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1.1 Constitutionalism: A Definition

The notion of "constitutionalism" identifies a political and legal doctrine that first appeared in England during the seventeenth century, and quickly spread throughout North America and Western Europe, becoming the leading ideological background of the three revolutions of the Modern Age of the Western World.

Constitutionalism and liberalism

Under a theoretical perspective, **constitutionalism represents the political and legal dimension of liberalism**, with which it shares not only philosophical premises, but also political goals: fighting monarchical absolutism and transforming the political, legal and economic structures of the *Ancien Régime* according to the interests and the objectives of a social class, the bourgeoisie, that was rapidly increasing its social and cultural hegemony.

With the aim of preventing any form of concentration of power, and seeking to establish a government founded on a sound and balanced legal framework, constitutionalism pursued the goal of **limiting political power** through the definition of three main legal means: (1) the adoption of a **written constitution**, prescriptive toward the institutions of the state and suitable to act as paramount law over its acts; (2) the **separation of power** of the state among the different branches of government; and (3) the legal protection of a wide range of **individual rights** (Grimm 2016).

In line with the goals of liberalism, constitutionalism promoted the affirmation of the principle of the **rule of law** (as known in the Anglo-American experience) and the ***état de droit*** (as known in the French and continental context), according to which the political power should not depend on the arbitrary will of the sovereign, but rather must follow established procedures and legal forms.

Constitutionalism and democracy

Yet, a more comprehensive and historically accurate analysis requires us to highlight the existing connections between the liberal doctrine of constitutionalism—with its emphasis on the priority of individual liberties and limited government—and the innovative understanding of the legitimacy of political power devised in the framework of constitutional thought (Ridola 2005): constitutionalism proposed a contractarian explanation of the source of political sovereignty, according to which **political power derives from the consent of the people, and is delegated to institutions representative of the people** (representative

government) (Manin 1996). Such a reliance on the idea of **popular sovereignty** allowed constitutionalism to incorporate projects and demands of popular movements, with their claims for legal equality, political empowerment and social justice: popular movements played, indeed, an important role in the achievements of the revolutions, blending their demands for equality, political participation and social justice with goals and means elaborated within the environment of bourgeois liberalism (Skinner 2012).

In conclusion, liberalism, with its emphasis on the constraints on government and the guarantee of individual liberties and democracy, and its purpose of favoring equality in political participation and bolstering social improvements, merged during the age of the revolutions, enriching the meaning of and set of values within constitutionalism (Bobbio 1995): starting with this moment, the development of constitutionalism has been strictly intertwined with the **process of democratization**, that in the Western World took concrete shape between the nineteenth and twentieth century, and with the inclusion of all social classes in the area of political participation.

The constitutions of the Modern and Contemporary Ages are the outcome of this multifaceted doctrine: as an evolution of these seminal purposes, contemporary liberal-democratic constitutions set rules to shape the design of the government in order to grant separation and balance among its several branches, grant the rights of men and ensure equality, regulate the democratic participation of the people, prevent discrimination and promote social justice.

1.2 The Contribution of Ancient Constitutionalism: Jusnaturalism, Mixed Government, and Contractarianism

The doctrine of constitutionalism places its roots in ancient political and philosophical thought, in which not only the need for limitation of political power was present, but the proposals and discussions of many of the legal tools cultivated by modern constitutionalism were exhibited, as well. Scholars are used to speaking about an **"ancient constitutionalism"**, different from but strictly

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connected to modern, western constitutionalism (McIlwain 1939). A look into the features of this "ancient constitutionalism" allows for a better understanding of modern constitutionalism.

Due to upheavals and political turmoil that used to affect Greek polis, in Greek philosophy of the classic age, the reflection on the best form of government has always been linked with the aspiration to establish constraints on political authority.

