

return, and no such abdication; though King James II ceased to be king, yet there could be no vacancy in the throne, the monarchy being hereditary, and not elective. No act of the king can destroy the succession of his heirs, and such persons to whom of right the succession of the crown belongs.

Sir Thomas Clarges [ca. 1618–95]: These reasons of the Lords seem to me to be so cogent, that they deserve to be seriously weighed. I take the crown to be hereditary, and that King James has “abdicated” the crown, and the pretended prince of Wales being in the power of the French king, and the throne vacant, the crown ought to proceed to the next Protestant successor.

Serjeant John Maynard [1604–90]: ...’Tis a sad thing, that the whole welfare of the nation must depend upon a word of a grammatical construction. ...

[*Debate*] on the first amendment [substituting] “deserted” for “abdicated,” etc. ...

Sir Joseph Tredenham [ca. 1643–1707]: ... I thank God, we have a Protestant heir to the crown. Of the prince of Wales [James II’s son] I shall say the less, because much has been said by Clarges; and ‘tis the opinion of the House, that there is a legal incapacity, as well as a natural. In the princess of Orange [Mary] there is no incapacity; she is a Protestant; and as for her being a woman, Queen Elizabeth was so, and reigned gloriously. I would be grateful to the prince of Orange, for the great things he has done for the nation; but is this the way, to erect a throne to the ruin of his princess? ... If the government [the strict order of succession] be subverted, the whole mob may have some more right than we. ... When you eradicate the succession, all the crowns in Christendom will concern themselves. It will make such an earthquake, that all the Protestants in the world will fare the worse for it. ... There is no other way to have peace and quiet, but by recognizing the princess, who has no legal nor natural impediment. ...

Col. John Birch [1615–91]: ... I am glad gentlemen have spoken so plainly of the succession of this noble lady, and to have it there settled. ... [You] say, gentlemen, “This is a sacred succession, and must not be altered.” ... But I hold, that ... the Lords and Commons cannot do an unjust thing. We have taken from one brother to give to another, and it has not been questioned to [until] this hour. The Lords have not agreed the throne to be vacant; and, if so, where is the government? Had you spoken plain English t’other day, that the disposal of the crown was in the Lords and Commons, there had been no room for this debate; and you, by that authority ..., might have talked of the succession. ... God has brought us from Popery and tyranny; and, at this rate, nothing will content us but to go into it again. You have [Catholic] heirs in Spain, in Savoy, and all up and down, and where more I know not; and poor England, for want of speaking one plain word, will be ruined, you and your posterity. Say but where your power is, and the debate is at an end. There may be claims to the crown, but their claims will signify nothing; for the Lords and Commons have other thoughts. ... I will conclude, that the power of disposing of the crown is in the Lords and Commons; and by virtue of that power fill the vacancy. And I would not agree with the Lords in leaving out “The throne is vacant.” ...

Mr. Henry Pollexfen [ca. 1632–91]: If this discourse had been made sooner, perhaps we had been much forwarder. ... But lest what has been said should make impression, I shall answer, first, ‘tis pretended that this vote does make ours an elective kingdom. All men love their monarchy, and if you make men believe that it is elective, you will catch [offend] a great many. ... I have as much inclination to the princess of Orange as anybody, but you do not really mind the good of your country, and the Protestant religion. If she be now proclaimed queen, can anything be more desirable than that her husband be joined with her in the government? – Now, if you settle the crown on her, and we are to secure a title we cannot make, if any transient issue should arise, she is gone, and he [William] will be in war with her father [James] to defend her title – And does any think the prince of Orange will come in to be a subject to his own wife in England? This is not possible, nor ought to be in nature. ...

Mr. William Williams [ca. 1634–1700]: I take this question to be for the unity of the Lords and Commons in this great conjuncture. Let the power be where it will, I speak for all England. All agree, that the late King James II has departed from the throne, and that his reign over us ceases. If the Lords are of opinion that the reign of King James is ceased, we are all agreed. The Lords say, he shall never return again; they are not for his returning again to his government. I am not for the monarchy of a child; I am not for one to subvert the laws of the government. If this may be done by the Lords and the Commons, I would agree.

(The question being put, That this House do agree with the Lords in the second amendment, it passed in the negative [failed], 282 to 151. A free conference [with the Lords] was desired.)

9.3 *The Bill of Rights (presented to William and Mary, February 13, 1689; enacted as statute, 1 Will. and Mary, sess. 2, c. 2, December 16, 1689)*³

Eventually the Commons and the Lords worked out their differences and presented the Declaration of Rights to William and Mary (who reigned jointly 1689–94; then from Mary’s death in 1694 William reigned alone to 1702) at their proclamation ceremony in February. It was later enacted as An Act for Declaring the Rights and Liberties of the Subject and Settling the Succession of the Crown. How does it justify the Revolution? What does it accuse James of doing? Is it an accurate account of James’s reign? How does it limit the power of future monarchs? Are the rights articulated below “ancient” or new? How does this compare with the American Bill of Rights of a century later? Is this a contract? Is this constitutional monarchy?

³ SR, 6: 142–4.

I Whereas the late King James the Second, by the assistance of diverse evil counselors, judges, and ministers employed by him, did endeavor 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.
2. By committing and prosecuting diverse worthy prelates for humbly petitioning to be excused from concurring to the said assumed power [see document 8.13, above].
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.
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.
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 [re] cognizable only in Parliament, and by diverse other arbitrary and illegal courses.
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 the Second 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

January 22 [1689], 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 having been accordingly made.

