

# Constitutions and Economic Development: The Insignificance of the English Bill of Rights

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# England 1688-1701: Constitutions and Commitment

- England 1688-1701
  - paradigm within NIE for relationship between institutions and development
- North and Weingast (1989): "Constitutions and Commitment"
  - new institutions, by design
  - established credibility of government commitments
  - led to growth and freedom
- Current research
  - based on insights from studies of transition countries
  - incorporating perspective of Hayek (1960)
  - constitutional developments of 1688-1701 not crucial

# Outline

- Origins: four crucial questions for the NIE
  - relationship to deliberations on constitutions
- Enduring debate: big-bang versus evolutionary-institutional
  - transition
  - current research
- Application: North-Weingast and Hayek on English constitutions
- What do constitutions do?
- Letting the data speak
  - searching for structural breaks
  - timing of changes in socioeconomic activity during 1600-1800
- Letting the law speak
  - context and content of the clauses of the laws
  - were they new, permanent, and relevant?

# Origins: Four questions from observing transition

- What is the optimal strategy for large scale reforms?
  - big bang versus evolutionary-institutional
- How important are law and legal processes?
  - especially in developing countries
- How best to view role of institutions in society?
  - like formal constitutions: small number of high-level, enduring laws
  - like markets: vast number of ever-changing micro-structures
- What is the relationship between culture and institutions?
  - are culture and institutions complements or substitutes?
  - institutions as congealed culture?
  - institutions as supplanting culture?

# Constitutions and these four questions

- New constitution: the ultimate big-bang?
- How much effect does a constitution have *qua* legal measure?
- Is a constitution of any relevance without myriad supporting institutions?
- Are constitutions simply a reflection of existing cultural understandings?
- Central question for NIE:
  - is law a powerful autonomous force producing productive change?  
or
  - is law a productive systematization of current patterns of behavior and modes of operating?
    - law as catalyst versus law as technology

# Big bang and evolutionary-institutional

- 1989-1994, debate on the strategy of transition
- Big-bang, shock-therapy
  - change to what is desired
  - fast, decisive break, destruction of old institutions
  - liberalization followed soon by growth surge
  - early focus on institutions not crucial
    - not essential
    - easy to create: economic, political and legal institutions in one year (Sachs)
    - create markets, and institutions would follow (Shleifer)
  - experts
    - Aslund (1995) "...after the democratic breakthrough. A brief spell of technocratic policymaking emerged which could be used to construct a new system."
  - large scale changes
    - importing legal frameworks
    - new constitutions
    - schemes for privatization

# Evolutionary-institutional

- Evolutionary-institutional paradigm
  - change from what exists
  - markets without institutions are unproductive (NIE)
  - old institutions might be better than none (Murrell, 1992)
  - pragmatic institutional substitutes
    - China (Qian, 2000)
  - difficulty of creating new institutions (North, 1990)
    - experimental processes needed (Hayek, 1960)
    - diminish risks by reversible piecemeal reforms (Murrell 1992; Dewatripont-Roland, 1995)
    - potential failure of schemes of reconstruction (Burke 1789, Popper 1945 )
    - hazards of transplants (Berkowitz et al. 2003)
  - importance of nascent private sector
    - exit and entry fundamental (Schumpeter, 1961)
    - rigidities of old organizations (Nelson and Winter, 1982)

# Big-bang versus Evolutionary-Institutional: Now

- Transition experience?
  - China
  - economic performance not related to speed of reforms (Campo, 2007)
  - conditional effect of success of reforms (Djankov-Murrell, 2002)
  - institutional development as critical (Beck and Laeven, 2007)
- Development aid
  - criticisms of big bang approach
    - Easterly (2008) use of political philosophy of Popper
    - Dixit (2009), from Dawkins "Evolution is smarter than you are."
- The effect of Napoleon
  - Acemoglu et al. (2009): "The French Revolutionary armies imposed new and radically different institutions...and did so in extreme 'Big Bang' style. Nevertheless, our evidence suggests that this was an 'economic success'. Taken together, these findings are interesting for those who favor radical institutional reforms."
- Constitutions
  - North-Weingast (1989) and Hayek (1960)



# English history in one slide

- Magna Carta – 1215
  - beginnings of habeas corpus, trial by jury, parliament, constraints on taxation
- gradually increasing role of Parliament next four centuries
- King leads religious reformation – 1532
  - monarch head of the Church of England
  - redistribution of church lands
- Stuart monarchs (1603 on)
  - populace 98% protestant; Catholic or near-Catholic royalty
  - James I and Charles I
    - Kings reject Parliament's aims; Parliament does not fund the Kings
    - Civil War, Charles beheaded (1649), redistribution of losers' lands
  - Charles II, restoration of monarchy 1660
    - foreign policy and religious policy angers Parliament; Parliament does not fund
  - James II, 1685-88
    - avowed Catholic, helps his co-religionists
    - increasing elite and popular discontent
    - replaced by William of Orange, his son-in-law
- William III, Anne, George I,....
  - Bill of Rights (1689), Act of Settlement (1701)
- Financial revolution, agrarian revolution, industrial revolution, British Empire.....Gordon Brown

