to 1749, the charters were seriously menaced at various times; but on each occasion the astute diplomacy of the colonial agents in England succeeded in warding off the threatened attack. Worthy of especial mention in this connection are Sir Henry Ashurst, the representative of Connecticut, and Jeremiah Dummer, his successor. In 1715, at a time

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when it was proposed to annex Rhode Island and Connecticut to the unchartered royal province of New Hampshire, Dummer issued his now famous Defence of the American charters, in which he forcibly argued, (1) That the colonies "have a good and undoubted right to their respective charters," in as much as they had been irrevocably granted by the sovereign "as premiums for services to be performed." (2) That these governments "have by no misbehaviour forfeited their charters," and were in no danger of becoming formidable to the motherland. (3) That to repeal the charters would endanger colonial prosperity, and "whatever injures the trade of the plantations must in proportion affect Great Britain, the source and centre of their commerce." (4) That the charters should be proceeded against in lower courts of justice, not in parliament. Dummer's presentment of the case was regarded by friends of the colonies as unanswerable, and was largely instrumental in causing an ultimate abandonment of the ministerial attack on the New England charters.

R. G. THWAITES, *The Colonies*. 266–267.

CHAPTER XII

THE STAMP ACT CONTROVERSY

SUGGESTIONS

WITH the passage of the Stamp Act in March, 1765, the colonists arose in open defiance against royal oppression. The Stamp Act Congress was called together in New York, and on October 7th, 1765, the document known as the Declaration of Rights and Grievances was drawn up and considered by the members. It sets forth the grievances of the colonists, it petitions the king for redress, and it finally asserts that "taxation cannot be constitutionally imposed on them but by their respective legislatures." This Declaration is important because it is the first utterance of the body of American citizens as a whole. Heretofore no concerted action had taken place; the colonists were, for the first time, acting in a body.

In studying the period to which this document of the Stamp Act Congress belongs, the British established qualities of character — love of individual freedom and great loyalty to the King — stand out emphatically. Eleven years later, with the Declaration of Independence, the loyalty to the Crown is set aside for the sake of independence of action; in 1765, however, the American colonist was a brave British subject rebelling against injustice, but striving to fulfil his ideal of patriotism to country and fidelity to English law.

For Outlines and Material, see Appendix A.

DOCUMENT

Declaration of Rights and Grievances of the Colonists in America. Oct. 7th, 1765.

Journ. First Cong. Amer. Cols. 27–29. Stamp Act Congress assembled in New York. See Act of Settlement.

The members of this congress, sincerely devoted, with the warmest sentiments of affection and duty to his majesty's person and government, inviolably attached to the present happy establishment of the protestant succession, and with minds deeply impressed by a sense of the present and impending misfortunes of the British colonies on this conti-

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nent; having considered as maturely as time would permit, the circumstances of said colonies, esteem it our indispensable duty to make the following declarations, of our humble opinions, respecting the most essential rights and liberties of the colonists, and of the grievances under which they labor, by reason of several late acts of parliament.

Magna Charta, arts. lxi., lxii.

1st. That his majesty's subjects in these colonies, owe the same allegiance to the crown of Great Britain, that is owing from his subjects born within the realm, and all due subordination to that august body, the parliament of Great Britain.

2d. That his majesty's liege subjects in these colonies are entitled to all the inherent rights and privileges of his natural born subjects within the kingdom of Great Britain,

3d. That it is inseparably essential to the freedom of a people, and the undoubted rights of Englishmen, that no taxes should be imposed on them, but with their own consent, given personally, or by their representatives.

See Confirmatio Chartarum.

4th. That the people of these colonies are not, and from their local circumstances, cannot be represented in the house of commons in Great Britain.

5th. That the only representatives of the people of these colonies, are persons chosen therein, by themselves; and that no taxes ever have been, or can be constitutionally imposed on them, but by their respective legislatures.

6th. That all supplies to the crown, being free gifts of the people, it is unreasonable and inconsistent with the principles and spirit of the British constitution, for the people of Great Britain to grant to his majesty the property of the colonists.

Magna Charta. Habeas Corpus Act.

7th. That trial by jury is the inherent and invaluable right of every British subject in these colonies.

8th. That the late act of parliament, entitled, an act for granting and applying certain stamp duties,

and other duties in the British colonies and plantations in America, &c., by imposing taxes on the inhabitants of these colonies, and the said act, and several other acts, by extending the jurisdiction of the courts of admiralty beyond its ancient limits, have a manifest tendency to subvert the rights and liberties of the colonists.

See Declaration of Independence.

9th. That the duties imposed by several late acts of parliament, from the peculiar circumstances of these colonies, will be extremely burthensome and grievous, and from the scarcity of specie, the payment of them absolutely impracticable.

10th. That as the profits of the trade of these colonies ultimately centre in Great Britain, to pay for the manufactures which they are obliged to take from thence, they eventually contribute very largely to all supplies granted there to the crown.

11th. That the restrictions imposed by several late acts of parliament, on the trade of these colonies, will render them unable to purchase the manufactures of Great Britain.

Navigation Acts.

12th. That the increase, prosperity, and happiness of these colonies, depend on the full and free enjoyment of their rights and liberties, and an intercourse, with Great Britain, mutually affectionate and advantageous.

13th. That it is the right of the British subjects in these colonies, to petition the king or either house of parliament.

This had been and continued to be a custom of British subjects until 1775.

Lastly, That it is the indispensable duty of these colonies to the best of sovereigns, to the mother country, and to themselves, to endeavor, by a loyal and dutiful address to his majesty, and humble application to both houses of parliament, to procure the repeal of the act for granting and applying certain stamp duties, of all clauses of any other acts of parliament, whereby the jurisdiction of the admiralty is extended as aforesaid, and of the other late acts for the restriction of the American commerce.

Note the difference in spirit towards George III. in 1765, and in 1776.

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CONTEMPORARY EXPOSITION

FRANKLIN (1766)

Q. Do not you think the people of America would submit to pay the stamp-duty if it was moderated?

A. No, never, unless compelled by force of arms.

. . . . . .

Q. What was the temper of America towards Great Britain before the year 1763?

A. The best in the world. They submitted willingly to the government of the Crown, and paid, in all their courts, obedience to the Acts of parliament. Numerous as the people are in the several old provinces, they cost you nothing in forts, citadels, garrisons or armies, to keep them in subjection. They were governed by this country at the expense only of a little pen, ink and paper. They were led by a thread. They had not only a respect, but an affection, for Great Britain, for its laws, its customs, and manners, and even a fondness for its fashions, that greatly increased the commerce. Natives of Britain were always treated with particular regard; to be an Old England-man was, of itself, a character of some respect, and gave a kind of rank among us.

Q. And what is their temper now?

A. O, very much altered!

Q. Did you ever hear the authority of parliament to make laws for America questioned till lately?

A. The authority of parliament was allowed to be valid in all laws except such as should lay internal taxes. It was never disputed in laying duties to regulate commerce.

. . . . . .

Q. In what light did the people of America use to consider the parliament of Great Britain?

A. They considered the parliament as the great bulwark and security of their liberties and privileges, and always spoke of it with the utmost respect and veneration.

Arbitrary ministers, they thought, might possibly at times attempt to oppress them; but they relied on it, that parliament on application, would always give redress. . . .

Q. And have they not still the same respect for parliament?

A. No, it is greatly lessened.

Q. To what causes is that owing?

A. To a concurrence of causes: the restraints lately laid on their trade, by which the bringing of foreign gold and silver into the colonies was prevented; the prohibition of making paper money among themselves; and then demanding a new and heavy tax by stamps; taking away, at the same time, trials by juries, and refusing to receive and hear their humble petitions.

Q. What is your opinion of a future tax imposed on the same principle with that of the stamp-act; how would the Americans receive it?

A. Just as they do this. They would not pay it.

Q. Have not you heard of the resolution of this House, and of the House of Lords, asserting the right of parliament relating to America, including a power to tax the people there?

A. Yes, I have heard of such resolutions.

Q. What will be the opinion of the Americans on those resolutions?

A. They will think them unconstitutional and unjust.

. . . . . .

Their opinion is, that when aids to the Crown are wanted, they are to be asked of the several assemblies according to the old established usage, who will, as they always have done, grant them freely. . . . The granting aids to the Crown is the only means they have of recommending themselves to their Sovereign, and they think it extremely hard and unjust, that a body of men, in which they have no representatives should make a merit to itself of giving and granting what is not its own, but theirs, and deprive them of a right they esteem of the utmost value and importance, as it is the security of all their other rights.

Pamphlet: *Political, Miscellaneous, and Philosophical Pieces.* 1766.

JAMES OTIS (1766)

If it was thought hard that charter privileges should be taken away by act of Parliament, is it not much harder to be in part, or in whole disfranchised of rights, that have been always

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thought inherent to a British subject, mainly, to be free from all taxes, but what he consents to in person, or by his representative? This right, if it could be traced no higher than Magna Charta, is part of the common law, part of a British subject's birthright, and as inherent and perpetual as the duty of allegiance; both which have been brought to these colonies, and have been hitherto held sacred and inviolable, and I hope and trust ever will. It is humbly conceived that the British colonists (except only the conquered, if any) are, by Magna Charta, as well entitled to have a voice in their taxes as the subjects within the realm. . . . The sum of my argument is, that civil government is of God, that the administrators of it were originally the whole people: . . . that this constitution is the most free one, and by far the best, now existing on earth; that by this constitution, every man in the dominion is a free man; that no parts of his Majesty's dominions can be taxed without his consent; that every part has a right to be represented in the supreme or some subordinate legislature: that a refusal of this would seem to be a contradiction in practice to the theory of the constitution: that the colonies are subordinate dominions, and are now in such a state, as to make it best for the good of the whole, that they should not only be continued in the enjoyment of subordinate legislation, but be also represented in some proportion to their numbers and estates in the grand legislation of the nation; that this would firmly unite all parts of the British empire in the greatest peace and prosperity, and render it invulnerable and perpetual.

JAMES OTIS, *The Rights of the British Colonies.* 65–67.

SIR WILLIAM KEITH (1767)

Reasons, humbly offered in Support of the above Proposal to extend the Duties on Stampt Paper and Parchment all over the British Plantations. The author of the above proposal disclaims all views of depriving the British subjects in the plantations of any of those rights and privileges which are derived to them as natural-born subjects of Great Britain; but on the other hand, he cannot consider that part of his Majesty's subjects abroad to be invested with any sort of rights or privileges, that are of

a higher and more independent Nature than what their brethren of Great-Britain can claim at home. . . . He conceives that the subjects there are under no other Supreme Legislature but that of Great Britain; in so much that every subject in America as often as his occasions require, has an indubitable right to make his humble application to a British Parliament where he virtually conceives himself to be truly represented; because the common interest of the British State of Commonwealth most certainly includes the subjects of America, equally with those of every other part of the Dominion, and so we find it to be understood by the Tenor of the famous Act of Navigation, as well as other restrictive acts relating to commerce and the public revenue.

SIR WILLIAM KEITH, *Subject of Taxing the British Colonists in America,* pamphlet.

DOCTOR TUCKER'S "LETTER" (1774)

Indeed it has been my constant remark, that when men were at a loss for solid arguments and matters of fact, in their political disputes, they then had recourse to the spirit of the constitution as to their last shift, and the only thing to say. An American, for example, now insists, that according to the spirit of the English Constitutions, he ought not to be taxed without his own consent, given either by himself or by a representative in Parliament chosen by himself. Why ought he not? The constitution says no such thing. But the spirit of it doth; and that is as good, perhaps better. Very well; see then how the same spirit will presently wheel about and assert a doctrine quite repugnant to the claims and positions of you Americans. Magna Charta, for example, is the great foundation of English liberties, and the basis of the English Constitution. But by the spirit of Magna Charta, all taxes laid on by Parliament are constitutional, legal taxes.

Now remember . . . that the late Tax of Duties upon stamps was laid on by Parliament and therefore according to your own way of reasoning must have been a regular constitutional tax. . . . So that if you will now plead the spirit of Magna Charta against the jurisdiction of Parliament you will plead Magna Charta against itself.

DR. JOSIAH TUCKER, *Letter from a Merchant in London to his Nephew in America.* 11

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EDMUND BURKE (1774)

I propose, by removing the ground of the difference and by restoring the *former unsuspecting confidence of the colonies in the mother country*, to give permanent satisfaction to your people, and (far from a scheme of ruling by discord) to reconcile them to each other in the same act, and by the bond of the very same interest which reconciles them to British Government. . . .

If we adopt this mode; if we mean to conciliate and concede; let us see of what nature the concession ought to be: to ascertain the nature of our concession we must look at their complaint. The colonies complain that they have not the characteristic mark and seal of British freedom. They complain, that they are taxed in a parliament in which they are not represented. If you mean to satisfy them at all, you must satisfy them with regard to this complaint. If you mean to please any people, you must give them the boon which they ask; not what you may think better for them, but of a kind totally different. Such an act may be a wise regulation, but it is no concession. . . .

My idea, therefore, without considering whether we yield as matter of right, or grant as matter of favour, is, *to admit the people of our colonies into an interest in the constitution*; and, by recording that admission in the journals of parliament, to give them as strong an assurance as the nature of the thing will admit, that we mean forever to adhere to that solemn declaration of systematic indulgence. . . .

I . . . wish you to recognize, for the theory, the ancient constitutional policy of this kingdom with regard to representation, as that policy has been declared in Acts of Parliament; and, as to practice, to return to that mode which a uniform experience has marked out to you as best; and in which you walked with security, advantage, and honour until the year 1763.

My resolutions therefore mean to establish the equity and justice of a taxation of America, by *grant*, and not by *imposition*; . . . and to acknowledge that experience has shown the *benefits of their grants*, and the *futility of parliamentary taxation as a method of supply*.

EDMUND BURKE, *Speech on Conciliation with the Colonies*. Burke's Works, II. 21-60.

WILLIAM PITT (1774)

This, my Lords, though no new doctrine, has always been my received and unalterable opinion, and I will carry it to my grave, *that this country had no right under heaven to tax America*. It is contrary to all the principles of Justice and civil polity, which neither the exigencies of the State, nor even an acquiescence in the taxes, could justify upon any occasion whatever. Such proceedings will never meet their wished-for success; and instead of adding to their miseries, as the bill now before you most undoubtedly does, adopt some lenient measures which may lure them to their duty; proceed like a kind and affectionate parent over a child whom he tenderly loves, and instead of those harsh and severe proceedings, pass an amnesty on all their youthful errors, clasp them once more in your fond and affectionate arms; and I will venture to affirm you will find these children worthy of their sire. But should their turbulence exist after your professed terms of forgiveness, which I hope and expect this house will immediately adopt, I will be among the foremost of your Lordships to move for such measures as will effectually prevent a future relapse, and make them feel what it is to provoke a fond and forgiving parent! a parent, my Lords, whose welfare has been my greatest and most pleasing consolation. This declaration may seem unnecessary; but I will venture to declare, the period is not far distant, when she will want the assistance of her most distant friends; but should the all-disposing hand of Providence prevent me from affording her my poor assistance, my prayers shall be ever for her welfare.— Length of days be in her right hand, *and in her left riches and honour: may her ways be the ways of pleasantness, and all her paths be peace!* †

WILLIAM PITT, EARL OF CHATHAM'S *Speech in the House of Lords*, 27th day of May, 1774. *Chatham's Works*, XLI. 292.

† The bill for "Quartering Soldiers" was passed, notwithstanding the eloquence of Pitt.

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JOURNALS OF CONGRESS (1775)

Benjamin Franklin, Arthur Lee, agents, dated, London, February 5th, 1775.

We think it proper to inform you, that your cause was well defended by a considerable number of good and wise men in both houses of parliament, though far from being a majority: and that many of the commercial and manufacturing parts of the nation, concerned in the American trade, have presented, or, as we understand, are preparing to present, petitions to parliament, declaring their great concern, for the present unhappy controversies with America, and praying expressly, or in effect, for healing measures, as the proper means of preserving their commerce, now greatly suffering or endangered.

WILLIAM BOLLEN, *Journals of Congress* (May, 1775). I. 75, 76.

CRITICAL COMMENT

MACAULAY (1844)

Grenville proposed a measure destined to produce a great revolution, the effects of which will long be felt by the whole human race.

We speak of the act for imposing stamp duties on the North American colonies. . . . The Stamp Act will be remembered as long as the globe lasts. . . .

In the meantime, every mail from America brought alarming tidings. The crop which Grenville had sown, his successors had now to reap. The colonies were in a state bordering on rebellion. The stamps were burned. The revenue officers were tarred and feathered. All traffic between the discontented provinces and the mother country was interrupted. . . . The Stamp was indefensible, not because it was beyond constitutional competence of Parliament, but because it was unjust and impolitic, sterile of revenue, and fertile of discontents.

T. B. MACAULAY, *The Earl of Chatham* (*Ed. Rev.*, Oct. 1844).

CHAMBERLAIN (1887)

When the Stamp Act Congress met in New York, October 7th, 1765, that city was the headquarters of the British forces

in America, under the command of General Gage. Lieutenant-Governor Colden, then filling the executive chair, was in favour of the act, and resolved to execute it; but the Sons of Liberty expressed different sentiments. The Congress contained men some of whom became celebrated. Timothy Ruggles was chosen speaker, but Otis was the leading spirit. In full accord with him were the Livingstons of New York, Dickinson of Pennsylvania, McKean and Rodney of Delaware, Tilghman of Maryland, and Rutland and the elder Lynch of South Carolina. New Hampshire, Virginia, North Carolina and Georgia failed to send delegates, but not for lack of interest in the cause. The Congress prepared a Declaration of Rights and Grievances, an address to the King, a memorial to the House of Lords, and a petition to the House of Commons, and adjourned on October 25th. For a clear, accurate, and calm statement of the position of the colonies these papers were never surpassed; nor, until the appearance of the Declaration of Independence, was any advance made from the ground taken in them.

MELLEN CHAMBERLAIN, *The Revolution Impending*, in JUSTIN WINSOR, *Narrative and Critical History of America*. VI. 30–31.

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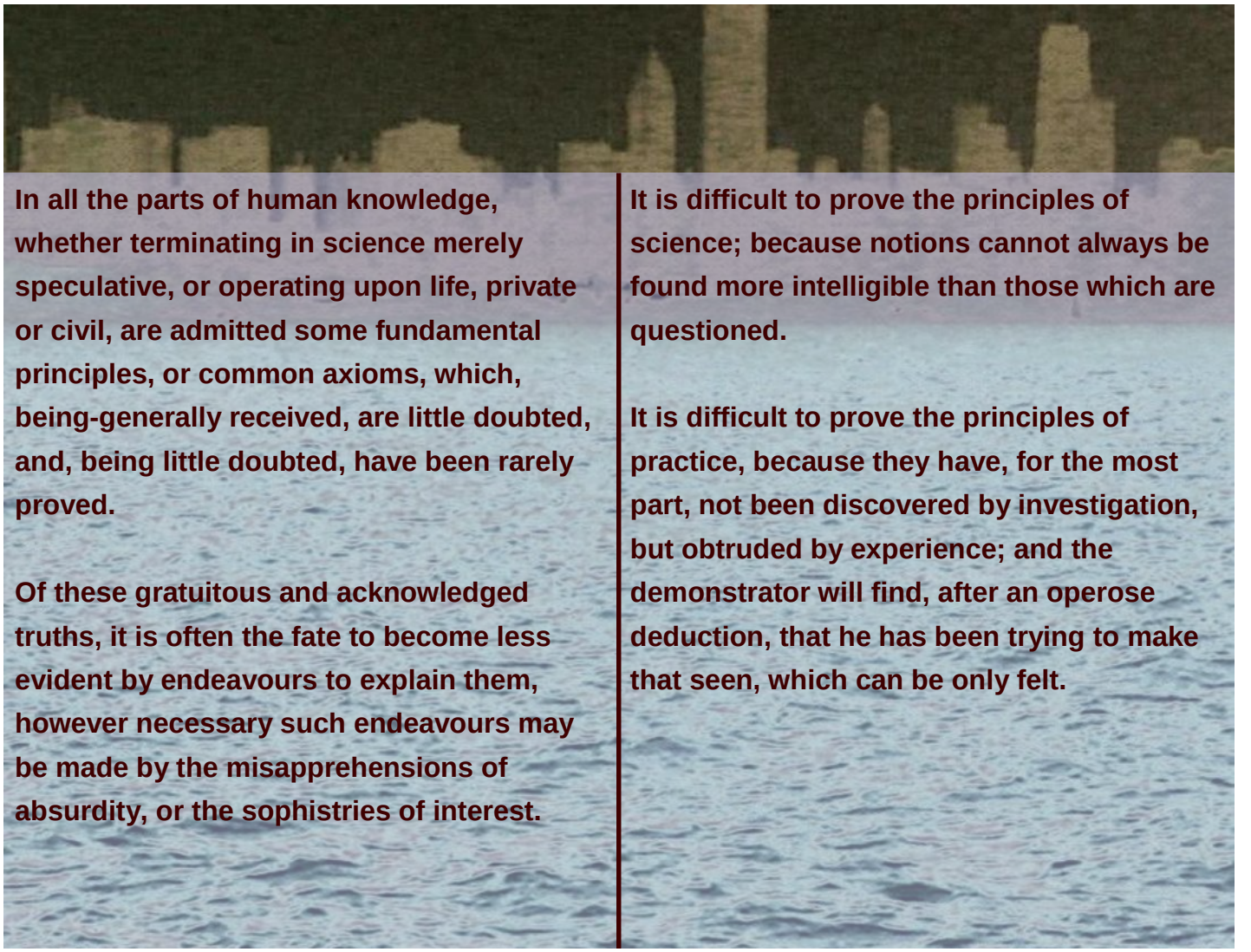

In all the parts of human knowledge, whether terminating in science merely speculative, or operating upon life, private or civil, are admitted some fundamental principles, or common axioms, which, being-generally received, are little doubted, and, being little doubted, have been rarely proved.

Of these gratuitous and acknowledged truths, it is often the fate to become less evident by endeavours to explain them, however necessary such endeavours may be made by the misapprehensions of absurdity, or the sophistries of interest.

It is difficult to prove the principles of science; because notions cannot always be found more intelligible than those which are questioned.

It is difficult to prove the principles of practice, because they have, for the most part, not been discovered by investigation, but obtruded by experience; and the demonstrator will find, after an operose deduction, that he has been trying to make that seen, which can be only felt.

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Of this kind is the position, that …

… 'the supreme power of every community has the right of requiring, from all its subjects, such contributions as are necessary to the publick safety or publick prosperity,'

… which was considered, by all mankind, as comprising the primary and essential condition of all political society, till it became disputed by those zealots of anarchy, who have denied, to the parliament of Britain the right of taxing the American colonies.

In favour of this exemption of the Americans from the authority of their lawful sovereign, and the dominion of their mother-country, very loud clamours have been raised, and many wild assertions advanced, which, by such as borrow their opinions from the reigning fashion, have been admitted as arguments;

… and, what is strange, though their tendency is to lessen English honour and English power, have been heard by Englishmen, with a wish to find them true. Passion has, in its first violence, controlled interest, as the eddy for awhile runs against the stream.

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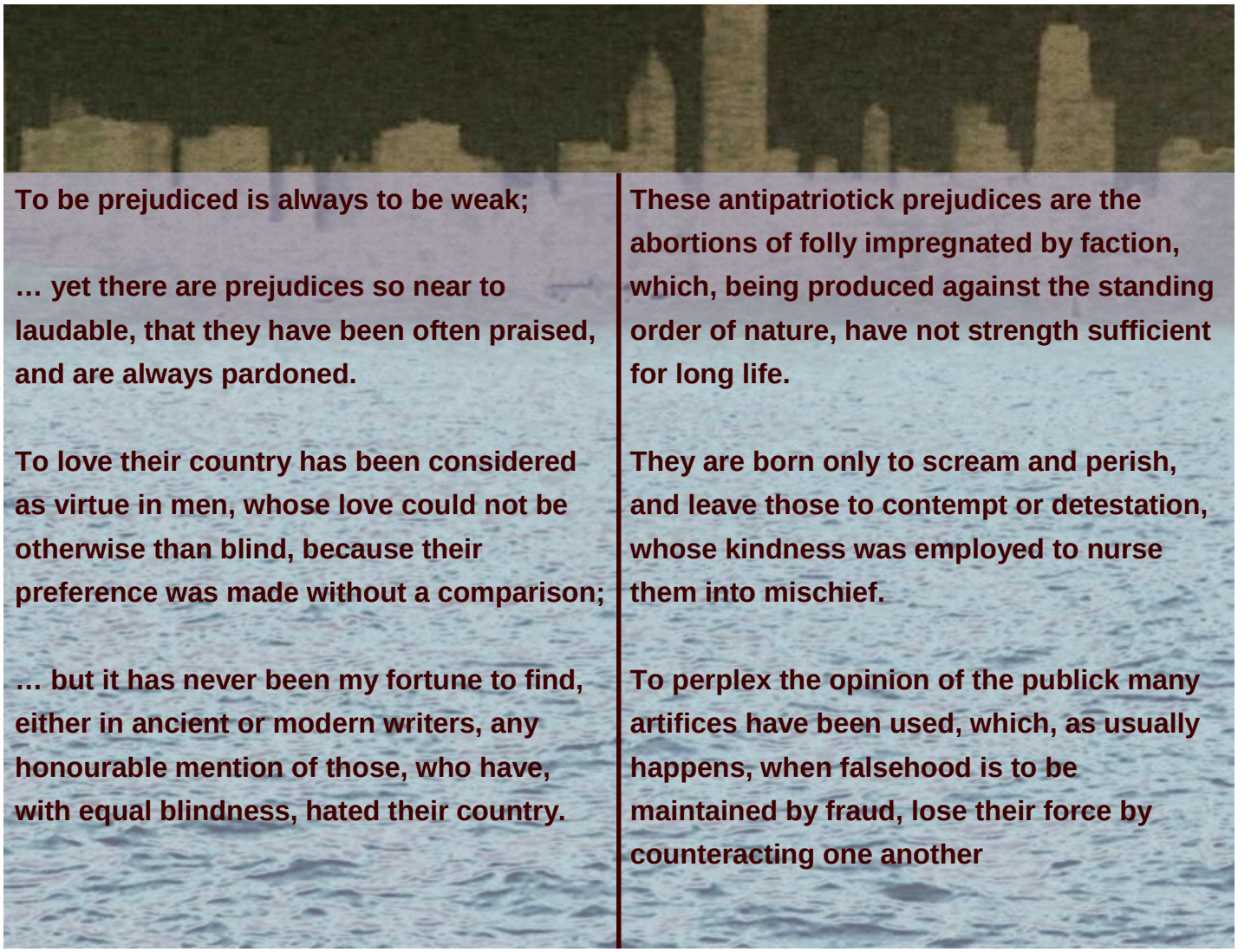

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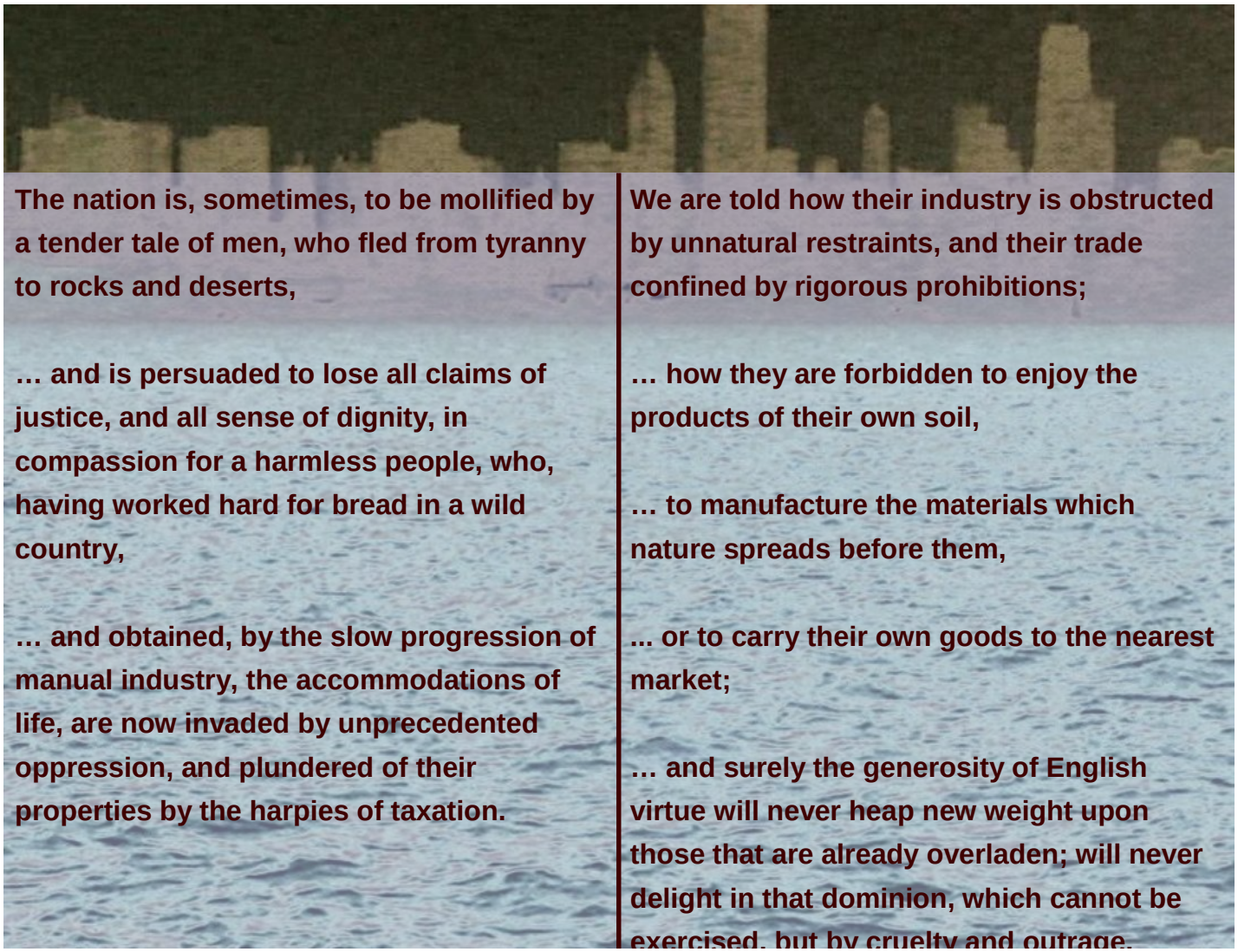

