

What is the Consent of the Governed?

1215 The Magna Carta

In feudal England the concept of “the divinity of kings” was an assumption on the part of many rulers. The king could rule as he saw fit, claiming that his authority came directly from God, and not from the church or the people. In 1100, King Henry I (1068-1135) issued **The Charter of Liberties** which limited the power of the king. During his reign, King John (1167-1216) alienated **the barons** in many ways including heavy taxation. Drawing on language from **The Charter**, they forced him to sign **The Magna Carta** in 1215, giving certain freedoms to the church and freemen, but especially requiring the consent of the barons for any special taxes. John saw this as a momentary compromise, but this “consent of the barons,” while only applying to a small class of people, was the thin edge of the wedge for much greater change.

1295 The Establishment of Parliament

The powerful baron, **Simon De Montfort** (1208-1265), called England's first Parliament apart from the authority of the king. He became de facto ruler briefly after King Henry III (1207-1272) was deposed in 1265, and expanded the principles of the Magna Carta to include a broader range of those with consent – barons, bishops, abbots, knights and town burghesses. He was killed shortly thereafter as King Henry III regained power. But in 1295, his example led **King Edward I** (1239-1307) to call for the first representative Parliament that included two knights from each county, two citizens from each city and two burghesses from each borough. King Edward declared: "What touches all, should be approved by all, and it is also clear that common dangers should be met by measures agreed upon in common." In 1362, a law was passed that Parliament must agree to all taxation, and this was reaffirmed by **The Petition of Right** in 1628. Though the calling of Parliament into session was still subject to the king's discretion, the **consent of the governed** gained momentum. In Spain, while **New World** natives were being forced to convert, the Roman Catholic Dominican priest, **Bartholomew de Las Casas** (1474-1566), declared that all persons are born free, and that "No one may be deprived of his liberty nor may any person be enslaved." Also, the Jesuit priest **Francisco Suarez** (1548-1617) directly challenged the divine right of kings, allowing for kings to be deposed by the people "acting as a whole."



"Washington Crossing the Delaware," by Emanuel Leutze (1851) depicts the first movement of George Washington's surprise attack on the garrison in Trenton, New Jersey, during the American Revolution. His victory there was a significant morale booster for a people seeking liberty after having lost many battles.

1517 The Protestant Reformation

In Germany, Augustinian canon and scholar **Martin Luther** (1483-1546) did not intend to start **The Protestant Reformation** in 1517. But it came to pass as he sought freedom to hold his convictions when the church authorities tried to silence him. The religious wars of Europe that followed were one long bloody march toward the consent of the governed.

The Mayflower Compact 1620

When the **English Puritans** came to the New World for religious, political and economic liberty, their November 11, 1620 **Mayflower Compact** set the tone for the British Colonies – a written document where “just and equal laws . . . for the general good of the colony” were put in place. Governor **William Bradford** (1590-1657), opposed “Arbitrary Government . . . where a people have men set over them, without their choice or consent,” instead calling for a “government and governors as we should, by common consent agree to make and choose.” The Puritans had sailed from the United Provinces of the Netherlands, where they had been for a season of exile from England. They found greater freedoms there, but yearned for more, so they sought them in the New World. And the Dutch, in founding the New Netherlands and New Amsterdam (later to become New York) in 1609, brought with them the consent of the governed in many ways, antedating the Pilgrims by eleven years.

The Fundamental Orders of Connecticut 1638

Thomas Hooker (1586-1647), Puritan pastor and founder of Hartford, Connecticut, was invited in 1638 to address the new Connecticut General Assembly. He challenged them to create a written document where they who "have the power to appoint officers and magistrates also have the power to set bounds and limitations on their power" for "the foundation of authority is laid firstly in the free consent of the people." This led to **The Fundamental Orders of Connecticut** in 1639, regarded as the **first written constitution since antiquity**. It was the first such time a people wrote a compact to form a government on their own, without appeal to any charter or royal concession.

