

# The revolution from antiquity till 18<sup>th</sup> century

## Abstract

Many revolutions have broken out throughout history before the rise of constitutionalism in the 18th century and the establishment of positive law. Since then, many times, the tendency for reaction against authority obtained the form of a revolution. The article searches the core of revolution and its route in human societies from antiquity till the 18th century, when the American and the French revolution led to the revolution's positivization.

**Keywords:** revolution, resistance, disobedience, rebellion, uprising

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## Introduction

The last decades, the analysis of the legal meaning of revolution has been limited. Suddenly, the Arab Spring in 2010, which has lasted till now, led to a reexamination of revolution's background. Throughout history, many revolutions have broken out. The Roman Republic was shocked by the revolution of the Thracian Spartacus (73-71 BC) where as the Roman Empire by the Great Revolt of the Jews (66-73 AD), the Eastern Roman Empire faced the Nika Revolt in 532 AD and the Abbasid Caliphate confronted the revolt of slaves, called the Zanj Rebellion in 869 AD.<sup>1</sup> Also, during the Middle Ages, the peasants many times carried out uprisings. The uprising of the peasants in France in 1358 (Jacquerie Revolt) is famous as well as the Peasants' Revolt in England in 1381 and the Great Peasants' Revolt in Germany in 1524-1524. Among them, some had a deeper national, political, religious or social content. For example, in 1382 the Maillotins Revolt was against the imposition of tax in France while in 1450 the Jack Cade Rebellion in England confronted the abuse of power and the public debt. Rebellions become 'revolutions' when the insurgents are successful. Usually, the word 'rebellion' produces negative connotations. On the contrary, resistance and revolution are terms which create positive connotations.

All the above revolutionary movements had a social and legal background. Every revolution fights against the official social and political status quo. The core of the political power is the law, whether it is related to the God or not. It is obvious from a legal point of view that a first major distinction of the law is that between positive and natural law. Natural law is much older and universal - in some sense eternal - and incorporates the immortal idea of justice and the unwritten moral values of justice. On the contrary, positive law is a construct, a human-made law. Positive law was mainly associated with the constitutionalism of the 18<sup>th</sup> century, when the state of law was clearly separated from the previous royal absolutism and the ecclesiastical conformism.

Maybe the first who directly examined the natural law was the pre-Socratic Greek philosopher Heraclitus<sup>2</sup> (τρέφονται γὰρ πάντες οἱ ἀνθρώπειοι νόμοι ὑπὸ ἐνὸς τοῦ θείου). for all human laws are fed by the divine one. *Fragments* 114 in Stobaeus, *Anthology*, III, 1, 179). Later, Aristotle continued with the distinction between natural and positive law (*Rhetoric*, I, 1368b<sup>1</sup> and 1373b<sup>2</sup> and *Nicomachean*

*Ethics*, 1134b. IX-X<sup>3</sup>). The revolution has partially acquired its current meaning after the Glorious Revolution in 1688 (English Revolution) and the great revolutions of the 18<sup>th</sup> century (American and French Revolution). The constitutional texts of the above revolutions (see the American Declaration of Independence of 1776 and the French Declaration of the Rights of Man and of the Citizen of 1789) helped in the positivization of the natural law of the revolution. According to Habermas<sup>4</sup> 'The act by which the positivization of Natural Rights was initiated, in America as well in France, was a declaration of fundamental rights'. The American colonists wanted to legitimize their independence from the British Empire and the French to legitimize the overthrow of the *Ancien Régime*.

Before the 18<sup>th</sup> century and the following rise of positive law, (civil) disobedience, resistance and revolution were three *types* of the same general concept of *Reaction* which developed from antiquity since the late 18<sup>th</sup> century under the umbrella of natural law,<sup>4</sup> with the primary exception of Athenian Democracy and Roman Res Publica in which the armed defence of the democracy was legitimate as well as the tyrannicide.<sup>5</sup> During this period disobedience, resistance and revolution do not have clear separating lines.<sup>6</sup> For that reason, some analysts support their opinions for the existence of the (civil) disobedience, the (right of) resistance and the (right of) revolution

mean those established by each people in reference to themselves, which again are divided into written and unwritten; by general laws I mean those based upon nature. In fact, there is a general idea of just and unjust in accordance with nature, as all men in a manner divine, even if there is neither communication nor agreement between them. This is what Antigone in Sophocles evidently means, when she declares that it is just, though forbidden, to bury Polynices, as being naturally just: "For neither to-day nor yesterday, but from all eternity, these statutes live and no man knoweth whence they came." And as Empedocles says in regard to not killing that which has life, for this is not right for some and wrong for others, "But a universal precept, which extends without a break throughout the wide-ruling sky and the boundless earth." Alcidas also speaks of this precept in his *Messeniacus*(...) And in relation to persons, there is a twofold division of law; for what one ought to do or ought not to do is concerned with the community generally, or one of its members.<sup>3</sup>

<sup>3</sup>Political Justice is of two kinds, one natural, the other conventional. A rule of justice is natural that has the same validity everywhere, and does not depend on our accepting it or not.<sup>4</sup>

<sup>4</sup>I believe that the concept of *Reaction* to authority encompasses only revolution, resistance and disobedience because for these concepts there is common terminology in legal theory.

<sup>5</sup>For a complete analysis on tyranny in the ancient world, see Joannes Stobaeus (5<sup>th</sup>-century CE), *Anthology*, Chapter 49.

<sup>6</sup>For this problem see also Rompoukou-Karagianni.<sup>6</sup>

<sup>1</sup>Now, the law is particular or general. By particular, I mean the written law in accordance with which a state is administered; by general, the unwritten regulations which appear to be universally recognized.<sup>3</sup>

<sup>2</sup>Now there are two kinds of laws, particular and general. By particular laws I

before the 18<sup>th</sup> century with the same bibliographic sources! On the contrary, after the victory of legal positivism (civil) disobedience, resistance and revolution have taken each one a more different orientation and content. There are many possible reasons for this confusion. At first, before the 18<sup>th</sup> century, the separation of powers was absent. Also, till then, the democracy had been mainly associated only with the ancient Athenian Democracy and the Roman Res Publica. Furthermore, the current legal and social concepts of the state, the state of law, the society or the constitution were almost totally unknown. In addition, the above confusion is partially justified because the concept of the revolution is analyzed not only through the legal theory, but also by other sciences like history, social and political sciences, philosophy, criminology and religious studies. For example, the act of Spartacus against the Roman Republic (Third Servile War-73–71 BC) is described either as revolution or uprising, war, revolt, rebellion et cetera. This paradigm clarifies the difficulty in describing correctly events which took place many centuries ago.