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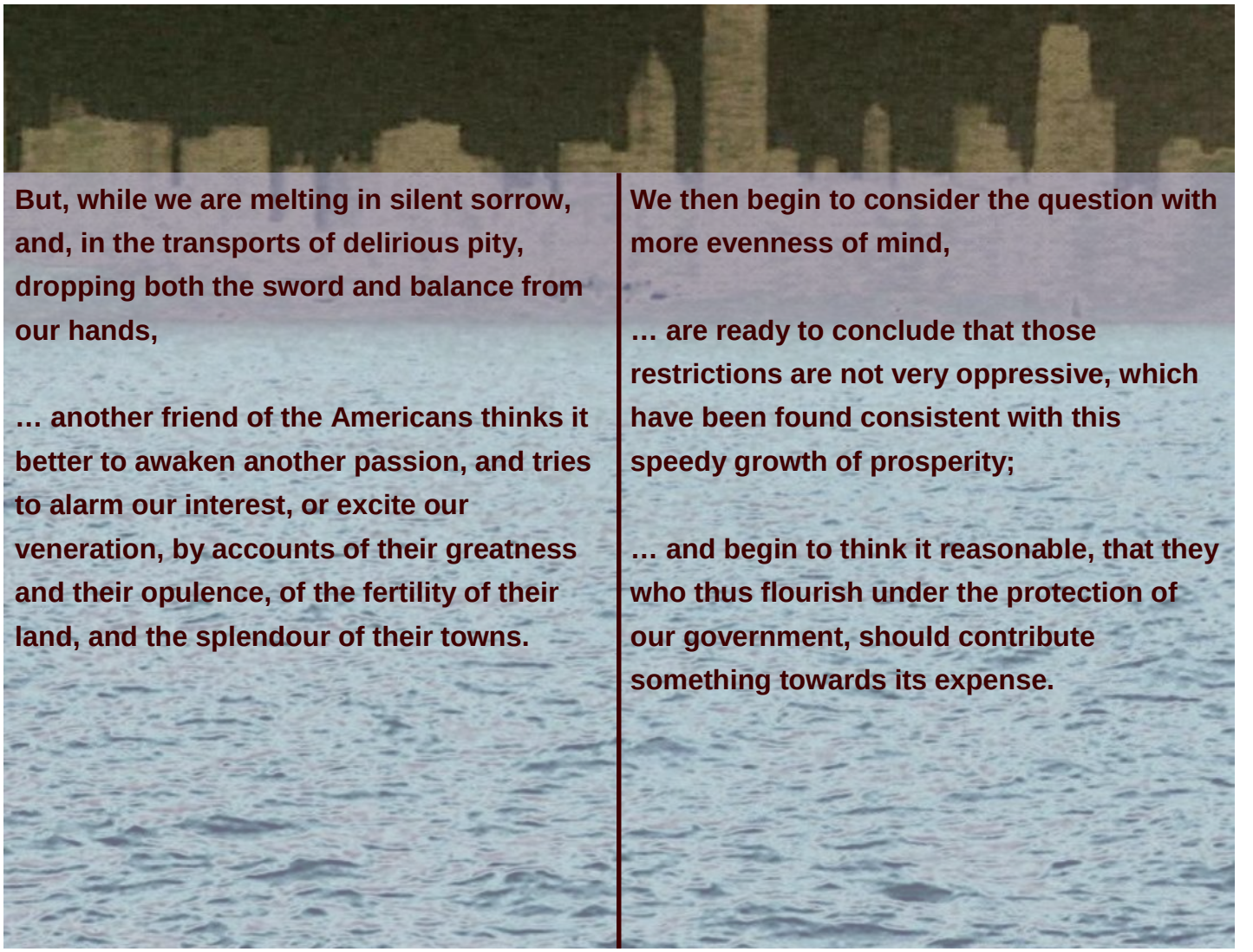

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But we are soon told, that the Americans, however wealthy, cannot be taxed; that they are the descendants of men who left all for liberty, and that they have constantly preserved the principles and stubbornness of their progenitors; that they are too obstinate for persuasion, and too powerful for constraint; that they will laugh at argument, and defeat violence;

… that the continent of North America contains three millions, not of men merely, but of whigs, of whigs fierce for liberty, and disdainful of dominion; that they multiply with the fecundity of their own rattlesnakes, so that every quarter of a century doubles their numbers.

Men accustomed to think themselves masters do not love to be threatened.

This talk is, I hope, commonly thrown away, or raises passions different from those which it was intended to excite.

Instead of terrifying the English hearer to tame acquiescence, it disposes him to hasten the experiment of bending obstinacy, before it is become yet more obdurate, and convinces him that it is necessary to attack a nation thus prolifick, while we may yet hope to prevail.

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When he is told, through what extent of territory we must travel to subdue them, he recollects how far, a few years ago, we travelled in their defence.

When it is urged, that they will shoot up, like the hydra, he naturally considers how the hydra was destroyed.

Nothing dejects a trader like the interruption of his profits.

A commercial people, however magnanimous, shrinks at the thought of declining traffick and an unfavourable balance.

The effect of this terrour has been tried.

We have been stunned with the importance of our American commerce, and heard of merchants, with warehouses that are never to be emptied, and of manufacturers starving for want of work.

That our commerce with America is profitable, however less than ostentatious or deceitful estimates have made it, and that it is our interest to preserve it, has never been denied; but, surely, it will most effectually be preserved, by being kept always in our own power.

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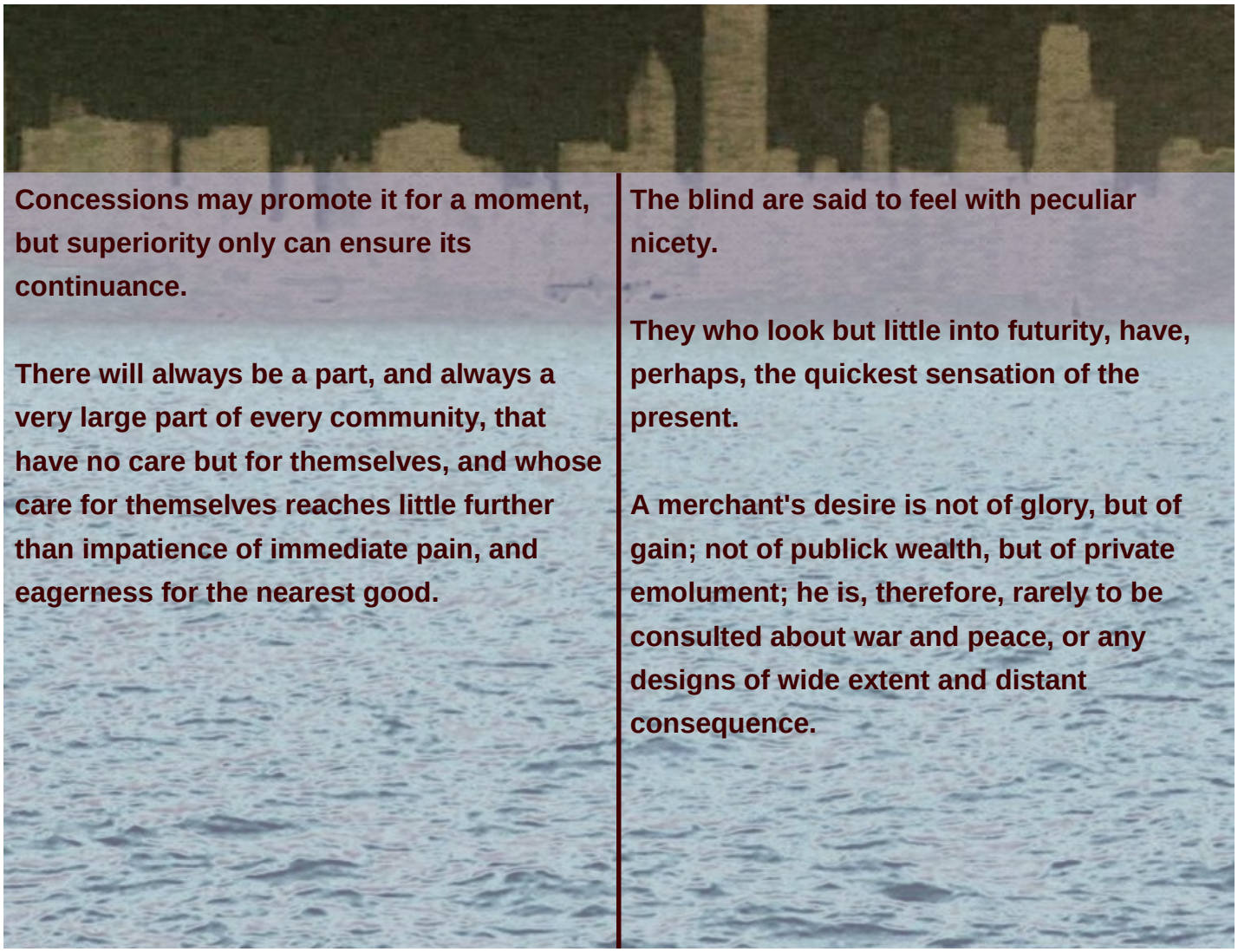

Concessions may promote it for a moment, but superiority only can ensure its continuance.

There will always be a part, and always a very large part of every community, that have no care but for themselves, and whose care for themselves reaches little further than impatience of immediate pain, and eagerness for the nearest good.

The blind are said to feel with peculiar nicety.

They who look but little into futurity, have, perhaps, the quickest sensation of the present.

A merchant's desire is not of glory, but of gain; not of publick wealth, but of private emolument; he is, therefore, rarely to be consulted about war and peace, or any designs of wide extent and distant consequence.

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Yet this, like other general characters, will sometimes fail.

The traders of Birmingham have rescued themselves from all imputation of narrow selfishness, by a manly recommendation to parliament of the rights and dignity of their native country.

To these men I do not intend to ascribe an absurd and enthusiastick contempt of interest, but to give them the rational and just praise of distinguishing real from seeming good; of being able to see through the cloud of interposing difficulties, to the lasting and solid happiness of victory and settlement.

Lest all these topicks of persuasion should fail, the greater actor of patriotism has tried another, in which terrour and pity are happily combined, not without a proper superaddition of that admiration which latter ages have brought into the drama.

The heroes of Boston, he tells us, if the stamp act had not been repealed, would have left their town, their port, and their trade, have resigned the splendour of opulence, and quitted the delights of neighbourhood, to disperse themselves over the country, where they would till the ground, and fish in the rivers, and range the mountains, and be free.

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These, surely, are brave words.

If the mere sound of freedom can operate thus powerfully, let no man, hereafter, doubt the story of the Pied Piper.

The removal of the people of Boston into the country, seems, even to the congress, not only difficult in its execution, but important in its consequences.

The difficulty of execution is best known to the Bostonians themselves; the consequence alas! will only be, that they will leave good houses to wiser men.

Yet, before they quit the comforts of a warm home, for the sounding something which they think better, he cannot be thought their enemy who advises them, to consider well whether they shall find it.

By turning fishermen or hunters, woodmen or shepherds, they may become wild, but it is not so easy to conceive them free;

… for who can be more a slave than he that is driven, by force, from the comforts of life, is compelled to leave his house to a casual comer, and, whatever he does, or wherever he wanders, finds, every moment, some new testimony of his own subjection?

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If choice of evil be freedom, the felon in the galleys has his option of labour or of stripes.

The Bostonian may quit his house to starve in the fields; his dog may refuse to set, and smart under the lash, and they may then congratulate each other upon the smiles of liberty, "profuse of bliss, and pregnant with delight."

To treat such designs as serious, would be to think too contemptuously of Bostonian understandings.

The artifice, indeed, is not new: the blusterer, who threatened in vain to destroy his opponent, has, sometimes, obtained his end, by making it believed, that he would hang himself.

But terrours and pity are not the only means by which the taxation of the Americans is opposed.

There are those, who profess to use them only as auxiliaries to reason and justice; who tell us, that to tax the colonies is usurpation and oppression, an invasion of natural and legal rights, and a violation of those principles which support the constitution of English government.

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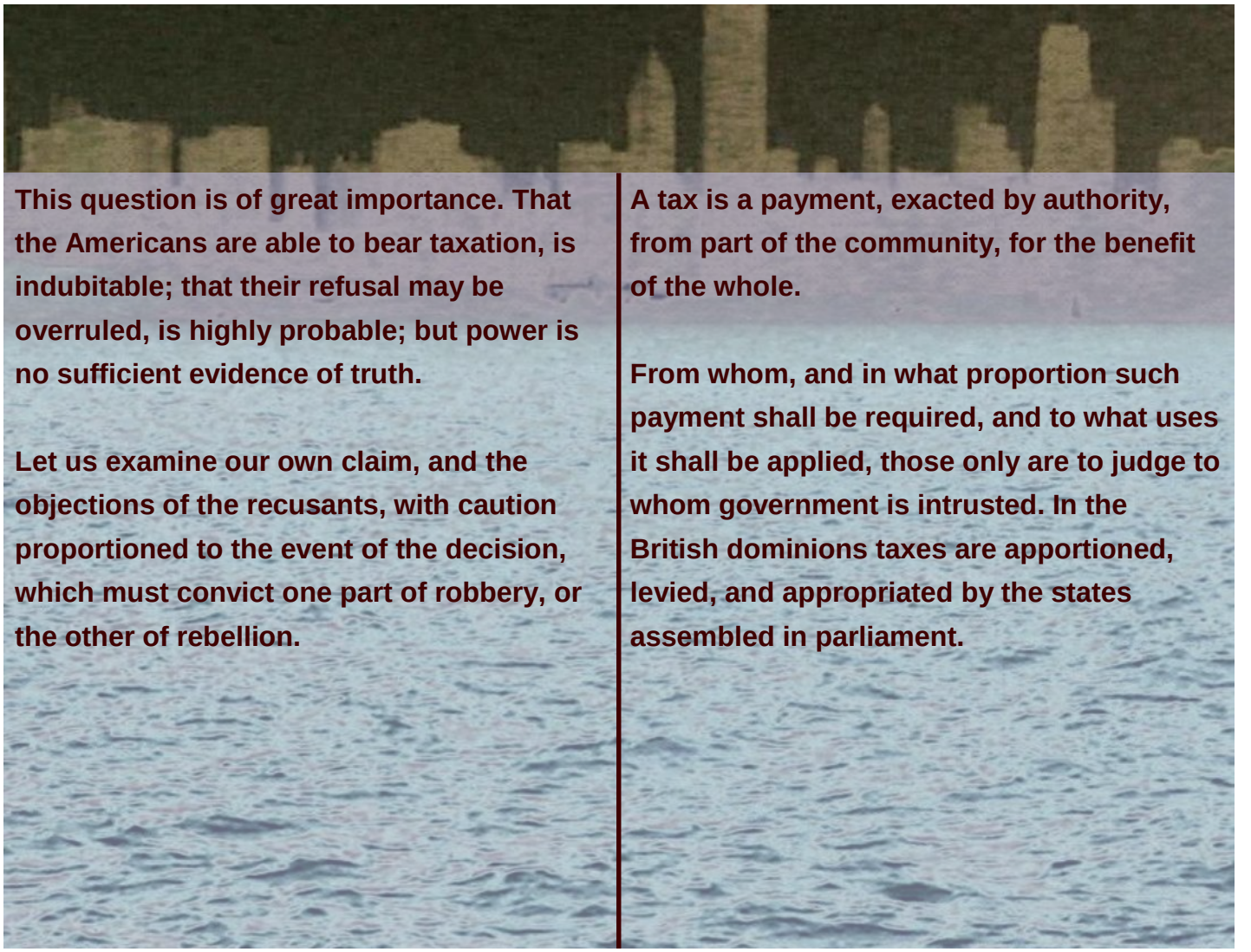

This question is of great importance. That the Americans are able to bear taxation, is indubitable; that their refusal may be overruled, is highly probable; but power is no sufficient evidence of truth.

Let us examine our own claim, and the objections of the recusants, with caution proportioned to the event of the decision, which must convict one part of robbery, or the other of rebellion.

A tax is a payment, exacted by authority, from part of the community, for the benefit of the whole.

From whom, and in what proportion such payment shall be required, and to what uses it shall be applied, those only are to judge to whom government is intrusted. In the British dominions taxes are apportioned, levied, and appropriated by the states assembled in parliament.

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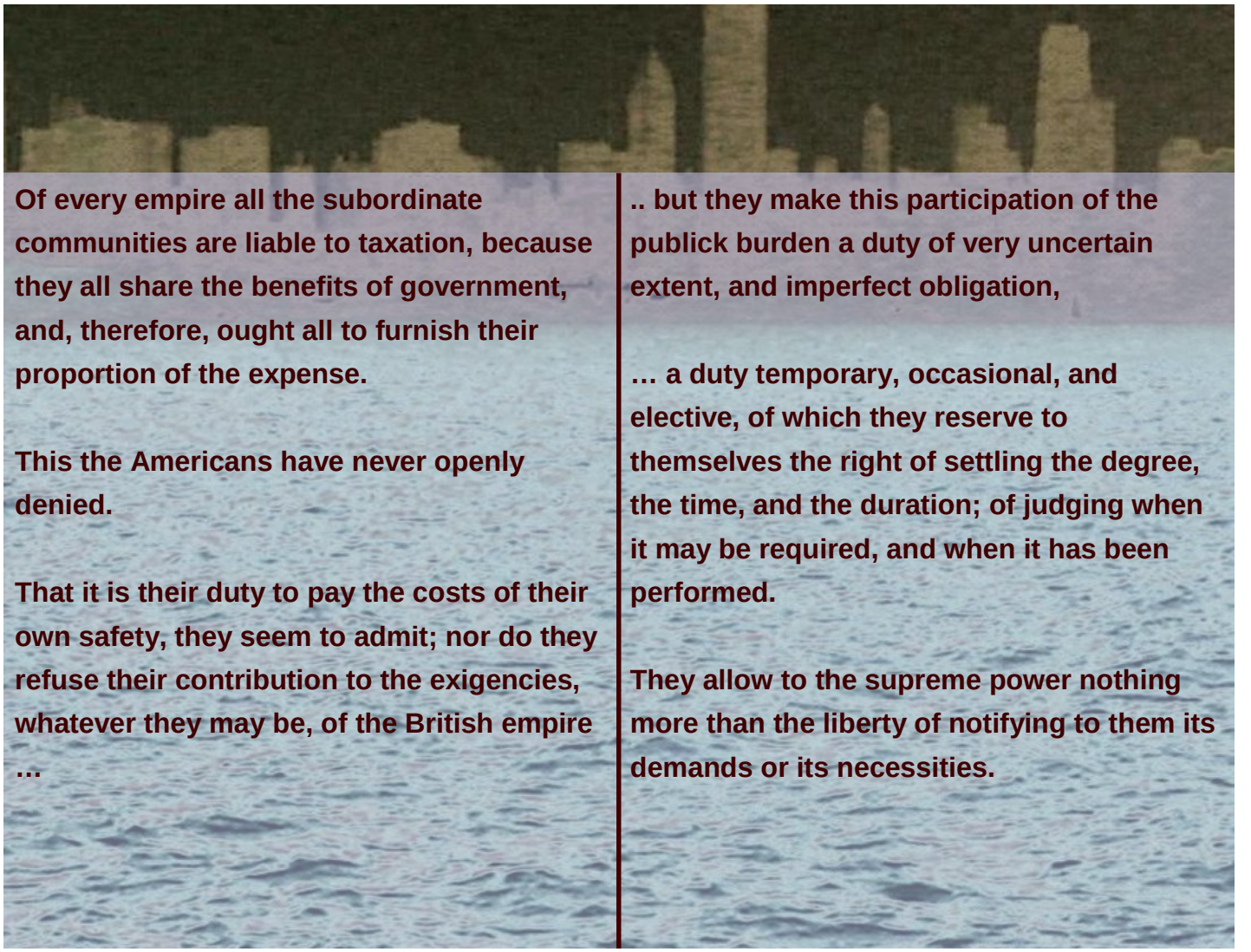

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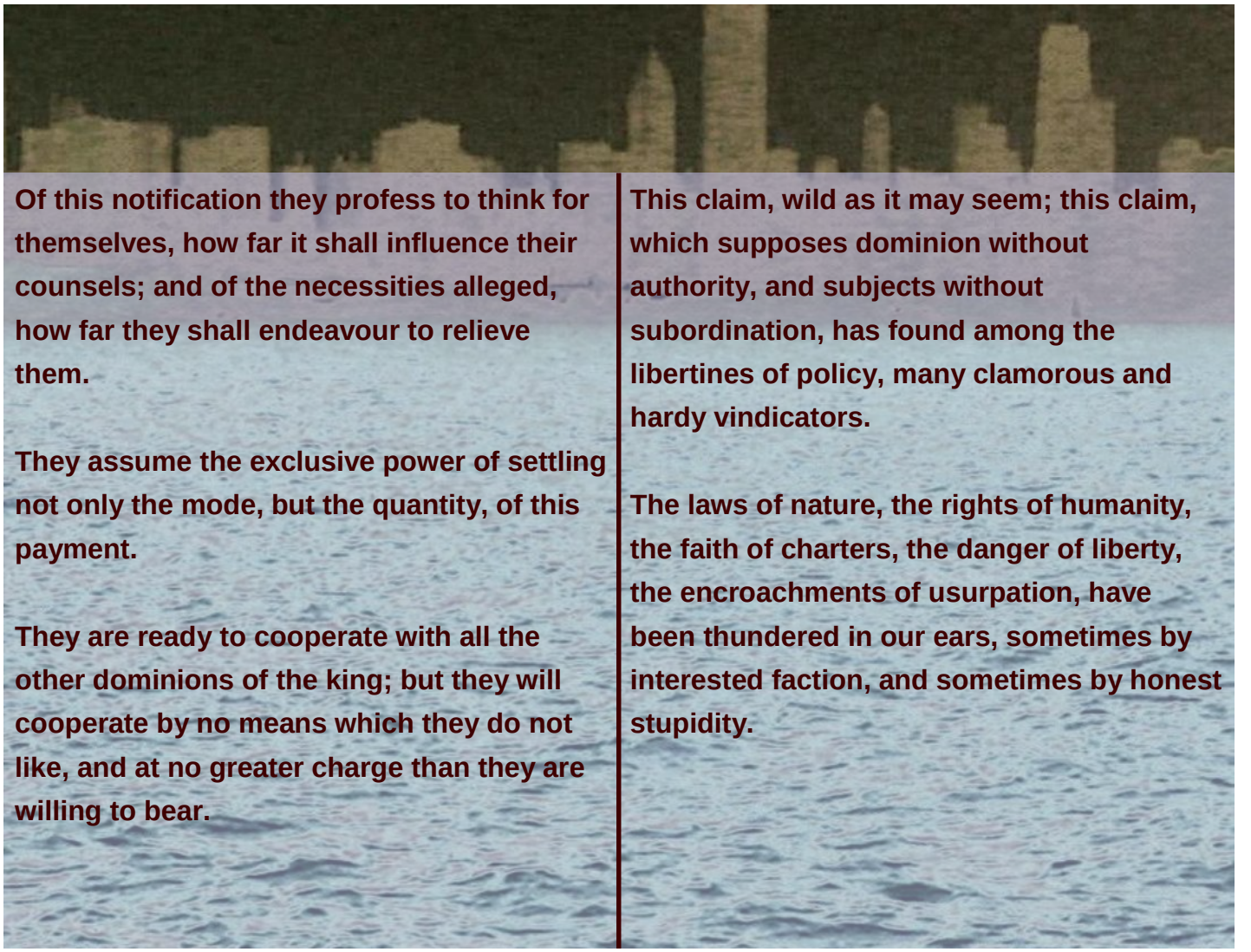

Of this notification they profess to think for themselves, how far it shall influence their counsels; and of the necessities alleged, how far they shall endeavour to relieve them.

They assume the exclusive power of settling not only the mode, but the quantity, of this payment.

They are ready to cooperate with all the other dominions of the king; but they will cooperate by no means which they do not like, and at no greater charge than they are willing to bear.

This claim, wild as it may seem; this claim, which supposes dominion without authority, and subjects without subordination, has found among the libertines of policy, many clamorous and hardy vindicators.

The laws of nature, the rights of humanity, the faith of charters, the danger of liberty, the encroachments of usurpation, have been thundered in our ears, sometimes by interested faction, and sometimes by honest stupidity.

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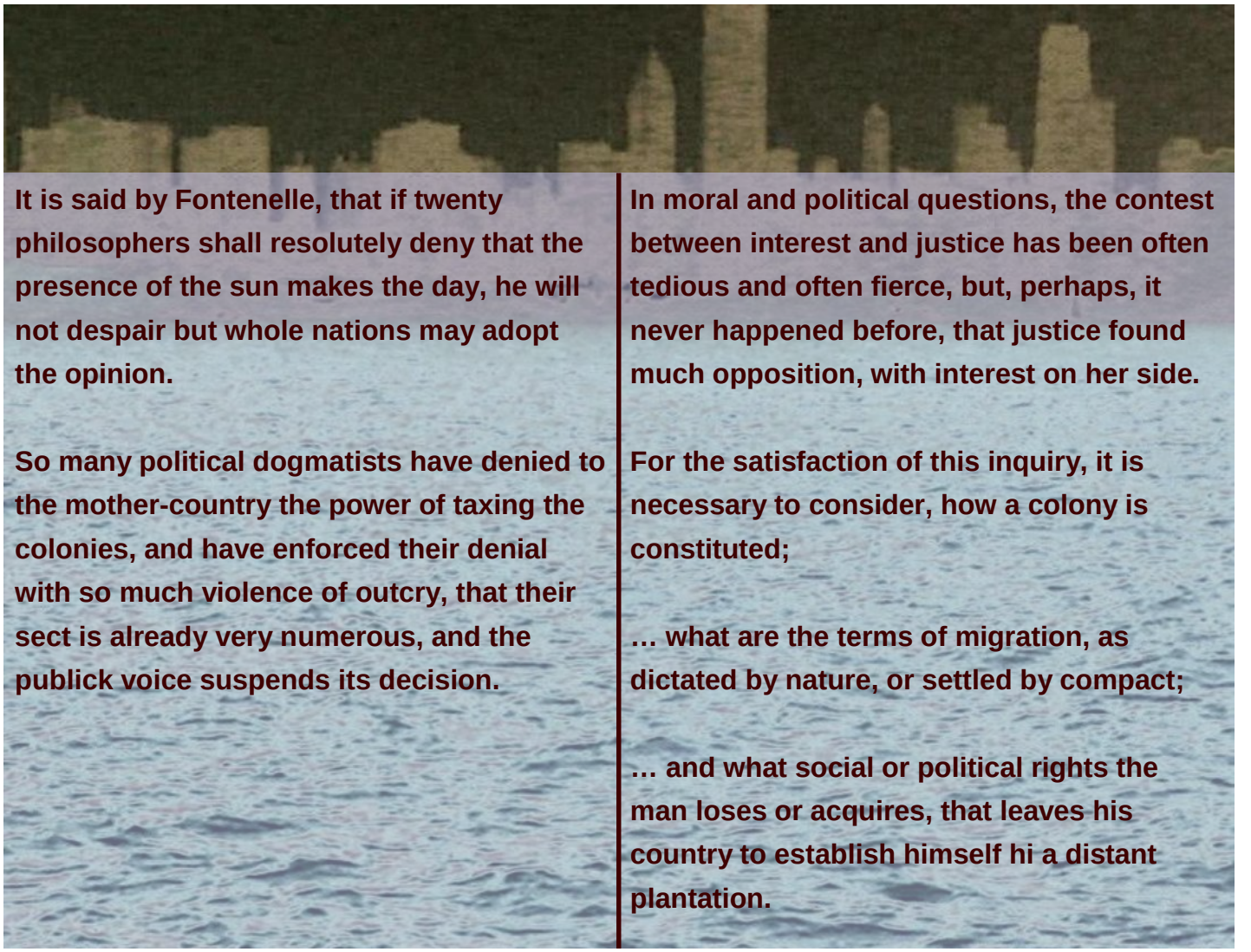

It is said by Fontenelle, that if twenty philosophers shall resolutely deny that the presence of the sun makes the day, he will not despair but whole nations may adopt the opinion.

So many political dogmatists have denied to the mother-country the power of taxing the colonies, and have enforced their denial with so much violence of outcry, that their sect is already very numerous, and the publick voice suspends its decision.

In moral and political questions, the contest between interest and justice has been often tedious and often fierce, but, perhaps, it never happened before, that justice found much opposition, with interest on her side.

For the satisfaction of this inquiry, it is necessary to consider, how a colony is constituted;

… what are the terms of migration, as dictated by nature, or settled by compact;

… and what social or political rights the man loses or acquires, that leaves his country to establish himself hi a distant plantation.