The Settling of Providence 1640

When Puritan pastor **Roger Williams** (ca. 1603-1683) fled Boston, Massachusetts, with ninety freemen, he established Providence, Rhode Island. He provided **the most expansive definition of religious liberty since antiquity**. Williams declared "that the sovereign, original and foundation of civil power lies in the people" and that "such governments as are by them erected and established have no more power, nor for no longer time, than the civil power of people consenting and agreeing shall bestow to them."

Samuel Rutherford and *Lex, Rex* 1660

The Scottish Puritan theologian and preacher **Samuel Rutherford** (ca. 1600-1661) criticized the divine right of kings, and was charged with treason by King Charles II in 1660 for his book *Lex, Rex*, "The Law, the King." Rutherford said that the king is not above the law, which is to say the law is king. This simple concept is monumental – no one is above the law. Rutherford argued that "politic society is voluntary, being grounded on the consent of men."

The English Bill of Rights 1689

Following **The Glorious Revolution** of 1688, any action of the king required the consent of the people as represented by Parliament. **The English Bill of Rights** declared: "The election of members of Parliament ought to be free," their proceedings were not to be impeached from without, and Parliament was to be held frequently.

The consent of the governed is the bulwark of American freedom, a risky proposition meaning the government belongs to the people. We elect our own representatives, and they are always accountable to us. Without a historically informed understanding of the consent of the governed, the only alternative is a slide toward some form of tyranny. A lazy people cannot be a free people.

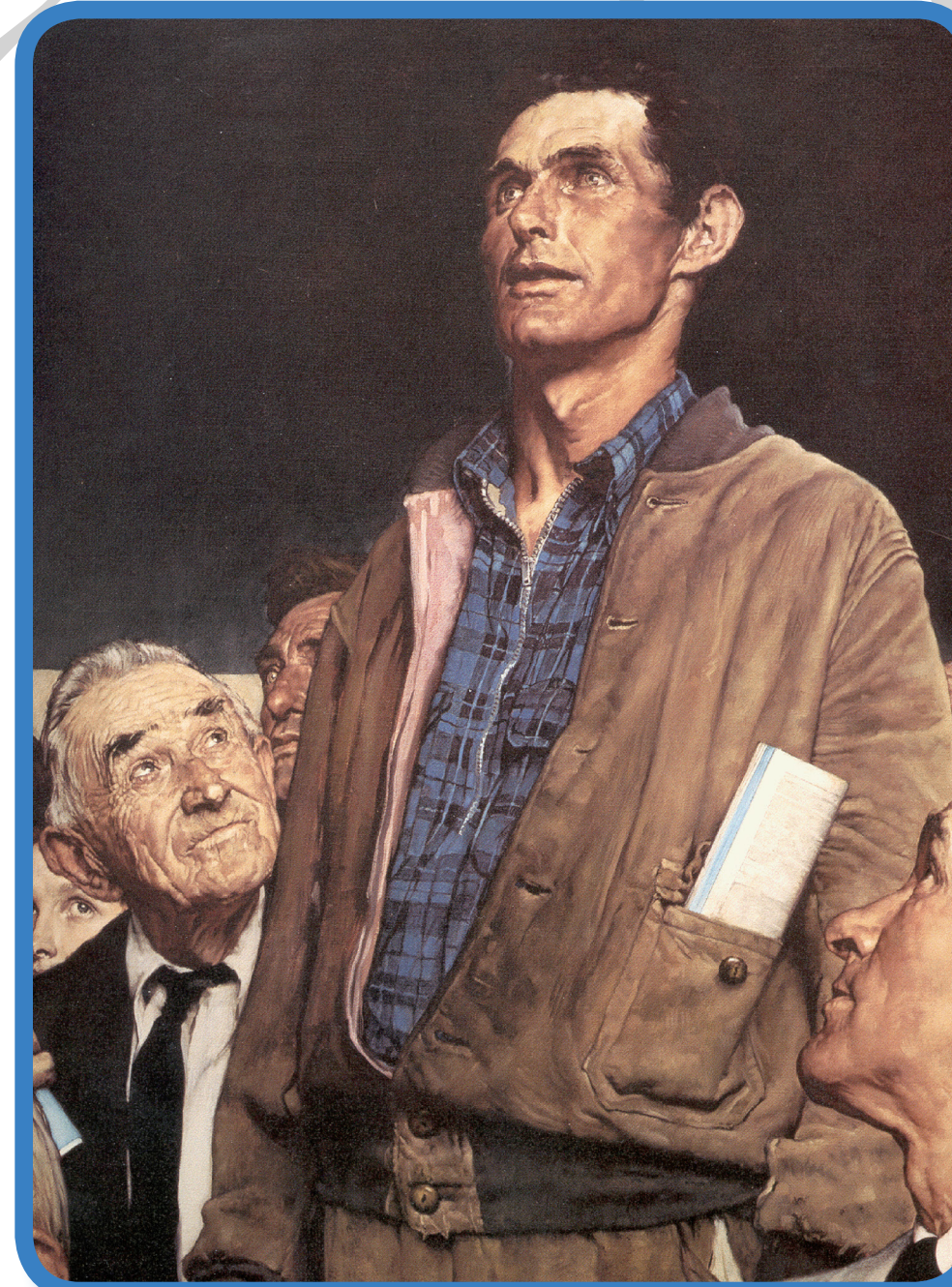
Dating to the era of **The Magna Carta** in 1215, the consent of the governed only comes to us through a long and bloody struggle between those who aspire to freedom, and those who cling to tyranny. It comes to us through a texture of uneven yet unrelenting progress, through a growth of checks and balances.