### The ancient Greek-Roman period

The *Reaction* to authority, from antiquity till the 18<sup>th</sup> century, was mainly covered under the mantle of natural law. Historically, the revolution has indirectly appeared in the ancient Greek and Roman literature, in Christianity and Judaism as well as in oriental philosophical traditions. In Asia and particularly in China, revolution is mentioned as early as the Bronze Age. A well-known example is the *Tirukkural* a classic work of poetry of Tamil, written about 200 BC by Thiruvalluvar.<sup>1</sup> 'In Bronze Age China, notions of legitimate popular uprisings served as an important potential curb over otherwise formidable imperial authority'.<sup>7</sup> The teachings of the great philosopher Confucius (551-479 BC) and Mencius (c. 300 BC) are typical. 'Within Confucian thought, the idea of a right to resist that inhered in the people is typically associated with Mencius'.<sup>7</sup> The Chinese philosophy was influenced by the *Mandate of Heaven*, which was essentially an ancient kind of social contract between the monarchs and their subjects, which obliged the monarchic power to govern properly and fairly. The violation of the *Mandate of Heaven* produced a legitimate right of reaction to power. 'The theory of the Mandate of Heaven helped scholars to understand the rise and fall of rulers, and it is sometimes identified with a right of rebellion'.<sup>7</sup> Also, indirect references to revolution occurred in Africa and to a lesser extent in the ancient Islamic world.<sup>8</sup>

Several researchers identify the justification of a revolution in the sacred books of the Old Testament (one of the two collections of books that form the Christian Bible) as the Genesis<sup>7</sup>, the Exodus<sup>8</sup>, the Numbers, the Deuteronomy<sup>9</sup> and the Prophets.<sup>9</sup> Indeed, Genesis, Exodus, Numbers, and Deuteronomy are all books of the Jewish Torah (Law) and the Christian Pentateuch, i.e. they are accepted by Jews, Catholics, Orthodox as well as Protestants. Also, *The Book of Tobit* mentions Tobit, the person who resisted against the order of the king not to bury the citizens, an action which resembles the act of Antigone of Sophocles! 'Sennacherib, King of Assyria, slew many Jews and threw their bodies behind the city wall: Tobit buried them and when the king learned of it he sought to put him to death'.<sup>10</sup>

17 And my clothes to the naked: and if I saw any of my nation dead, or cast about the walls of Nineve, I buried him.

<sup>7</sup>See Genesis Chapter 38 about Judah and Tamar (Daube 1972:13-14).

<sup>8</sup>Pharaoh ordered the Hebrew midwives to kill all male newborn immediately on delivery. But the midwives feared God and did not do as the king of Egypt commanded them, but saved the men children alive—*Exodus* 1.15 ff.<sup>10</sup>

<sup>9</sup>See in 25.5 ff.

18 And if the king Sennacherib had slain any, when he was come, and fled from Judea, I buried them privily; for in his wrath he killed many; but the bodies were not found when they were sought for of the king. 19 And when one of the Ninevites went and complained of me to the king that I buried them, and hid myself; understanding that I was sought for to be put to death, I withdrew myself for fear. (Chapter 1).

7 Therefore I wept: and after the going down of the sun I went and made a grave, and buried him.

8 But my neighbours mocked me, and said, This man is not yet afraid to be put to death for this matter: who fled away; and yet, lo, he burieth the dead again (Chapter 2).

Another example is found in the Book of Esther in Old Testament.<sup>10</sup> Furthermore, the issues which concern the meaning of revolution were investigated by both the ancient Greeks and the Romans, who succeeded them. 'Theories of revolution and rebellion are ancient and varied, from Greece and Rome to natural law, the Enlightenment, liberalism, and human rights. Even deferential and hierarchical systems, such as Confucianism, feudalism, and some religions, have justified violent regime change in extreme circumstances'.<sup>11</sup> 'Indeed, prior to the American and the French Revolutions of the eighteenth century, the right of revolution had been accepted in several human societies. Scholars have identified related expectations, for example, among the early Greeks and Romans'.<sup>12</sup> 'Looking back in history, the right of revolution has emerged simultaneously, both in Western and Eastern legal tradition. Schools of natural law and social contract have largely contributed to the affirmation of the right of revolution in international law, while it has independently developed in Chinese and Islamic law. The powerful influence of these major legal traditions in the world has led to an explicit or implicit recognition of this right in constitutional laws worldwide'.<sup>8</sup> 'Dialogue concerning the right to revolt was present in the political theories of the Greeks and Romans, as well as in the Germanic folklore and the legal traditions of Medieval Europe'.<sup>13</sup>

From a philosophical perspective,<sup>11</sup> in the ancient Greek world, the first ones who dealt with the conventionality of law and the concept of disobedience and resistance were Homer (8<sup>th</sup> century BC) in *the Iliad* (I - 9) and Hesiod (c. 700 BC) in the *Works and Days*.<sup>1</sup> 'In Homer, particularly in the Iliad, for the first time, we encounter the case of civil disobedience in its early form. This is the conflict between Agamemnon and Diomedes before the assembly of the Achaeans'.<sup>15</sup> Later, in the late 6<sup>th</sup> century, due to Cleisthenes' reforms (507-506 BC), the word *nomos* (= law) has acquired the meaning it has today. Discipline in law and in particular in democracy became more important when the city-state governance was given to tyrants. In this case, the citizens had the right to react.<sup>16</sup> In the antiquity, the famous example of Tyrannicides, who were honored for their actions, were the heroes of democracy Harmodius and Aristogeiton. Harmodius and Aristogeiton murdered the Peisistratids' tyrant Hipparchus in 514 BC. The Tyrannicides were considered sacred persons. In their statues, somebody could resort as a refuge for any reason. Aristotle informed us that they were the first mortals whose statues were erected on the Agora.<sup>17</sup> Also, at the same period, Xenophon of Athens (c. 430 BC)<sup>12</sup> and Plato (427-347 BC) as

<sup>10</sup>The story opens with a magnificent banquet given by the Persian monarch. On the seventh day, slightly drunk, he sends for his beautiful wife, Queen Vashti, to boast with her before his guests. She refuses to appear, and enraged, he convenes the Council of State—composed entirely of men.<sup>10</sup>

<sup>11</sup>We should not therefore contradict the assertion that the Revolution received its first impulse from Philosophy.<sup>5,14</sup>

<sup>12</sup>See Xenophon in *Hiero*.

well as Aristotle (384-322 BC) wrote against tyrants.<sup>13</sup> '[T]he law ran as follows: "These are the ancestral statutes of the Athenians; if any persons shall make an attempt to establish a tyranny, or if any person shall join in setting up a tyranny, he shall lose his civic rights, both himself and his whole house"' (Aristotle, *The Athenian Constitution*, Section 1, Part 16, translated by Sir Frederic G.

The ancient Athenian law addressed various crimes. Among them, the political crimes, such as the betrayal, the establishment of tyranny and the overthrow of the regime were heavily punished. Since the end of the 5<sup>th</sup> century, the overthrow of the government has been the pre-eminent political crime that the legislation dealt with successive settings like the *Decree of Demofantus* (410 BC), the *Decree of Eucrates* (336 BC) and the *Prosecution law*.<sup>18</sup> When the democracy replaced the short-lived oligarchy, known as *The Four Hundred* (411-410 BC), the Ecclesia based on a Demofantus' proposal, passed a Decree which could punish anyone who wanted to topple the democratic government. The text of the decree was written in a Stele outside Bouleuterion (Assembly House), (Andoc. *Speech On the Mysteries* 1.96-1.98). Then, the *Decree of Eucrates or Democracy's Stele* (SEG 12.87 - Ag. 16, 73, 337/6 BC), written in a marble Stele in Stoa of Attalos (Agora Museum, I 6524, S 2370), defined that: '(...). If anyone should rise up against the Demos for tyranny or join in establishing the tyranny or overthrow the Demos of the Athenians or the democracy in Athens, whoever kills him who does any of these things shall be blameless. (...)'.<sup>14</sup> The above mentioned *Democracy's Stele* is a law against tyranny and an essential precursor of the modern constitutional clauses of resistance and revolution. The law (Decree) was passed a few months after the Philip II of Macedon defeated the Thebans and Athenians at the Battle of Chaeronea (338 BC), to prevent the possibility of pro-Macedonian revolt in Athens. In reality, however, the law proved short-lived. In 322 BC Macedonians occupied Athens. It is said that the rapporteur of the law Eucrates faced ignominious death. The marble copies of the law were deposited.<sup>19</sup>

Furthermore, in the 4<sup>th</sup> century, the Prosecution law referred to the following offenses:

- a) Overturning the municipality.
- b) Conspiracy to overthrow democracy.
- c) Betrayal city, army or navy.
- d) Bribe in order to propose to the Ecclesia things harmful to the city (deceiving the Athenian municipality).