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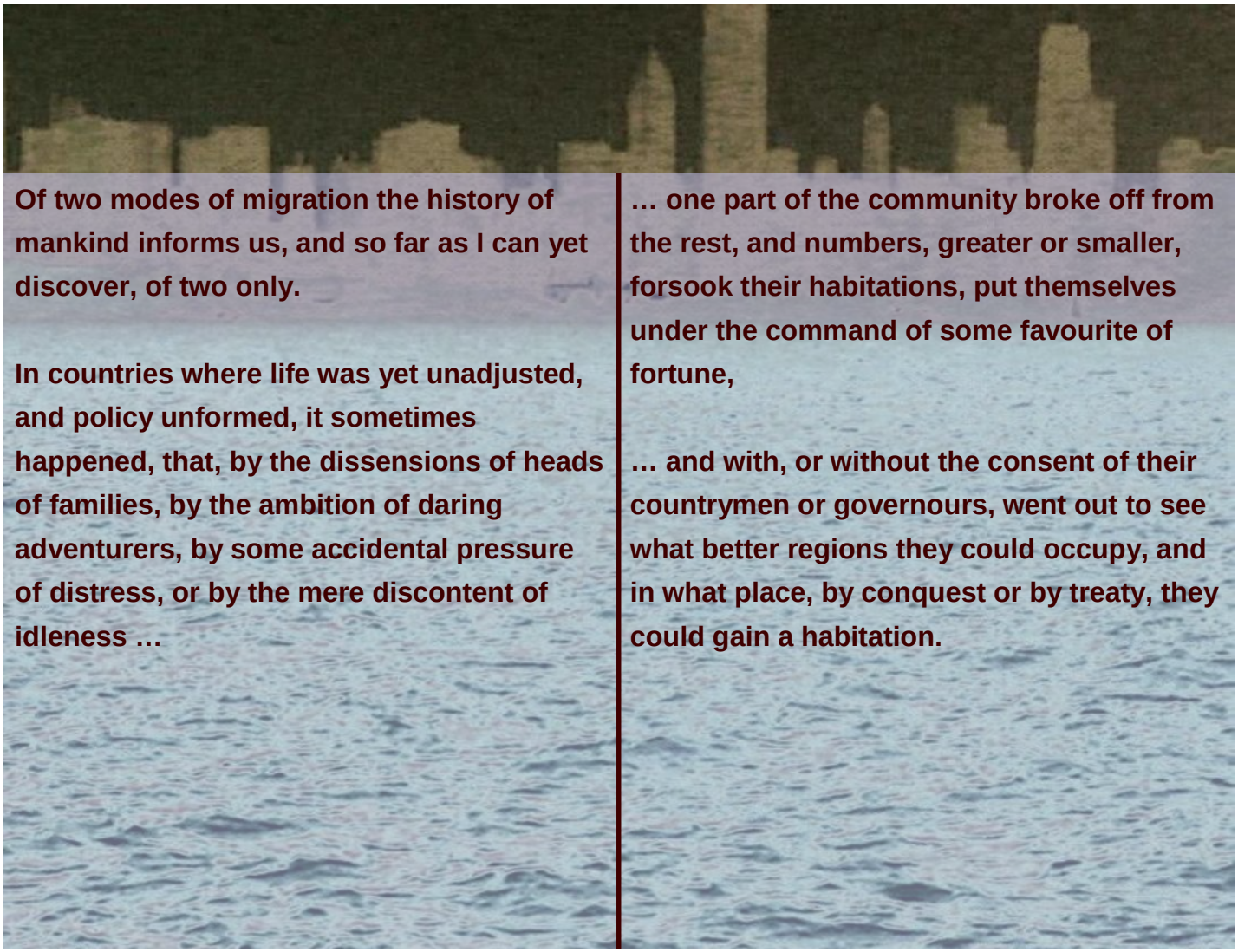

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Sons of enterprise, like these, who committed to their own swords their hopes and their lives, when they left their country, became another nation, with designs, and prospects, and interests, of their own.

They looked back no more to their former home;

… they expected no help from those whom they had left behind;

… if they conquered, they conquered for themselves;

… if they were destroyed, they were not by any other power either lamented or revenged.

Of this kind seem to have been all the migrations of the early world, whether historical or fabulous,

… and of this kind were the eruptions of those nations, which, from the north, invaded the Roman empire, and filled Europe with new sovereignties.

But when, by the gradual admission of wiser laws and gentler manners, society became more compacted and better regulated,

… it was found, that the power of every people consisted in union, produced by one common interest, and operating in joint efforts and consistent counsels.

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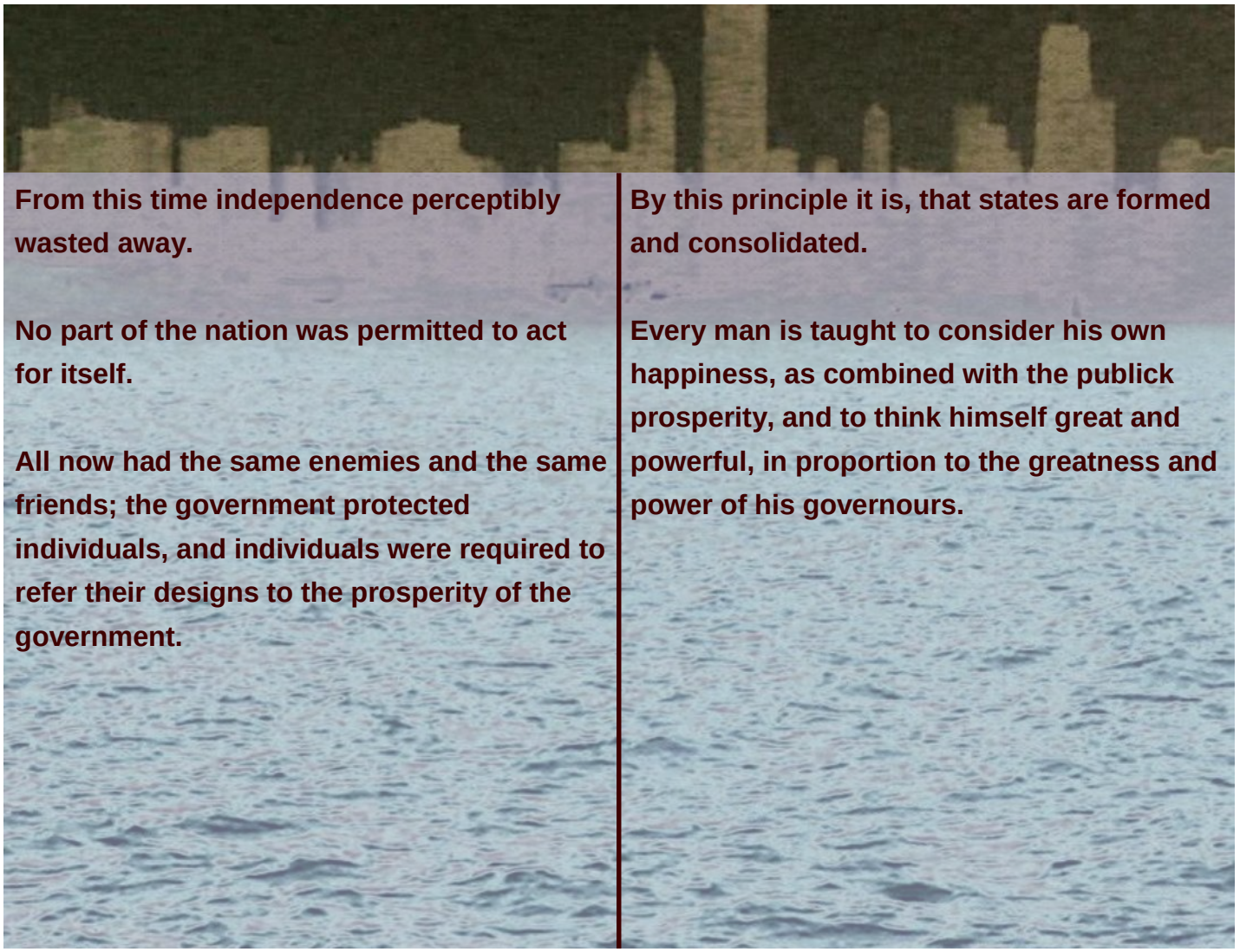

From this time independence perceptibly wasted away.

No part of the nation was permitted to act for itself.

All now had the same enemies and the same friends; the government protected individuals, and individuals were required to refer their designs to the prosperity of the government.

By this principle it is, that states are formed and consolidated.

Every man is taught to consider his own happiness, as combined with the publick prosperity, and to think himself great and powerful, in proportion to the greatness and power of his governours.

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Had the western continent been discovered between the fourth and tenth century, when all the northen world was in motion;

… and had navigation been, at that time, sufficiently advanced to make so long a passage easily practicable,

… there is little reason for doubting, but the intumescence of nations would have found its vent, like all other expansive violence, where there was least resistance …

… and that Huns and Vandals, instead of fighting their way to the south of Europe, would have gone, by thousands and by myriads, under their several chiefs, to take possession of regions smiling with pleasure, and waving with fertility, from which the naked inhabitants were unable to repel them.

Every expedition would, in those days of laxity, have produced a distinct and independent state.

The Scandinavian heroes might have divided the country among them, and have spread the feudal subdivision of regality from Hudson's bay to the Pacifick ocean.

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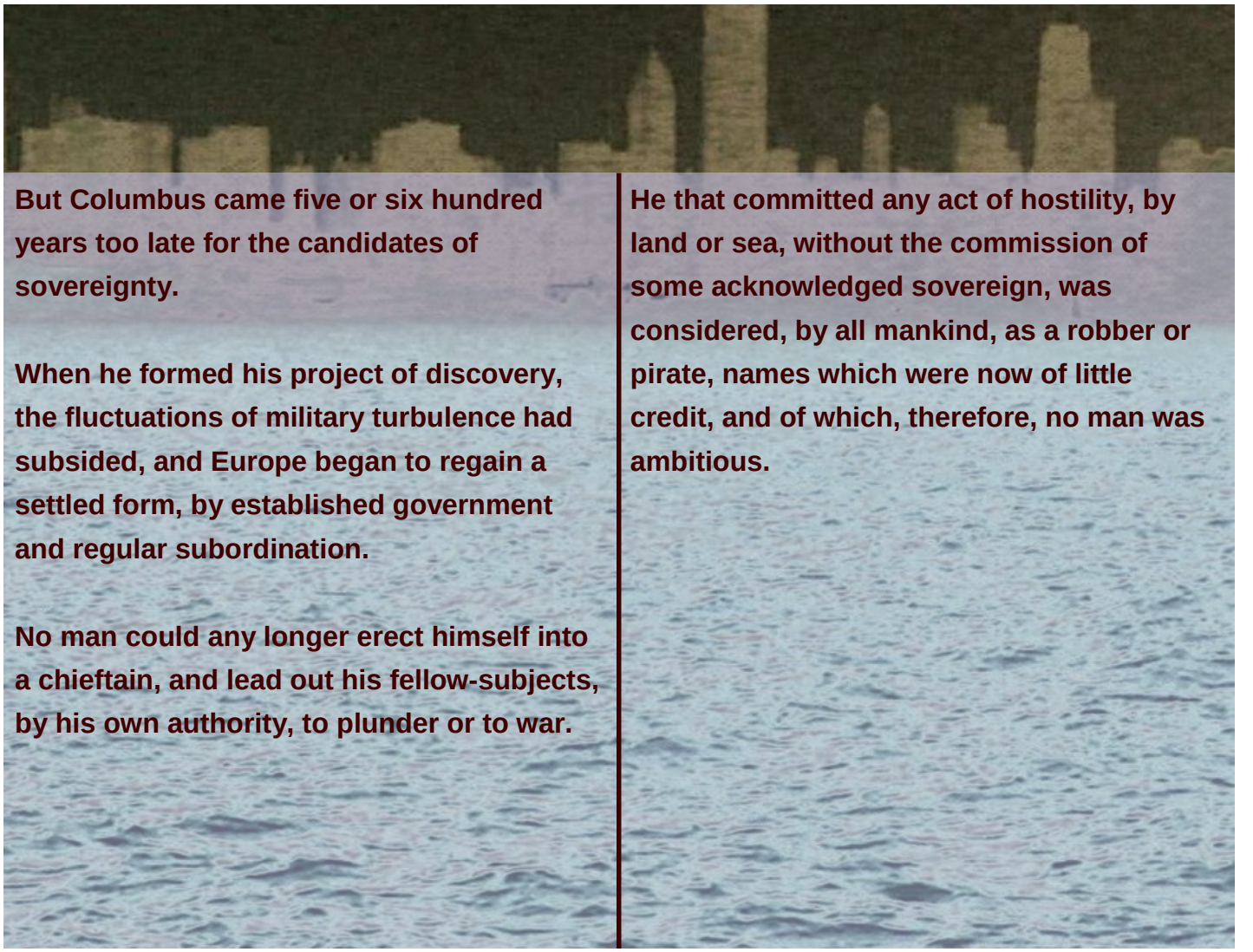

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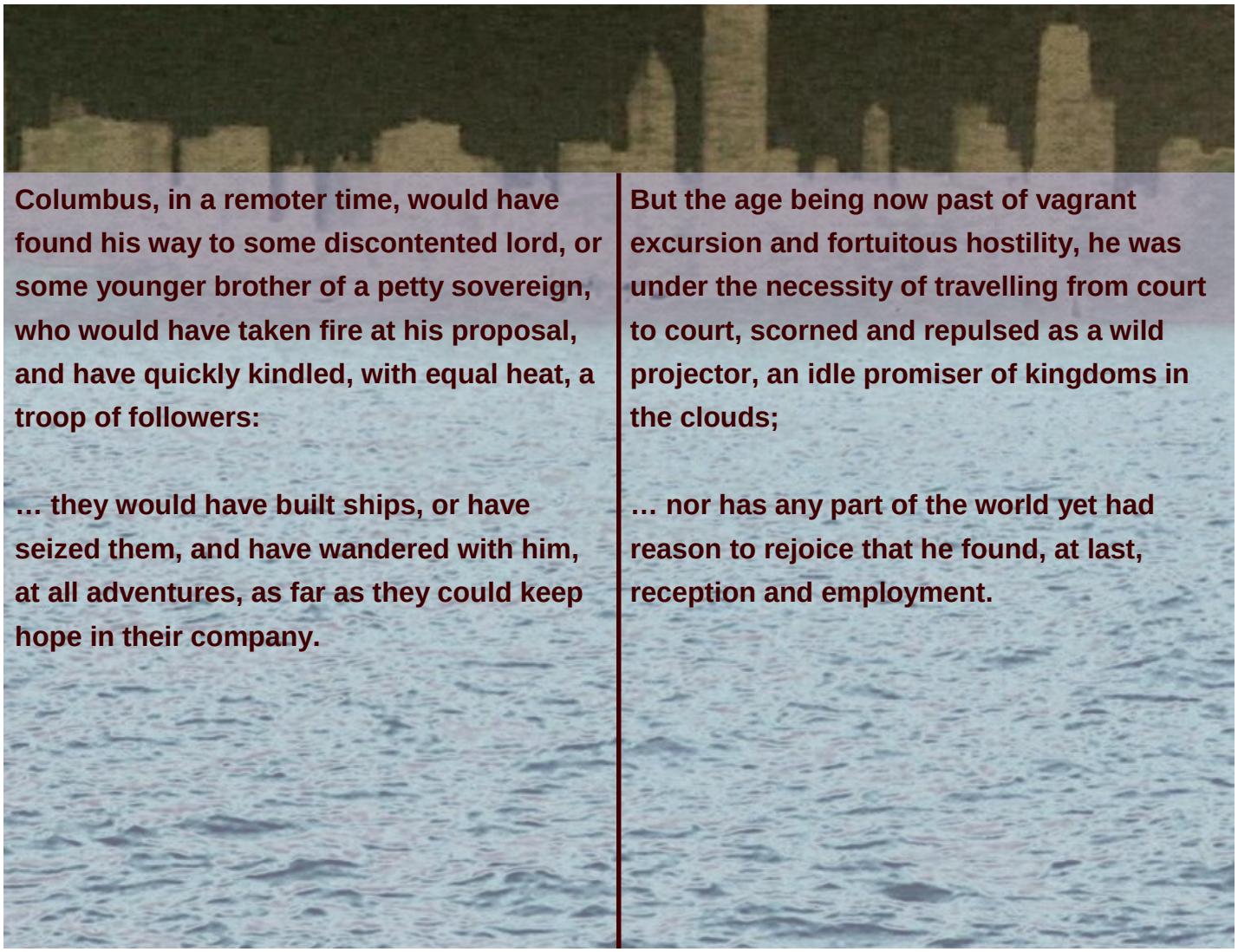

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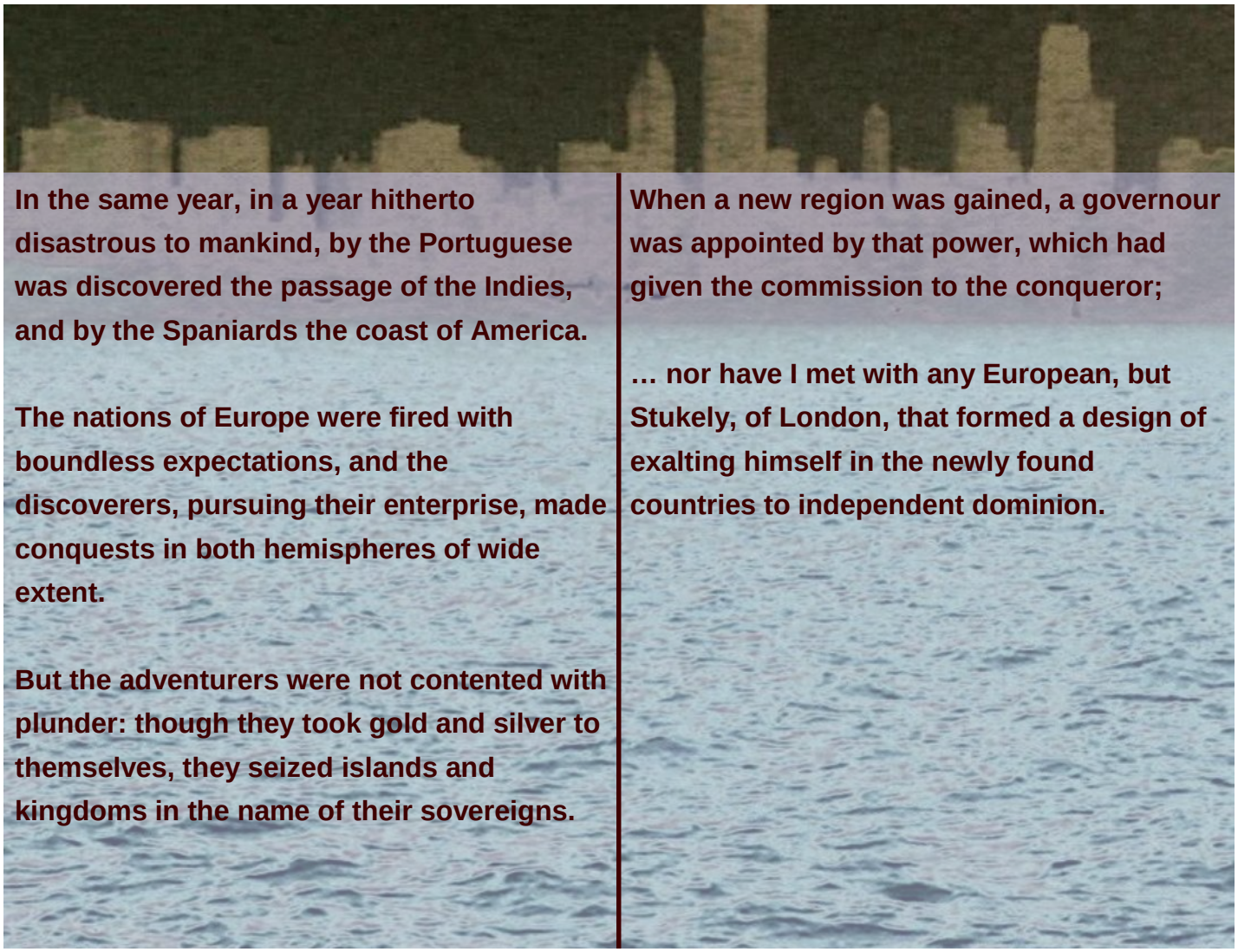

In the same year, in a year hitherto disastrous to mankind, by the Portuguese was discovered the passage of the Indies, and by the Spaniards the coast of America.

The nations of Europe were fired with boundless expectations, and the discoverers, pursuing their enterprise, made conquests in both hemispheres of wide extent.

But the adventurers were not contented with plunder: though they took gold and silver to themselves, they seized islands and kingdoms in the name of their sovereigns.

When a new region was gained, a governour was appointed by that power, which had given the commission to the conqueror;

… nor have I met with any European, but Stukely, of London, that formed a design of exalting himself in the newly found countries to independent dominion.

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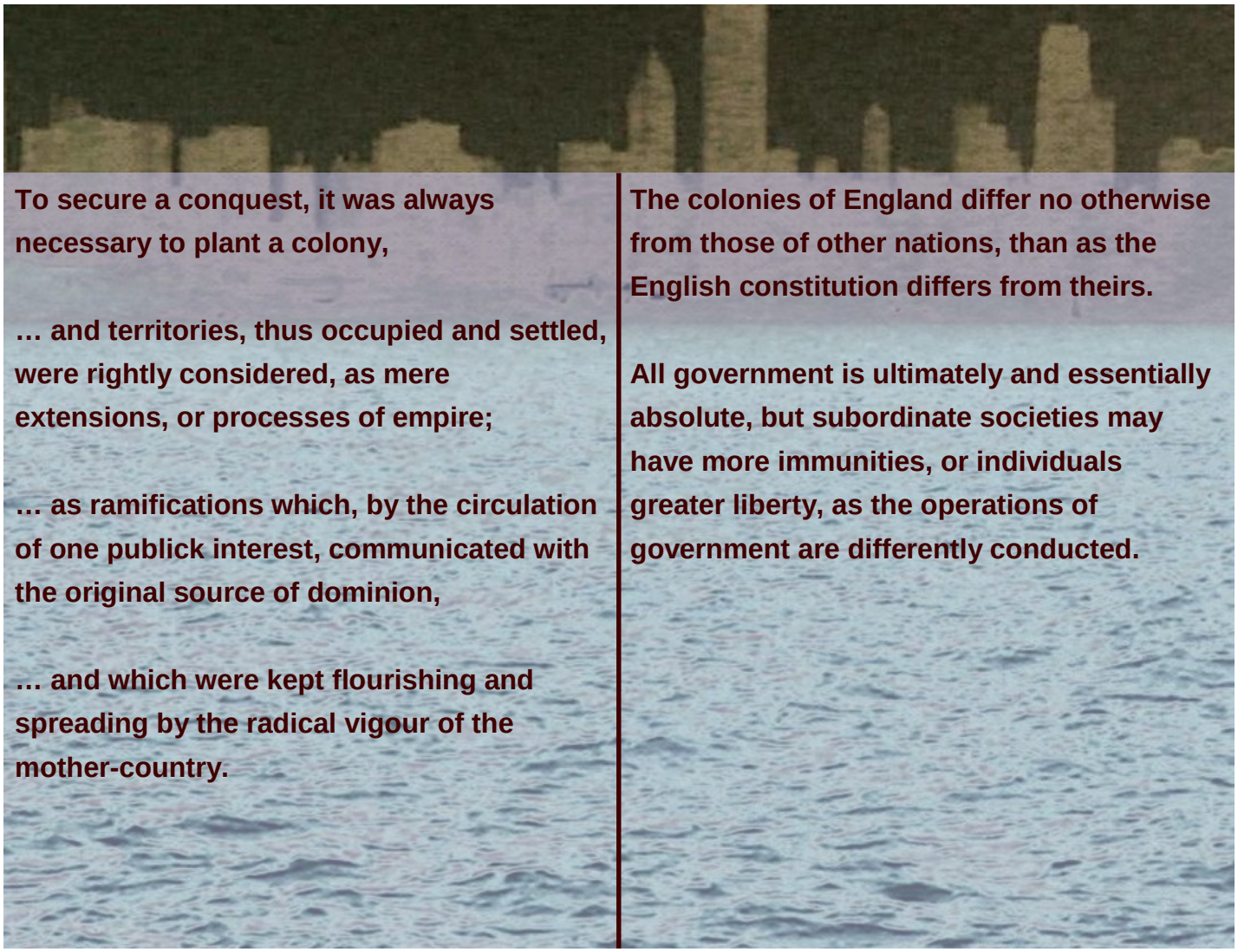

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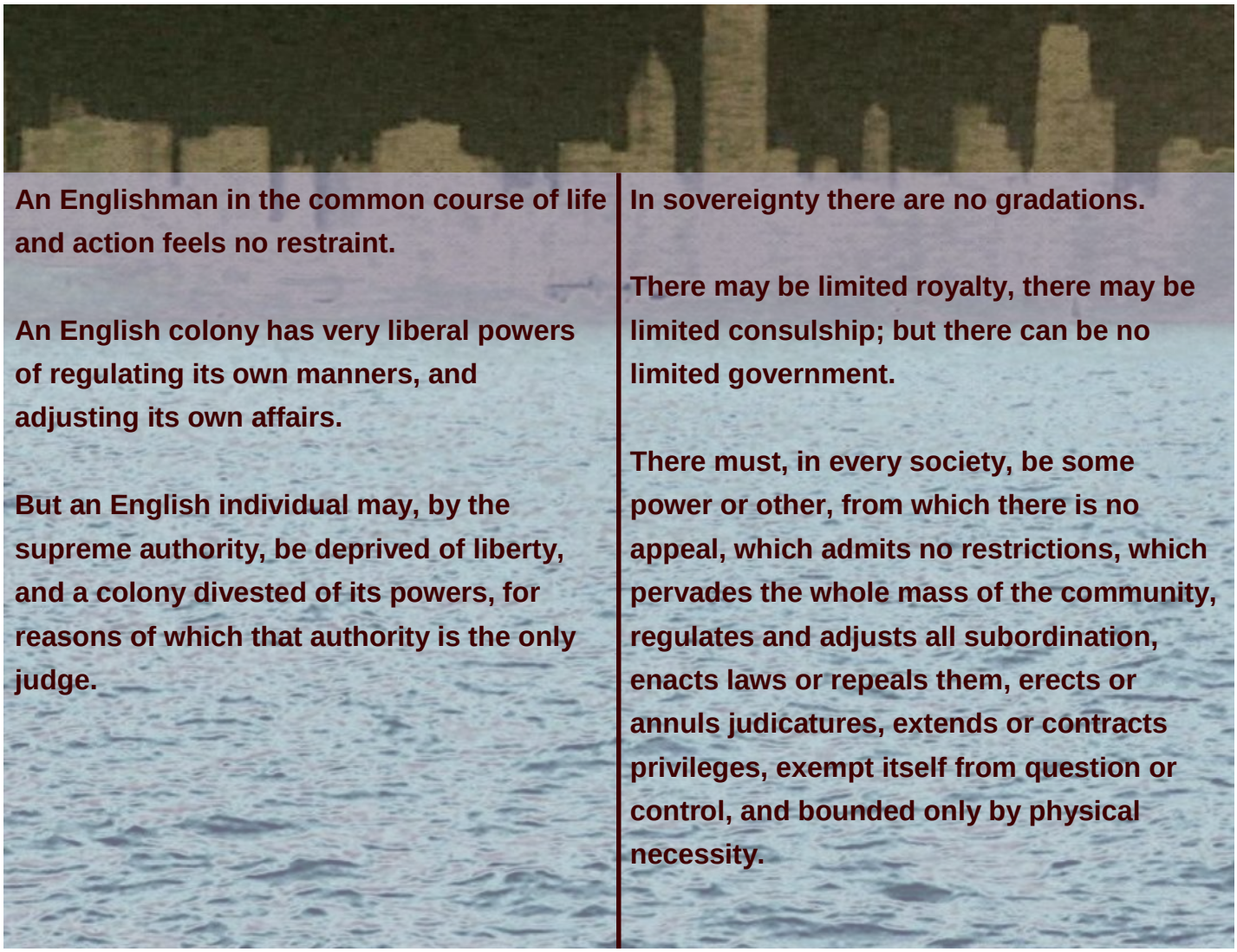

An Englishman in the common course of life and action feels no restraint.

An English colony has very liberal powers of regulating its own manners, and adjusting its own affairs.

But an English individual may, by the supreme authority, be deprived of liberty, and a colony divested of its powers, for reasons of which that authority is the only judge.

In sovereignty there are no gradations.

There may be limited royalty, there may be limited consulship; but there can be no limited government.

There must, in every society, be some power or other, from which there is no appeal, which admits no restrictions, which pervades the whole mass of the community, regulates and adjusts all subordination, enacts laws or repeals them, erects or annuls judicatures, extends or contracts privileges, exempt itself from question or control, and bounded only by physical necessity.