The theory of natural law

Since the Hellenistic age, the idea of a **higher law**—shaped by nature, human reason, or given by God—that binds all men, began to appear. In Sophocles' tragedy *Antigone*, the young heroin refuses to obey Creon's commands:

» It was not God's proclamation, that final Justice that rules the world below makes no such laws. Your edict, King, was strong, but all your strength is weakness itself against the immortal unrecorded laws of God. They are not merely now: they were, and shall be, operative forever, beyond man utterly.

However, it is only with Christian and Roman philosophy that this doctrine would be fully defined, assuming the features of what is today commonly acknowledged as **jusnaturalism**. The theory, despite its several sources, each varying from one another, generally claims the existence of a natural, rational limit to the law of men. In **Cicero's *De Republica***, we find a precise explanation of the bounds to the law of men represented by the law of nature:

» True law is right reason in agreement with nature; it summons to duty by its commands, and averts from wrongdoing by its prohibitions. And it does not lay its commands or prohibitions upon good men in vain, though neither has any effect on the wicked. It is a sin to try to alter this law, nor is it allowable to attempt to repeal any part of it, and it is impossible to abolish it entirely. We cannot be freed from its obligations by senate or people, and we need not look outside ourselves for an expounder or interpreter of it. And there will not be different laws in Rome and in Athens, or different laws now and in the future, but one eternal and unchangeable law will be valid for all nations and all times, and there will one master and ruler, that is, God, over us all, for he is the author of this law, its promulgator, and its enforcing judge.

In **Christian political theory**, developed throughout the years in which Christians were a persecuted minority, natural law, based on the will of God, represented the main constraint to the doctrine of unbounded sovereignty, which was expressed by leading political and legal thought in the age of the Roman Empire. Per Origen, a Christian theologian living in the third century AD,

> As there are, then, generally two laws presented to us, the one being the law of nature, of which God would be the legislator, and the other being the written law of cities, it is a proper thing when the written law is not opposed to that of God, for the citizens not to abandon it under pretext of foreign customs; but when the law of nature, that is, the law of God, commands what is opposed to the written law, observe whether reason will not tell us to bid a long farewell to the written code, and to the desire of its legislators, and to give ourselves up to the legislator God, and to choose a life agreeable to His word, although in doing so it may be necessary to encounter dangers, and countless labours, and even death and dishonor. For when there are some laws in harmony with the will of God, which are opposed to others which are in force in cities, and when it is impracticable to please God (and those who administer laws of the kind referred to), it would be absurd to condemn those acts by means of which we may please the Creator of all things, and to select those by which we shall become displeasing to God, though we may satisfy unholy laws, and those who love them.

Throughout the Middle Ages, this doctrine was kept alive and continued to be developed by many philosophers and Christian theologians—among whom were John of Salisbury and Thomas Aquinas—for whom it represented the consequence of their religious vision of political obligation, as well as a powerful tool of resistance against secular power and its attempts to reduce the political leverage and the liberties of the Christian Church (Troeltsch 1912).

The rule of law in England

In the specific context of England, the belief in the intangibility of natural law merged with the quest for the **rule of law**, a doctrine defended by the jurists of the Middle Ages, aimed at establishing boundaries of the power of the King to legislate and govern. These boundar-

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ies were found in natural law and human reason, as well as in the customary law rooted in the historical tradition of the country (*lex terrae*). According to Bracton, the rule of law limits the political authority of the King to shape the law: whereas the Monarch has absolute authority over the political choices of the kingdom (*gubernaculum*), his power is bound by the rule of law as to the administration of justice and the enforcement of the law (*iurisdictio*) (McIlwain 1939).