The ancient text says: In what cases then do you think impeachments should be used? Your answer has already been embodied in detail in the law, so as to leave no room for doubt. "If any person," it says, "seeks to overthrow the democracy of the Athenians." Naturally, gentlemen of the jury; for a charge like that admits of no excuse from anyone nor of an oath for postponement. It should come directly into court. "Or if he attends a meeting in any place with intent to undermine the democracy, or forms a political society; or if anyone betrays a city, or ships, or any land, or naval force, or being an orator, makes speeches contrary to the interests of the Athenian people, receiving bribes." The opening provisions of the law were made applicable by you to the entire citizen body, since those are offences which anyone might commit; but the latter part is directed against the orators themselves, in

<sup>13</sup>See Plato, *Republic*, book 8, 565c-566a and 566e-567a- book Θ' (9), 574 b, c and 575 c, d. See in the Perseus Digital Library in Plato, *Republic*.

<sup>14</sup>Retrieved from the American School of Classical Studies

whose hands the proposing of measures rests. (Hyperides, *In Defence of Euxenippus*, 7-8, dated between 330 and 324 BC).<sup>15</sup>

In ancient Athens and other cities democracy was protected by the Ephebic Oath,<sup>16</sup> an oath of the youth of Athens. At the same time, heavy penalties such as the institution of ostracism (ten years exile) were executed for those who were dangerous to the democracy and the grave penalty of *dishonor* could bring deprivation of political rights to enemies of the municipality, traitors, deserters, slanderers, embezzlers of public money, judges who judged unfairly and to those who were wasting paternal fortune. Let us not forget that the tyrant Hippias (575-490 BC) was exiled with his family after the restoration of democracy, and his remaining followers were judged and convicted. Also, Thucydides in *The Peloponnesian War* (Book 8, Chapter 76), referred to an act of armed resistance by a part of the Athenian fleet at Samos against the imposing of the oligarchy of 400 rulers (known as The Four Hundred), after the Athenian coup of 411 BC.<sup>18</sup> 'The soldiers proceeded to summon an assembly, at which they deposed their former generals, and any trierarchs whom they suspected, and chose others' (Thuc. 8.76.2a). Also, Xenophon described the death of Euphron, tyrant of the ancient Greek city-state of Sicyon (*Hellenica*, Book VII, Chapter I, 44-45, Chapter II, 11, Chapter III, 1-12). Furthermore, Aristotle made some notions in his 5<sup>th</sup><sup>17</sup> Book of *Politics*,<sup>22</sup> as well as the formidable orator Demosthenes (384 -322) in *Philippics Philippic II*<sup>18</sup>(25) and *IV*<sup>19</sup> (4). Also, we should mention that in antiquity the references about resistance and disobedience are abundant, but we cannot extend our analyses on this issue. However, we should mention Herodotus with his *Speech of the Persian noble Otanes*, the Sophists Protagoras, Anonymous of Iamblichus, Thrasymachos, Callicles, Glaucus, Hippias, Antiphon, Alcidas and Critias, the tragedy of Aeschylus *Eumenides* (321-329, 389-393, 614-618 and 622-624), Sophocles' *Antigone*<sup>3-25</sup>,<sup>20</sup> Socrates' *Apology* and *Crito*-see Plat. *Crito* 49c), Thucydides' *Melian Dialogue*, Plato in the *Republic*, Book VIII, 566a-566b and Stoics (the 'Calvinists of antiquity'). In addition, we should state that the meaning of resistance

<sup>15</sup>Retrieved from the Perseus Digital Library, Department of the Classics, Tufts University.<sup>20,21</sup>

<sup>16</sup>'(...) I will obey whoever is in authority, and submit to the established laws and all others that the people shall harmoniously enact. If anyone tries to overthrow the constitution or disobeys it, I will not permit him, but will come to its defence single-handed or with the support of all. (...)'

<sup>17</sup>'Almost all the other subjects which we intended to treat have now been discussed. There must follow the consideration of the questions, what are the number and the nature of the causes that give rise to revolutions in constitutions, and what are the causes that destroy each form of constitution, and out of what forms into what forms do they usually change, and again what are the safeguards of constitutions in general and of each form in particular, and what are the means by which the safeguarding of each may best be put into effect. (...)'

<sup>18</sup>'What is it that you desire?' I said. 'Is it freedom? And do you not see that the very titles that Philip bears are utterly alien to freedom? For a king, a tyrant, is always the foe of freedom and the enemy of law. Will you not be on your guard,' I said, 'lest in striving to be rid of war, you find yourselves slaves?'

<sup>19</sup>Therefore, as the Greeks in every city are divided into these two parties-the one desiring neither to rule others by force nor to be slaves to any man, but to enjoy liberty and equality under a free constitution; the other eager to rule their fellow-countrymen, but to take their orders from some third person, who they think will enable them to compass their ends-Philip's faction, those who hanker after tyrannies and oligarchies, have everywhere gained the supremacy, and I doubt whether of all the states there is any stable democracy left except our own.<sup>23</sup>

<sup>20</sup>'A woman is the main figure also in the Greek prototype of civil disobedience: Antigone, who despite King Creon's strict prohibition, buried her brother who had perished as a traitor'.<sup>10</sup>

had not only a national or local character (e.g. Persian Wars and local resistance against a tyrant). The resistance was not only secular but also spiritual. In ancient times, many philosophical schools focused on both internal fullness and freedom from material things. Sophists, Pre-Socratics, Post-Socratics, Cynics, Epicureans, Stoics, Sceptics, and Neoplatonists are just some of those that focused on inner freedom, self-government, self-sufficiency, indivisible being, freedom of will, temperance and a host of other spiritual virtues. However, despite the scattered references 'classical Greece is characterized by several periods of obedience more than disobedience to the law' (Yataganas 2010:65) - see Demosthenes, *Against Aristogiton* 2, section 25.

Subsequently, we discover ideas of resistance during the Roman period in the works of Cicero (106-43 BC) on *Duties (De Officiis – III, 21)* justifying the murder of Julius Caesar, *De Re Publica* (On the Commonwealth – I, 42, II, 25 and III, 31) and *De Legibus* (On the Laws). Also, there are similar references in the tragedy of Seneca *Hercules Furens* (920), in the *Parallel Lives* of Plutarch (*Solon*. 30.3-5.), in the historian Tacitus *Calgacus's Speech* and in the teachings of Roman Emperor Marcus Aurelius (121-180 AD). Also, about the end of the 2<sup>nd</sup> century and the beginning of the 3<sup>rd</sup> century, Athenaeus of Naucratis in his famous work *Deipnosophistae* (Book XII, 56) mentioned a whole chapter about the tragic punishment of the tyrants (see the tragic end of Dionysius the Younger).

The main reason for which the main revolutionary reaction to the central governmental and religious power come after the early Renaissance (11<sup>th</sup> century) and the Protestant Reformation (16<sup>th</sup> century) was that gradually the so-called Roman Republic (*Res Publica*) declined and transformed after the rise of Julius Caesar and Octavian into the Roman Empire. The first period of the absolutism of the Roman Empire was called Principate (*Principatus*) and the second Dominate (*Dominatus*). Since then, the democratic institutions have weakened such as the Senate. The retreat of the democratic ideals coincided with the increasing importance of the army such as the Praetorian Guard. As a legal result, for many centuries, the revolution lost the contact with positivism until the coming of constitutional Magna Charta in 1215.