# North and Weingast (1989)

- Most cited journal article on constitutions
- "Constitutions and Commitment"
- "It is clear that the institutional changes of the Glorious Revolution permitted the drive toward British hegemony and dominance of the world."
- "a fundamental redesign of the fiscal and governmental institutions"
  - "designers of the new system"
- "These changes reflected an explicit attempt to make credible the government's ability to honor its commitments."
  - "A ruler ...constrained to obey a set of rules that do not permit leeway for violating commitments."
- "By limiting the ability of the government to renege on its agreements, the courts played a central role in assuring a commitment to secure rights."
- "we have thus shown how institutions played a necessary role in making possible economic growth and political freedom"

# An alternative: Hayek's *Constitution of Liberty*: 1

- "Socratic maxim that the recognition of our ignorance is the beginning of wisdom has profound significance for our understanding of society"
- 'British tradition' of theorizing on constitutions
  - David Hume, Adam Smith, Adam Ferguson, Edmund Burke
  - reasoning based on experience of common-law
  - institutions: accumulated result of trial and error, survival of successful.
    - "sum of experience; in part handed from generation to generation as explicit knowledge, but to a larger extent embodied in tools and institutions which had proved themselves superior"

# An alternative: Hayek's *Constitution of Liberty*: 2

- Genesis of English constitution
  - medieval ideal of the supremacy of law partially retained
  - Magna Carta: Coke on monopolies in 1602, 1624 "if a [monopoly] grant be made to any man that grant is against the liberty and freedom of the subject and consequently against this great charter"
  - Civil War: debate and conflict produced political ideals which would govern English political evolution
    - by Restoration, an established tradition
      - accepted except by a Catholic monarch
    - rights as the solution to past conflicts
    - "these ideas exercised a decisive influence during the next hundred years in the summarized form they were given after 1688's revolution"

# What is a constitution?

- Most common conceptualizations:
  - the highest order set of institutions for a polity
  - rules that set limits on majority decisions
  - rules defining the nature, processes, powers, and duties of a government
  - rules within which other legal and governmental decisions are made
- Summary: rules of the polity that set the framework for other decisions and are less subject to contention in normal politics

# Why constitutionalize some institutions?

- **Stability:** provide framework for normal political process
  - rules according to which conflicts are resolved out must be relatively immune from such conflict (Elster Offer Preuss, 1998)
  - keep certain issues out of normal politics (Elster Offer Preuss, 1998)
  - an unchanging text more stable than judicial interpretation (Posner, 1987)
  - provides clear conditions setting limits on government action (Weingast, 1997)
- **Rights:** constitutions protect fundamental rights.
  - future weakness of will (Buchanan, 2002)
  - overcoming fits of passion (Elster, 2000)
  - protect minorities (Buchanan, 2002)
  - overcoming interests (Elster, 2000)
- **Efficiency:** a role analogous to contract law
  - constraints can enhance freedom (Madison, 1788)
  - overcome strategic time inconsistency (Elster, 2000)
  - a pragmatic way of organizing the choice process (Buchanan, 2002)

# Questions to be addressed on 1688-1701

- Were the **constitutional** developments of 1689 and 1701 important in the development of England?
  - were they new?
  - did they provide stability? were they durable?
  - did they provide new rights?
  - did they provide efficient legal mechanisms for conducting government?
  - did they change the course of economic development?
- Clarification 1:
  - effect of constitution as a precise legal/institutional document
  - effect of an imprecise statement of English political ideals
  - note: most cross-country research confounds these two
- Clarification 2:
  - not the question asked by those who examine the effects of different constitutional rules (e.g. Persson and Tabellini)