The theory of mixed government

While the doctrine of jusnaturalism was reliant on moral grounds, the doctrine of **mixed government** represented a purely pragmatic theory of the necessity for constraints on political authority. Attempting to counterbalance democratic radicalism realized by Pericles in the polis of Athens, **Aristotle's *Politika*** addresses the question of the best form of government in an innovative, original way. The philosopher, indeed, refuses monarchy—government by one man—as it could easily become a tyranny; he also refuses aristocracy—government by the richest part of society—since it could easily become an oligarchy; and also refuses democracy, which he conceives as government by the majority. Democracy, according to Aristotle, could lead to a government of the popular class, and thus it would boost only the interests of the poorest against the other social classes. As an alternative, he proposes a mixed form of government, where all the social classes are represented and share powers through different institutions, which are intricately linked to one another. He calls this balanced form of government "**Politeia**".

Throughout the centuries, Aristotle's theory influenced other philosophers and politicians. During the Roman Age, the most important of those was **Cicero**. As a member of the aristocracy, he fought against both the desire of the tribunes—representatives of the plebs—to acquire more power, and the attempts to confer all political power to one man. To this end, he proposed the same idea as Aristotle, i.e. a mixed and balanced form of government, that he called "**Republica**" (Commonwealth). This form of government, theorized by Cicero in *De Republica*, had its most significant historical expression in the institutional framework of the Roman Republic of the second century BC. Here, the main features of the three traditional forms of government (monarchy, aristocracy and democracy) were present, being represented respectively by the consuls, the senate, and the different kinds of legislative

assemblies (De Martino 1974). Among the latter, notably, the plebeian council deserves a special acknowledgement, as it was the main popular assembly of the ancient Roman Republic, in charge of the election of the tribunes of the plebs. Cicero clearly explains the theoretical as well as the practical reasons for the preference accorded to the mixed form of government:

> The regal form of government is in my opinion much to be preferred of those three kinds. Nevertheless, one which shall be well tempered and balanced out of all those three kinds of government, is better than that; yet there should be always something royal and pre-eminent in a government, at the same time that some power should be placed in the hands of the better class, and other things reserved for the judgment and will of the multitude. Now we are struck first with the great equability of such a constitution, without which a people cannot be free long; next with its stability. The three other kinds of government easily fall into the contrary extremes: as a tyrant grows out of a king; factions from the better class; and mobs and confusion from the people.

Several features of these doctrines are linked to specific elements of the cultural and political landscape of the Ancient Age: both Aristotle's and Cicero's doctrines are strictly connected to the historical and social conditions of their times and to their main political project—the need to achieve political peace and social stability (Rimoli 2011). According to them, this goal could only be reached as a result of a mixed form of government, in which all the powers are shared and divided. Furthermore, similar to the philosophy of the Ancient Age, the two philosophers based their theories on a specific interpretation of the social body: the political community is comparable to a human body, in which all of its parts are connected, and no single part is more important than another, regardless of the function performed by each. Such a general view of the political community is linked to a static and organicist interpretation that can't be adapted to modern societies. Nonetheless, in these doctrines we can find the first assertions of the relevance of a mixed government, whence the **modern doctrine of the separation of powers** stems (Vile 1967).

The theory of contractarianism

A third contribution to modern constitutionalism comes from the doctrine of **contractarianism**. As we will

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see in the next chapter, the idea that the state and its political institutions were born on the basis of a social compact among free men is a fundamental pillar of modern constitutionalism. This doctrine had already been introduced by several philosophers and politicians in the Ancient Age in addition to the Middle Ages. Also in this case, Christianity played a pivotal role in consolidating such doctrine, because the idea of the contract had already been largely addressed in the Bible, exemplifying the foundation of the alliance between God and men.

The theoretical framework of contractarianism was also developed by the legal practice during the Middle Ages, through the affirmation of a new social and economic pattern—**feudalism**.

In the feudal landscape, the contract was the typical model of setting the relationships among individuals and among communities, both in the realm of work and of production, as well as in the political sphere. Focusing on political power, the feudal contract was based on a pact of submission and assistance between individuals, legitimizing the political authority of the lord over the people. In the practice of feudal law, moreover, contract theory was applied by the courts of justice as a means to resolve disputes arising from the violation of agreements and mutual duties, as well as by groups and communities rebelling against the lord and attempting to claim their independence (De Benedictis 2001). In European history, therefore, contractarianism was much more than a political doctrine: it was a fundamental legal framework for the organization of social and political relationships.