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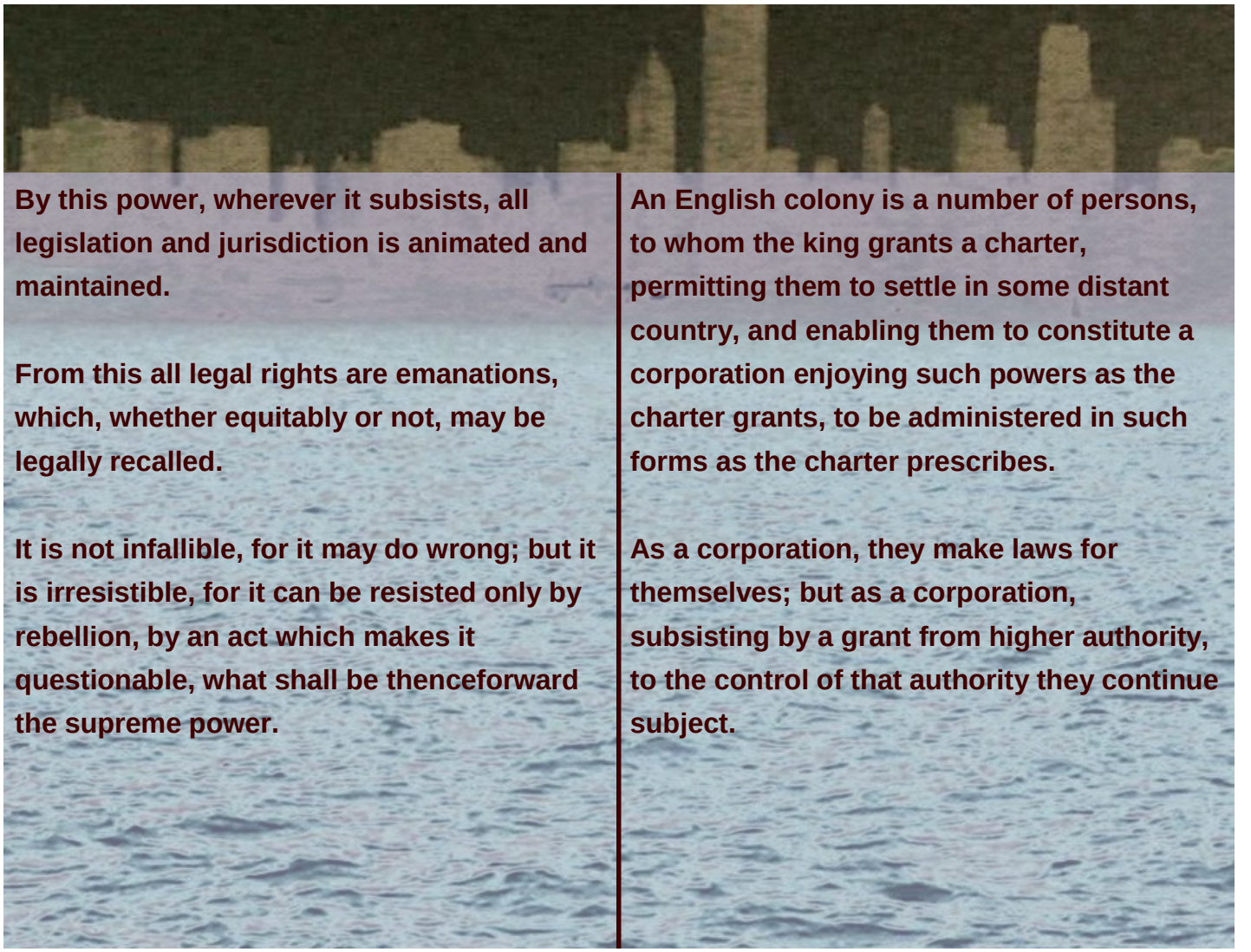

By this power, wherever it subsists, all legislation and jurisdiction is animated and maintained.

From this all legal rights are emanations, which, whether equitably or not, may be legally recalled.

It is not infallible, for it may do wrong; but it is irresistible, for it can be resisted only by rebellion, by an act which makes it questionable, what shall be thenceforward the supreme power.

An English colony is a number of persons, to whom the king grants a charter, permitting them to settle in some distant country, and enabling them to constitute a corporation enjoying such powers as the charter grants, to be administered in such forms as the charter prescribes.

As a corporation, they make laws for themselves; but as a corporation, subsisting by a grant from higher authority, to the control of that authority they continue subject.

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As men are placed at a greater distance from the supreme council of the kingdom, they must be intrusted with ampler liberty of regulating their conduct by their own wisdom.

As they are more secluded from easy recourse to national judicature, they must be more extensively commissioned to pass judgment on each other.

For this reason our more important and opulent colonies see the appearance, and feel the effect, of a regular legislature, which, in some places, has acted so long with unquestioned authority, that it has forgotten whence that authority was originally derived.

To their charters the colonies owe, like other corporations, their political existence.

The solemnities of legislation, the administration of justice, the security of property, are all bestowed upon them by the royal grant.

Without their charter, there would be no power among them, by which any law could be made, or duties enjoined; any debt recovered, or criminal punished.

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A charter is a grant of certain powers or privileges, given to a part of the community for the advantage of the whole, and is, therefore, liable, by its nature, to change or to revocation.

Every act of government aims at publick good.

A charter, which experience has shown to be detrimental to the nation, is to be repealed; because general prosperity must always be preferred to particular interest.

If a charter be used to evil purposes, it is forfeited, as the weapon is taken away which is injuriously employed.

The charter, therefore, by which provincial governments are constituted, may be always legally, and, where it is either inconvenient in its nature, or misapplied in its use, may be equitably repealed;

… by such repeal the whole fabrick of subordination is immediately destroyed, and the constitution sunk at once into a chaos;

… the society is dissolved into a tumult of individuals, without authority to command, or obligation to obey, without any punishment of wrongs, but by personal resentment, or any protection of right, but by the hand of the possessor.

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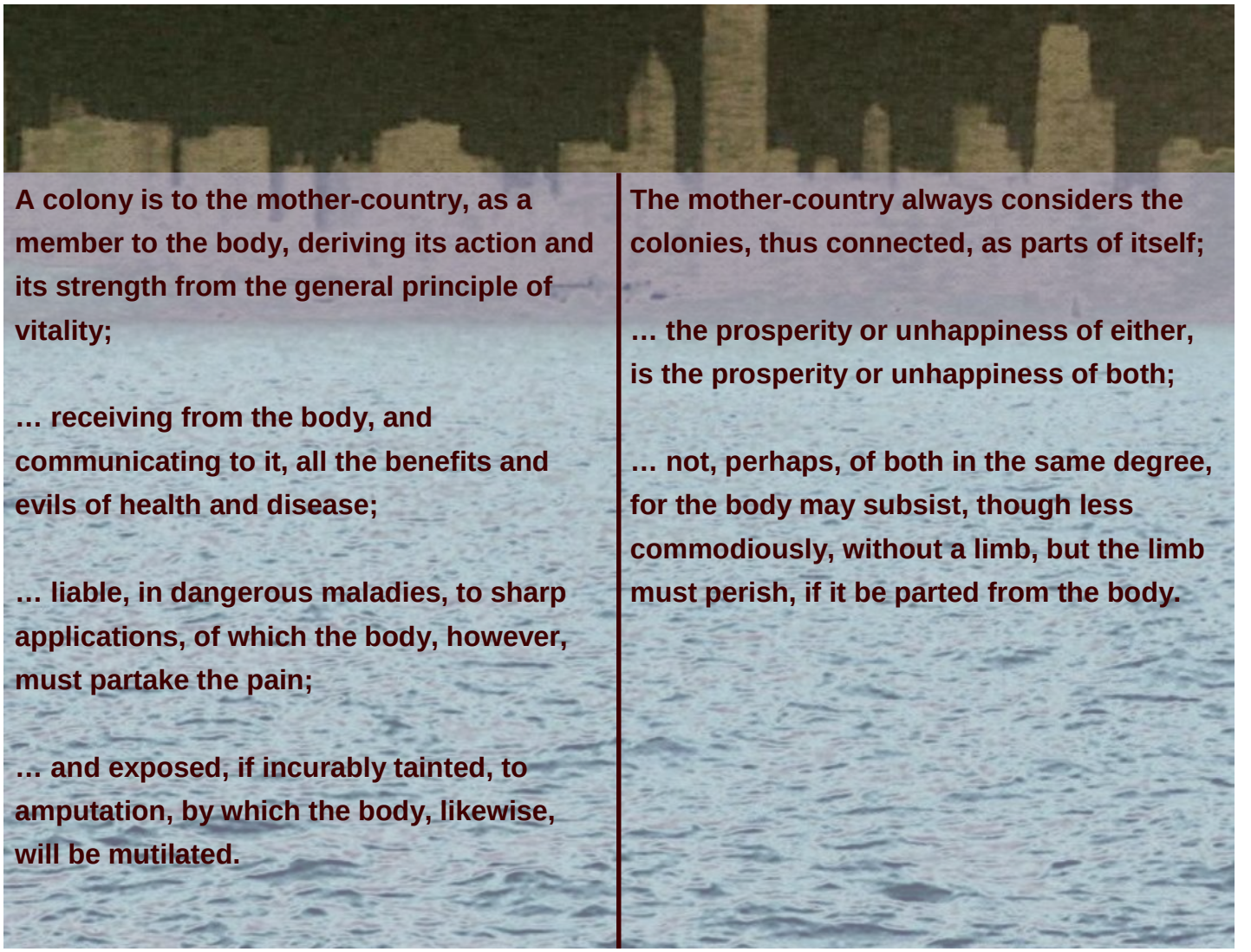

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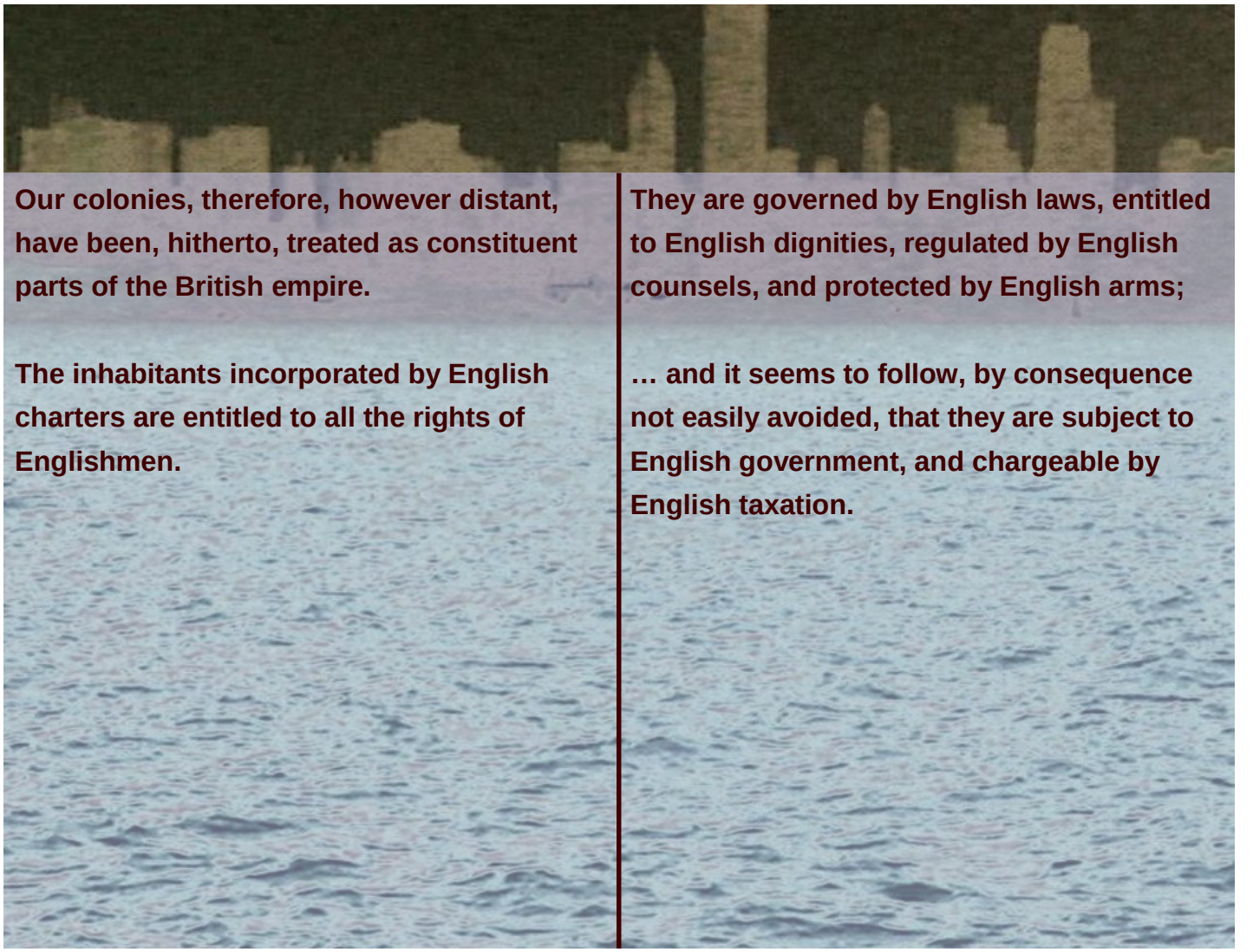

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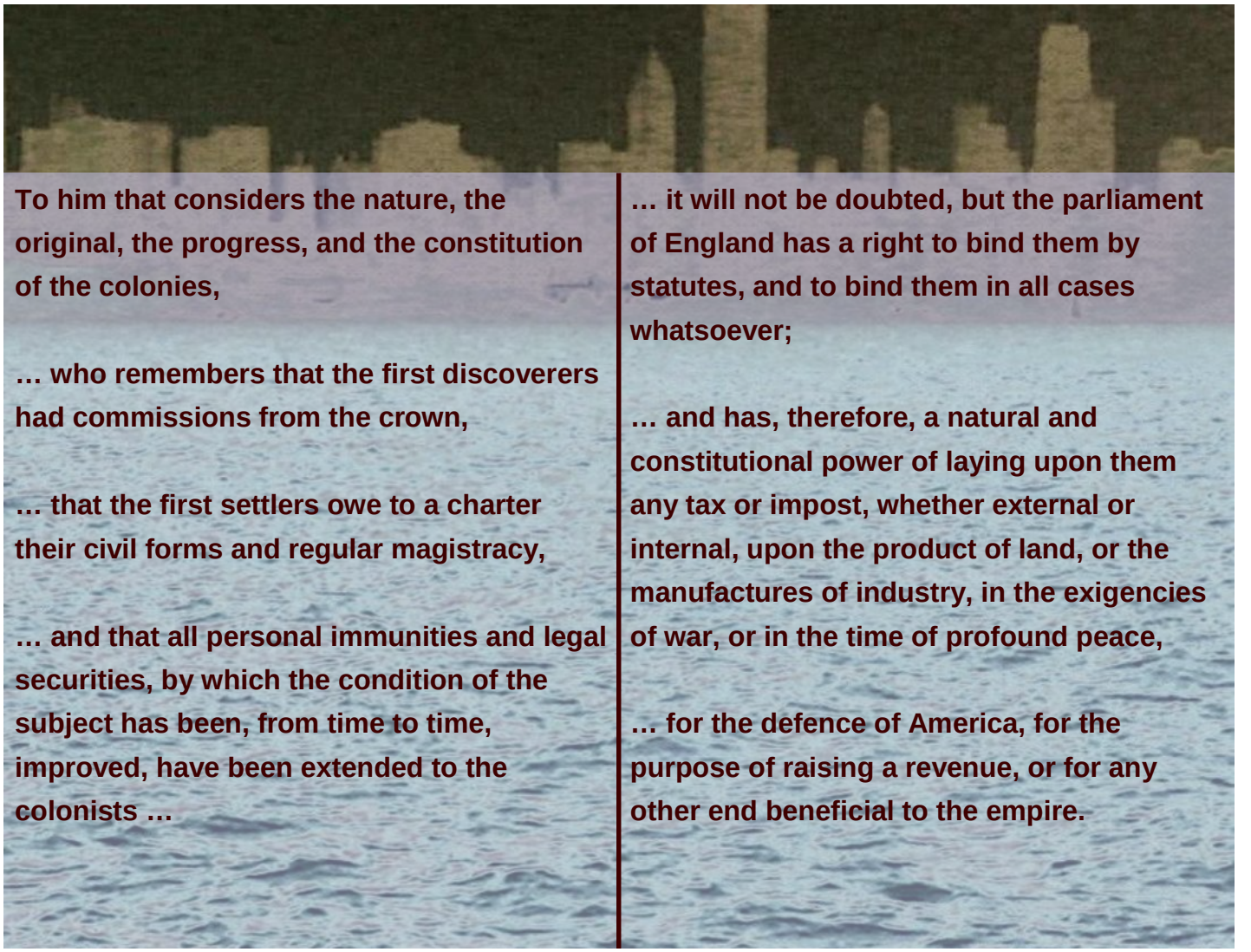

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There are some, and those not inconsiderable for number, nor contemptible for knowledge, who except the power of taxation from the general dominion of parliament,

… and hold, that whatever degress of obedience may be exacted, or whatever authority may be exercised in other acts of government, there is still reverence to be paid to money, and that legislation passes its limits when it violates the purse.

Of this exception, which, by a head not fully impregnated with politicks, is not easily comprehended …

… it is alleged, as an unanswerable reason, that the colonies send no representatives to the house of commons.

It is, say the American advocates, the natural distinction of a freeman, and the legal privilege of an Englishman, that he is able to call his possessions his own,

… that he can sit secure in the enjoyment of inheritance or acquisition, that his house is fortified by the law,

… and that nothing can be taken from him, but by his own consent.

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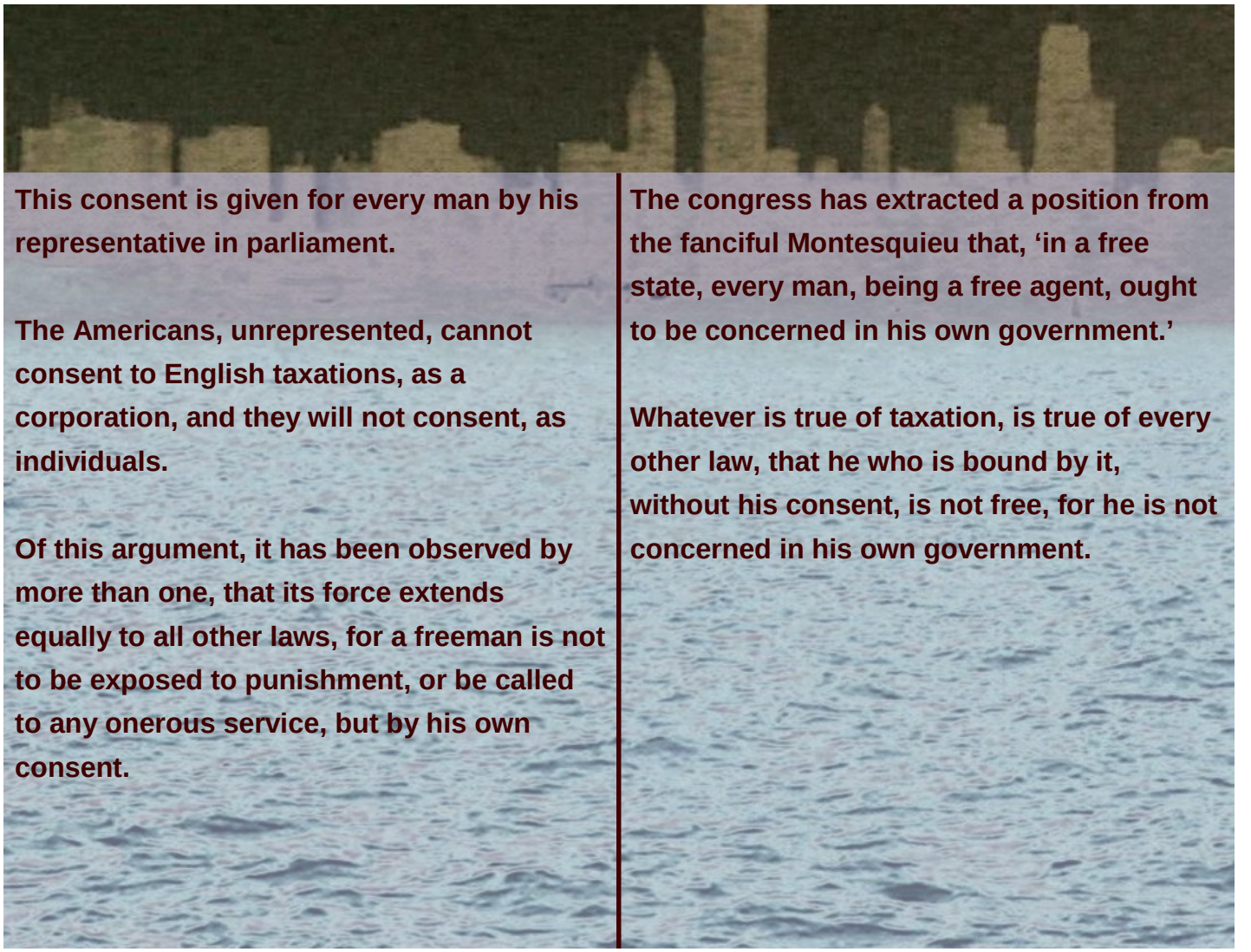

This consent is given for every man by his representative in parliament.

The Americans, unrepresented, cannot consent to English taxations, as a corporation, and they will not consent, as individuals.

Of this argument, it has been observed by more than one, that its force extends equally to all other laws, for a freeman is not to be exposed to punishment, or be called to any onerous service, but by his own consent.

The congress has extracted a position from the fanciful Montesquieu that, 'in a free state, every man, being a free agent, ought to be concerned in his own government.'

Whatever is true of taxation, is true of every other law, that he who is bound by it, without his consent, is not free, for he is not concerned in his own government.

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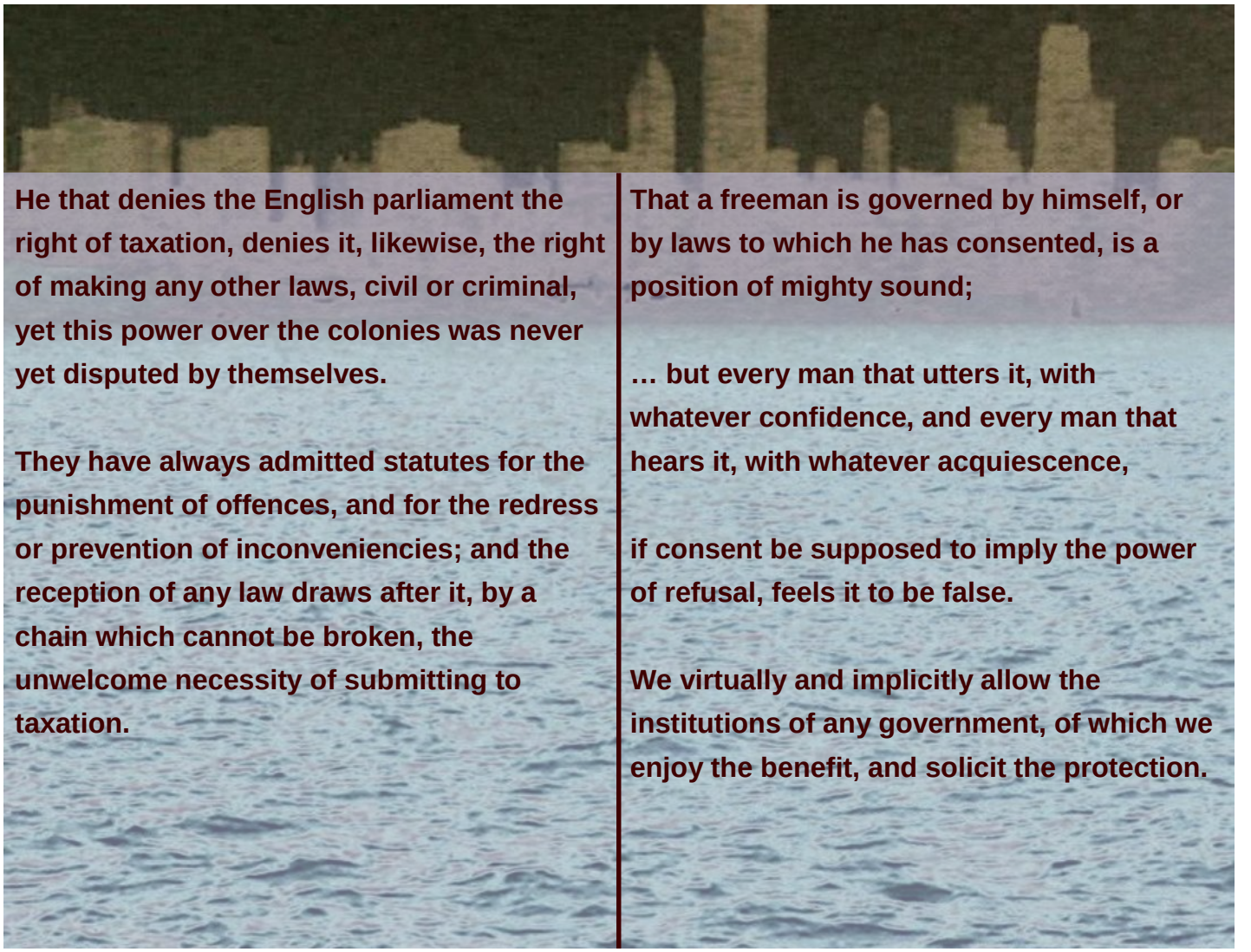

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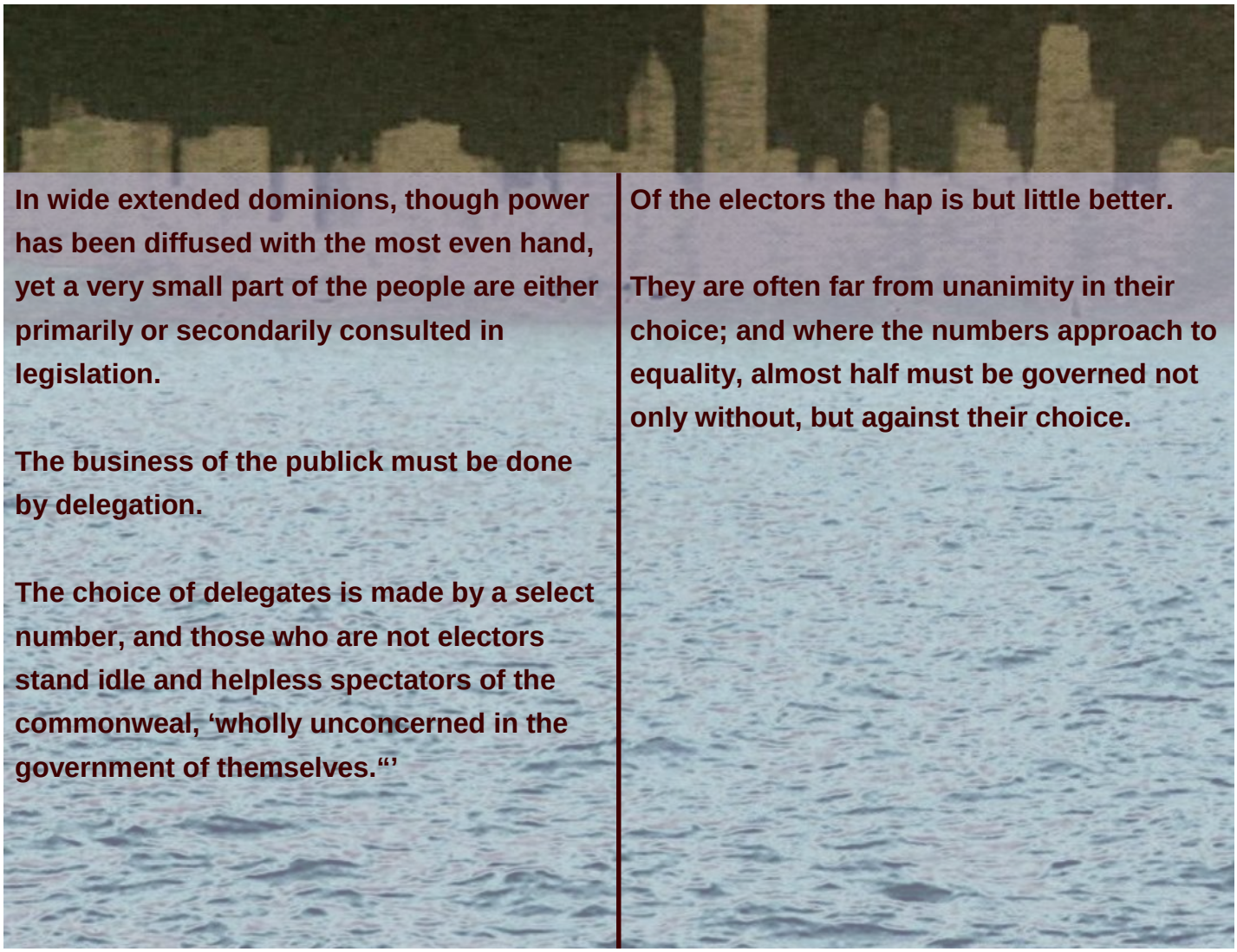

In wide extended dominions, though power has been diffused with the most even hand, yet a very small part of the people are either primarily or secondarily consulted in legislation.

The business of the publick must be done by delegation.

The choice of delegates is made by a select number, and those who are not electors stand idle and helpless spectators of the commonweal, 'wholly unconcerned in the government of themselves.“'

Of the electors the hap is but little better.

They are often far from unanimity in their choice; and where the numbers approach to equality, almost half must be governed not only without, but against their choice.