### The advent of christianity

Later, the retreat of the Roman democratic institutions continued with the culmination of the Eastern or the Late Roman Empire (some mistakenly call it Byzantium). Then the political power took a sacred dimension and the Emperor became the official and visible representative of God on Earth. The famous Jesus' phrase 'Render unto Caesar the things that are Caesar's, and unto God the things that are God's' (Matthew 22:21) strengthened both royal power and the church which were typically separated. Simultaneously, the church became even more reluctant to react to unfair governmental acts. The word "resistance" is absent from the vocabulary of the Bible. Therefore, from the Christian standpoint disobedience to secular power is unacceptable.<sup>18,21</sup> Indeed, many theorists rely on passages of the *Holy Scripture*.<sup>24,25,15,7</sup> Great interest is shown in: *The Epistle of St. Paul the Apostle to the Romans* writes: Submission to Governing Authorities (*Romans* 13:1-7), *The Epistle (Letter) of St. Paul the Apostle to the Hebrews* (Chapter 13:7), *The Epistle (Letter) of St. Paul to Titus* (Chapter 2:9), (Chapter 3:1), *the First Letter of St. Paul to*

<sup>21</sup>On the other hand, some argue that the teaching of Christ encloses the civil disobedience because of the expulsion of the merchants from the Temple of Jerusalem and His refusal to be cheered by the people as an earthly king as well as due to some extracts of His Speech on the Mount of Olives. Contra Yataganas.<sup>15</sup>

*Timothy* (Chapter 2:1-2), (Chapter 6:1) and *the First Epistle of Peter the Apostle* (Chapter 2:13-18). Similar views on obedience to secular power have also formulated by the leading saints of Christianity, such as Gregory the Theologian (see *Speeches* IZ' and IΘ') and John Chrysostom (see ΛΑ' Speech, Heb. 13-17).

However, throughout history a few prominent figures of Christian background, who had joined the priesthood, strongly resisted to the narrow interpretation of these holy texts (e.g. Papaflessas, Miguel Hidalgo, Samuel Sharp, Georgiy Gapon, William Henry Sheppard, Hélder Câmara, Óscar Romero, Jerzy Popiełuszko and Antonio Cardenal Caldera -Jesus Rojas). Some of them also supported the progressive movement of 'Liberation theology' or they had an active role to reactionary and revolutionary actions. The official Church, even today, finds difficult to categorize their actions. A classic example is the case of the Dominican friar, Jacques Clément who assassinated the king Henry III of France in 1589. Although Clément was regarded as a martyr and was praised by Pope Sixtus V, Clément has never been canonised.

### The proto-protestant period

The effect of the advent and the gradual prevalence of Christianity in the 4<sup>th</sup> century in the New Roman Empire would mean the end of the disobedience theories. The above scheme will last at least until the 11<sup>th</sup> century! For example, in the West during the feudalism (c. 800-1500 AD) the submissive vassal was providing faith and the lord (seigneur) in exchange of a fief, inheritance rights and a guarantee of security. The vassal was providing a religious oath of subordination (oath of fealty) during a ceremony of dedication - subordination (homage) to the lord. People were behaving as subjects and not as citizens.

The first signs of institutionalization of the reaction to political power were recorded in the 9<sup>th</sup> century with the *Oaths of Strasbourg* in 842 AD. Then, the 11<sup>th</sup> and the 12<sup>th</sup> century were marked by the first serious conflict between the Papal Church and European monarchies. The political and religious *Investiture Controversy*, on whose authority is to select (invest) local church officials such as bishops of the cities and abbots of monasteries, started at first between Henry D of the Holy Roman Empire and the Pope Gregory the 7<sup>th</sup> in 1075 AD and ended, after a fierce battle, with the *Concordat of Worms*, in the German city of Worms in 1122. Thirty years later, in 1153, the bishop of Chartres, John of Salisbury (c. 1120-1180) wrote *Policraticus* (the third book, in chapter 15, is entitled *It Is Lawful to Flatter Only Him Whom It Is Lawful to Slay; the Tyrant a Public Enemy*). John of Salisbury accepted the murder of Julius Caesar, Caligula, Julian and Holofernes (Babylonian General of Nebuchadnezzar) by Judith. It is very important to note that John of Salisbury is the first who accepted and defended the tyrannicide, as a way of political opposition to power since antiquity!<sup>26</sup>

The analysis of the 13<sup>th</sup> century is pivotal because until then there were no encoded rights of citizens against the arbitrariness of the political power. The major changes coincided with the signing of Magna Charta, the Great Charter of the Liberties in England. In 1215, the King of England John Lackland signed the sacred Magna Charta, the first constitutional document of England, which is a cluster of rights of British nationals (see art. 61 about the right to rebellion).<sup>6,8,25</sup> Seven years later, in 1222 the King of Hungary Andrew II issued a similar to Magna Charta special Golden Bull, which is the first constitutional text of the country. The art. 31 of the Golden Bull, called 'clause of resistance', stipulated that the nobles could complain and make armed uprisings if the king would breach the provisions

of the Golden Bull.<sup>27</sup> Furthermore, in the 13<sup>th</sup> century, the brilliant Italian theologian Thomas Aquinas (1225-1274) wrote his famous work *Commentary On the Sentences* (his 2<sup>nd</sup> book, Distinction 44, art. 2, is entitled: *Whether Christians are bound to obey secular powers, especially tyrants*). On the contrary, we cannot forget that, according to the Christian teachings, a murder is for any reason considered as a sin.<sup>22</sup> Apart from Aquinas teachings, we should refer the work of the Italian Saint Bonaventure (1221-1274) as well as the French priest Jean Buridan (c. 1295–1363) in Gazoulis.<sup>18</sup>

Then, in the 14<sup>th</sup> and 15<sup>th</sup> century, namely the pre-reformation period, the texts with references to resistance were multiplied.<sup>15</sup> For example, Marsiglio da Padova (c. 1275-c. 1342) wrote his *Defensor Pacis* (1324), the *Sachsenspiegel* law codification was issued in Saxony (c. 1230), the *Charte de Contenberg* was signed in 1312 as well as the *Joyeuse Entrée* in 1356 and the known *Bavarian letters of freedom* (Bayerische Freiheitsbriefe) the same period (Ginsburg et al. 2013:1199). In general, the resistance's right against the law's violation of the ruler was announced in Prussia in 1413, in Aragon in 1461 and in Denmark in 1466.<sup>6,24,28,29</sup>

The wind of change of Western Renaissance (11<sup>th</sup>-17<sup>th</sup> century) and Eastern-Palaiologian Renaissance (13<sup>th</sup> century-1453 AD) began to shake the stagnant waters of the authority of power and paved the way for revolting against oppressive power. The Renaissance was soon followed by the hurricane of the Reformation (16<sup>th</sup> century) which rocked forever the mummified political and religious authority and legitimized the violent political reaction. Officially, the beginning of the end of the old regime occurred in the 16<sup>th</sup> century with the Reformation. In particular, from the 12<sup>th</sup> to the 15<sup>th</sup> century, the bloodshed between Guelphs, supporters of the Pope and the Ghibellines, supporters of Holy Roman Emperor, showed that the Papal Power was not immune. The first signs of the collapse of the Papal Church appeared in the 14<sup>th</sup> century with the "capture" of the Pope in Avignon (1309-1378 AD). The condemnation of the English theologian and philosopher John Wycliffe (1320-1384), who was judged by the Catholic Church as heretical, the condemnation of the French theologian and professor of the University of Paris Jean Petit (c. 1360-1411) that defended the murder of Louis I, Duke of Orléans in 1407, the defection at that time of Jan Huss (1369-1415) who was burned at the stake as a heretic<sup>23</sup> and the inglorious end of the Dominican monk, short-lived political and religious leader of Florence Girolamo Savonarola (1452-1498) were not random events. On the contrary, the aforementioned events were reflecting the emergence of a clear proto-Protestant trend in society. To give an example, Savonarola gradually attacked all the representatives of the power, the Pope and the Medici, and as a consequence, he was eventually anathematized as a heretic and was burned at the stake.