At the beginning of the Modern Age, feudal contractual practice and contractual theories of the Middle Ages—mainly based on a religious vision of the social compact—were rethought and canalized into **a modern doctrine of contractarianism, conceived as the very foundation of political obligation and state legitimacy**. The idea that political obligation follows and depends on a compact among individuals, in which the government finds the very reason of its existence and its boundaries, was an essential contribution to a theory of limited political power. It introduced indeed some of the basis of modern constitutionalism: **the idea of equality of men; the existence of a superior legal framework to be respected by the government; and the need for a just government to rest upon the consent of the people**.

Furthermore, whereas the doctrine of natural law was mainly connected to religious beliefs and religious visions of the world, contractarianism permitted a secular view of the boundaries of political power (Gough 1957). In the Modern Age, where a vehement process of secularization took place (Hazard 1935), this feature of contractarianism helped define the theoretical elements of the doctrine of constitutionalism.

The theory of the right of resistance

In conclusion, although created via different paths, **jusnaturalism and contractarianism led to the affirmation of superior and intangible limits to the commands of the political power of men**. This also brought on a radical outcome: the theorization of a right of resistance against the political authorities, in the form of disobedience to unjust commands and norms, as well as in the form of rebellion against the tyrant. As we will see in ► Sect. 1.4, the claims for a **right of resistance** were the ideological tools of minority groups, which catered to the continued existence and preservation of the tradition of constitutionalism throughout the centuries of absolutism (Buratti 2006).

1.3 The Doctrine of Sovereignty and the Foundation of the Nation State in the Modern Age

The doctrine of absolute sovereignty in Europe

Despite such refined theories widespread within ancient and medieval political thought, the actual development of political institutions followed divergent directions. In Western Europe, indeed, the Roman Imperial Age, the Middle Ages and the first centuries of the Modern Age were characterized by the affirmation and consolidation of a completely different doctrine about political obligation, based on the idea of **absolute sovereignty**. This doctrine supported the growth of the Empire and, later on, national monarchies. Within the intellectual landscape of those time periods, only a minority of theorists and communities considered constitutionalism as a sound political doctrine (► Sect. 1.4).

The role played by the Civil law legal system

The idea of political power as absolute was consolidated in the context of the Roman Empire: at the end of the Roman Republican Age, the weakening of the Senate and the tribunes gave the Emperor the right to act as superior to and not bounded by the law, identifying the law with his own will (*quod principi placuit legis habet vigorem*).

In the following centuries, these doctrines shaped the codification of law led by Emperor Justinian, according to whom, "the imperial majesty should be armed with laws as well as glorified with arms".

A relationship of mutual support exists between the consolidation of the doctrine of absolute sovereignty and the growth and development of the **Civil law legal system**, throughout the last Imperial Age and Middle Ages, based on the codification of law. Roman law of the late Imperial Age was characterized by the prevalence of written, enacted, sources of law responding to the will of the sovereign and able to prevail on norms resulting from customs and opinions of lawyers. The development of the European civilian legal system follows these premises, building hierarchical relationships among the sources of law, over which the enacted law, issued by the monarch, rests. Accordingly, the role of the courts of justice was strictly limited to the application of the provisions within enacted law.

Legal Tools and Keywords: Legal Orders, Sources of Law, Legal Systems

"Ubi societas ibi ius". This Latin formula easily explains the common awareness of the relationship existing between law and human societies. Whenever a group of men reaches a certain level of stability and organization, institutions and norms start to exist with the function of regulating the relationships among individuals, developing and protecting shared interests, and maintaining the society itself. At first glance, therefore, the **legal order** can be conceived as a set of institutions and norms regulating the forms of collective organization and the rules of a civilization.