# Did the constitutional measures change the course of economic development?

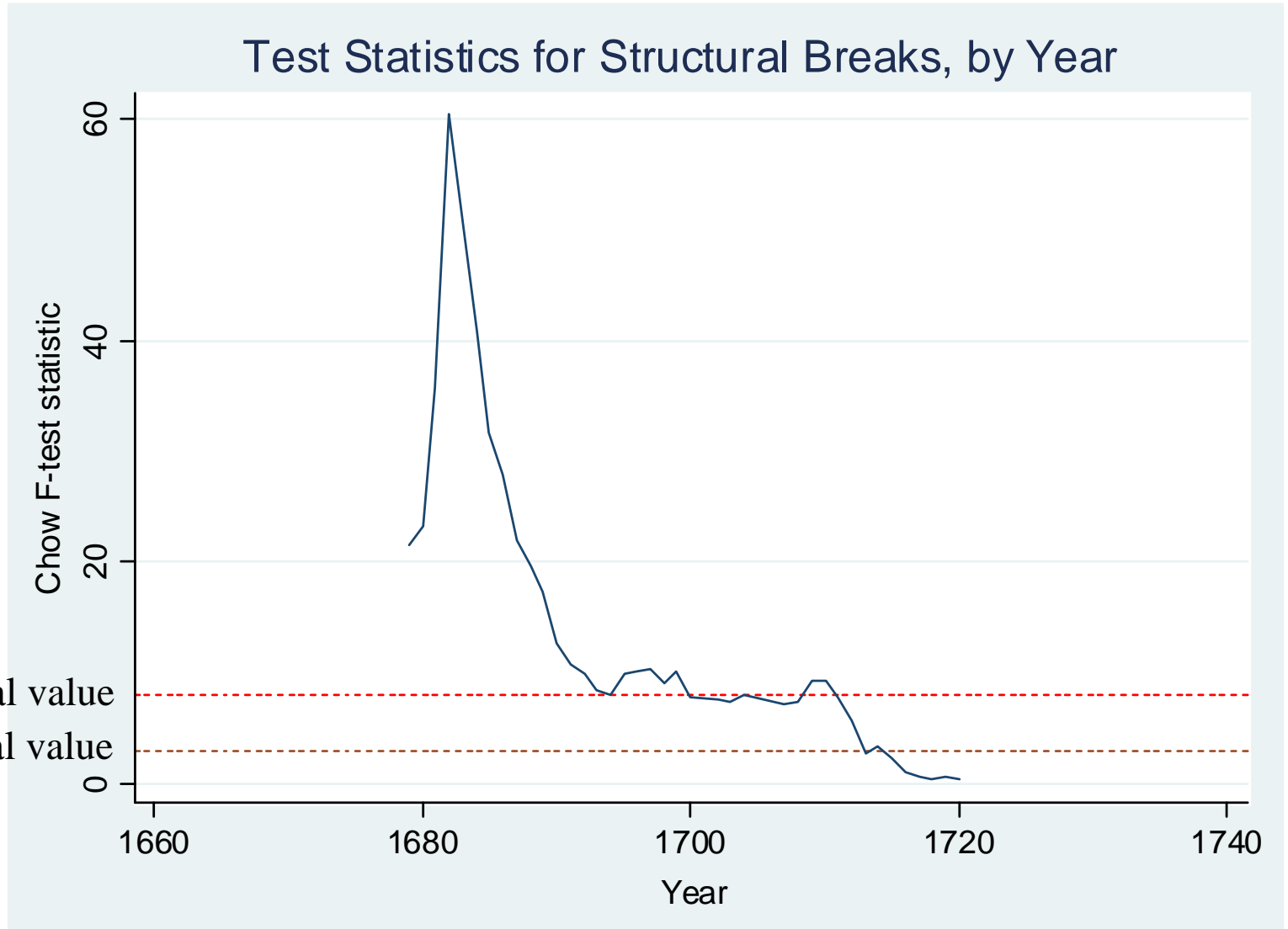
- Does the data show evidence of structural breaks?
- Econometric methods (Hansen, 2001)
  - Chow test for hypothesized break year
  - test for one unknown break (Quandt (1960), Andrews (1993))
  - possibility of many breaks: Bai and Perron (1998)
- Data
  - every possibly relevant series I could find
- Search for mean shifts in levels and growth rates