### The influence of the reformation

A little later, the religious Reformation that began in 1517 by the German Luther (1483-1546) with his *95 Theses* against the Papacy and continued by the German Thomas Müntzer (1489-1525), the Swiss Zwingli (1484-1531) and John Calvin (1509 -1564) led, after very large civil conflicts,<sup>24</sup> to a large cut of the jurisdiction of the Pope.

<sup>22</sup>One of Ten Commandments defines: *Thou shalt not kill* (Exodus 20:13, Deuteronomy 5:17). See, also, the relevant teaching of Saint Basil the Great about the absolute prohibition of the murder (see Eighth Rule of St. Basil the Great about willful or intentional murder).

<sup>23</sup>See the Hussite Revolution (1419-1434) which was a clear pre-Protestant Christian movement that followed the radical teachings of Jan Hus.

<sup>24</sup>Culminating in the Pan-European Thirty Years' War, which ended with the

In 1524-1525, the German Peasants' War broke out. The peasants gave a catalogue with Twelve Articles, which is a draft of human rights and civil liberties in continental Europe.<sup>28</sup> In 1527 the month-long looting of Rome by numerous uncontrolled troops of the Holy (!) Roman Empire, despite the unparalleled courage of the Swiss Guard in front of the Basilica of Saint Peter, revealed the weaknesses of the Papal States. Lutherans, in 1530, at the Diet of Augsburg, began to theorize resistance (see the *These XVI* of the Augsburg Confession for *Civil Affairs*)<sup>25</sup> which was recorded more clearly in 1550 with the Lutheran Faith Declaration, the Magdeburg Confession. In the meanwhile, amid religious upheaval in 1534, King Henry VIII and the English parliament announced, mainly for political reasons, their secession from Rome, creating the Anglican Church.

The era of the Reformation gave a major boost to the currents of reaction to ecclesiastical and secular power.<sup>26</sup> 'This is the first large inter-ecclesiastical resistance in the West, which undoubtedly marked the future of Western Christianity. Both Luther and Calvin<sup>27</sup> recognized the right of passive resistance as an evangelical principle with the ultimate purpose of electing Protestant rulers'.<sup>29</sup> 'The right to resist became increasingly central to the political debate in the sixteenth and seventeenth centuries. The thinkers in this era tended to treat the collective right to resist as grounded in an innate right of human self-defense'.<sup>7</sup> In 1556, the Englishman John Ponet Protestant Bishop of Rochester (c. 1514-1556) published his extremely interesting work *A Shone Treatise of Politike Power*. He denied the absolute secular power of kings (the divine right) and accepted the tyrannicide (see the Chapter VI entitled: *Whether It Be Lawful To Depose An Evil Governor, And Kill A Tyrant*). Also, both the English clergyman Christopher Goodman (1520-1603) and the Scottish Protestant theologian John Knox (c. 1513-1572) expressed similar views with Ponet. Goodman in 1558 published his work entitled *How superior Powers ought to be obeyed by their subjects, and wherein they may lawfully be by God's word disobeyed and resisted*. Regarding Knox, a pupil of Calvin, he decisively influenced the creation of the Scottish Reformation and the establishment of the Scottish Presbyterian Church (1560).

Subsequently, on 24<sup>th</sup> August 1572, during the Night - Massacre of St. Bartholomew,<sup>28</sup> thousands of Huguenots (French Calvinists)<sup>29</sup> were massacred by Roman Catholics in Paris. The massacre was the result of an order of one of the youngest kings, French king

infamous Treaty of Westphalia (1618-1648).

<sup>25</sup>XVI of Civil Affairs: Secular governments and vocations are considered to be part of God's natural orders; Christians are free to serve in government and the military and to engage in the business and vocations of the world. Laws are to be followed unless they are commandments to sin.

<sup>26</sup>See in 1549, in England, the Kett's rebellion. The Rebels 'put together twenty-nine articles in which, they claimed, they demanded nothing more than the application of the king's ordinances, because evil judges had falsified them to the detriment of farmers and tenants'.<sup>28</sup>

<sup>27</sup>John Calvin, the figurehead of the Protestant Reformation and theologian, held a *theory of resistance* in his writings that focused on acts of defiance by magistrates or estates, exercised in order to *oppose the violence and cruelty of kings*.<sup>13</sup>

<sup>28</sup>This slaughter inaugurated the second phase of the Reformation, which was more radical and more offensive.<sup>18</sup>

<sup>29</sup>Calvinists, themselves severely oppressed by nominally infallible kings, developed their own ideas about unjust authority. Their practical solutions were limited, but Calvin seems to have at least contemplated a magistrate's duty to resist tyranny and a duty of the faithful to resist infringements on the exercise of religion. These ideas helped lay the basis for social contract theory and incorporated a proto-notion of resistance, even if not fully conceptualized as a duty or accompanied by an institutional manifestation'.<sup>7</sup>

Charles IX, who was only 22 years old.<sup>30</sup> This event launched the parallel movement of Monarchomachs including mainly Huguenots diplomats, intellectuals, and philosophers. Monarchomachs were the forerunners of the social contract between the people and the government and opposed to the despotism of the absolute monarchy. Therefore, only little after, in 1573 French Monarchomach François Hotman (1524-1590), a popular lawyer, with his work *Franco-Gallia* (see Chap. XVIII) tried to establish scientifically the right to revolt.<sup>18,15</sup> Additionally, the same year was posthumously published the work of French judge Étienne de La Boétie (1530-1563) entitled *Discours de la servitude volontaire (Discourse on Voluntary Servitude)* which addresses the major problem of the peoples' voluntary acceptance of servitude. According to him, someone's passivity, even towards a king who is a tyrant, certifies the legitimacy of the latter.

Then, in 1574 the French Protestant theologian, scholar and member of the Movement of Monarchomachs, Théodore de Bèze (1519-1605) published his book *the Right of Magistrates* in which he opposed to the tyranny of the official French State in religious matters and supported the legitimacy of resistance and the overthrow of unworthy leaders even by means of weapons. Afterwards, in 1574 it was published under the pseudonym of Eusèbe Philadelphie Cosmopolite *Le Reveille-matin des Français, et de leurs voisins* in the form of *Dialogues* and in 1579 the revolutionary book *Vindiciae contra tyrannos (Defences [of liberty] against tyrants)*. The latter was a text of an unknown Huguenot under the pseudonym of 'Stephen Junius Brutus' (probably of Hubert Languet or Du-Plessis-Mornay).<sup>31</sup> The book consisted of four challenging questions to the unfair royal authority and power.<sup>6</sup>

At the same time, while the Protestant Huguenots were revolting and they were trying to resist to the monarchy in order to restore the rights of collective institutions (old privileges of cities and classes), Catholic Jesuits (the Society of Jesus founded in 1534) were rebelling, trying to resist to 'human' national-local monarchy. The latter wanted to restore the lost glory and the 'divine' universal power of the Pope, namely his superiority in moral and religious matters in a society of Christian states! It is no coincidence that in 1594 AD the Jesuits were banned in France after the assassination attempt on the French King Henry IV (1553-1610).