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 representative 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 the 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 pretense 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 defense suitable to their conditions and as allowed by law.
8. That election of members of Parliament ought to be free.
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 impaneled and returned, and jurors which pass upon men in trials for high treason ought to be freeholders.
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, Parliaments ought to be held frequently.

And they do claim, demand, and insist upon all and singular the premises as their undoubted rights and liberties ...; to which demand of their rights they are particularly encouraged by the declaration of his highness the prince of Orange [October 10 and 24, 1688, n.s., see document 8.1, above] 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.

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 dignity of the said kingdoms and dominions to them, the said prince and princess, during their lives and the life of the survivor to 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 same 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.

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.

"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 this damnable doctrine and position, that princes excommunicated or deprived by the pope ... 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, pre-eminence or authority, ecclesiastical or spiritual, within this realm. 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 and desire of the said Lords and Commons contained in the said declaration. ...

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.

9.4 *The Toleration Act (An Act for Exempting their Majesties' Protestant Subjects, Dissenting from the Church of England, from the Penalties of Certain Laws) (1 Will. & Mary, c. 18, 1689)*⁴

Like the Restoration Settlement (see chapter 8), the Revolution Settlement included a series of Acts which shaped the country's constitutional, religious, and fiscal arrangements for years to come. While the Bill of Rights was the lynchpin of the Settlement, Parliament, in partial reward to those Dissenters who had not embraced James's Declaration of Indulgence and who (as London goldsmiths) had bankrolled the early part of the Revolution, also passed what has become known as the Toleration Act. What does the original title of the Toleration Act suggest about its intent? Who and what did it tolerate? What did it not tolerate? Parliament followed this with An Act that the Solemn Affirmation and Declaration of the People called Quakers shall be Accepted instead of an Oath in the Usual Form (7 & 8 Will. III, c. 34, 1696). How close was the religious settlement in these Acts to James II's desire to remove the Penal Laws and Test Acts?

- I. Forasmuch as some ease to scrupulous consciences in the exercise of religion may be an effectual means to unite their majesties' Protestant subjects in interest and affection:
- II. Be it enacted ... that neither the statute ... entitled, "An Act to Retain the Queen's Majesty's Subjects in Their Due Obedience" [1581]; nor the statute ... entitled, "An Act for the More Speedy and Due Execution of Certain Branches of the Statute" [1587] ...; nor that branch or clause of a statute ... entitled, "An Act for the Uniformity of Common Prayer and Service in the Church" [1559] ..., whereby all persons ..., are required to resort to their parish church or chapel, or some usual place where the common prayer shall be used ..., upon pain that every person so offending shall forfeit for every such offence twelve pence; nor ... any other law or statute of this realm, made against Papists or popish recusants, except the statute ... entitled, "An Act for Preventing Dangers Which May Happen from Popish Recusants" [1673]; and except also the statute ... entitled, "An Act for the More Effectual Preserving the King's Person and Government by Disabling Papists from Sitting in Either House of Parliament" [1661]; shall be construed to extend to any person or persons dissenting from the Church of England, that shall take the oaths mentioned in a statute made this present Parliament, entitled "An Act for Removing and Preventing All Questions and Disputes concerning the Assembling and Sitting of this Present Parliament" [1 Will. & Mary, c. 1],

⁴ SR, 6: 74-6.

and [that] shall make and subscribe the declaration mentioned in a statute made in [30] King Charles II [1678, Test Act, see chapter 8] ..., which oaths and declaration the justices of peace at the general sessions of the peace ... are hereby required to tender and administer to such persons as shall offer themselves to take. ...

- IV. Provided always ... that if any assembly of persons dissenting from the church of England shall be had in any place for religious worship with the doors locked, barred, or bolted during any time of such meeting together, all and every person or persons, that shall come to and be at such meeting, shall not receive any benefit from this law, but be liable to all the pains and penalties of all the aforesaid laws recited. ...

Provided always, that nothing herein contained shall ... exempt any of the persons aforesaid from paying of tithes or other parochial duties. ...

- X. And whereas there are certain other persons, dissenters from the Church of England, who scruple the taking of any oath, be it enacted ... that every such person shall make and subscribe the aforesaid declaration, and also this declaration of fidelity following, *viz.*:

"I, A.B., do sincerely promise and solemnly declare before God and the world, that I will be true and faithful to King William and Queen Mary; and I do solemnly profess and declare, that I do from my heart abhor, detest, and renounce, as impious and heretical, that damnable doctrine and position, 'that princes excommunicated or deprived by the pope ..., may be deposed or murdered by their subjects, [etc.]' ... [as that contained in the Bill of Rights, document 9.3]." ...

- XIII. Provided always, and it is the true intent and meaning of this Act, that all the laws made and provided for the frequenting of divine service on the Lord's day, commonly called Sunday, shall be still in force. ...
- XIV. Provided always ... that neither this Act, nor any clause, article, or thing herein contained, shall extend ... to give any ease, benefit, or advantage to any Papist ..., or any person that shall deny, in his preaching or writing, the doctrine of the blessed Trinity.

9.5 *The Act of Settlement (12 & 13 Will., c. 2, 1701)*⁵

The Act of Settlement dealt with the very practical problem, evident at the end of William's reign, that neither he nor his successor, Princess Anne (reigned as queen, 1702–14), would produce any children that could inherit the throne. Worse, James II had just died and Louis XIV had recognized his

⁵ SR, 7: 636–7.