# A beginning example: the behavior of judges

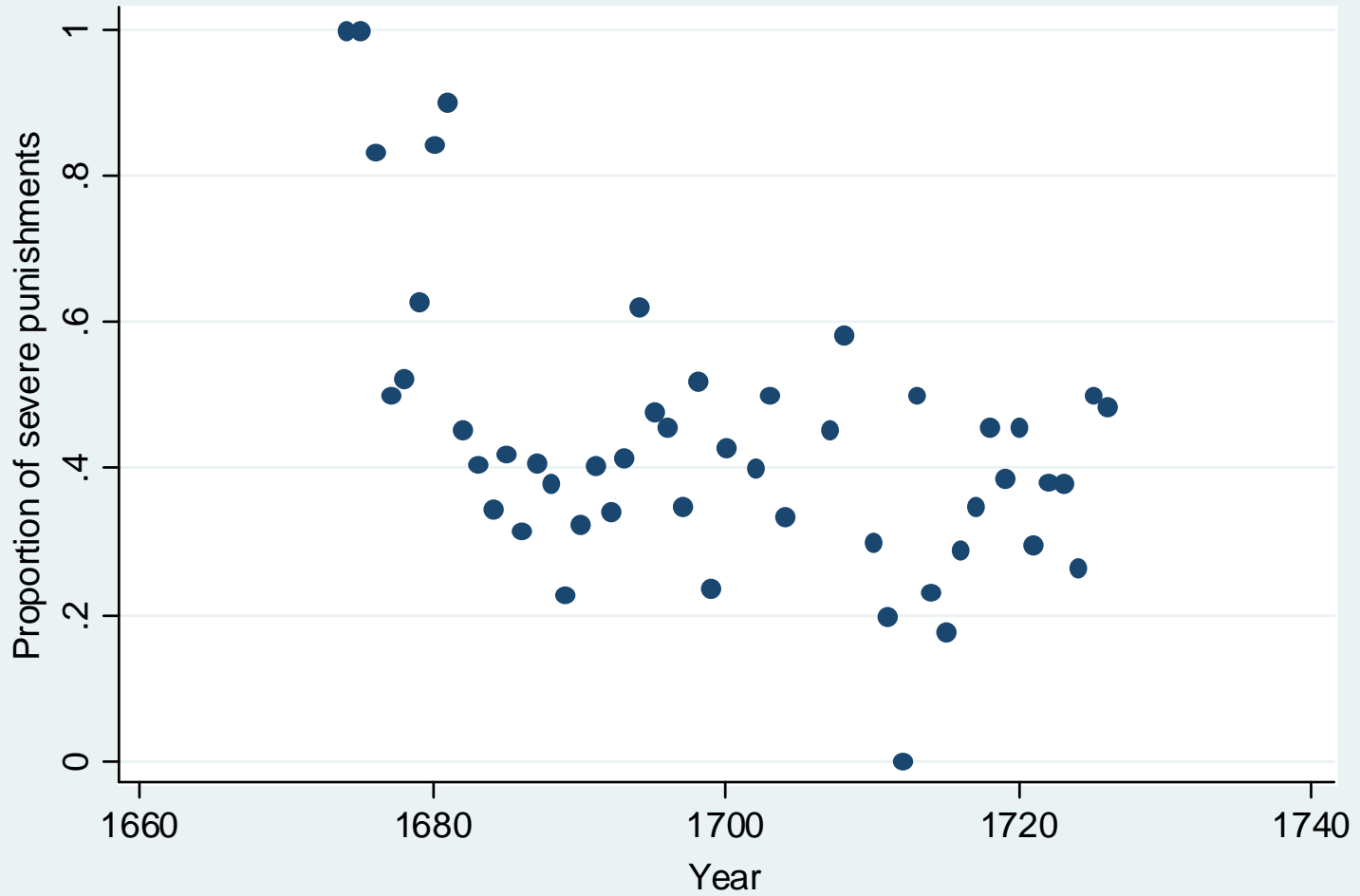
- Data: The Old Bailey Archives
- 1701: judges' tenure during good behavior explicitly stated in Act of Settlement
  - Klerman and Mahoney (2005) decisive break
  - North-Weingast (1989), protection of property by courts crucial
- data series: proportion of property crimes receiving most severe punishments, 1674-1726
- result: one break point in 1682 (first year of new regime)
- testing for many break points: same result