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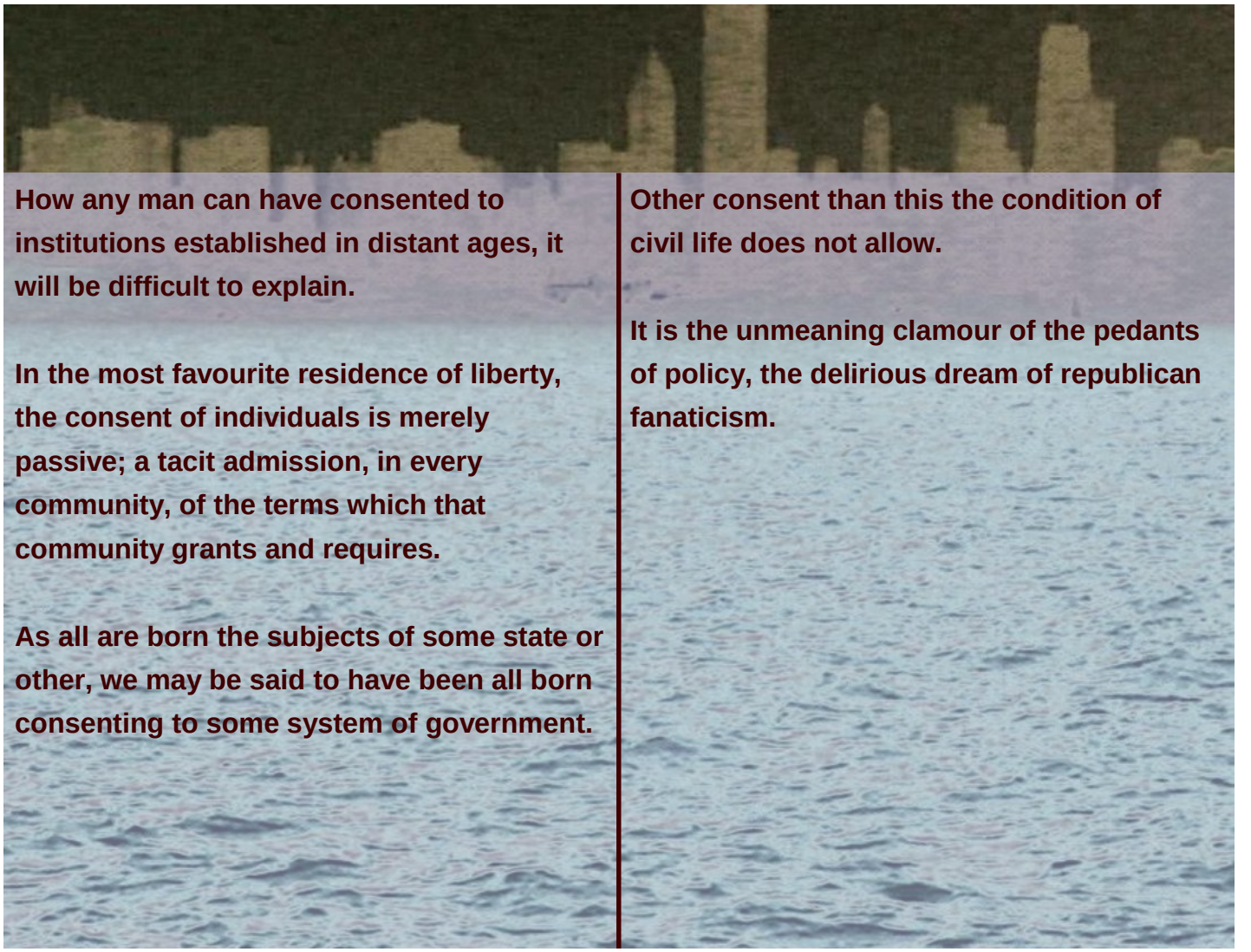

How any man can have consented to institutions established in distant ages, it will be difficult to explain.

In the most favourite residence of liberty, the consent of individuals is merely passive; a tacit admission, in every community, of the terms which that community grants and requires.

As all are born the subjects of some state or other, we may be said to have been all born consenting to some system of government.

Other consent than this the condition of civil life does not allow.

It is the unmeaning clamour of the pedants of policy, the delirious dream of republican fanaticism.

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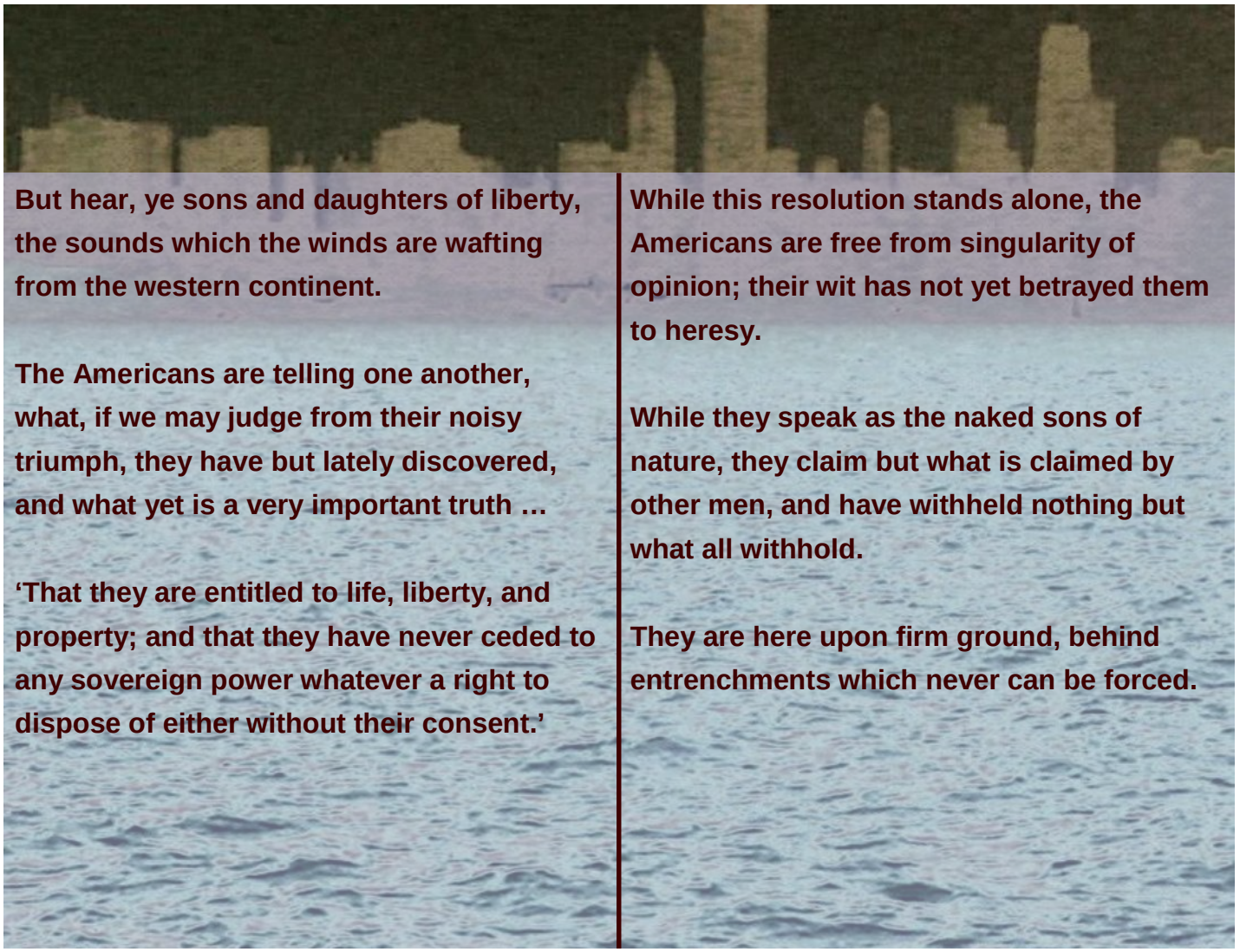

But hear, ye sons and daughters of liberty, the sounds which the winds are wafting from the western continent.

The Americans are telling one another, what, if we may judge from their noisy triumph, they have but lately discovered, and what yet is a very important truth …

'That they are entitled to life, liberty, and property; and that they have never ceded to any sovereign power whatever a right to dispose of either without their consent.'

While this resolution stands alone, the Americans are free from singularity of opinion; their wit has not yet betrayed them to heresy.

While they speak as the naked sons of nature, they claim but what is claimed by other men, and have withheld nothing but what all withhold.

They are here upon firm ground, behind entrenchments which never can be forced.

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Humanity is very uniform.

The Americans have this resemblance to Europeans, that they do not always know when they are well.

They soon quit the fortress, that could neither have been ruined by sophistry, nor battered by declamation.

Their next resolution declares, that 'Their ancestors, who first settled the colonies, were, at the time of their emigration from the mother-country, entitled to all the rights, liberties, and immunities of free and natural-born subjects within the realm of England.'

This, likewise, is true; but when this is granted, their boast of original rights is at an end; they are no longer in a state of nature.

These lords of themselves, these kings of ME, these demigods of independence sink down to colonists, governed by a charter.

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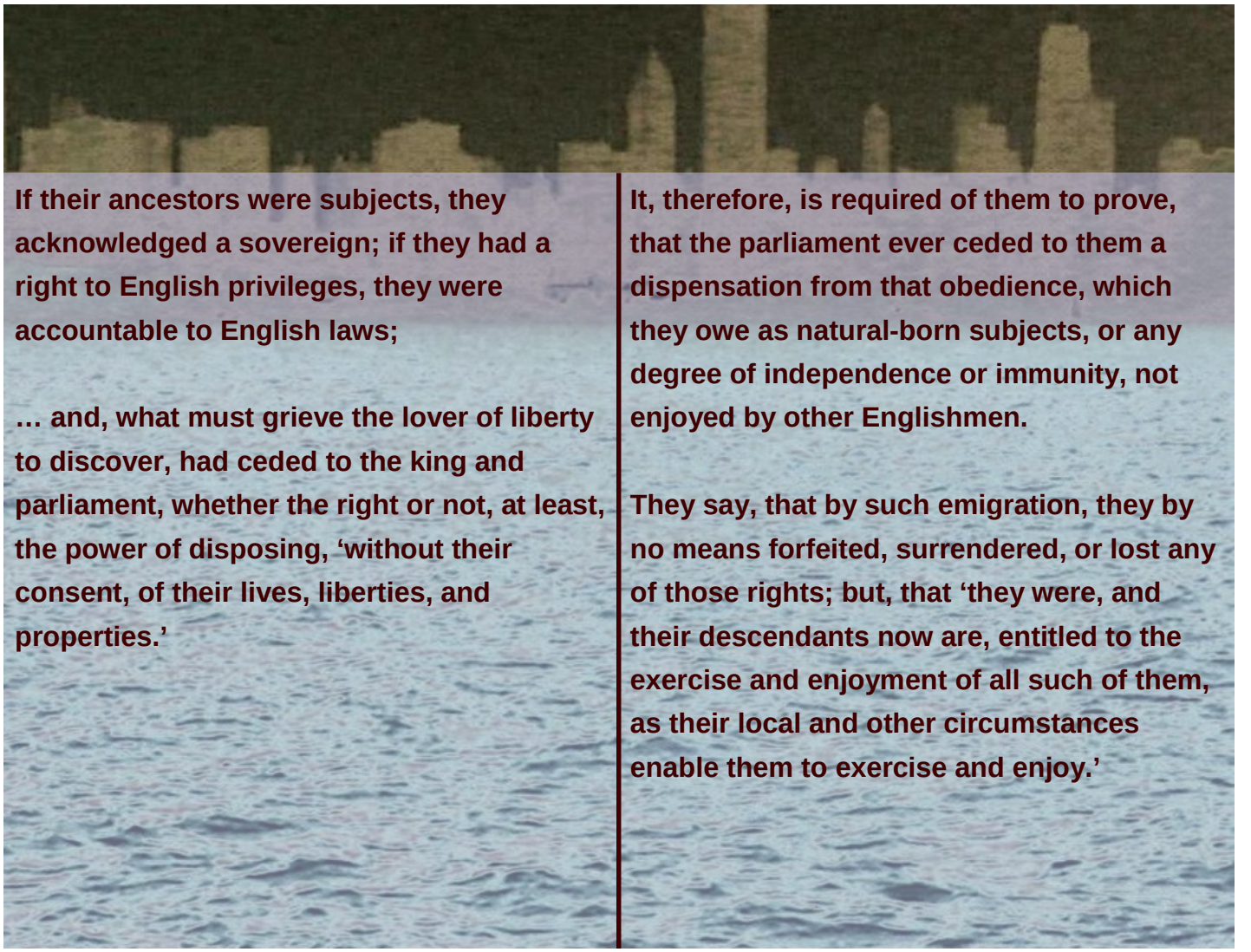

If their ancestors were subjects, they acknowledged a sovereign; if they had a right to English privileges, they were accountable to English laws;

… and, what must grieve the lover of liberty to discover, had ceded to the king and parliament, whether the right or not, at least, the power of disposing, 'without their consent, of their lives, liberties, and properties.'

It, therefore, is required of them to prove, that the parliament ever ceded to them a dispensation from that obedience, which they owe as natural-born subjects, or any degree of independence or immunity, not enjoyed by other Englishmen.

They say, that by such emigration, they by no means forfeited, surrendered, or lost any of those rights; but, that 'they were, and their descendants now are, entitled to the exercise and enjoyment of all such of them, as their local and other circumstances enable them to exercise and enjoy.'

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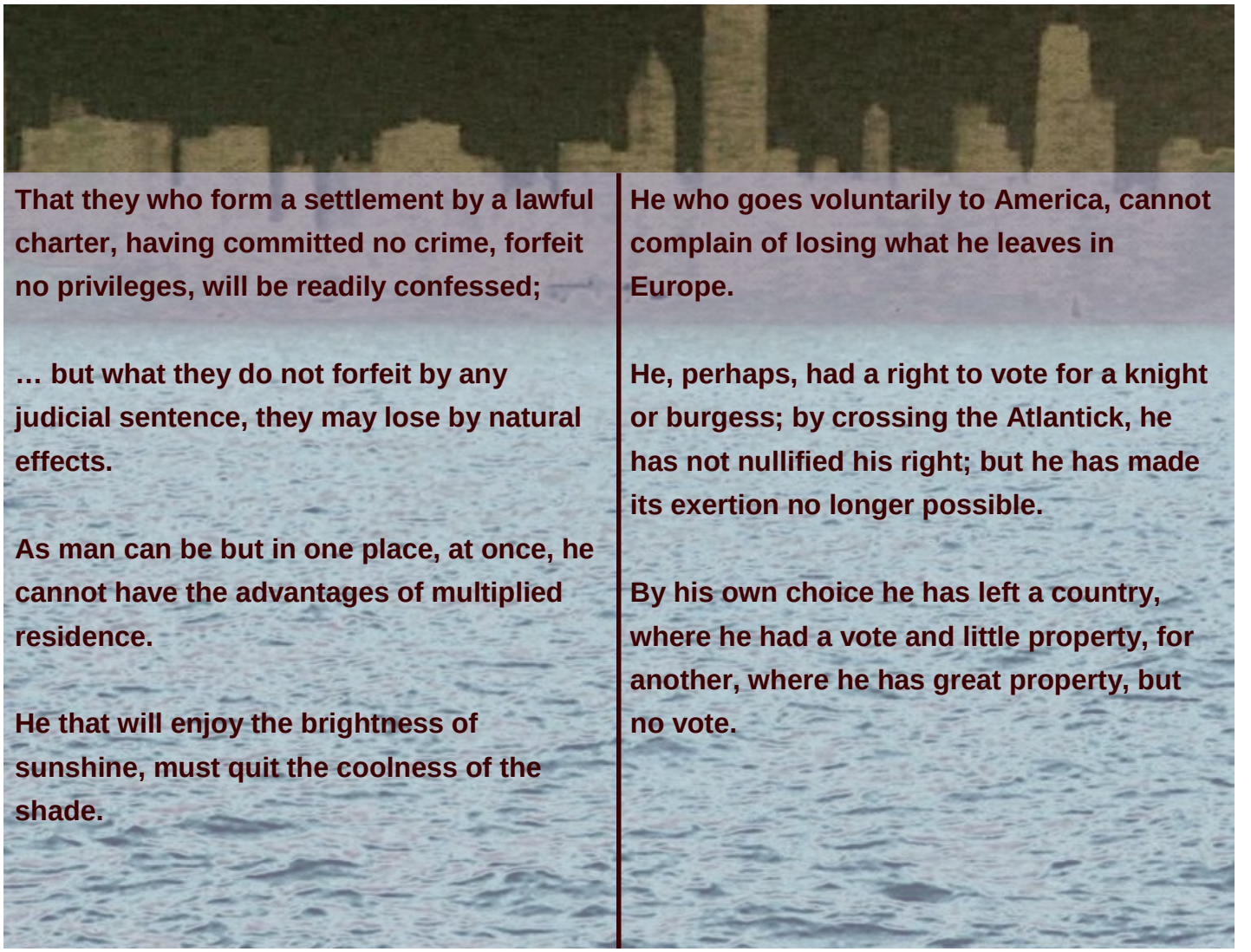

That they who form a settlement by a lawful charter, having committed no crime, forfeit no privileges, will be readily confessed;

… but what they do not forfeit by any judicial sentence, they may lose by natural effects.

As man can be but in one place, at once, he cannot have the advantages of multiplied residence.

He that will enjoy the brightness of sunshine, must quit the coolness of the shade.

He who goes voluntarily to America, cannot complain of losing what he leaves in Europe.

He, perhaps, had a right to vote for a knight or burgess; by crossing the Atlantick, he has not nullified his right; but he has made its exertion no longer possible.

By his own choice he has left a country, where he had a vote and little property, for another, where he has great property, but no vote.

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But as this preference was deliberate and unconstrained, he is still "concerned in the government of himself;" he has reduced himself from a voter, to one of the innumerable multitude that have no vote.

He has truly "ceded his right," but he still is governed by his own consent; because he has consented to throw his atom of interest into the general mass of the community.

Of the consequences of his own act he has no cause to complain; he has chosen, or intended to choose, the greater good; he is represented, as himself desired, in the general representation.

But the privileges of an American scorn the limits of place; they are part of himself, and cannot be lost by departure from his country; they float in the air, or glide under the ocean:

'Doris amara suam non intermisceat undam.'

A planter, wherever he settles, is not only a freeman, but a legislator: 'ubi imperator, ibi Roma.'

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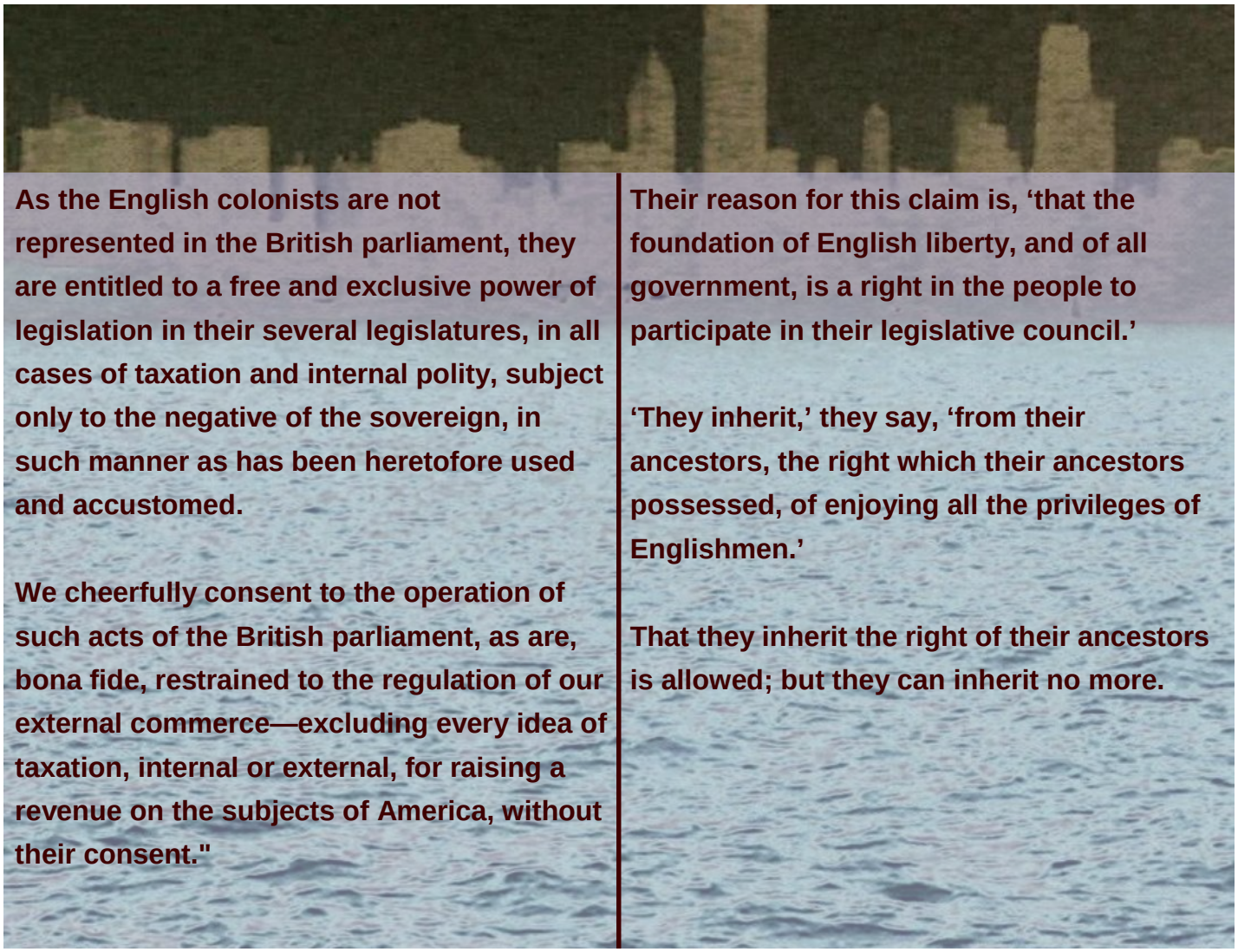

As the English colonists are not represented in the British parliament, they are entitled to a free and exclusive power of legislation in their several legislatures, in all cases of taxation and internal polity, subject only to the negative of the sovereign, in such manner as has been heretofore used and accustomed.

We cheerfully consent to the operation of such acts of the British parliament, as are, bona fide, restrained to the regulation of our external commerce—excluding every idea of taxation, internal or external, for raising a revenue on the subjects of America, without their consent."

Their reason for this claim is, 'that the foundation of English liberty, and of all government, is a right in the people to participate in their legislative council.'

'They inherit,' they say, 'from their ancestors, the right which their ancestors possessed, of enjoying all the privileges of Englishmen.'

That they inherit the right of their ancestors is allowed; but they can inherit no more.

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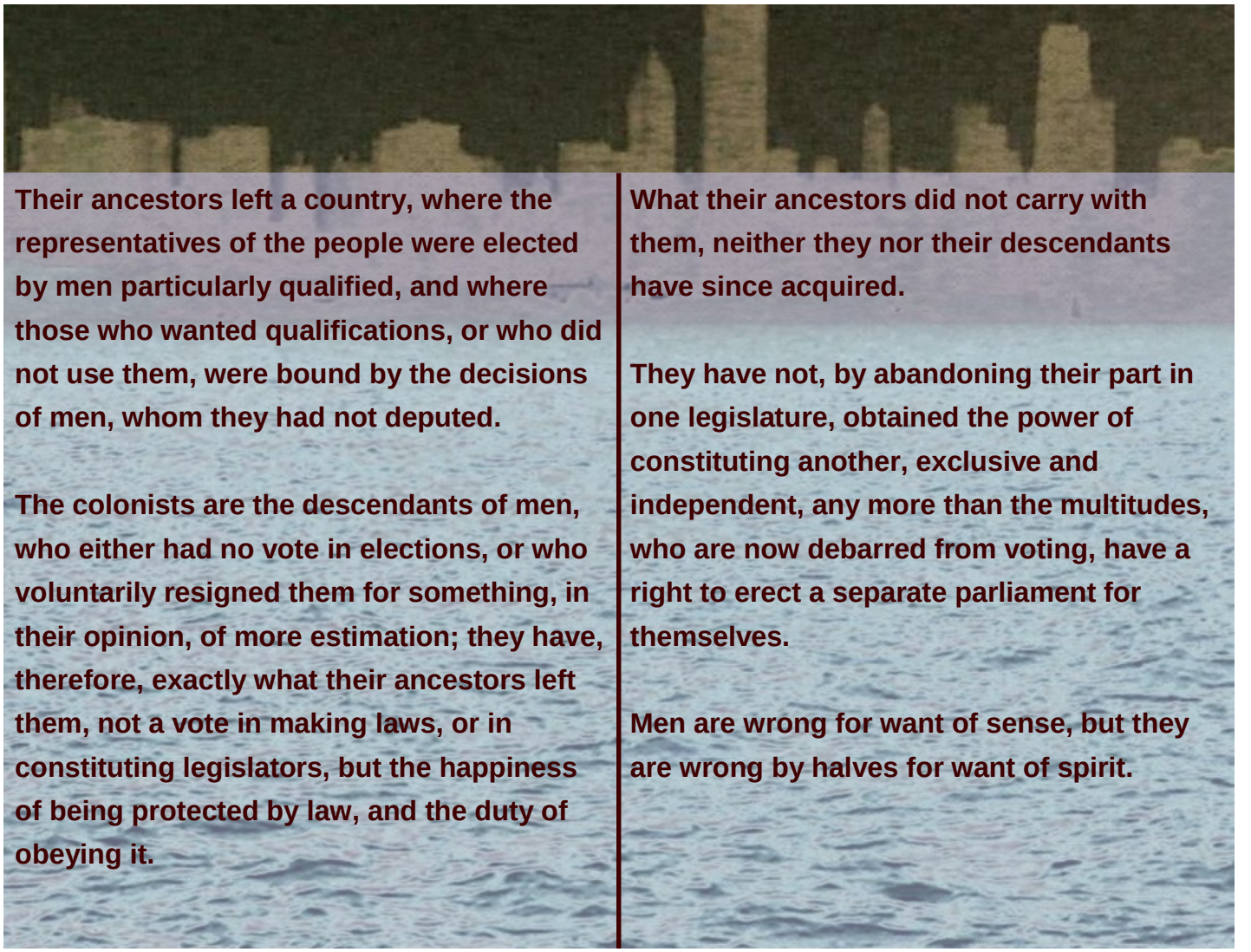

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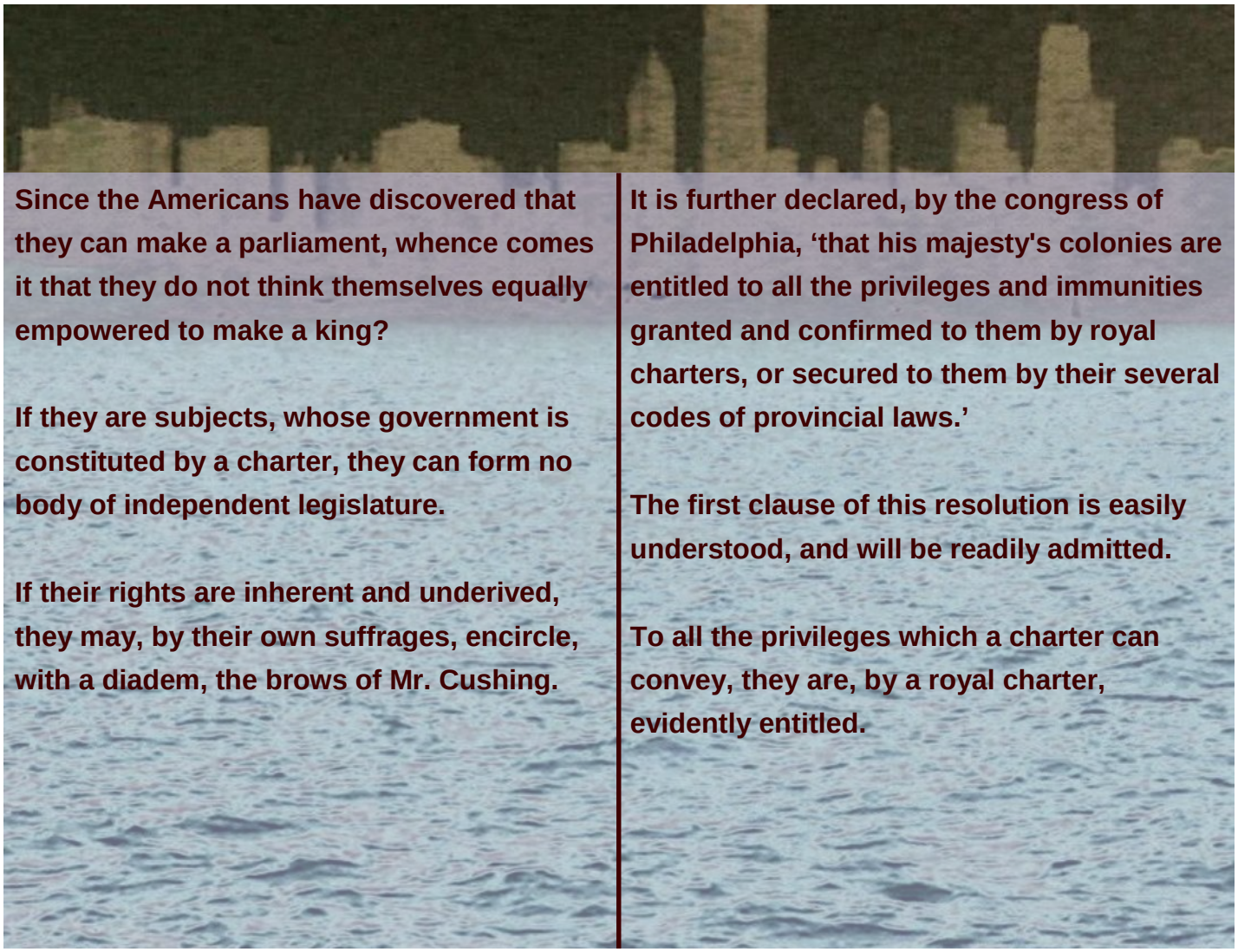

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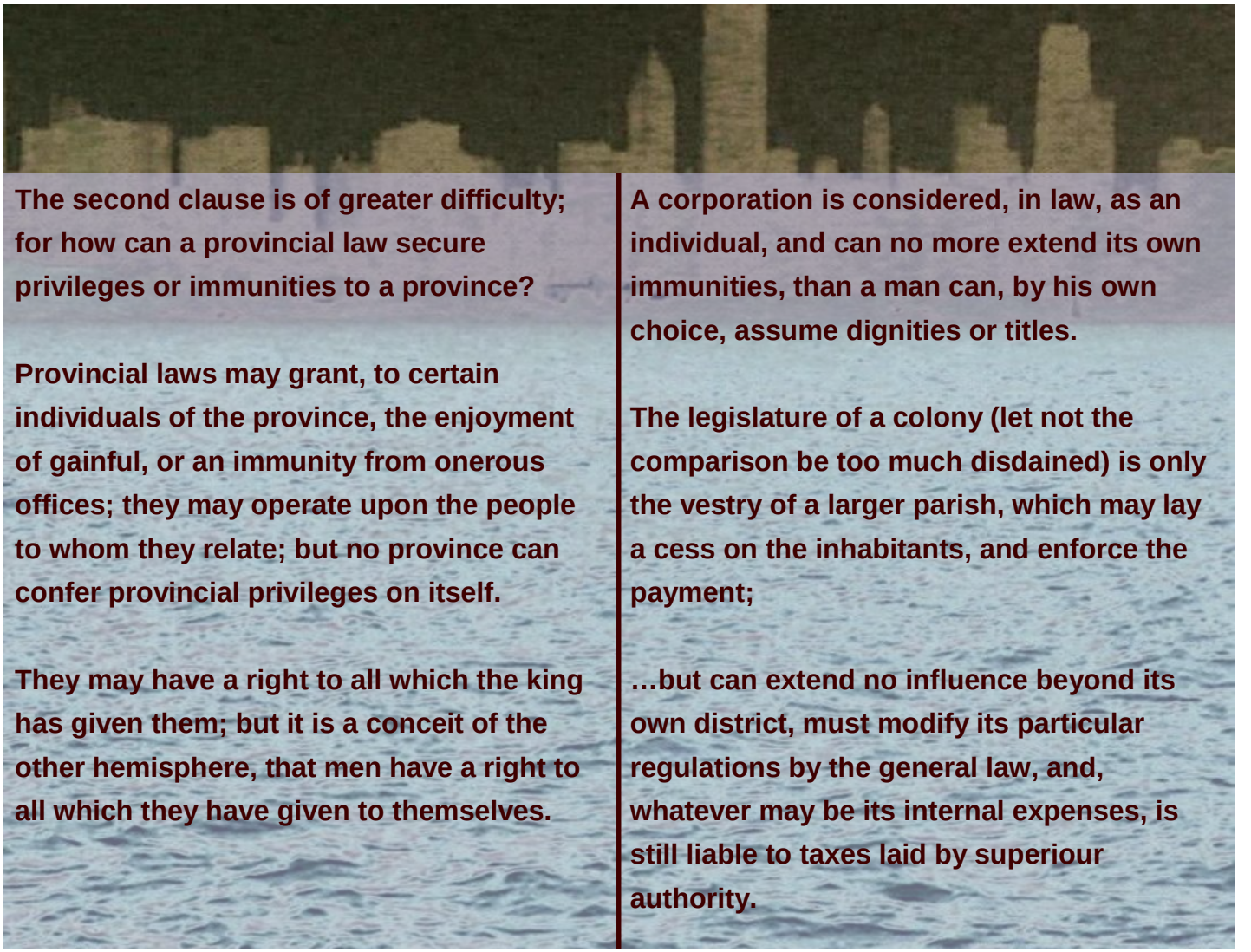

The second clause is of greater difficulty; for how can a provincial law secure privileges or immunities to a province?