The legally binding norms in a legal order derive from **sources of law**. Sources of law are any acts or facts that the legal order acknowledges as valid forms of normative production. In complex societies, the law is produced by several sources of law: in the evolution of modern western law, the main sources of law acknowledged are enacted legislation, jurisprudence and customary law. This **pluralism of the source of law** implies an organization of the relationships among sources, in order to avoid normative conflicts. The set and the methods of organization of the sources of law take the name of the **legal system**.

In ancient societies, where tradition played a fundamental political role, **customary law** had the prominent position in the hierarchy of the sources of law (traditional or customary legal systems). Though, with the development of more complex societies, the importance of customs in legal systems has progressively diminished. **Jurisprudence** (or case law) is the set of decisions made by the courts (judicial branch of a legal order) adopted at the time of ruling on cases brought to their jurisdiction. **Enacted legislation** means any written, normative, published act created by a political body according to a specific procedure.

Starting with the Modern Age, the legal orders of the states in the Western World are organized according to two distinct legal systems. In the **Civil law legal system,** the enacted legislation occupies the key role: the courts are bound by the enacted law, they only retain a power of interpretation of the norms. In the **Common law legal system**, instead, the main source of law is the jurisprudence of the courts, according to the rule of the precedent (the respect of the previous decisions taken in similar cases by a superior court) (David and Jauffret-Spinosi 1993; Losano 2000).

During the Middle Ages, the collapse of the Roman Empire resulted in an extreme political fragmentation in Europe, with the affirmation of local lords and communes as new political authorities. Such a radical transformation from the imperial model, which was characterized by legal uniformity and political hierarchy, brought on the emergence of different legal systems: local customs and local traditions came back to life, overlapping with the commands of new local lords. **Legal fragmentation was a typical feature of the Middle Ages' legal systems**, only partially limited by the effort of courts' jurisprudence to foster the consolidation of a *jus commune*—the expression for a universalistic vision of politics—made of principles of Justinian Law and maxims of legal interpretation delivered by lawyers.

During the fifteenth century, with the settlement of the monarchies in France, Great Britain, Spain and Portugal, a process of reorganization of the political institutions took shape. The outcome was the foundation of a new political organization, the **state**—a political organization

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spread over a vast territory, driven by a centralized governmental authority, and imposing a homogeneous legal order on the people. The state-building process followed common paths throughout Europe, with the emergence of an aristocrat's ability to predominate over his peers and progressively centralize fundamental public functions, such as: maintaining armies and granting internal security; raising revenues; imposing regulations on commerce; organizing jurisdiction and granting the enforcement of its rulings (Hirschmann 1977; Poggi 1978).

The affirmation of the modern state implied the elaboration of a theoretical legitimacy of the concentration of power in the figure of the monarch. Therefore, the doctrine of absolute sovereignty was revitalized and stressed: political power was thought to be legitimized by God and granted by him to his representative on Earth. The French philosopher Bodin is considered the father of this stream of thought. This divinity attributed to the sovereign led to extremism in the views of his value, glorifying him with illusions of mysticism and sanctity (Kantorowicz 1957). Accordingly, the political power of the sovereign was considered to be indivisible and illimitable.

The theorists of absolute political power fought against all doctrines aimed at establishing boundaries to the power of the sovereign to legislate: from their perspective, the prince was "*legibus solutus*". According to them, the sovereign's role was to abolish jurisdictional authority of the territorial lords, as well as to modify ancient legal traditions and privileges of the cities, communities, guilds and nobles, which were widespread in the medieval legal order.

The foundation of the nation state in modern Europe

The spreading of the Civil law legal system in continental Europe, with its rational and centralized hierarchical structure, fostered the development of the modern nation state, the settlement of a centralized authority able to bind all the local powers existing in the fragmented legal order of the Middle Ages, as well as the twilight of the *jus commune*. These achievements occurred thanks to the acquisition of the power by the monarch to produce normative acts and introduce normative innovations: a radical change when compared to the medieval legal order, which conceived the law as customary and eternal, and the role of political authority as strictly limited to enforcing the law.