# Severity of punishments for property offences

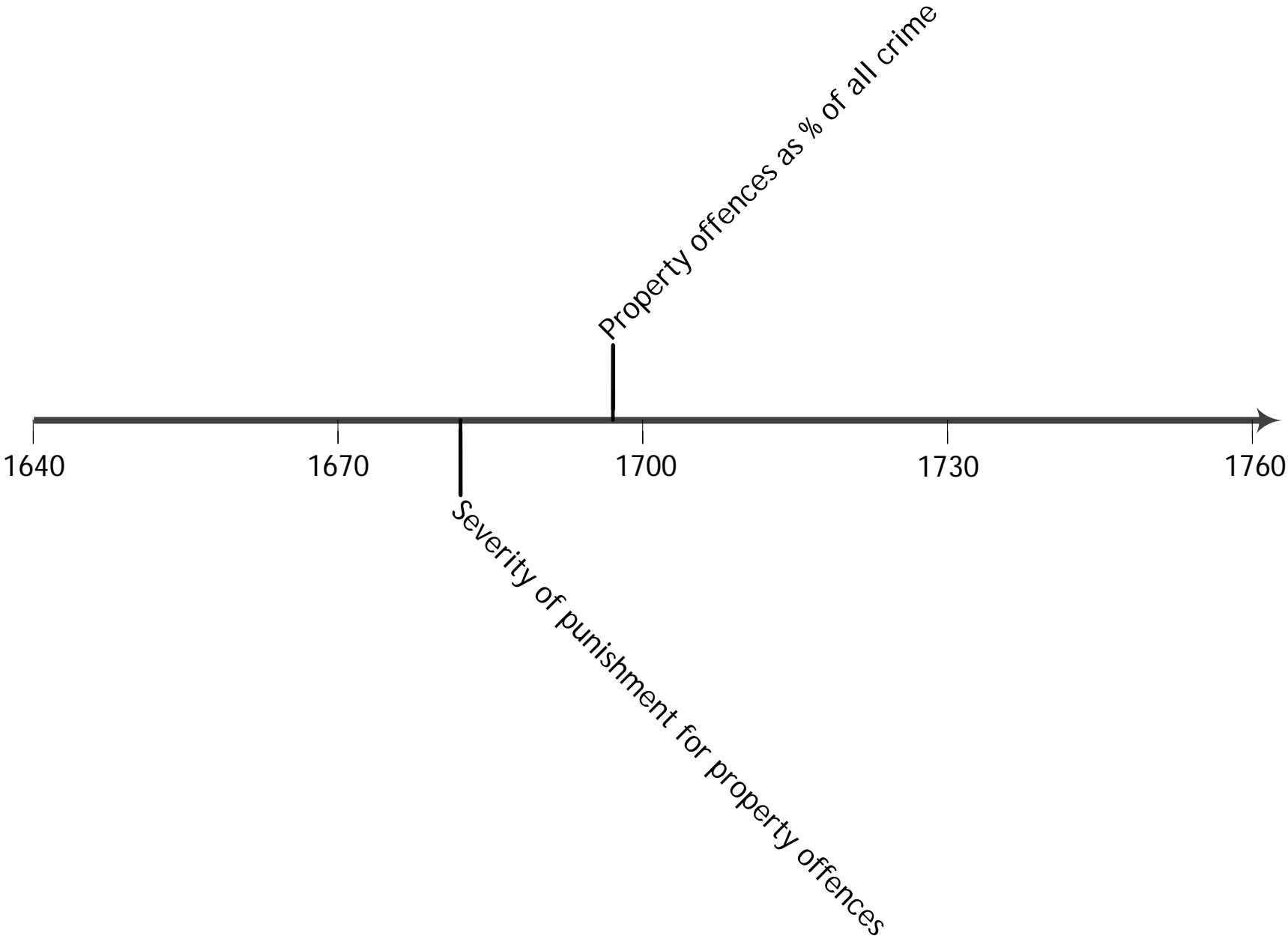


One significant break only: 1682 first year of new regime

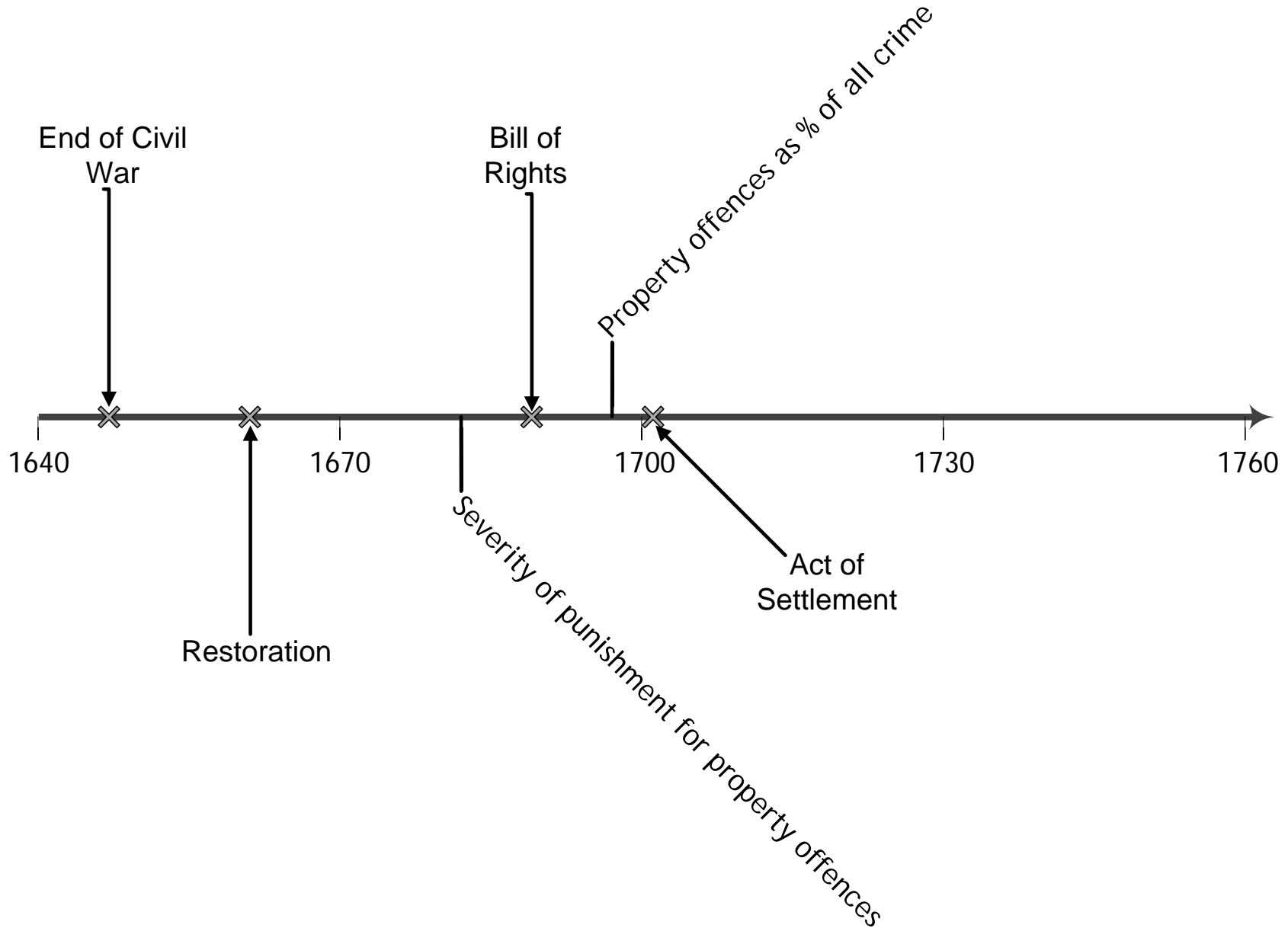
## Severity of Punishments for Property-Rights Crimes