Provincial laws may grant, to certain individuals of the province, the enjoyment of gainful, or an immunity from onerous offices; they may operate upon the people to whom they relate; but no province can confer provincial privileges on itself.

They may have a right to all which the king has given them; but it is a conceit of the other hemisphere, that men have a right to all which they have given to themselves.

A corporation is considered, in law, as an individual, and can no more extend its own immunities, than a man can, by his own choice, assume dignities or titles.

The legislature of a colony (let not the comparison be too much disdained) is only the vestry of a larger parish, which may lay a cess on the inhabitants, and enforce the payment;

…but can extend no influence beyond its own district, must modify its particular regulations by the general law, and, whatever may be its internal expenses, is still liable to taxes laid by superiour authority.

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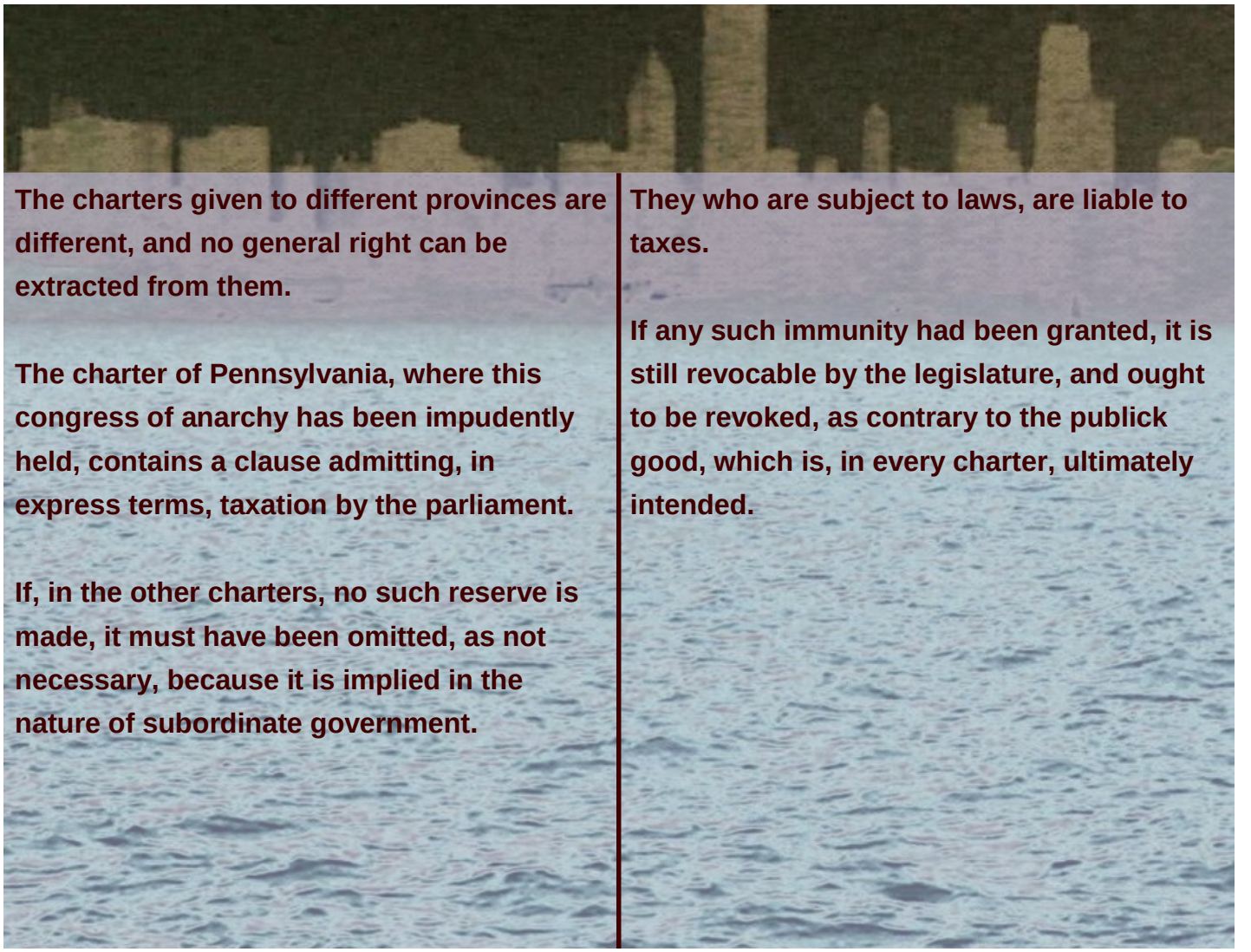

The charters given to different provinces are different, and no general right can be extracted from them.

The charter of Pennsylvania, where this congress of anarchy has been impudently held, contains a clause admitting, in express terms, taxation by the parliament.

If, in the other charters, no such reserve is made, it must have been omitted, as not necessary, because it is implied in the nature of subordinate government.

They who are subject to laws, are liable to taxes.

If any such immunity had been granted, it is still revocable by the legislature, and ought to be revoked, as contrary to the publick good, which is, in every charter, ultimately intended.

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Suppose it true, that any such exemption is contained in the charter of Maryland, it can be pleaded only by the Marylanders.

It is of no use for any other province;

… and, with regard even to them, must have been considered as one of the grants in which the king has been deceived;

… and annulled, as mischievous to the publick, by sacrificing to one little settlement the general interest of the empire; as infringing the system of dominion, and violating the compact of government.

But Dr. Tucker has shown, that even this charter promises no exemption from parliamentary taxes.

In the controversy agitated about the beginning of this century, whether the English laws could bind Ireland, Davenant, who defended against Molyneux the claims of England, considered it as necessary to prove nothing more, than that the present Irish must be deemed a colony.

The necessary connexion of representatives with taxes, seems to have sunk deep into many of those minds, that admit sounds, without their meaning.

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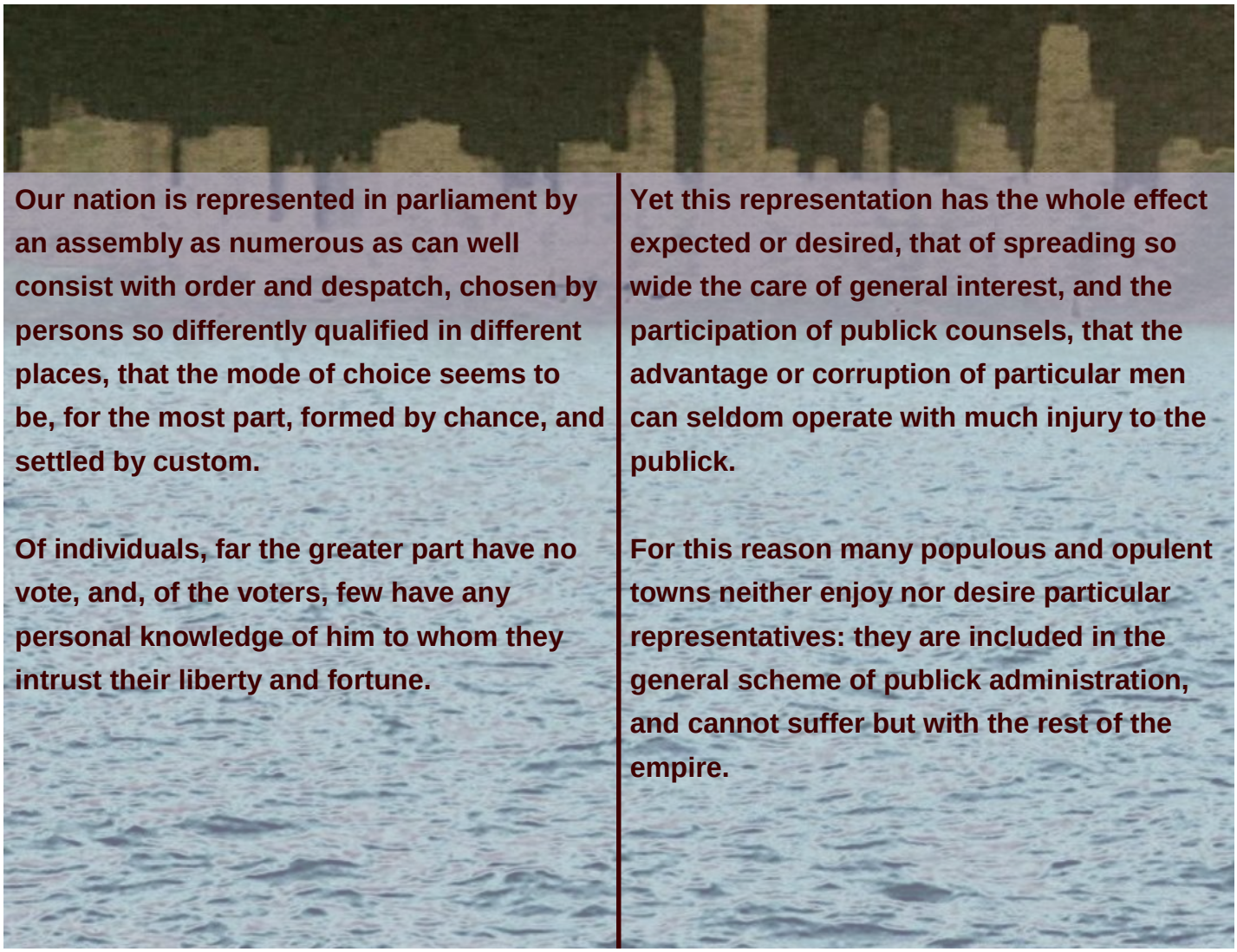

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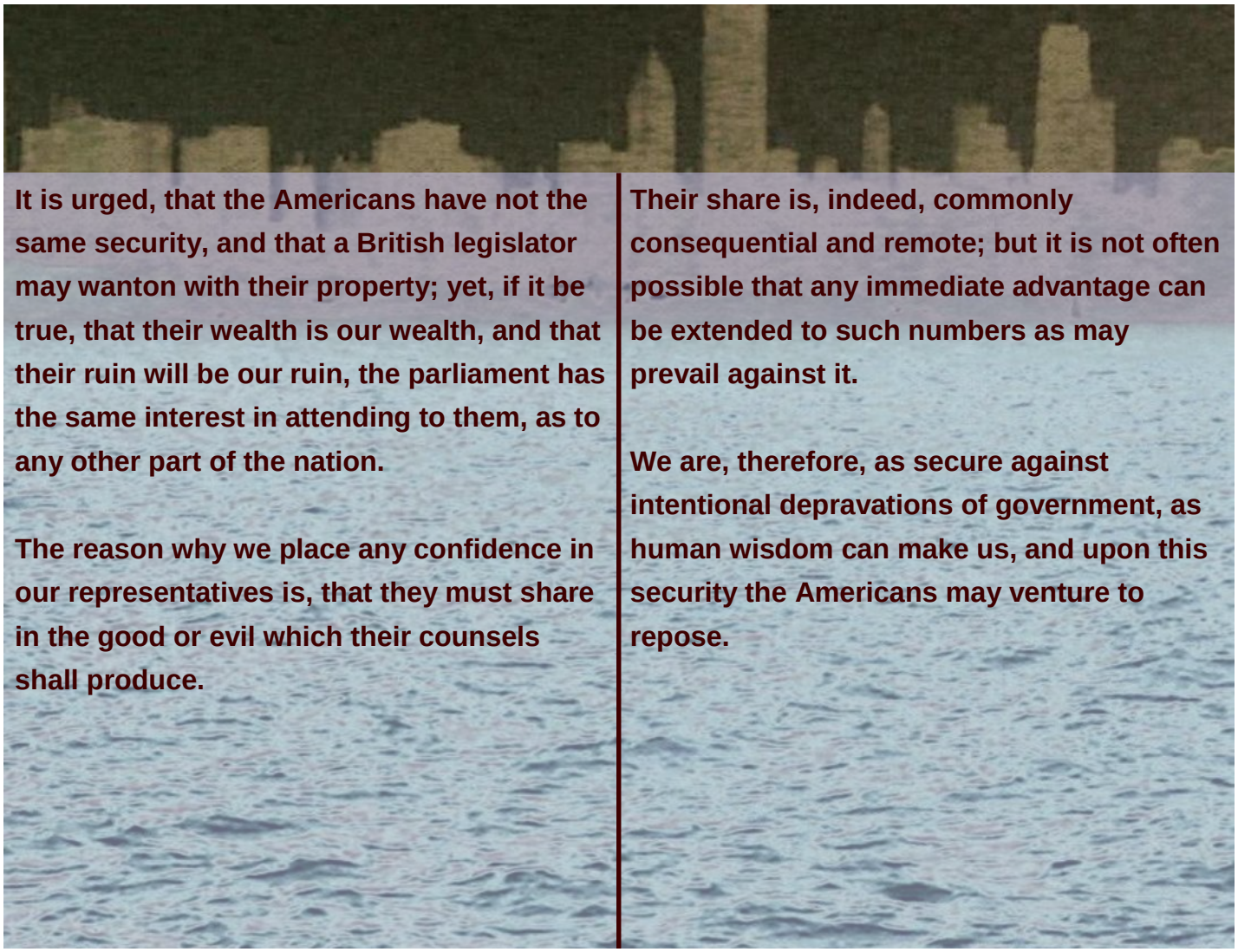

It is urged, that the Americans have not the same security, and that a British legislator may wanton with their property; yet, if it be true, that their wealth is our wealth, and that their ruin will be our ruin, the parliament has the same interest in attending to them, as to any other part of the nation.

The reason why we place any confidence in our representatives is, that they must share in the good or evil which their counsels shall produce.

Their share is, indeed, commonly consequential and remote; but it is not often possible that any immediate advantage can be extended to such numbers as may prevail against it.

We are, therefore, as secure against intentional depravations of government, as human wisdom can make us, and upon this security the Americans may venture to repose.

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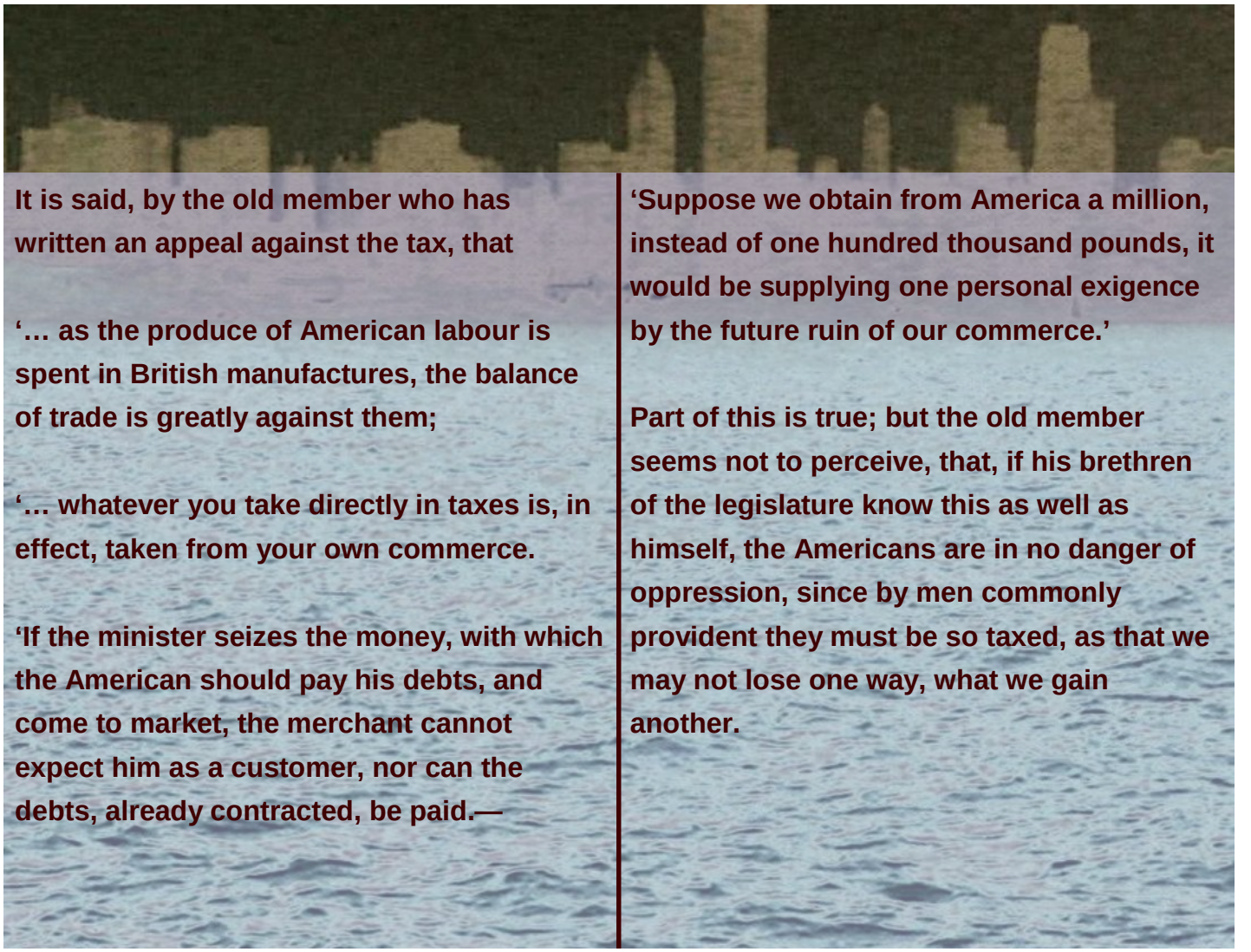

It is said, by the old member who has written an appeal against the tax, that

'… as the produce of American labour is spent in British manufactures, the balance of trade is greatly against them;

'… whatever you take directly in taxes is, in effect, taken from your own commerce.

'If the minister seizes the money, with which the American should pay his debts, and come to market, the merchant cannot expect him as a customer, nor can the debts, already contracted, be paid.—

'Suppose we obtain from America a million, instead of one hundred thousand pounds, it would be supplying one personal exigence by the future ruin of our commerce.'

Part of this is true; but the old member seems not to perceive, that, if his brethren of the legislature know this as well as himself, the Americans are in no danger of oppression, since by men commonly provident they must be so taxed, as that we may not lose one way, what we gain another.

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The same old member has discovered, that the judges formerly thought it illegal to tax Ireland, and declares that no cases can be more alike than those of Ireland and America; yet the judges whom he quotes have mentioned a difference.

Ireland, they say, 'hath a parliament of its own.'

When any colony has an independent parliament, acknowledged by the parliament of Britain, the cases will differ less.

Yet, by the sixth of George the first, chapter fifth, the acts of the British parliament bind Ireland.

It is urged, that when Wales, Durham, and Chester were divested of their particular privileges, or ancient government, and reduced to the state of English counties, they had representatives assigned them.

To those from whom something had been taken, something in return might properly be given.

To the Americans their charters are left, as they were, nor have they lost any thing, except that of which their sedition has deprived them.

If they were to be represented in parliament, something would be granted, though nothing is withdrawn.

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The inhabitants of Chester, Durham, and Wales were invited to exchange their peculiar institutions for the power of voting, which they wanted before.

The Americans have voluntarily resigned the power of voting, to live in distant and separate governments; and what they have voluntarily quitted, they have no right to claim.

It must always be remembered, that they are represented by the same virtual representation as the greater part of Englishmen …

… and that, if by change of place, they have less share in the legislature than is proportionate to their opulence, they, by their removal, gained that opulence, and had originally, and have now, their choice of a vote at home, or riches at a distance.

We are told, what appears to the old member and to others, a position that must drive us into inextricable absurdity: that we have either no right, or the sole right, of taxing the colonies.

The meaning is, that if we can tax them, they cannot tax themselves; and that if they can tax themselves, we cannot tax them.

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We answer, with very little hesitation, that, for the general use of the empire, we have the sole right of taxing them.

If they have contributed any thing in their own assemblies, what they contributed was not paid, but given; it was not a tax or tribute, but a present.

Yet they have the natural and legal power of levying money on themselves for provincial purposes, of providing for their own expense at their own discretion.

Let not this be thought new or strange; it is the state of every parish in the kingdom.

The friends of the Americans are of different opinions.

Some think, that, being unrepresented, they ought to tax themselves; and others, that they ought to have representatives in the British parliament.

If they are to tax themselves, what power is to remain in the supreme legislature?

That they must settle their own mode of levying their money is supposed.

May the British parliament tell them how much they shall contribute?

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If the sum may be prescribed, they will return few thanks for the power of raising it; if they are at liberty to grant or to deny, they are no longer subjects.

If they are to be represented, what number of these western orators are to be admitted? This, I suppose, the parliament must settle; yet, if men have a natural and unalienable right to be represented, who shall determine the number of their delegates? Let us, however, suppose them to send twenty-three, half as many as the kingdom of Scotland, what will this representation avail them? To pay taxes will be still a grievance. The love of money will not be lessened, nor the power of getting it increased.

Whither will this necessity of representation drive us?

Is every petty settlement to be out of the reach of government, till it has sent a senator to parliament; or may two of them, or a greater number, be forced to unite in a single deputation?

What, at last, is the difference between him that is taxed, by compulsion, without representation, and him that is represented, by compulsion, in order to be taxed?

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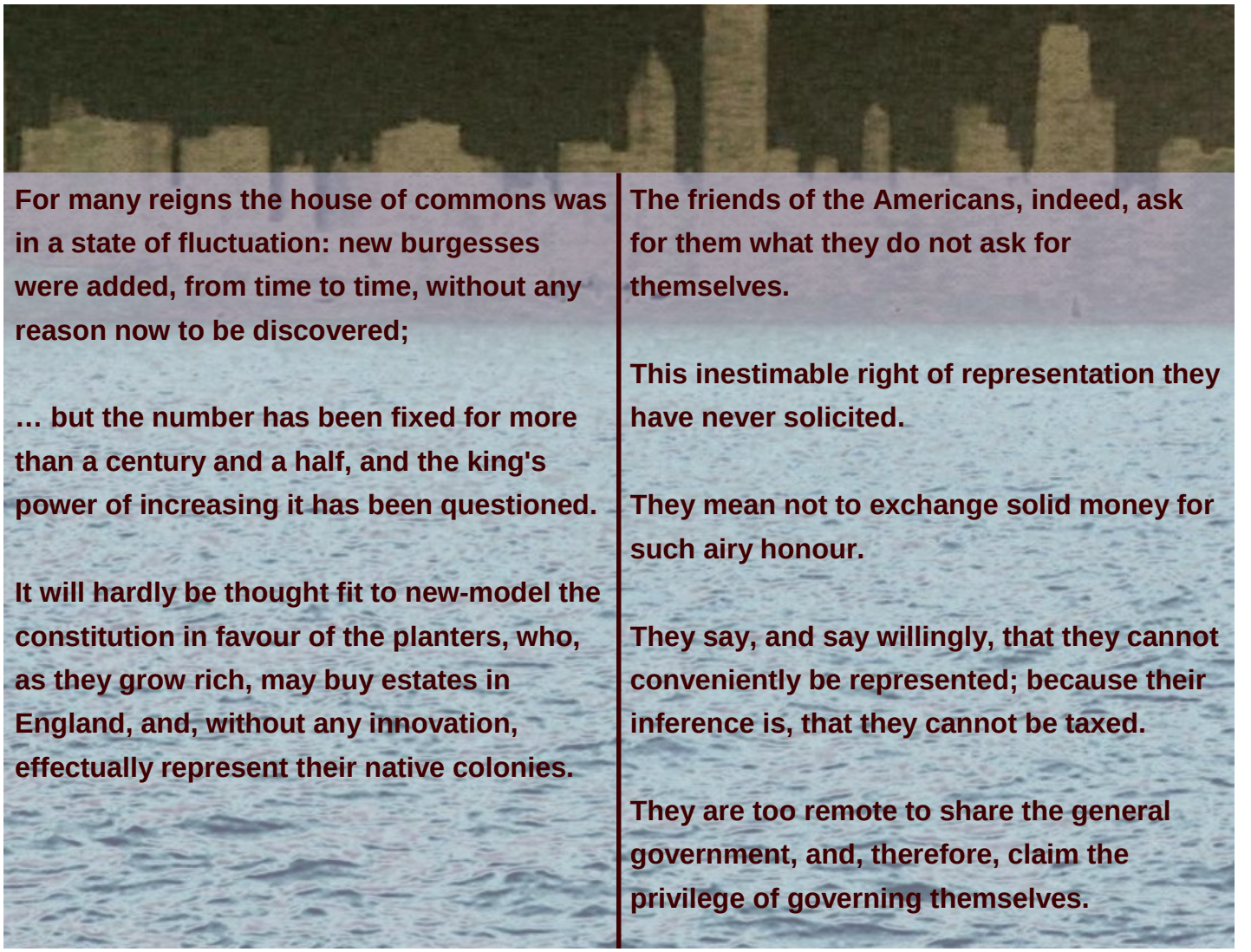

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Of the principles contained in the resolutions of the congress, however wild, indefinite, and obscure, such has been the influence upon American understanding, that, from New England to South Carolina, there is formed a general combination of all the provinces against their mother-country.

The madness of independence has spread from colony to colony, till order is lost, and government despised; and all is filled with misrule, uproar, violence, and confusion.

To be quiet is disaffection, to be loyal is treason.

The congress of Philadelphia, an assembly convened by its own authority, has promulgated a declaration, in compliance with which the communication between Britain and the greatest part of North America, is now suspended.

They ceased to admit the importation of English goods, in December, 1774, and determine to permit the exportation of their own no longer than to November, 1775.

This might seem enough; but they have done more: they have declared, that they shall treat all as enemies who do not concur with them in disaffection and perverseness; and that they will trade with none that shall trade with Britain.