Following the signing of **The United States Constitution** in 1787, **Benjamin Franklin** (1706-1790; and also a signer of **The Declaration of Independence**) was reputedly asked, “Well, Doctor, what have we got – a Republic or a Monarchy?” Franklin responded, “A Republic, if you can keep it.” In a strict monarchy, the unelected king has the final say; in a democratic and constitutional republic, the people have the final say through their elected representatives.

The phrase “a democratic and constitutional republic” can be a mouthful, but its precision is important. Democracy refers to the vote of the people, yet we are not a pure “democracy.” That would be too cumbersome, having every item in the state and nation always voted upon. Such a pure democracy can only work in small communities.

A more accurate term is “a representative government,” which is the nature of a “republic.” We democratically elect our representatives, who make the law according to the state and federal constitutions which we have also voted upon. If we do not like how our representatives are governing, we can elect others to take their places, or even remove them sooner by more direct means.

Can we keep our republic? This is always a live question. Freedom is consistently at risk of being lost if we are not vigilant to protect it; indeed, tyrants can be elected by a constitutionally illiterate people. The best way to protect our republic is for all citizens to participate in the consent of the governed. Thus, in service to an understanding of the consent of the governed, here is a thumbnail sketch of a few important milestones along the way.



Few images capture so well the consent of the governed than this 1943 Norman Rockwell painting "Freedom of Speech." This painting was part of a series of four entitled "The Four Freedoms," which Rockwell painted after he was inspired by a speech given by President Franklin Roosevelt on the same subject. They were published in the Saturday Evening Post the same year, and were later adapted into posters by the U.S. Treasury Department as ads for war bonds. Rockwell himself considered "Freedom of Speech" the best of the four.

If we honor the long struggle for the consent of the governed, then we cannot be a lazy people. We are called to hold those in government to be fully accountable to “We the People” on all occasions. “We the People” means all of us. If we are ever unsatisfied with government, we have a remedy – become involved, and make the consent of the governed a living reality.

1690 John Locke and *Two Treatises on Government*

English philosopher **John Locke** (1632-1704) was crucially important to the **founders of the United States**, especially in his two **Treatises on Government**. Rooted in the Reformation and its interaction with the Enlightenment, Locke emphasized reason and toleration, the equality of all men, and their equal say in government. "Men, being, as has been said, by nature, all free, equal, and independent, no one else can be put out of his estate, and subjected to the political power of another, without his own consent." Locke argued that all men have **unalienable rights** given by the Creator - life, liberty and property. "Unalienable" is that which cannot be taken from us apart from due process of law, for its nature transcends human government. The consent of the governed depends on unalienable rights.