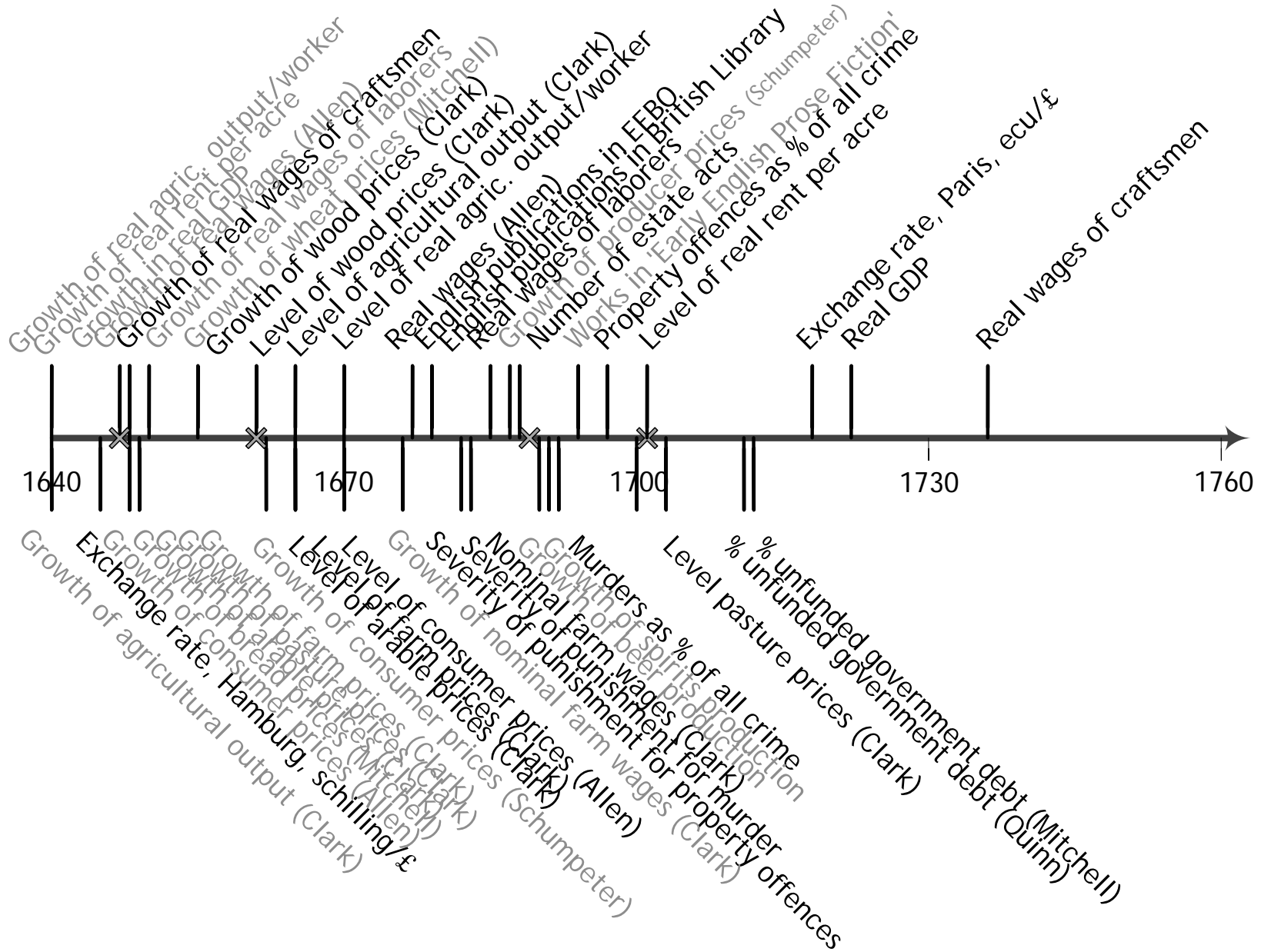
# Breakpoints for property crimes and punishments