A good example was the Spaniard Father Juan de Mariana (1536-1624), known as 'Father Mariana', who was both Monarchomach and Jesuit. In 1598, Mariana wrote the work *De rege et regis institutione* in which in the 6<sup>th</sup> chapter he was positive to the overthrow of a monarch who acts tyrannically.<sup>32,8</sup> In accordance with Mariana, the great Spanish theologian and jurist Francisco de Vitoria (c. 1483-1546) believed that the Spanish were by mistake engaged in the expansionary policy towards the Indians in America and that the violent conversion to Christianity was also a mistake. Also, the Spanish Jesuit theologian, philosopher and priest Francisco Suárez (1548-1617), believed that tyrannicide was permissible and he opposed to the divine right of kings.<sup>18</sup> The main views of Suárez were recorded in the *De legibus ac Deo legislatore* in 1612. Mariana, Francisco de Vitoria and Suárez were undoubtedly influenced by the modernist positive philosophical *School of Salamanca*. Despite the apparent reaction to the secular and

religious power in a variety of countries,<sup>33</sup> the system of secular and religious authority was reluctant to any substantial change.<sup>34</sup> In the exceptions were included, the French (protestant) Monarchomach Nicolas Barnaud (1538–1604), the Anglican Bishop Thomas Bilson (1547-1616) with his work *The True Difference Between Christian Subjection and Unchristian Rebellion* in 1585, the Scottish scholar George Buchanan (1506-1582) with the *De Jure Regni apud Scotos* in 1579, the French theologian Jean Boucher (c. 1548-1646) and the German Calvinist and possibly the last monarchomach Johannes Althusius (1557-1638) with his work *Politica Methodice Digesta, Atque Exemplis Sacris et Profanis Illustrata* in 1603 (Gazoulis 1990:82-83). Althusius, tried to justify the protestant Dutch Revolt of 1568 against Catholic Spaniards. 'Old ideas of resistance to the tyrant who breaks divine laws or the contract signed with his subjects, experienced a vigorous revival during the troubles of the second half of the sixteenth century.'<sup>28</sup>

The refusal of the new political and religious reality led to the bloody intereuropean religious wars (e.g. the Thirty Years' War and the Eighty Years' War). For example, in 1570 Pope Pious V issued *Regnans in Excelsis* declaring: 'We charge and command all and singular the nobles, subjects, peoples and others afore said that they do not dare obey her orders, mandates and laws. Those who shall act to the contrary we include in the like sentence of excommunication'. The prolonged uncertainty lasted until the very important Peace of Westphalia in 1648, which effectively legalized the reactionary religious movements of the Reformation. Until the signing of the treaty, the theory, in general, attempted to justify the old regime and to reject disobedience, despite the existence of a few opposing voices which were usually persecuted. Until about the mid-17<sup>th</sup> century, the traditional views even hardly were dominating the philosophical dialogue. 'Individual voices, coming mainly from the French Protestants (Huguenots) and the Calvinist theologians as well as scattered movements tried to form an opposition although they never gained a substantial influence. Thinkers like Pierre Jurieu in France (1637-1713) or groups such as the movement of Levelers in England (1647-1650)<sup>35</sup> tried to resurrect the practice of resistance against oppressive powers without success.<sup>36</sup> They received criticism by Catholics (e.g. Bossuet)<sup>37</sup> and Protestant thinkers (e.g. Bayle) very quickly and effectively, they were isolated and either remained silent or were suppressed by force'.<sup>15</sup> Even at that time, the hard line of obedience was prevailing. For example, the French bishop Jacques-Bénigne Bossuet (1627-1704), the French Roman Catholic Archbishop François de Salignac de la Mothe-Fénelon (1651-1715)

<sup>33</sup>See in Poland the *Articuli Henriciani (King Henry's Articles)* in 1573 namely the first constitution of Poland until the known Constitution of May 3, 1791, as well as the edict *Articulus de non Praestanda Oboedientia* in 1607 which established a 'right' of resistance in case of a breach of law by the ruler.<sup>31</sup> The same period the largely protestant Dutch Revolt turned against the roman catholic Spanish Empire.<sup>25</sup> 'There are historical and sociological reasons for playing the concept of the bourgeois revolution objectively to much earlier events; thus, for example, those which led to the secession of the Netherlands from the Spanish Crown. But subjectively the appeal at that time was the preservation of the privileges of the estates.'<sup>5</sup>

<sup>34</sup>In 1536, the Pilgrimage of Grace, a popular uprising, took place in Yorkshire against Henry VIII following Protestant Reformation.<sup>32</sup>

<sup>35</sup>The Levelers during the period of the English Civil War claimed enlargement of the electorate, religious tolerance and radical political changes. The most important work that reflected their ideas was *the Agreement of the People*, a series of manifestos published in the years 1467-1649.

<sup>36</sup>In 1607, in England, the Midland Revolt, against the enclosure of common land, was unsuccessful, too.

<sup>37</sup>See his work *Politics Drawn from the Very Words of Holy Scripture*.

<sup>30</sup>Later, due to this slaughter, Vattel in chapter IV, entitled *Of the Sovereign, his Obligations, and his Rights*, justified with legal arguments (natural law) the refusal of obedience in some cases.<sup>30</sup>

<sup>31</sup>The use of a pseudonym shows the range of fear of persecution.

<sup>32</sup>For example, in his book Mariana supported the assassination of Henry III of France in 1589.

and the Physiocrats such as François Quesnay (1694-1774), Anne-Robert-Jacques Turgot (1727–1781), Pierre-Paul Lemercier de La Rivière de Saint-Médard (1719-1801) and Pierre Samuel du Pont de Nemours (1739-1817) did not accept a right to resist.<sup>18</sup> This research covers centuries to record an opposing voice, a view inconsistent with the prevailing views.<sup>38</sup> For example, the Spanish Jesuit priest Alfonso (Alphonsus) Salmerón (1515-1585), was absolutely opposed to any death even that of a tyrant. To make it engaging, he used the example of Herod to demonstrate that even in this case obedience to secular authority is absolute, in secular issues.<sup>33</sup> Contrary to Mariana was also the Spanish professor of Ingolstadt University, Gregory of Valencia (c. 1550-1603) in his work *Commentariorum Theologicorum*.<sup>33</sup> In 1596, Lancashire Magistrate Christopher Hudson stated that poor people are ‘always apt to rebel and mutiny ... on the least occasion’.

In the first half of the 16<sup>th</sup> century, the traditional views were recorded by the Dutch Jesuit theologian Leonardus Lessius (1554-1623), by the Jesuit theologian and priest Martinus Becanus (1563-1624) and by the Dutch Hugo Grotius (1583-1645), the illustrious pioneer of the contemporary international law. Lessius on *De Iustitia et Iure*, in 1605, defended the policy of absolute obedience<sup>39</sup> based on Christian sources.<sup>33</sup> So did Becanus in his *Opuscula Theologica* (vol. I. p. 130). Therefore, the official Catholic view is consistent with the Orthodoxy as resistance to the power is finally accepted only defensively, either passively or by suffering martyrdom as did the Christians of the Early Christianity!<sup>40</sup> Grotius in 1631 in his work *De jure belli ac pacis (On the Law of War and Peace)* opposed to granting a general right to revolution.<sup>8</sup> ‘Grotius denies the right of active rebellion’.<sup>34</sup> The Englishman Sir Robert Filmer (1588-1653) supported a more conservative view, and generally speaking, he did not accept a right to resist. In his work *Patriarcha or The Natural Power of Kings* attacked the two new enemies of royal power, the Jesuits, and the Calvinists. Filmer vigorously defended the divine power (right) of the king and he became the last staunch supporter of the old regime of that time.