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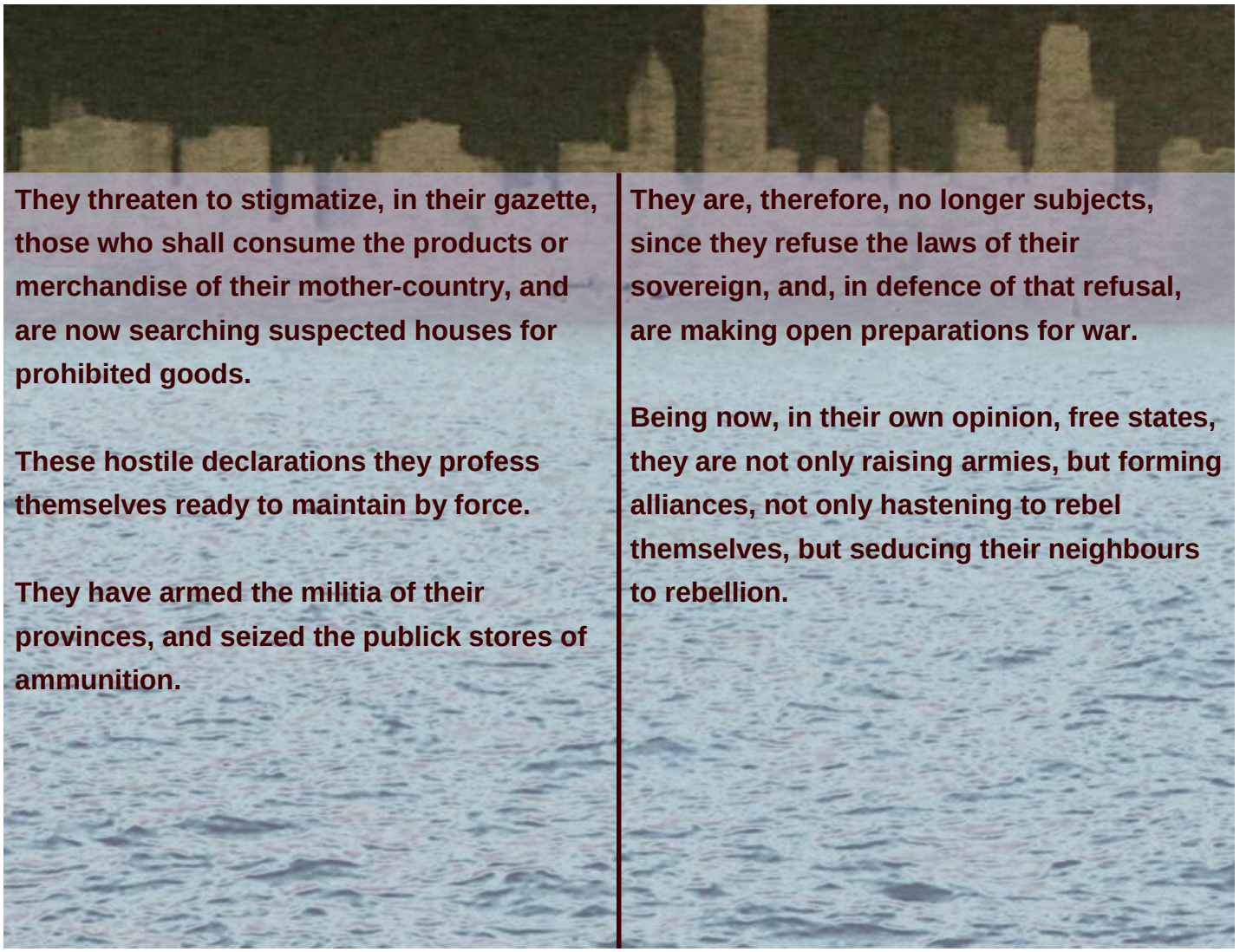

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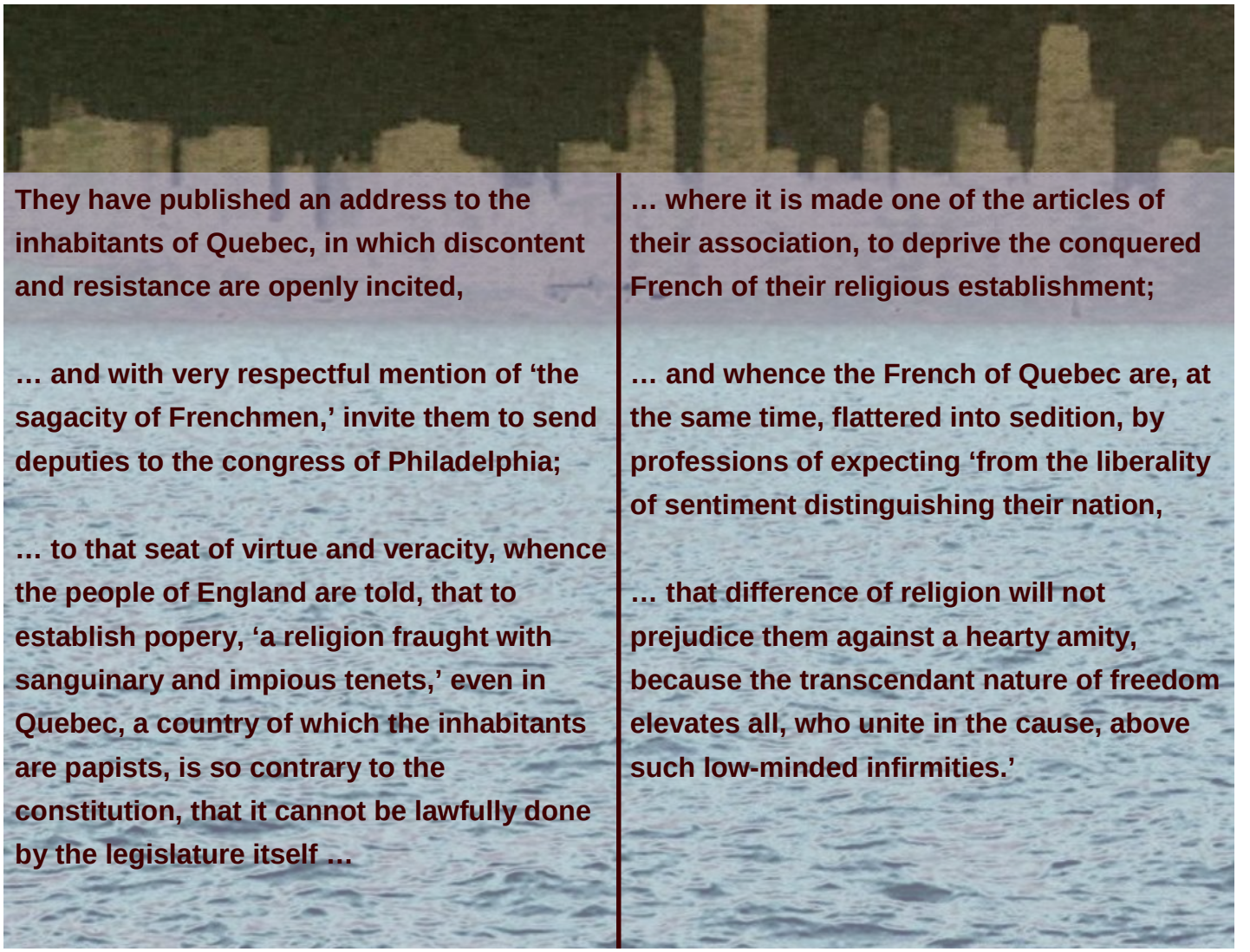

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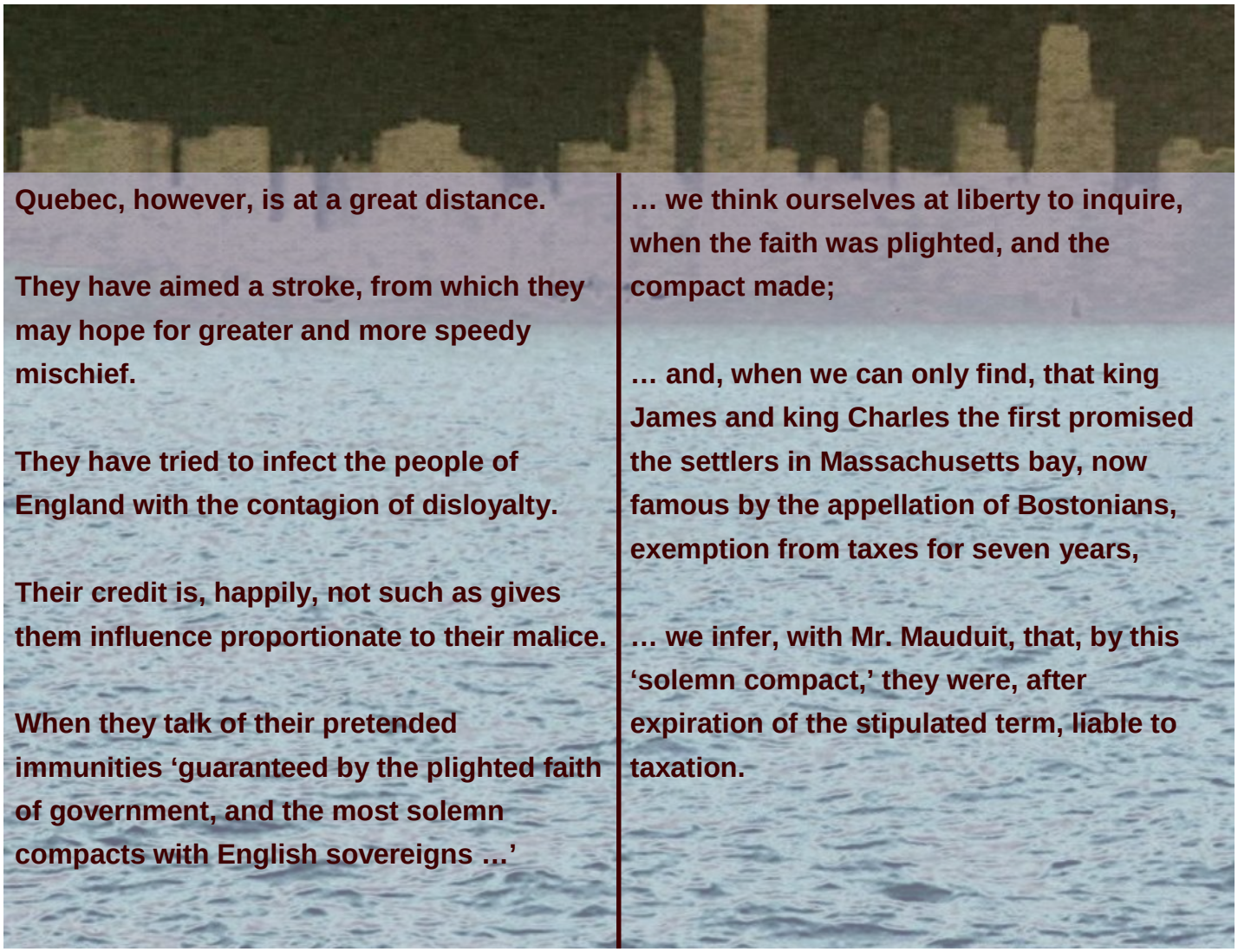

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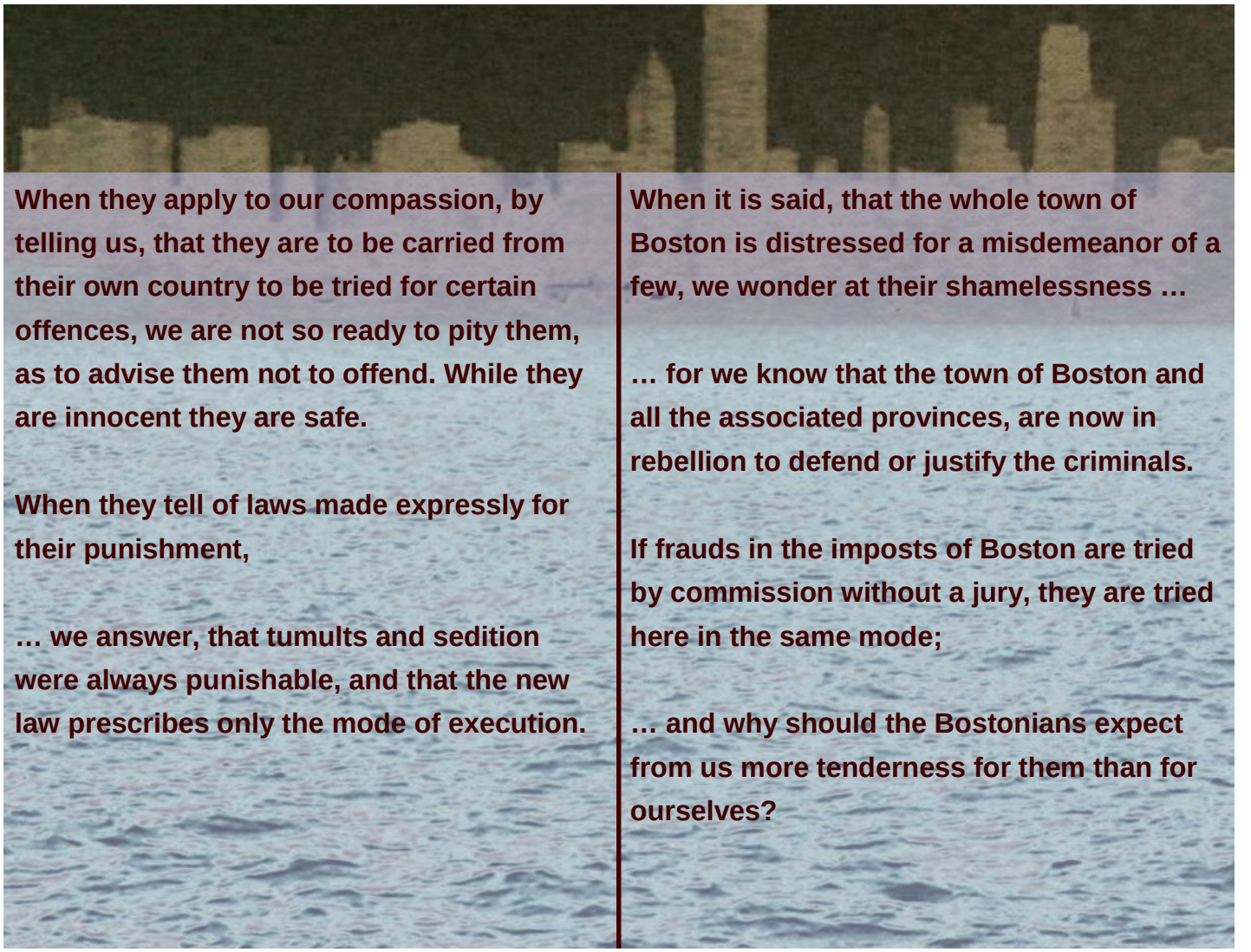

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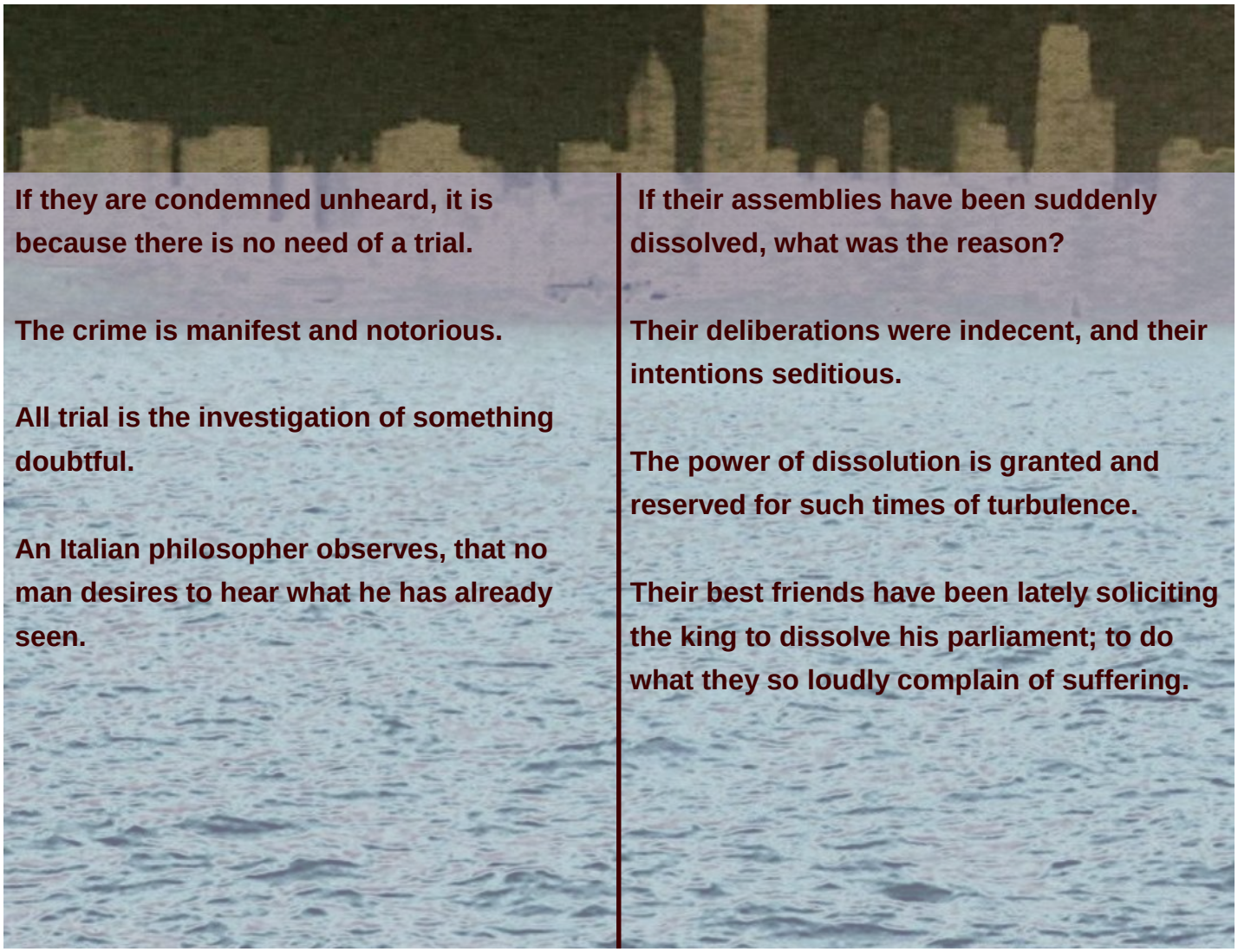

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That the same vengeance involves the innocent and guilty, is an evil to be lamented; but human caution cannot prevent it, nor human power always redress it.

To bring misery on those who have not deserved it, is part of the aggregated guilt of rebellion.

That governours have been sometimes given them, only that a great man might get ease from importunity, and that they have had judges, not always of the deepest learning, or the purest integrity, we have no great reason to doubt, because such misfortunes happen to ourselves.

Whoever is governed, will, sometimes, be governed ill, even when he is most "concerned in his own government."

That improper officers or magistrates are sent, is the crime or folly of those that sent them. When incapacity is discovered, it ought to be removed; if corruption is detected, it ought to be punished.

No government could subsist for a day, if single errours could justify defection.

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One of their complaints is not such as can claim much commiseration from the softest bosom.

They tell us, that we have changed our conduct, and that a tax is now laid, by parliament, on those who were never taxed by parliament before.

To this, we think, it may be easily answered, that the longer they have been spared, the better they can pay.

It is certainly not much their interest to represent innovation as criminal or invidious; for they have introduced into the history of mankind a new mode of disaffection, and have given, I believe, the first example of a proscription published by a colony against the mother-country.

To what is urged of new powers granted to the courts of admiralty, or the extension of authority conferred on the judges, it may be answered, in a few words, that they have themselves made such regulations necessary; that they are established for the prevention of greater evils; at the same time, it must be observed, that these powers have not been extended since the rebellion in America.

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One mode of persuasion their ingenuity has suggested, which it may, perhaps, be less easy to resist.

That we may not look with indifference on the American contest, or imagine that the struggle is for a claim, which, however decided, is of small importance and remote consequence,

… the Philadelphian congress has taken care to inform us, that they are resisting the demands of parliament, as well for our sakes as their own.

Their keenness of perspicacity has enabled them to pursue consequences to a greater distance; to see through clouds impervious to the dimness of European sight; and to find, I know not how, that when they are taxed, we shall be enslaved.

That slavery is a miserable state we have been often told, and, doubtless, many a Briton will tremble to find it so near as in America; but how it will be brought hither the congress must inform us.

The question might distress a common understanding; but the statesmen of the other hemisphere can easily resolve it.

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Our ministers, they say, are our enemies, and if they should carry the point of taxation, may, with the same army, enslave us.

It may be said, we will not pay them; but remember, say the western sages, the taxes from America, and, we may add, the men, and particularly the Roman catholicks of this vast continent, will then be in the power of your enemies.

Nor have you any reason to expect, that, after making slaves of us, many of us will refuse to assist in reducing you to the same abject state."

These are dreadful menaces; but suspecting that they have not much the sound of probability, the congress proceeds:

'Do not treat this as chimerical.

'Know, that in less than half a century, the quitrents reserved to the crown, from the numberless grants of this vast continent, will pour large streams of wealth into the royal coffers.

'If to this be added the power of taxing America, at pleasure, the crown will possess more treasure than may be necessary to purchase the remains of liberty in your island.'

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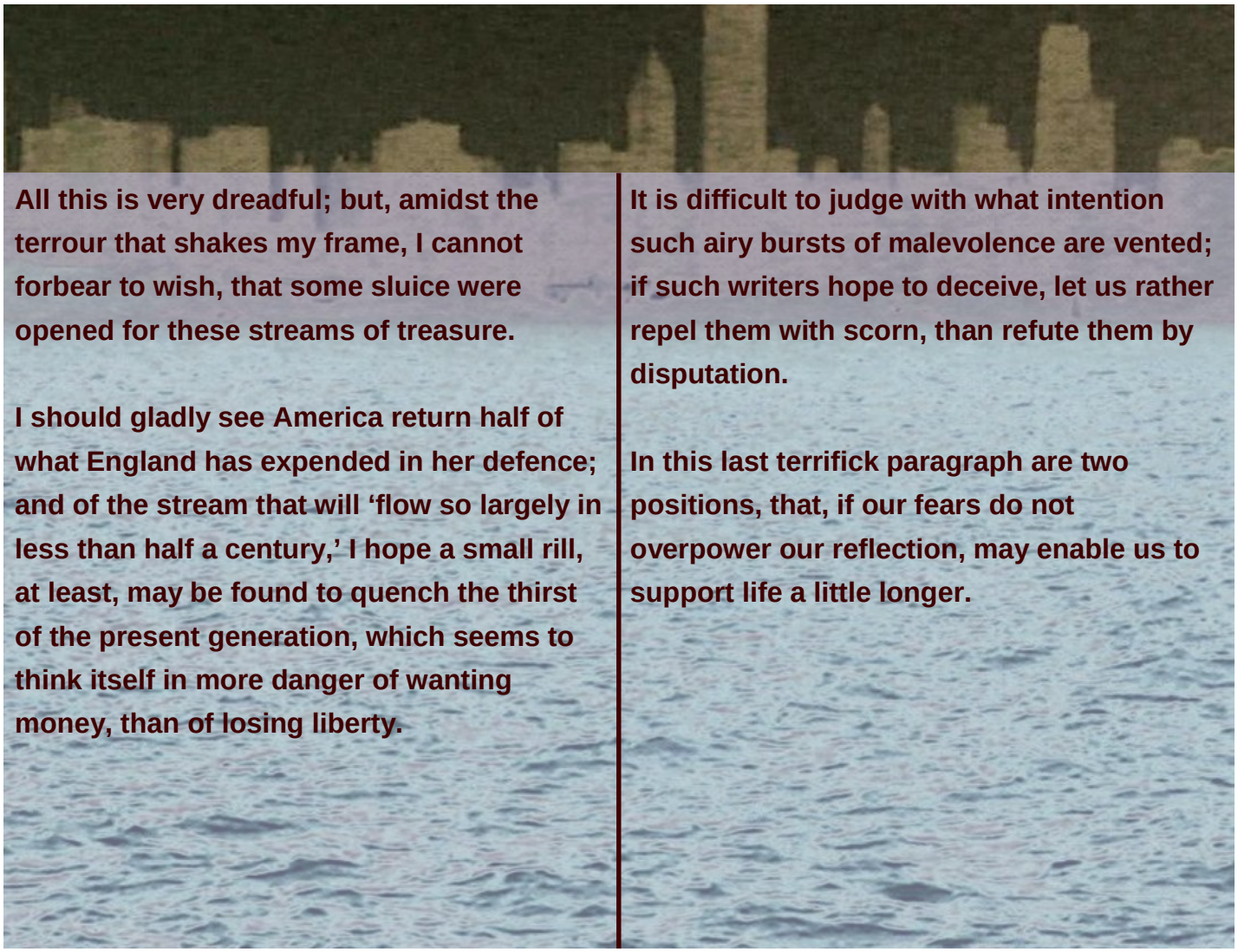

All this is very dreadful; but, amidst the terrour that shakes my frame, I cannot forbear to wish, that some sluice were opened for these streams of treasure.

I should gladly see America return half of what England has expended in her defence; and of the stream that will 'flow so largely in less than half a century,' I hope a small rill, at least, may be found to quench the thirst of the present generation, which seems to think itself in more danger of wanting money, than of losing liberty.

It is difficult to judge with what intention such airy bursts of malevolence are vented; if such writers hope to deceive, let us rather repel them with scorn, than refute them by disputation.

In this last terrifick paragraph are two positions, that, if our fears do not overpower our reflection, may enable us to support life a little longer.

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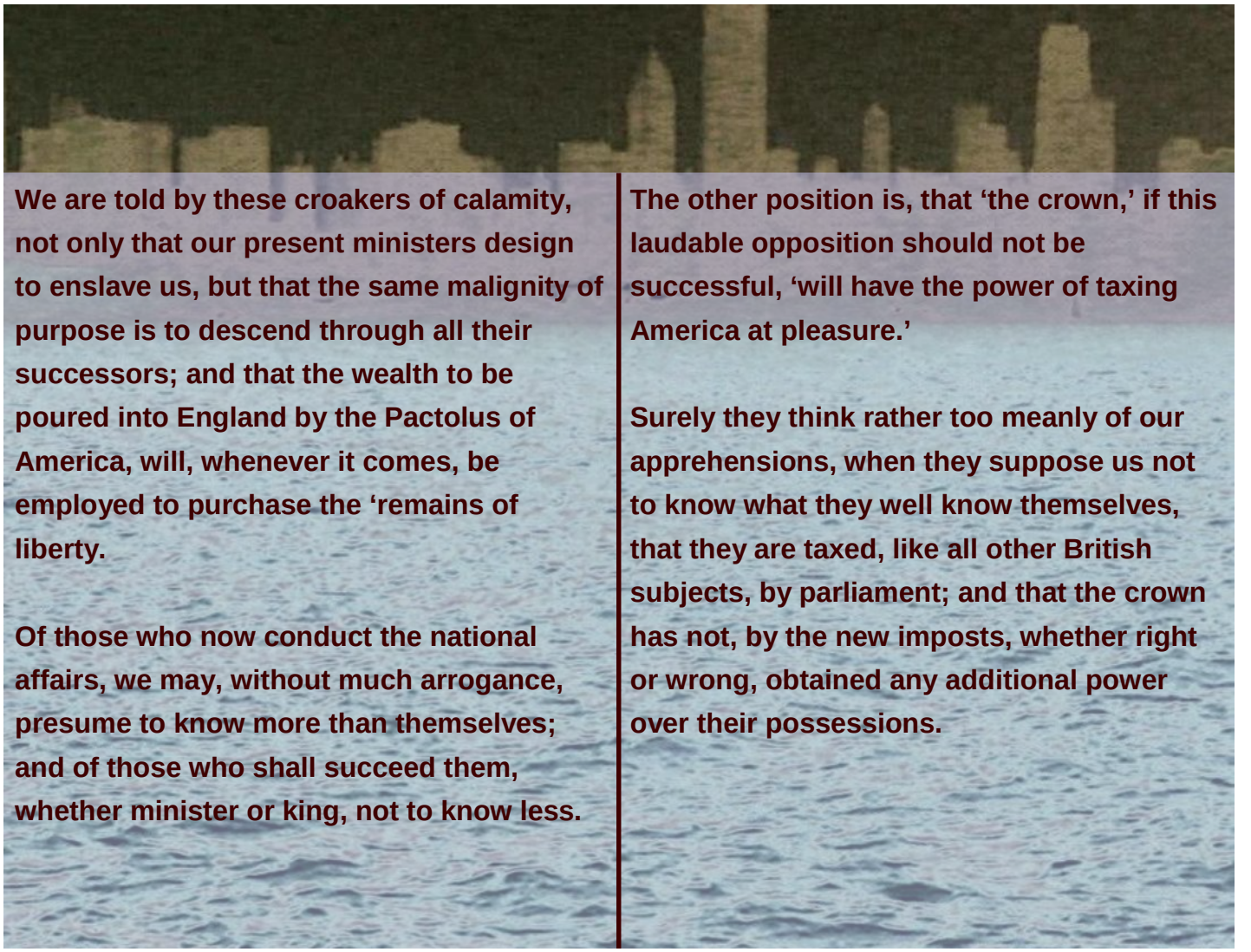

We are told by these croakers of calamity, not only that our present ministers design to enslave us, but that the same malignity of purpose is to descend through all their successors; and that the wealth to be poured into England by the Pactolus of America, will, whenever it comes, be employed to purchase the 'remains of liberty.

Of those who now conduct the national affairs, we may, without much arrogance, presume to know more than themselves; and of those who shall succeed them, whether minister or king, not to know less.

The other position is, that 'the crown,' if this laudable opposition should not be successful, 'will have the power of taxing America at pleasure.'

Surely they think rather too meanly of our apprehensions, when they suppose us not to know what they well know themselves, that they are taxed, like all other British subjects, by parliament; and that the crown has not, by the new imposts, whether right or wrong, obtained any additional power over their possessions.

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It were a curious, but an idle speculation, to inquire, what effect these dictators of sedition expect from the dispersion of their letter among us.

If they believe their own complaints of hardship, and really dread the danger which they describe, they will naturally hope to communicate the same perceptions to their fellow-subjects.

But, probably, in America, as in other places, the chiefs are incendiaries, that hope to rob in the tumults of a conflagration, and toss brands among a rabble passively combustible.

Those who wrote the address, though they have shown no great extent or profundity of mind, are yet, probably, wiser than to believe it:

… but they have been taught, by some master of mischief, how to put in motion the engine of political electricity;

… to attract, by the sounds of liberty and property;

…to repel, by those of popery and slavery; and to give the great stroke, by the name of Boston.

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When subordinate communities oppose the decrees of the general legislature with defiance thus audacious, and malignity thus acrimonious, nothing remains but to conquer or to yield; to allow their claim of independence, or to reduce them, by force, to submission and allegiance.

It might be hoped, that no Englishman could be found, whom the menaces of our own colonists, just rescued from the French, would not move to indignation, like that of the Scythians, who, returning from war, found themselves excluded from their own houses by their slaves.

That corporations, constituted by favour, and existing by sufferance, should dare to prohibit commerce with their native country,

… and threaten individuals by infamy, and societies with, at least, suspension of amity, for daring to be more obedient to government than themselves,

… is a degree of insolence which not only deserves to be punished, but of which the punishment is loudly demanded by the order of life and the peace of nations.