1776 The Declaration of Independence of the United States of America

On July 4, 1776, **The Declaration of Independence** from England was signed by 56 men at the risk of their lives and properties in pursuit of liberty. With their eloquent scribe **Thomas Jefferson** (later also to serve as President), the consent of the governed took central stage at the very foundation of the noble "**American Experiment**" in which we still live today: "We hold these Truths to be self-evident, that all Men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the Pursuit of Happiness - That to secure these Rights, Governments are instituted among Men, deriving their just Powers from the Consent of the Governed, that whenever any Form of Government becomes destructive of these Ends, it is the Right of the People to alter or to abolish it, and to institute new Government."

1780 The Massachusetts Constitution, Declaration of Rights

The state constitutions of the original thirteen colonies also affirmed the consent of the governed strongly. In Massachusetts, **John Adams** (1735-1826), who also served later as President, crafted the most detailed language: "Article V – All power residing originally in the people, and being derived from them, the several magistrates and officers of government, vested with authority, whether legislative, executive or judicial, are their substitutes and agents, and are at all times accountable to them... Article VII – Government is instituted for the common good; for the protection, safety, prosperity and happiness of the people; and not for the profit, honor, or private interest of any one man, family or class of men: Therefore the people alone have an incontestable, unalienable, and indefeasible right to institute government; and to reform, alter, or totally change the same, when their protection, safety, prosperity and happiness require it. Article VIII – In order to prevent those, who are vested with authority, from becoming oppressors, the people have a right, at such periods and in such manner as they shall establish by their frame of government, to cause their public officers to return to private life..."

The United States Constitution 1787

The assumption of the consent of the governed in the Declaration was so strong that the preamble to **The United States Constitution** starts with a bold simplicity, “**We the People...**,” and 42 state constitutions do essentially the same. In **The First Amendment**, Congress was prohibited from establishing a national church so that religious liberty would not be restricted; thus all subsequent liberties of speech, press, assembly and redress of grievances were able to flourish. “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press, or of the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.” In the **Fifth and Fourteenth Amendments**, the language of unalienable rights was legally codified: “nor shall any person be deprived of life liberty and property, without due process of law.”

The Liberty Bell on display in Philadelphia, Pennsylvania. It used to hang from the steeple of Independence Hall, where The United States Constitution was drafted. The inscription reads "Proclaim LIBERTY throughout all the Land unto all the Inhabitants thereof Lev. XXV X".



The Connecticut Constitution,
Declaration of Rights

"SEC. 1. All men when they form a social compact, are equal in rights; and no man or set of men are entitled to exclusive public emoluments or privileges from the community. SEC. 2. All political power is inherent in the people, and all free governments are founded on their authority, and instituted for their benefit; and they have at all times an undeniable and indefeasible right to alter their form of government in such manner as they may think expedient."

President Abraham Lincoln
and The Gettysburg Address 1863

As the consent of the governed grew in its centrality, various people, including blacks, women and Native Americans, had yet to be fully included. In **The Gettysburg Address**, delivered during the darkest hours of **The Civil War**, **Abraham Lincoln** said: "Four score and seven years ago our fathers brought forth, on this continent, a new nation, conceived in liberty, and dedicated to the proposition that all men are created equal ... that this nation, under God, shall have a new birth of freedom – and that government of the people, by the people, for the people, shall not perish from the earth." This was followed by **The Thirteenth, Fourteenth and Fifteenth Amendments**, which guaranteed the constitutional right to vote; but Native Americans are still not fully included, while also being Americans.

President Ronald Reagan's First Inaugural Address 1981

"So, as we begin, let us take inventory. We are a nation that has a government - not the other way around. And this makes us special among the nations of the Earth. Our Government has no power except that granted it by the people."