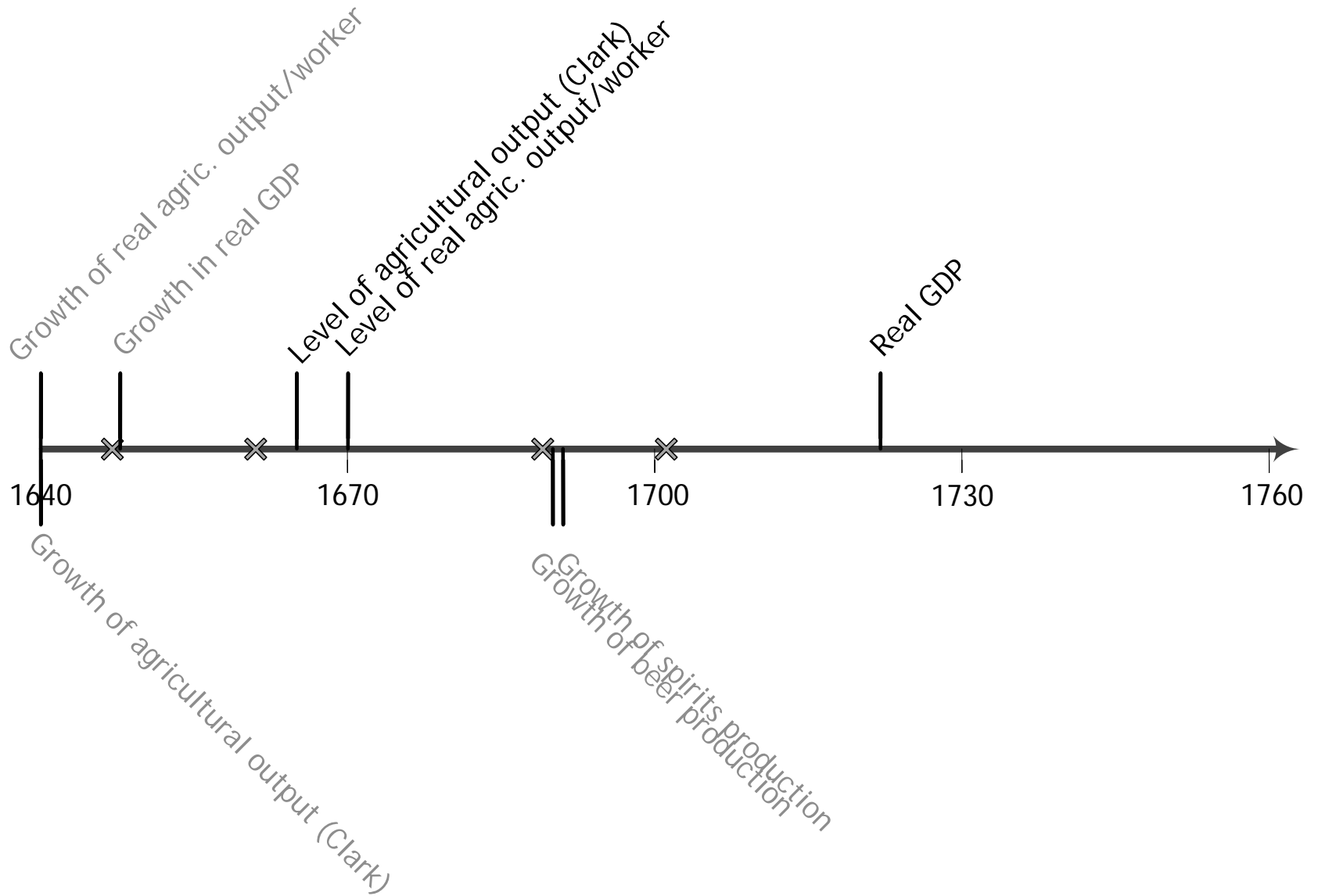
# Breakpoints in historical context



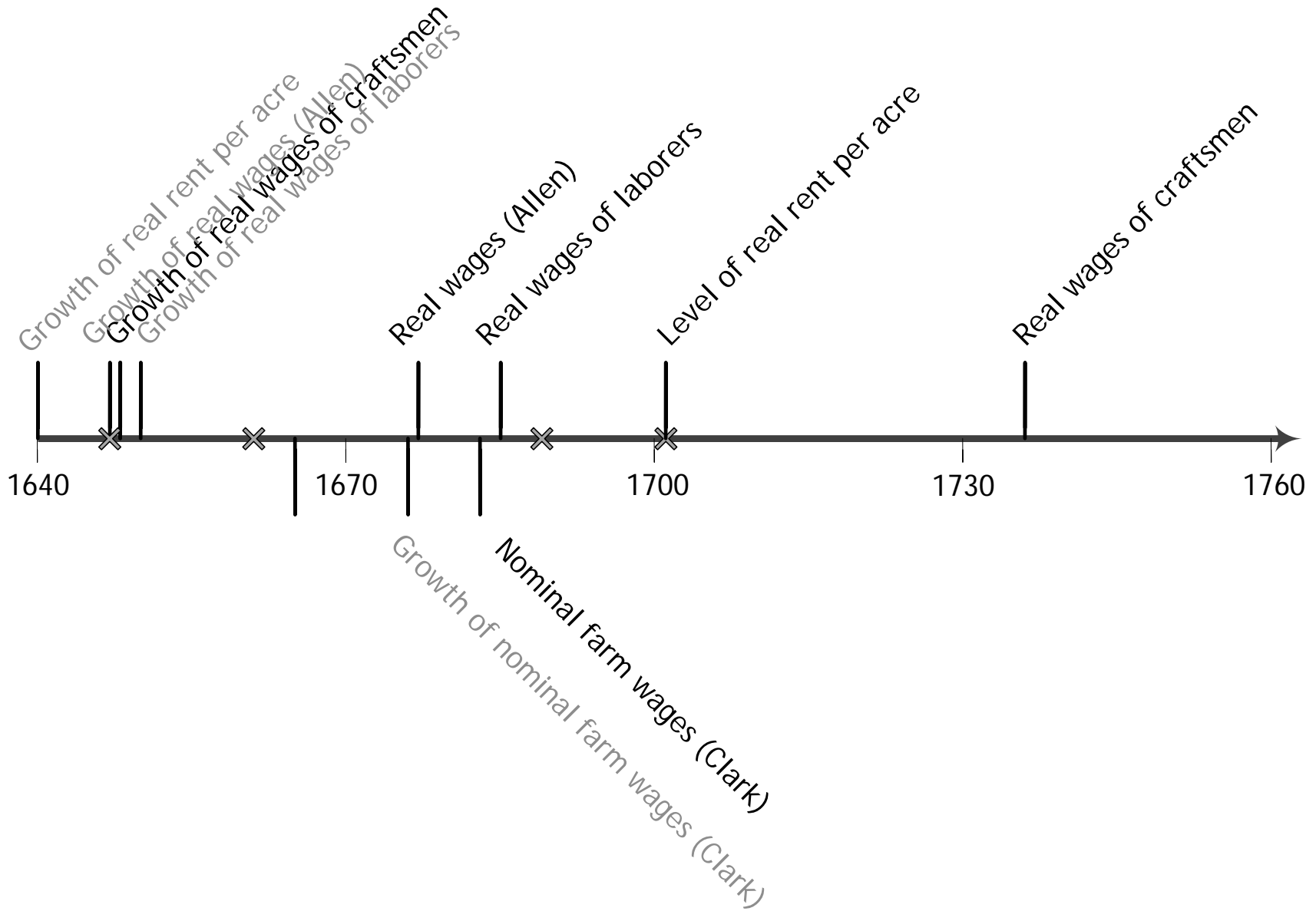
# Multitudinous breakpoints



# Production



# Wages and rents





# Bill of Rights and Act of Settlement as Legal Measures

- On a strict legal basis, no more permanent than other laws
  - majority of Commons, majority of Lords, and monarch's signature
  - stability could not come from legislated acts *per se*
- any implementing legislation required monarch's consent
- vagueness of legal measures
  - e.g. "Parliaments ought to be held frequently"
  - e.g. "Protestants may have arms for their defence suitable to their conditions and as allowed by law"
  - removes discussion of rules from normal politics?
  - provides efficient governmental mechanisms?
  - provides focal points for a rebellion?
- rights?

# Clauses of Bill of Rights and Act of Settlement: Big Bang or Evolutionary?

- Were the clauses fundamentally new?
- Did the clauses survive?
- Were they directly relevant in a legal sense to property rights or government finance?

# Clauses of Bill or Rights: New? Survival? Direct legal relevance to property rights or government finance? 1.

Clause	New?	Survival?	Direct legal relevance?
William and Mary declared king and queen	<b>x?</b>	<b>✓</b>	<b>x</b>
Future monarchs to be Church of England	<b>✓?</b>	<b>✓</b>	<b>x</b>
Suspending power illegal	<b>x</b>	<b>✓</b>	<b>x</b>
Dispensing power illegal	<b>x?</b>	<b>✓?</b>	<b>x</b>
No ecclesiastical commissions	<b>✓</b>	<b>x</b>	<b>x</b>
No taxation without grant of Parliament	<b>x</b>	<b>✓</b>	<b>✓</b>
Subjects have right to petition monarch	<b>x</b>	<b>✓</b>	<b>✓</b>

# Clauses of Bill or Rights: New? Survival? Direct legal relevance to property rights or government finance? 2.

Clause	New?	Survival?	Direct legal relevance?
Parliamentary consent for standing army	✓	✓?	✗