With the **Peace of Westphalia (1648)**—which brought an end to a long-lasting conflict between France and

England, also based on religious grounds after the Anglican Reform—the form of the modern state was finally acknowledged. The Treaty of Westphalia recognized the exclusive sovereignty of the state over its population: other institutions, such as the church, were not allowed to supersede the state within its boundaries.

The basic elements of the modern state

Transformations to the form of political obligation brought by Westphalia are easily understandable through the analyses of three basic elements of the modern state, which distinguish it from previous forms of political organization.

The first factor is **territory**: During the Middle Ages, territory was conceived in terms of heritage, as property belonging to the feudal lord, and the obedience to the sovereign's command was due because of a personal obligation based on the feudal compact; in the new environment of the modern state, territory represents an asset of the state as an abstract subject: in this framework, state's boundaries identify the space in which the state's legal order is in force. The identification of the effectiveness of the legal order through the state's boundaries meant first of all the overcoming of the Middle Ages' model of overlapping political sovereignties and social communities; then, it entailed a process toward an equal application of law over the people (Di Martino 2010). The second element to be taken into consideration is the **people**: modern state is different from any other organization exactly for extending itself to a polity, i.e. to a community of people who share a political belonging and are subject to the same political obedience. With the Revolutions and the emergence of democratic theories of political legitimacy, this idea allowed for the rise of the notion of citizenship, a status defined by conditions set forth by the law aimed at identifying the members of the society, that is the source of both duties toward the community as well as rights of political participation (Costa 1999). The third element is **sovereignty**: the modern state does not allow the recognition of other authorities within its boundaries and over its people; it claims the exclusive and legitimate use of force, the power to produce norms, to enforce them, and to judge controversies and crimes.

Modern sovereignty also owns an external dimension. The state is "*superiorem non recognosens*" both as well as in foreign affairs: in regard to the relationships between nation states, each state is equally legitimated to stand,

negotiate and join treaties. This allowed for the birth of the ***Jus Publicum Europaeum*** (Schmitt 1950), a term which refers to the first conceptualization of global international law, founded on the beliefs of formal equality of sovereign states and mutual acknowledgement. The states were the protagonist of the development of international law, which is mainly the outcome of the set of treaties and agreements between the states, aimed at regulating the relationships among each other. At the same time, the relationships among the states also create a base for the foundation of a transnational legal order, made up of customary rules and commonly acknowledged principles (e.g. the *pacta sunt servanda* principle), which progressively builds up the legal framework of international law and international relations.

With the transition from the Middle Ages to the Modern Age, the same doctrine of contractarianism changed in meaning, supporting the consolidation of absolutism. This shift in definition can be more easily understood when comparing two famous artistic allegories of political obligation: Ambrogio Lorenzetti's "Effects of Good Government", a fresco of the late Middle Ages (1338) lying in the Civic Museum of Siena, shows the sovereign bound by a rope held by citizens: here, the lord is equipped with the traditional hallmarks of command, but is submitted to the constant check by the people. The second image projects us in the middle of the Modern Age: it is the famous cover illustration of the "Leviathan" by Thomas Hobbes (1651), a book rightly considered a pillar of the doctrine of absolutism. In Hobbes'view, the power of the state can be compared to that of a biblical monster, the Leviathan, created by a social contract with the duty to protect the polity: it is illustrated as a giant who embodies within himself the citizens, thus representing the people as a whole. His will does not meet any sort of constraints, because he simply gives voice to the will of the people. The comparison between these two well-known images, suggests that, with the passage to the Modern Age, social contract is no more—as it was in the Ancient and Middle Ages—a mutual obligation, a source of bounds and duties for the sovereign, but rather now this contract is conceived as a pact of obedience, providing the sovereign with a representative characteristic which places him above the laws.