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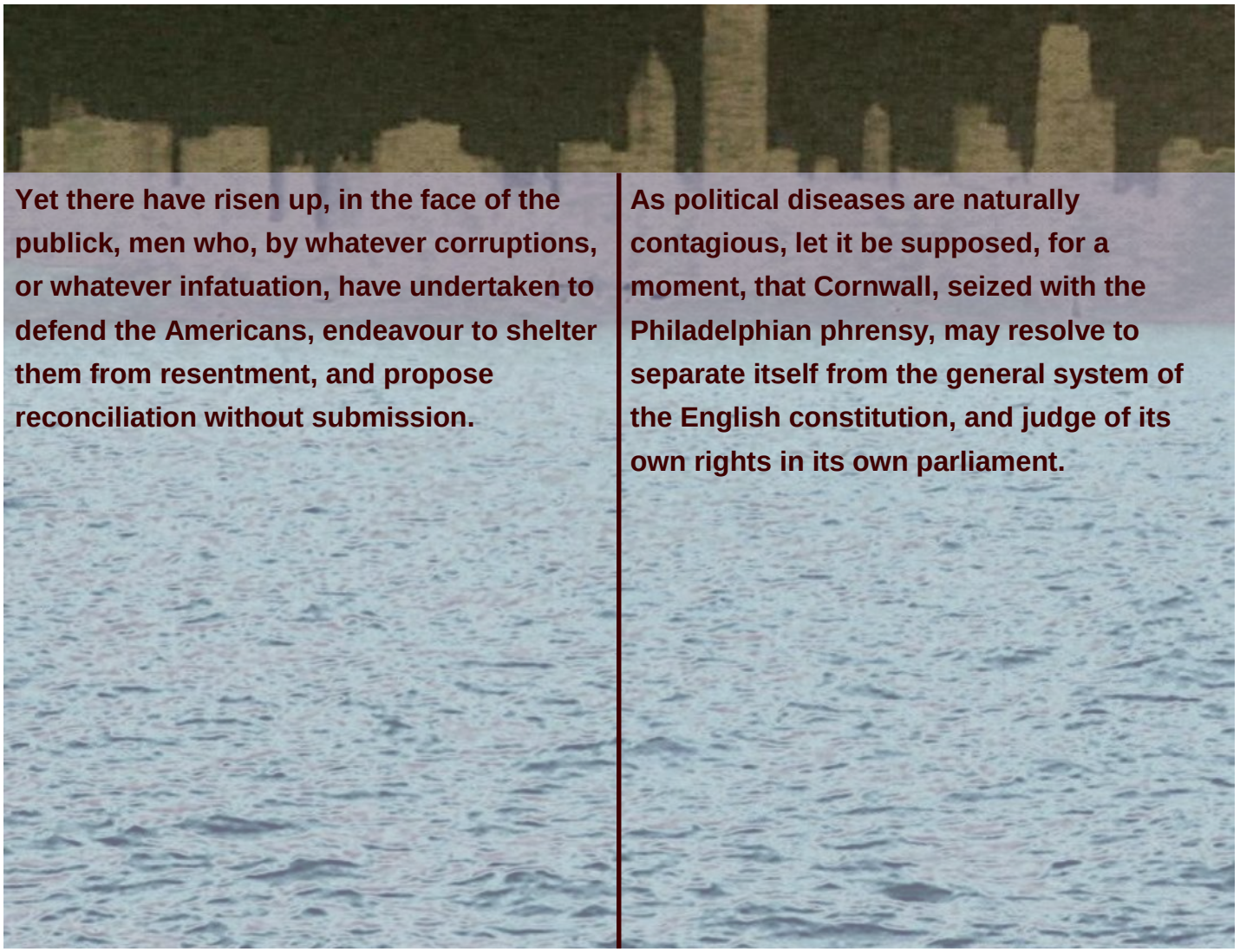

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A congress might then meet at Truro, and address the other counties in a style not unlike the language of the American patriots:

‘Friends and fellow subjects, We, the delegates of the several towns and parishes of Cornwall, assembled to deliberate upon our own state,

… and that of our constituents, having, after serious debate and calm consideration, settled the scheme of our future conduct, hold it necessary to declare the resolutions which we think ourselves entitled to form, by the unalienable rights of reasonable beings …

… and into which we have been compelled by grievances and oppressions, long endured by us in patient silence, not because we did not feel, or could not remove them, but because we were unwilling to give disturbance to a settled government, and hoped that others would, in time, find, like ourselves, their true interest and their original powers, and all cooperate to universal happiness.

‘But since, having long indulged the pleasing expectation, we find general discontent not likely to increase, or not likely to end in general defection, we resolve to erect alone the standard of liberty.

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‘Know then, that you are no longer to consider Cornwall as an English county, visited by English judges, receiving law from an English parliament, or included in any general taxation of the kingdom; but as a state, distinct and independent, governed by its own institutions, administered by its own magistrates, and exempt from any tax or tribute, but such as we shall impose upon ourselves.

‘We are the acknowledged descendants of the earliest inhabitants of Britain, of men, who, before the time of history, took possession of the island desolate and waste, and, therefore, open to the first occupants.

‘Of this descent, our language is a sufficient proof, which, not quite a century ago, was different from yours.

‘Such are the Cornishmen; but who are you? who, but the unauthorised and lawless children of intruders, invaders, and oppressors? who, but the transmitters of wrong, the inheritors of robbery?

‘In claiming independence, we claim but little.

‘We might require you to depart from a land which you possess by usurpation, and to restore all that you have taken from us.

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‘Independence is the gift of nature.

‘No man is born the master of another.

‘Every Cornishman is a freeman; for we have never resigned the rights of humanity: and he only can be thought free, who is 'not governed but by his own consent.

‘You may urge, that the present system of government has descended through many ages, and that we have a larger part in the representation of the kingdom than any other county.

‘All this is true, but it is neither cogent nor persuasive.

‘We look to the original of things.

‘Our union with the English counties was either compelled by force, or settled by compact.

‘That which was made by violence, may by violence be broken.

‘If we were treated as a conquered people, our rights might be obscured, but could never be extinguished.

‘The sword can give nothing but power, which a sharper sword can take away.

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‘If our union was by compact, whom could the compact bind, but those that concurred in the stipulations?

‘We gave our ancestors no commission to settle the terms of future existence.

‘They might be cowards that were frighted, or blockheads that were cheated; but, whatever they were, they could contract only for themselves.

‘What they could establish, we can annul.

‘Against our present form of government, it shall stand in the place of all argument, that we do not like it.

‘While we are governed as we do not like, where is our liberty?

‘We do not like taxes, we will, therefore, not be taxed: we do not like your laws, and will not obey them.

‘The taxes laid by our representatives, are laid, you tell us, by our own consent; but we will no longer consent to be represented.

‘Our number of legislators was originally a burden, and ought to have been refused; it is now considered as a disproportionate advantage; who, then, will complain if we resign it?

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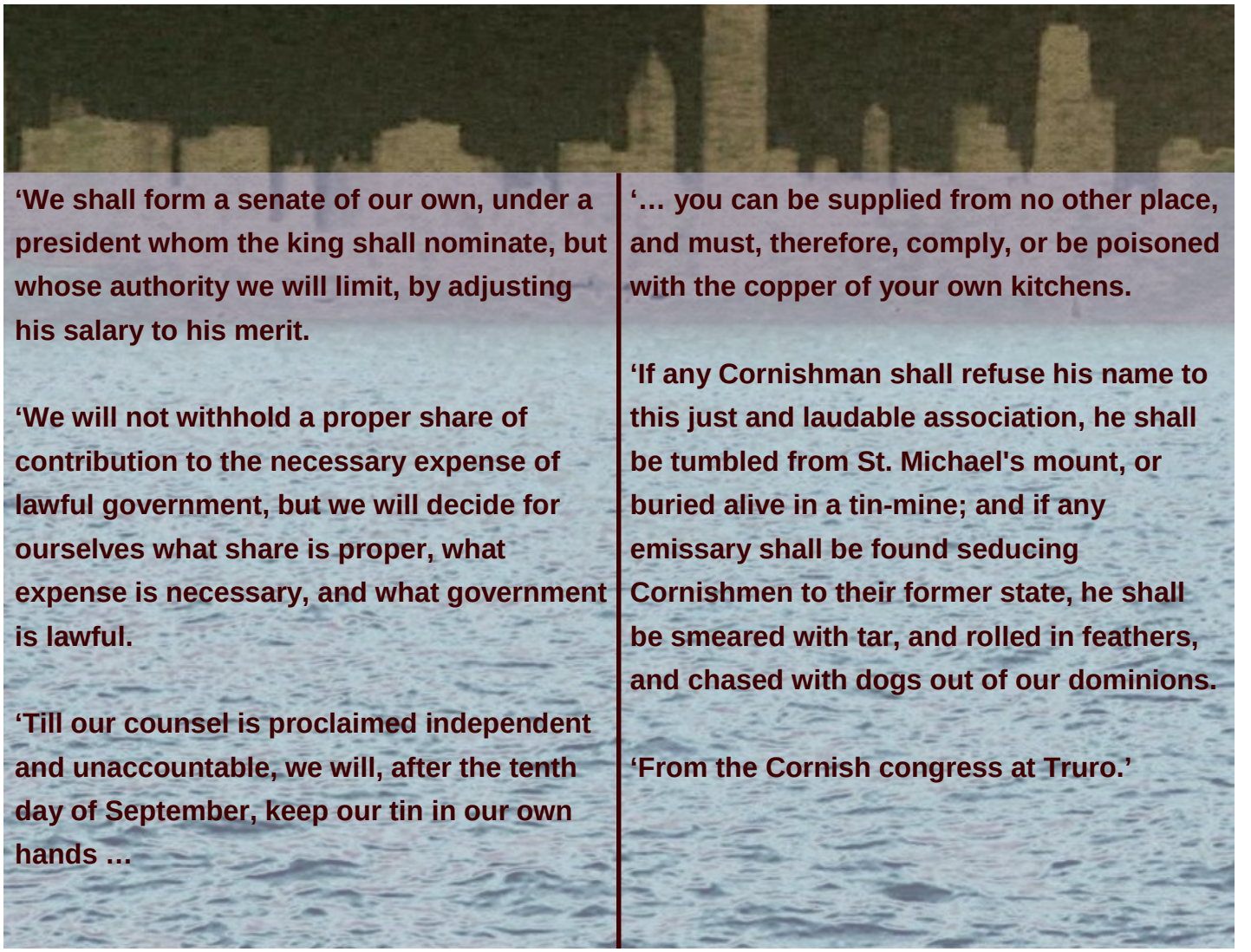

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Of this memorial, what could be said, but that it was written in jest, or written by a madman?

Yet I know not whether the warmest admirers of Pennsylvanian eloquence, can find any argument in the addresses of the congress, that is not, with greater strength, urged by the Cornishman.

The argument of the irregular troops of controversy, stripped of its colours, and turned out naked to the view, is no more than this.

Liberty is the birthright of man, and where obedience is compelled, there is no liberty.

The answer is equally simple.

Government is necessary to man, and where obedience is not compelled, there is no government.

If the subject refuses to obey, it is the duty of authority to use compulsion.

Society cannot subsist but by the power, first of making laws, and then of enforcing them.

To one of the threats hissed out by the congress, I have put nothing similar into the Cornish proclamation; because it is too wild for folly, and too foolish for madness.

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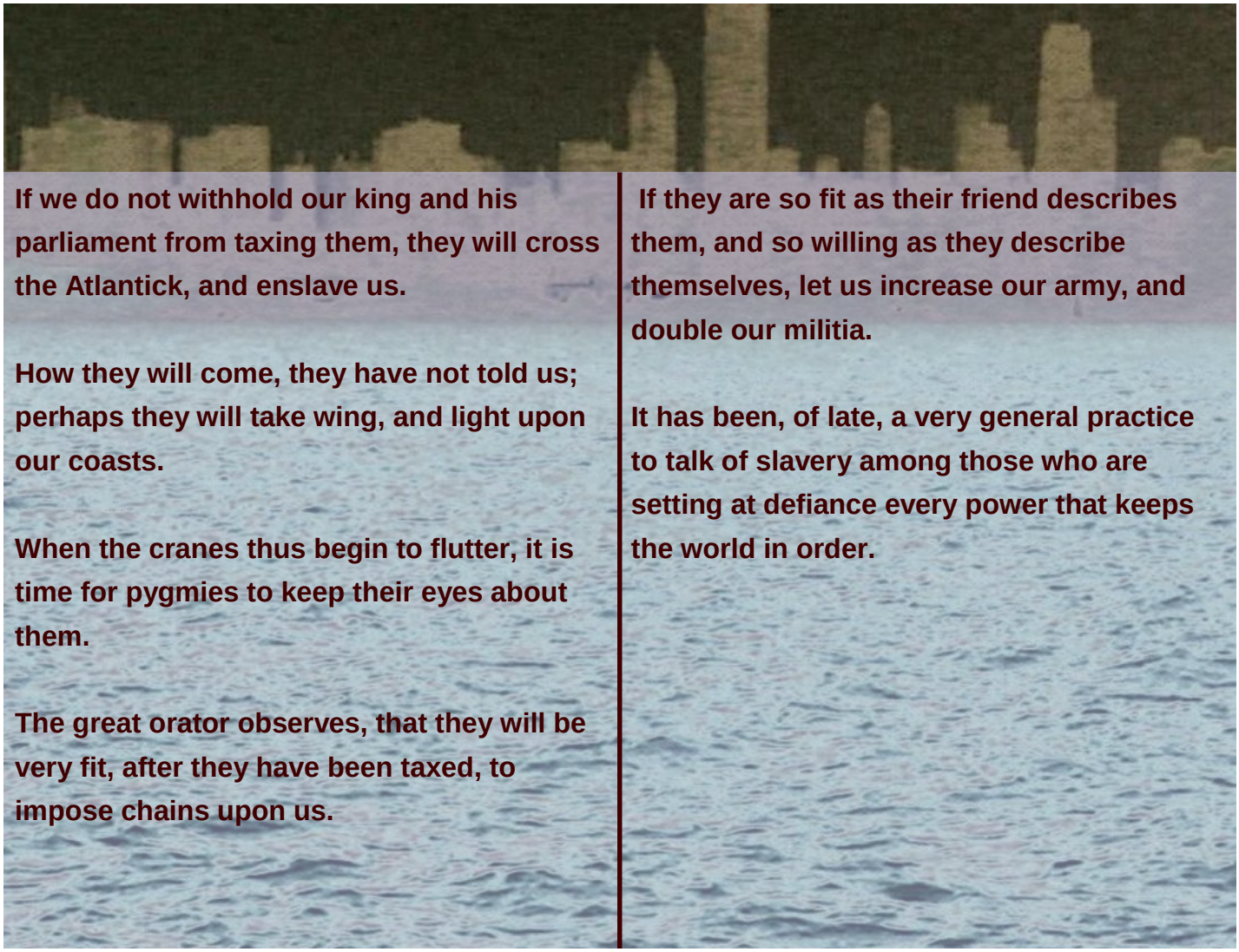

If we do not withhold our king and his parliament from taxing them, they will cross the Atlantick, and enslave us.

How they will come, they have not told us; perhaps they will take wing, and light upon our coasts.

When the cranes thus begin to flutter, it is time for pygmies to keep their eyes about them.

The great orator observes, that they will be very fit, after they have been taxed, to impose chains upon us.

If they are so fit as their friend describes them, and so willing as they describe themselves, let us increase our army, and double our militia.

It has been, of late, a very general practice to talk of slavery among those who are setting at defiance every power that keeps the world in order.

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If the learned author of the Reflections on Learning has rightly observed, that no man ever could give law to language, it will be vain to prohibit the use of the word slavery; but I could wish it more discreetly uttered: it is driven, at one time, too hard into our ears by the loud hurricane of Pennsylvanian eloquence, and, at another, glides too cold into our hearts by the soft conveyance of a female patriot, bewailing the miseries of her friends and fellow-citizens.

Such has been the progress of sedition, that those who, a few years ago, disputed only our right of laying taxes, now question the validity of every act of legislation.

They consider themselves as emancipated from obedience, and as being no longer the subjects of the British crown.

They leave us no choice, but of yielding or conquering, of resigning our dominion or maintaining it by force.

From force many endeavours have been used, either to dissuade, or to deter us.

Sometimes the merit of the Americans is exalted, and sometimes their sufferings are aggravated.

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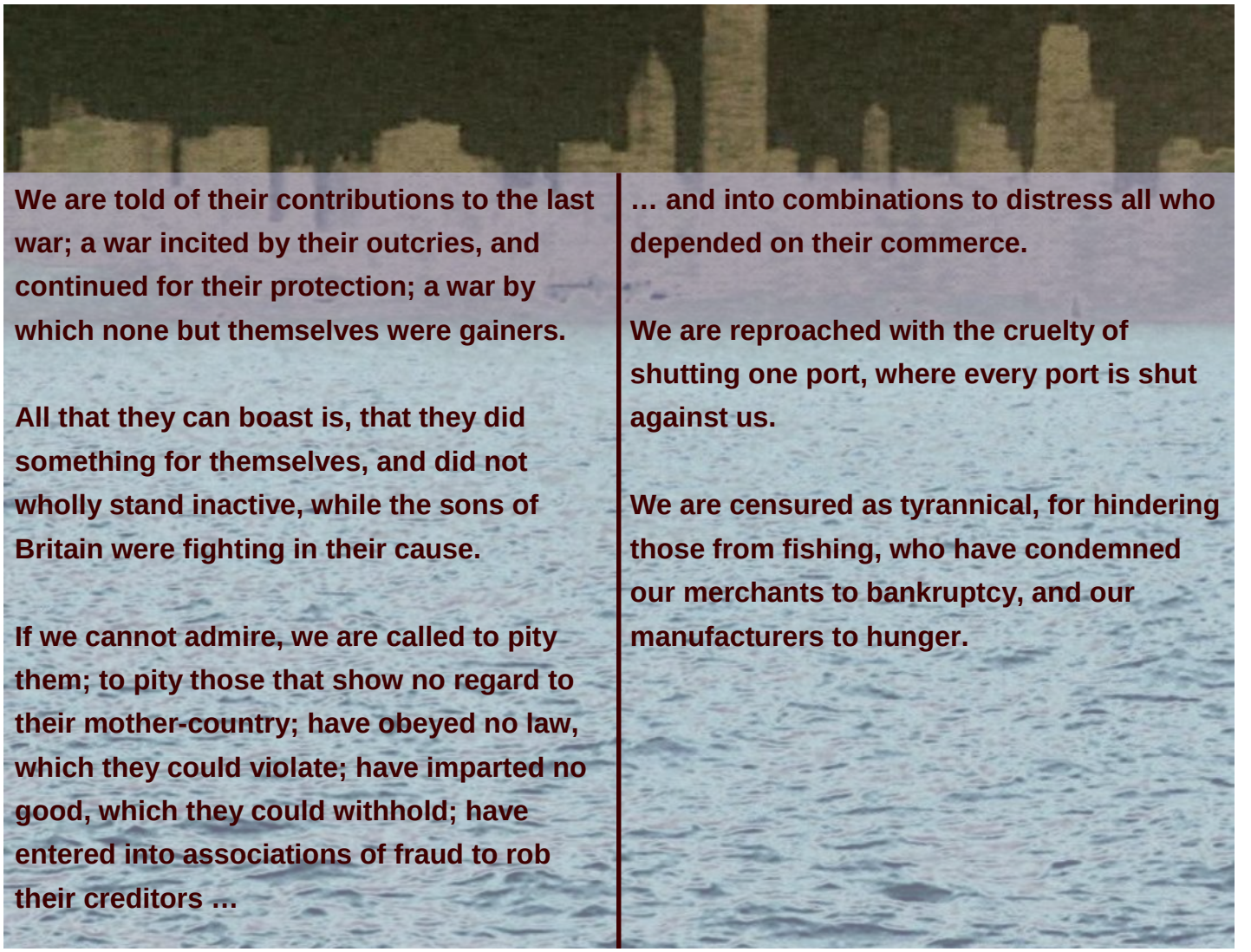

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Others persuade us to give them more liberty, to take off restraints, and relax authority; and tell us what happy consequences will arise from forbearance; how their affections will be conciliated, and into what diffusions of beneficence their gratitude will luxuriate.

They will love their friends.

They will reverence their protectors.

They will throw themselves into our arms, and lay their property at our feet; they will buy from no other what we can sell them; they will sell to no other what we wish to buy.

That any obligations should overpower their attention to profit, we have known them long enough not to expect.

It is not to be expected from a more liberal people.

With what kindness they repay benefits, they are now showing us, who, as soon as we have delivered them from France, are defying and proscribing us.

But if we will permit them to tax themselves, they will give us more than we require.

If we proclaim them independent, they will, during pleasure, pay us a subsidy.

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The contest is not now for money, but for power.

The question is not, how much we shall collect, but, by what authority the collection shall be made.

Those who find that the Americans cannot be shown, in any form, that may raise love or pity, dress them in habiliments of terrour, and try to make us think them formidable.

The Bostonians can call into the field ninety thousand men.

While we conquer all before us, new enemies will rise up behind, and our work will be always to begin.

If we take possession of the towns, the colonists will retire into the inland regions, and the gain of victory will be only empty houses, and a wide extent of waste and desolation.

If we subdue them for the present, they will universally revolt in the next war, and resign us, without pity, to subjection and destruction.

To all this it may be answered, that between losing America, and resigning it, there is no great difference; that it is not very reasonable to jump into the sea, because the ship is leaky.

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All those evils may befall us, but we need not hasten them.

The dean of Gloucester has proposed, and seems to propose it seriously, that we should, at once, release our claims, declare them masters of themselves, and whistle them down the wind.

His opinion is, that our gain from them will be the same, and our expense less.

What they can have most cheaply from Britain, they will still buy; what they can sell to us at the highest price, they will still sell.

It is, however, a little hard, that, having so lately fought and conquered for their safety, we should govern them no longer.

By letting them loose before the war, how many millions might have been saved.

One wild proposal is best answered by another.

Let us restore to the French what we have taken from them.

We shall see our colonists at our feet, when they have an enemy so near them.

Johnson, Samuel (1709-1784). Taxation No Tyranny, An answer to the resolutions and address of the American congress (1775). in The Works of Samuel Johnson, Volume 6, Reviews, Political Tracts, and Lives of Eminent Persons.

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Let us give the Indians arms, and teach them discipline, and encourage them, now and then, to plunder a plantation.

Security and leisure are the parents of sedition.

While these different opinions are agitated, it seems to be determined, by the legislature, that force shall be tried.

Men of the pen have seldom any great skill in conquering kingdoms, but they have strong inclination to give advice.

I cannot forbear to wish, that this commotion may end without bloodshed, and that the rebels may be subdued by terrour rather than by violence; and, therefore, recommend such a force as may take away, not only the power, but the hope of resistance, and, by conquering without a battle, save many from the sword.

If their obstinacy continues, without actual hostilities, it may, perhaps, be mollified, by turning out the soldiers to free quarters, forbidding any personal cruelty or hurt.

It has been proposed, that the slaves should be set free, an act which, surely, the lovers of liberty cannot but commend.

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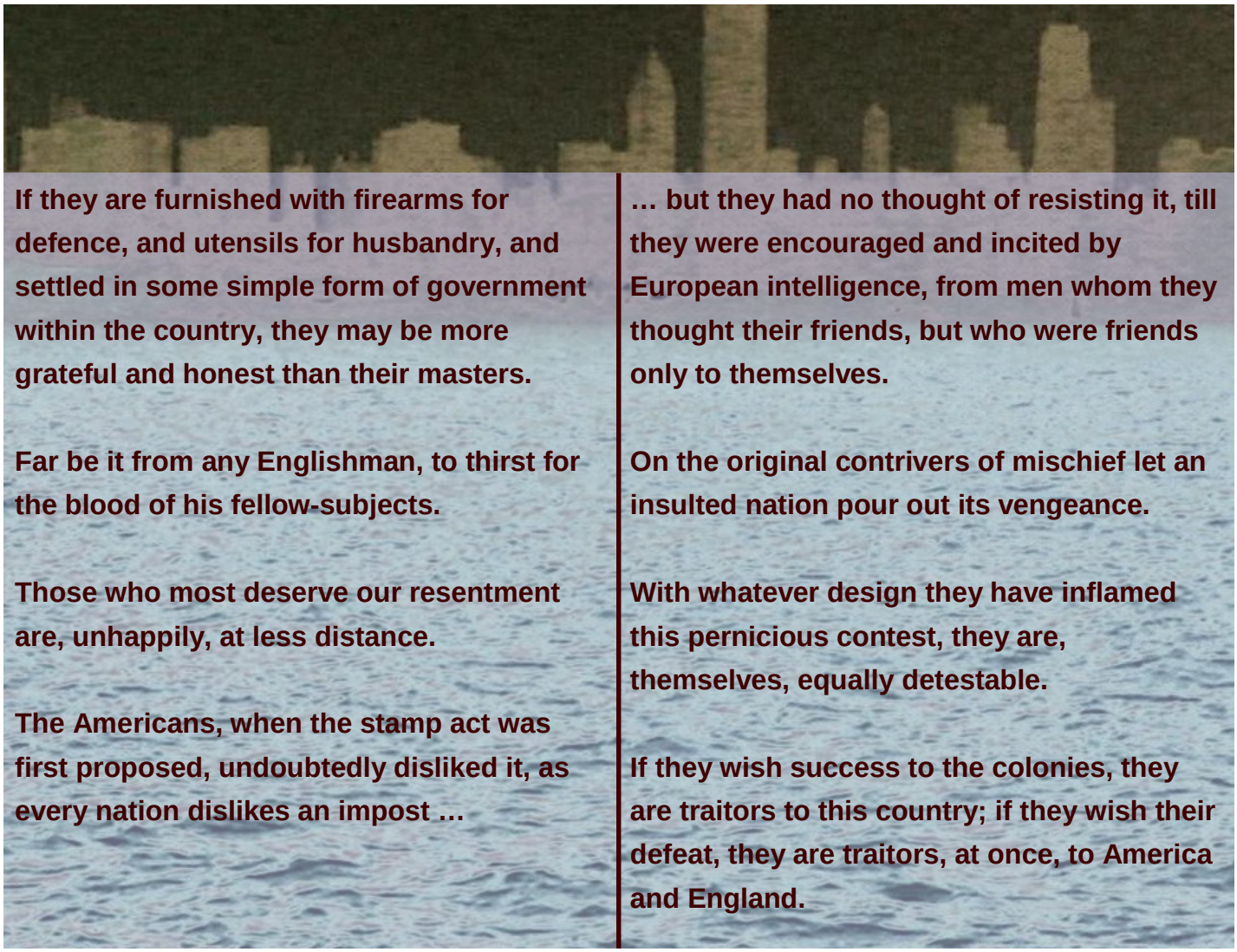

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To them, and them only, must be imputed the interruption of commerce, and the miseries of war, the sorrow of those that shall be ruined, and the blood of those that shall fall.

Since the Americans have made it necessary to subdue them, may they be subdued with the least injury possible to their persons and their possessions!

When they are reduced to obedience, may that obedience be secured by stricter laws and stronger obligations!

Nothing can be more noxious to society, than that erroneous clemency, which, when a rebellion is suppressed, exacts no forfeiture, and establishes no securities, but leaves the rebels in their former state.

Who would not try the experiment, which promises advantage without expense?

If rebels once obtain a victory, their wishes are accomplished; if they are defeated, they suffer little, perhaps less than their conquerors; however often they play the game, the chance is always in their favour.

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In the mean time, they are growing rich by victualling the troops that we have sent against them, and, perhaps, gain more by the residence of the army than they lose by the obstruction of their port.

Their charters being now, I suppose, legally forfeited, may be modelled, as shall appear most commodious to the mother-country.

Thus the privileges which are found, by experience, liable to misuse, will be taken away, and those who now bellow as patriots, bluster as soldiers, and domineer as legislators, will sink into sober merchants and silent planters, peaceably diligent, and securely rich.

But there is one writer, and, perhaps, many who do not write, to whom the contraction of these pernicious privileges appears very dangerous, and who startle at the thoughts of 'England free, and America in chains.'

Children fly from their own shadow, and rhetoricians are frighted by their own voices.

Chains is, undoubtedly, a dreadful word; but, perhaps, the masters of civil wisdom may discover some gradations between chains and anarchy.

Chains need not be put upon those who will be restrained without them.

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This contest may end in the softer phrase of English superiority and American obedience.

We are told, that the subjection of Americans may tend to the diminution of our own liberties; an event, which none but very perspicacious politicians are able to foresee.

If slavery be thus fatally contagious, how is it that we hear the loudest yelps for liberty among the drivers of negroes?

But let us interrupt awhile this dream of conquest, settlement, and supremacy.

Let us remember, that being to contend, according to one orator, with three millions of whigs, and, according to another, with ninety thousand patriots of Massachusetts bay, we may possibly be checked in our career of reduction.

We may be reduced to peace upon equal terms, or driven from the western continent, and forbidden to violate, a second time, the happy borders of the land of liberty.

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The time is now, perhaps, at hand, which sir Thomas Browne predicted, between jest and earnest:

‘When America should no more send out her treasure, but spend it at home in American pleasure.’

If we are allowed, upon our defeat, to stipulate conditions, I hope the treaty of Boston will permit us to import into the confederated cantons such products as they do not raise, and such manufactures as they do not make, and cannot buy cheaper from other nations, paying, like others, the appointed customs …

… that, if an English ship salutes a fort with four guns, it shall be answered, at least, with two;

… and that, if an Englishman be inclined to hold a plantation, he shall only take an oath of allegiance to the reigning powers,

… and be suffered, while he lives inoffensively, to retain his own opinion of English rights, unmolested in his conscience by an oath of abjuration.

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