### 1650 AD a turning point of history

After 1625,<sup>41</sup> due to the Scottish Presbyterian pastor Samuel Rutherford (c. 1600-1661) and especially after 1650, there is a clear philosophical shift to more liberal views, such as the construction of social contracts. This shift is due to:

1. The rapid expansion of the Reformation.
2. The Huguenot rebellions of the 1620s which were implacably suppressed by the French Crown.
3. The early English constitutionalism, which granted more powers to the Parliament of England and to the subjects - citizens (see Petition of Rights of 1628, Habeas Corpus Act of 1679 and Bill of Rights of 1689).<sup>42</sup>

<sup>38</sup>Maybe in the middle of the strong philosophical debate on the question of the existence of a right of resistance was Baruch Spinoza (1632-1677) who confronted the religious authorities at that time.<sup>18</sup>

<sup>39</sup>Lessius has argued that just laws of a usurper are binding because they derive their validity, not from the authority of a usurper, but from natural law.<sup>34</sup>

<sup>40</sup>See the disobedience of Saint George to the Roman emperor Diocletian (refusal to sacrifice to the Roman gods of the time).

<sup>41</sup>In 1626, in England, food riots broke out at Essex ports. A few years later, in 1629, the Maldon grain riots took place in the midst of industrial depression and poor harvests. Also, in the 1630s, main reaction lay in reforms under Philip IV and Count Olivares ‘one king, one law, one coinage’ (un rey, una ley, una moneda).<sup>35</sup>

<sup>42</sup>According to Rompoukou Karagianni<sup>6</sup> art. 7 of the Bill of Rights of 1689

4. The signing of the Westphalia treaty in 1648 which essentially legalized the overall Religious Reformation,
5. The beheading of King Charles I of England in 1649 who supported the divine right of monarchy rather than a constitutional monarchy during the British Civil War (1642-1651) in which finally parliamentarians prevailed against royalists,
6. The end of the Dutch Eighty Years’ War of Independence in 1648
7. The Glorious Revolution of 1688

The uprising known as ‘Bloody Corpus’ in Catalonia, in Barcelona on 7-10 June 1640 which led to the Catalonia, Revolt of 1640–1652 and

The Naples revolt of 1647-1648 against high taxes and Spanish rule which created the short-lived Neapolitan Republic.

Moreover, in England the shift of new ideas coincided with the emergence of the non-conformist movement of the *Ranters* (1640-1660) who were accused of being heretics and for subversive actions. Also, in 1649, the new tendency coincided with the appearance of the *Diggers*, a radical protestant group which supported economic equality and which tried to impose a social order without property or wages.<sup>1</sup> The Diggers were considered the forerunners of the modern anarchist movement. Additionally, at that time the new ideas were associated with the advent of *Quakers*, a radical protestant confession. These key historical events essentially legalized secular and religious public opposition, which sometimes reached even the level of a civil war or a revolution (e.g. Glorious revolution England in 1688). In other cases, the reaction led to a prolonged international religious war (Germany) or even a War of Independence, as in the Netherlands where the war had also a clear religious background. These wars lasted for decades, a critical element which shows their great importance, as the monarchies and the Papacy resisted at all costs although the latter eventually weakened. Their weakening triggered a domino of deposition of the previous powerful monarchies in Europe, such as France and then even the final fatal dissolution of the Papal States in 1870!

The conservative views of Filmer had inherent weaknesses which other theorists were not willing to accept as the Englishmen Thomas Hobbes, John Milton, Algernon Sidney and John Locke.<sup>36</sup> The giant of philosophical thought and precursor of the Enlightenment, Thomas Hobbes (1588-1679) was one of the leading thinkers and founders of the modern state. Hobbes instead of supporting the absolutism of the monarch on the divine origin and the hereditary right of kings, an argument which was already crackling, decided to create a new structure, a strong link between an absolute sovereign and the subjects, the social contract. The major change is that the power of the sovereign, called Leviathan, is given by people to him freely so that the latter provides safety and welfare to them. His views appeared in his legendary work *Leviathan or the Matter, Form and Power of a Commonwealth Ecclesiastical and Civil*. The views of Hobbes, although very innovative for his time, they were revised at certain points by the German Baron Samuel von Pufendorf (1632-1694), particularly with his work *De jure naturae et gentium (Of the Law of Nature and Nations)* in 1672, in which he accepted a limited framework of justifiable uprising and argued that ‘a People relates indirectly to the ‘right of resistance’. The text defines that ‘That the subjects which are Protestants may have arms for their defence suitable to their conditions and as allowed by law’.

may defend themselves against the extreme and unjust Violence of their Prince' (VII, ch. VIII, at 722, Basil Kennett trans., 4<sup>th</sup> ed. 1729, [1672]).<sup>37</sup>

Apart from Hobbes, John Milton (1608-1674) in his work *The Tenure of Kings and Magistrates* defended the resistance to tyrannical power and rejected the divine right of kings. Similarly, the politician Algernon Sidney (1623-1683) in his *Discourses Concerning Government* and John Locke (1632-1704)<sup>43</sup> with his first of the *Two Treatises of Government* were very critical of Filmer's work *Patriarcha* because of his traditional ideas. In 1689, Locke, an advocate of parliamentarism, innovates and in his *Second Treatise of Government* referred to a duty to disobedience, resistance, and revolution against a tyrant or an unlawful political power. In his groundbreaking work, among many others, the paragraphs 168, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 222,<sup>44</sup> 225, 227, 228, 229, 232, 233, 234, 237, 238, 239, 240, 241, 242 and 243 are crucial. In addition, in 1689, Locke dealt with disobedience on his work *A Letter Concerning Toleration*, in a period which followed the Glorious Revolution in 1688.<sup>45</sup> Nowadays, for many theorists the Glorious Revolution of 1688 is the beginning of the legalization of the modern revolutions.<sup>46</sup>

The German philosopher Gottfried Leibniz (1646-1716) was affected by the democratic views of his contemporary John Locke. In 1695, in a letter to Baron J. C. Boyneburg's son Philipp he wrote that: 'As for ... the great question of the power of sovereigns and the obedience their peoples owe them, I usually say that it would be good for princes to be persuaded that their people have the right to resist them, and for the people, on the other hand, to be persuaded to obey them passively. I am, however, quite of the opinion of Grotius, that one ought to obey as a rule, the evil of revolution being greater beyond

<sup>43</sup>Locke is ultimately affected by the Englishman James Tyrrell (1642-1718), whose work *Patriarcha non monarcha* in 1681 opposed to the previous ideas of Filmer (*Patriarcha*).

<sup>44</sup>To give an example: 'Whenever the legislators endeavour to take away, and destroy the property of the people, or to reduce them to slavery under arbitrary power, they put themselves into a state of war with the people, who are thereupon absolved from any farther obedience, and are left to the common refuge, which God hath provided for all men, against force and violence. Whosoever, therefore, the legislative shall transgress this fundamental rule of society, and either by ambition, fear, folly or corruption, endeavour to grasp themselves, or put into the hands of any other an absolute power over the lives, liberties, and estates of the people, by this breach of trust they forfeit the power, the people had put into their hands, for quite contrary ends, and it devolves to the people, who have a right to resume their original liberty, and by establishment of a new legislative (such as they shall think fit), provide of their own safety and security, which is the end for which they are in society' (Chapter XIX, Of the Dissolution of Government).

<sup>45</sup>In Great Britain, the rise of Protestantism threw the final tombstone to Catholicism. The Glorious Revolution of 1688 led to the overthrow and the dethronement of the last Catholic King James II of England.