Protestants can own arms (within law)	✗?	✓?	✗
Free election of members of Parliament	✗	✓	✓
Freedom of speech in Parliament	✗	✓	✓
Neither excessive bail, nor excessive fines, nor cruel and unusual punishments	✗?	✓?	✓
Trial by jury	✗	✓	✓
Pre-conviction 'farming' of seizures illegal	✗	✓	✓
Parliaments ought to be held frequently	✗	✓?	✓

# Act of Settlement: New? Survival? Direct legal relevance to property rights or government finance? 1.

Clause	New?	Survival?	Direct legal relevance?
Protestant succession	<b>x</b>	<b>✓</b>	<b>x</b>
Monarch takes Church of England communion	<b>x?</b>	<b>✓</b>	<b>x</b>
Parliament veto of wars of non-native monarchs	<b>✓</b>	<b>x</b>	<b>x</b>
Parliament veto on monarch's foreign travels	<b>✓</b>	<b>x</b>	<b>x</b>
Privy council resolutions to be public	<b>✓</b>	<b>x</b>	<b>x</b>

# Act of Settlement: New? Survival? Direct legal relevance to property rights or government finance? 2.

Clause	New?	Survival?	Direct legal relevance?
Restrictions on role of aliens in government	✓	✓	✗
King's employees not in House of Commons	✓	✗	✓
judges to serve <i>quamdiu se bene gesserint</i>	✓?	✓?	✓
Monarch cannot stop Parliamentary impeachment	✗	✓?	✓

# Clauses of Bill of Rights and Act of Settlement: Big Bang or Evolutionary?

- new?
- survive?
- institution legally relevant to property rights or government finance?
- **NOT EVEN ONE** clause matches all three of these criteria!

# Conclusions

- Economists should analyze institutional details
- Breakpoint analysis provides ideal tool to examine timing of economic developments
- Hayek rather than North-Weingast best explains constitutional developments
  - cultural-symbolic significance of Bill of Rights and Act of Settlement, not legal significance
- Agenda items
  - analysis of evolution of governmental financial institutions
  - apply the methods to other historical episodes of institutional change