Obviously, the concrete organization of the absolute state in the Modern Age, and the structure of the *Ancien Régime* society, were more complex than what was envis-

aged by the theoretical doctrines of absolutism: in some countries, the aristocracy was able to preserve portions of authority, and the judicial courts often played a role in constraint of the government. Furthermore, the monarchs had to deal with the **parliaments** of the Modern Age—collective bodies representative of the different classes of the *Ancien Régime* society, where general political issues were debated and revenues' collection authorized (Hofmann 1974).

However, against the political orders of the Middle Ages, the modern state was able to overcome feudal and local peculiarities and privileges, organizing the political power through a centralized administrative and judicial system. Moreover, the affirmation of the modern state helped in the overcoming of religious conflicts, endemic in European society after the fall of the Roman Empire and further exacerbated by the religious schisms of the sixteenth century, by imposing a sole religion on citizens, and limiting the role of the church in politics, thus enforcing a separation between church and state, which is at the origin of the modern concept of secularism.

1.4 The Minority Paths of Constitutionalism in the Age of Absolute Sovereignty

Against the hegemony of the doctrine of absolute sovereignty, and the related consolidation of the modern state, at the beginning of the Modern Age the theoretical roots of ancient constitutionalism were resumed, brought back to life and reconceived in the light of the new modern political age by philosophers, minority groups and local communities (Wolzendorff 1916).

Aristocratic resistance

In many countries, aristocracy resisted the attempts to affirm a centralized monarchy through the imposition of charters of rights: compacts drafted in the typical form of a feudal pact, in which the aristocrats acknowledged the legitimacy of the monarchy, and the king would confirm privileges, immunities and prerogatives of the lords. In all of these charters, the pacts were granted through the codification of the right of resistance, allowing aristocrats to resist, rebel and remove the sovereign in the case of violations of the charter. The English ***Magna Carta Libertatum* (1215)** was assumed to be the pattern for such documents. These charters are hardly comparable to modern constitu-

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tions and modern bills of rights: they were only aimed at protecting privileges of the aristocratic social class, rather than individual rights, and their design is more easily comparable to compacts between lords and vassals typical of the feudal system (Brunner 1968); at the same time, however, the aristocratic charters of rights contributed to the settlement of the conception of individual rights as constraints to the political power of the monarchs, and established a contractarian pattern as the legal framework for the protection of rights, seminal for what would become constitutional documents.

The resistance of religious minorities

Opposition to the modern concept of political sovereignty was also carried out by the religious minorities persecuted by the monarchs all over Europe. According to the main theorists of these groups (Hotman, Theodore Beza, Calvin, among others), political power derived from a compact with the people. Therefore, in any case in which the government becomes unjust and oppressive, the people should always have the power to resist and remove the tyrant. At the same time, these authors refused the binding authority of Roman law, deemed to be the source of the absolutist doctrine of sovereignty. A sound political system, instead, should have been based on a system of constraints over the power of the monarch, consisting of the traditional institutions of the country and of other innovative institutions entrusted with competences to check the monarch's powers (Zancarini 2001). Additionally, the politics of the Italian Renaissance exhibit relevant connections to ancient constitutionalism: though far from the premises of modern constitutionalism, Machiavelli, in his *Discourses on the First Decade of Titus Livius* (1513–1519), magnified the institutional structure of the Roman Republic, and most of all, the role played by the tribunes, described as fundamental to the prevention of abuse of power by the Senate (Skinner 1978).

The insurgency of the United Provinces of the Netherlands against the Habsburg Empire, known as the Dutch Revolt (1581–1588), laid the foundation for the consolidation of these doctrines—supported by the Calvinist religion spread in those territories—and for the settlement of the Republic, an institutional organization setting the first form of power-sharing (Clerici 2004).

This broad set of theories, claims and episodes of political fights contributed to shaping **the doctrine of resistance against political power**. Clearly, during the