<sup>46</sup>The doctrine of revolution was primarily shaped by the English civil war of the 17<sup>th</sup> century and the American War of Independence of the 18<sup>th</sup> century. Both overturned the previous legal order. The civil war of the 1640s initially overthrew the British monarchy. It was followed by the so-called Glorious Revolution of 1688, in which Parliament installed a new royal lineage, the House of Orange, on the condition of power-sharing between the Crown and the Parliament. The War of Independence established a new nation, the United States, through the defeat of the British. In these revolutions, the British and American courts recognised the legitimacy of the victorious side and generally sanctioned acts done in the name of their revolutions, dating back to the dates on which their rebellions commenced. These revolutions were fundamentally progressive eruptions, breaking up the old feudal-monarchical forms of rule and signalling the rise to ascendancy of the emerging capitalist classes'.<sup>38</sup>

comparison than the evils causing it. Yet I recognize that a prince can go to such excess, and place the well-being of the state in such danger, that the obligation to endure ceases. This is most rare, however, and the theologian who authorizes violence under this pretext should take care against excess; excess being infinitely more dangerous than deficiency.<sup>37</sup>

## The French school of thinking of the 18<sup>th</sup> century

In the meanwhile, the erstwhile powerful Papal State due to its administrative failure, rampant luxury, and corruption of moral values had lost much of its power in many countries such as Germany, UK, Netherlands, Scandinavian countries, Switzerland, France, despite the widespread efforts of the Counter-Reformation during the 16<sup>th</sup> and 17<sup>th</sup> century, specifically after the signing of the Treaty of Westphalia in 1648. The revolution as a reactionary act gained political background and content, initially against the Catholic Church and later against the monarchical power too. In Sweden, the Age of Liberty (or Age of Freedom) which lasted from 1718 to 1772 was the last omen before the following revolutionary hurricane. If the 17<sup>th</sup> century for the English had major political significance the 18<sup>th</sup> for the French was even more crucial. The Bourbon dynasty collapsed underestimating the popular demand for radical changes and reforms. Among the French intellectuals who stood out were Voltaire, Montesquieu, Gabriel Bonnot de Mably, Jean-Jacques Rousseau and Honoré Gabriel Riqueti, Comte de Mirabeau.

Voltaire (1694-1778) indirectly recognized a trend to resist to the despotic authority. In his work entitled *Idées républicaines* (1765) stated in *idée I* that: 'Le pur despotisme est le châtement de la mauvaïse conduite des hommes. Si un ecommunauté d'hommes est maîtrisé e par un seul ou par quelques-uns, c'est visiblement parcequ'elle n'a eu ni le courage ni l'habileté de se gouvernerelle-même'.<sup>47</sup> That time Montesquieu (1689-1755) wrote the *Persian Letters* of 1721 in which he mentioned that: 'But if a prince, instead of making the lives of his subjects happy, attempts to oppress and ruin them, the basis of obedience is destroyed; nothing binds them, nothing attaches them to him; and they return to their natural liberty' (Letter CIV). Later, in 1748, he examined the separation of powers in his in legendary work *The Spirit of the Laws*. At the same time, Rousseau (1712-1778), who was influenced by Hobbes, followed another theory of the social contract. In his *Social Contract* (1762) the dominant was not named Leviathan, but The General Will (*Volonté Générale*),<sup>48</sup> which means the will of the people as a whole to comply with their laws. Although, a Prince as a dominant cannot abuse his power 'de sorte qu'à l'instant que le Gouvernement usurpe la souveraineté, le pacte social est rompu, et tous les simples citoyens, rentrés de droit dans leur liberté naturelle, sont forcés, mais non pas obligés d'obéir'<sup>49</sup> (Rousseau 1762:196). Furthermore, Gabriel Bonnot de Mably (1709-1785), a French philosopher, was the first who admitted that the right of resistance was not only collectively exercised but also individually. Till then the philosophers were reluctant to recognize an individual right to resist (Gazoulis 1990:107 et seq.). Also, Mably broadened the meaning of resistance not only to the classic tyranny, but to every

<sup>47</sup>'Pure despotism is the punishment of the misbehavior of men. If a community of men is controlled by one or a few, it is obviously because it has had neither the courage nor the ability to govern itself'.

<sup>48</sup>Rousseau's *Volonté Générale* resembles with the later Kant's *Categorical imperative* (1785 Grounding for the Metaphysics of Morals) while both of them demand absolute obedience.

<sup>49</sup>so that, at the moment when the Government usurps sovereignty, the social pact is broken, and all ordinary citizens, returned by right in their natural freedom, are forced, but not obliged to obey'.



authoritarian power.<sup>50</sup> Finally, in 1776, Honoré Gabriel Riqueti, Comte de Mirabeau (1749-1791) published his work *Essai sur le despotisme*, in which he stated that ‘Le despotisme n’est pas et ne saurait être une forme de gouvernement, et l’administration qui pourrait y conduire une nation serait un brigandage criminel, funeste et contre lequel tous les homes doivent se liguier.’<sup>51</sup>

The aforementioned thinkers raised the seeds of defiance against the political and religious authority. Their views were more academic, philosophical and theological than legal and they did not manage to formulate a complete doctrine of rights and obligations in regards to the revolution. The Constitutionalism which adopted the fundamental political and social rights took place after the mid-18<sup>th</sup> century, after the breakthrough of the major revolutions that had shaken the world (American and French revolution).

## Conclusions

Through the ages, many times the people have reacted violently to the oppression and to all forms of tyranny. Even from the first organized societies, the idea of justice was incorporated into the natural law. From antiquity till the last quarter of the 18<sup>th</sup> century, the concept of *reaction* consisted of many social, philosophical and legal types such as disobedience, resistance, and revolution. Of course, due to a general lack of constitutionalism and an immature progress of political rights, the reaction was mainly based on the principles of natural law. The above scheme had some exemptions, especially during the rise of the Athenian Democracy in the 5<sup>th</sup> century B.C, and the following Roman Res Publica. Although, the Athenian Democracy and the Roman Republic developed a kind of legal fracture of resistance to tyranny and defense of democracy, the legal political reaction to the authority was not complete. After the incoming of Jules Caesar and Octavianus Augustus the ancient democratic elements of the societies of that time were rapidly transformed into a more despotic way of the rule (*Principate* and *Dominate* periods). Later, when Christianity became the official religion of the New Roman Empire in the 4<sup>th</sup> century, the resistance to the state authority became inactive. Officially, the stagnant waters of the centralization and the absolutism of the secular power were shaken after the signing of the Magna Charta in 1215. The tide was moving fast. In the 14<sup>th</sup> century, many scholars who tried to control both the secular (monarchic) and ecclesiastical powers were burnt or executed. Soon, the arbitrariness of the Papal States and the Monarchies triggered the wave of the Reformation, which turned into a typhoon after the Night - Massacre of St. Bartholomew in 1572. Monarchomachs, Jesuits, Levelers, Ranters, Diggers and Quakers were some of the major philosophical, political and religious movements who attacked either the royal or the papal primacy. The coming of the great revolutions in England (Glorious Revolution of 1688), in the USA (1775) and in France (1789) led to the signing of many important legal texts such as Constitutions, Declarations of

Rights and Bills of Rights in which a right to revolt was guaranteed. The above constitutional texts marked the positivization of the right of revolution.

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<sup>50</sup>See his work *Des droits et des devoirs du citoyen* in 1758. ‘La guerre civile est un mal dans ce sens, qu’elle est contraire à la sûreté et au Bonheur que les hommes se sont proposés en formant des Sociétés, et qu’elle fait périr bien de citoyens (...) Ainsi la guerre civile est un bien, lorsque la société, sans le secours de cette opération, seroit exposée à périr dans la gangrène, et, pour parler sans métaphore, courroit risqué de mourir du despotisme’ (LETTRE, TROISIÈME).

<sup>51</sup>Retrieved from ‘Despotism is not and can not be a form of government, and the administration which could lead a nation to it would be a criminal robbery, fatal and against which all men must gang up’.

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