Università
Ca'Foscari
Venezia

Corso di Laurea magistrale in

Relazioni Internazionali Comparate

Tesi di Laurea

Does a ius resistendi exist?

Historical development and codification of an Early Modern concept

Relatrice
Ch.ma Prof.ssa Giulia Delogu

Laureando
Antonio Cosentini
Matricola 898775

Anno Accademico
2023 / 2024

Table of contents

RIASSUNTO II

I. INTRODUCTION 2

A RIGHT TO RESIST: IT EXISTS, BUT IT CANNOT BE SEEN 2
WHAT IS (NOT) A RESISTANCE? 8

II. A RELIGIOUS RESISTANCE: CHRISTIAN PATHS TOWARDS AN EARLY RIGHT TO RESIST 12

I. COMPARING EARLY CATHOLIC APPROACHES: JOHN OF SALISBURY, THOMAS AQUINAS, BARTOLUS DE SAXOFERRATO AND COLUCCIO SALUTATI 13
II. THE MYTH OF MAGNA CARTA: CHAPTER 61 AND THE RESISTANCE OF THE BARONS 20
III. 'KILL THE KING': THEORIES AND PRACTICES OF THE MONARCHOMACHS IN SIXTEENTH CENTURY'S EUROPE 32

III. A REVOLUTIONARY RESISTANCE: UNDERSTANDING THE TWO CONCEPTS THROUGH THE ATLANTIC REVOLUTIONS 41

I. THE AMERICAN REVOLUTION: RESISTING THE COLONIAL RULE 43
II. THE FRENCH REVOLUTION: THE DEGENERATION OF RESISTANCE 57
III. THE HAITIAN REVOLUTION: HOW THE DECLARATION TRIGGERED THE RESISTANCE OF BLACK SLAVES 70
IV. COUNTERREVOLUTION AND ANARCHY IN THE NINETEENTH CENTURY: A TRAIL OF DEAD MONARCHS 79

IV. CODIFYING THE RIGHT TO RESIST IN THE TWENTIETH CENTURY 87

I. ONCE AGAIN, THE ATLANTIC: CODIFICATION EXPERIENCES IN EUROPE AND LATIN AMERICA 89
II. DOES A RIGHT TO RESIST EXIST IN INTERNATIONAL LAW? 102

V. CONCLUSIONS 110

REFERENCES 114

Riassunto

Fin dall'epoca classica, il tema della legittimità della resistenza contro le ingiustizie, anche quando prescritte dalla legge, ha rivestito una particolare importanza. Il diritto di resistenza, o *ius resistendi,* consiste nella facoltà di disobbedire l'autorità quando opera contrariamente ai valori fondamentali del sistema giuridico, senza per questo mettere in discussione il sistema stesso. La teorizzazione del diritto di resistenza attraversa una fase cruciale nel Tardo Medioevo, per poi svilupparsi durante l'Età Moderna fino ad arrivare al significato che adottiamo oggi. Per questo, il diritto di resistenza è un concetto tipicamente moderno, che ancora oggi torna ciclicamente nel dibattito della filosofia politica, specialmente in relazione alla legittimità di fenomeni correlati, come la disobbedienza civile o l'opposizione a regimi autoritari. Tuttavia, già nelle prime fasi di una discussione su questo diritto, ci si può rendere conto che sembra godere di uno status ridotto rispetto ad altri diritti umani fondamentali. Uno dei motivi che ci spinge ad affermare ciò è la sua mancata costituzionalizzazione, ossia la sua mancata codificazione insieme a molti altri diritti umani nelle Costituzioni nazionali e nei trattati internazionali. Questa apparente irrilevanza del diritto di resistenza contrasta con la sua ricca storia teoretica, ma anche con i numerosi tentativi di dare a questo diritto di per sé *contra legem* un proprio spazio all'interno dei sistemi giuridici di vari Stati.

Questa tesi si prefigge lo scopo di riprendere il dibattito sul diritto di resistenza attraverso un approccio storico, ma senza rinunciare al contributo che le discipline filosofica e giuridica possono apportare. Il tentativo di riesumare storie di resistenza e del suo corrispettivo diritto punta a presentare un lavoro il quanto più completo possibile, tale da presentare i maggiori sviluppi del concetto e le più importanti esperienze di codificazione del diritto di resistenza dal Medioevo ad oggi. Allo stesso tempo, questo lavoro si pone come obiettivo l'introduzione nel dibattito storiografico di una definizione precisa di *resistenza,* da utilizzare alternativamente agli abusati ed inflazionati concetti di *protesta*, *insurrezione*, *ribellione* e soprattutto *rivoluzione*. Per questo motivo, l'introduzione presenta una sezione che distingue questi termini e propone come definizione di *resistenza* la seguente: *"un atto intrinsecamente illegittimo, condotto individualmente o collettivamente, attraverso modalità violente e non, rivolto a rappresentare l'ultimo ricorso in protezione di un ordine politico contro una seria e sistematica condizione di oppressione ed ingiustizia."*

Il primo capitolo presenta gli sviluppi del diritto di resistenza durante il Tardo Medioevo, attraverso un'iniziale teorizzazione dell'istituto del tirannicidio, le prime esperienze di codificazione e il trauma delle guerre di religione della Controriforma. Attraverso un confronto fra Giovanni di Salisbury, Tommaso d'Aquino, Bartolo da Sassoferrato e Coluccio Salutati, si possono individuare alcuni dei maggiori problemi che caratterizzano il tema del diritto di resistenza. In primo luogo, viene posta attenzione al bersaglio del diritto di resistenza, in questo caso il tiranno, proponendo una definizione che possa distinguere chi governa illegalmente e chi no. In tal senso, gli autori sopracitati fanno spesso riferimento ad una distinzione tra tiranno *ex defectu tituli*, ossia colui che ascende al trono attraverso metodi illegali, e tiranno *ex parte exercitii,* ossia il governante il cui esercizio risulta ingiusto. Ai due casi sono riservati trattamenti distinti, generalmente più clementi verso il tiranno 'per esercizio', che gode di un diritto divino e le cui azioni sono divinamente ordinate. Allo stesso modo, la soggettività del diritto di resistenza, ossia chi può invocare tale diritto, risulta differente da caso a caso: le tradizioni tomista e bartoliana distinguono fra comunità *superiorem non recognoscentes* e *superiorem recognoscentes,* a seconda della presenza o meno di un'autorità intermedia fra il popolo e il monarca. Solo nel primo caso la resistenza verrebbe identificata come diritto collettivo, mentre nel secondo tale diritto può essere riconosciuto solo a tali autorità. Altre tradizioni, come quella di Coluccio Salutati, suggeriscono una soggettività più ampia che includerebbe qualsiasi individuo. Nel frattempo, i primi riferimenti legali del diritto di resistenza iniziano ad apparire: alla Magna Carta del 1215 è dedicata un'ampia sezione, sia per la rilevanza che il documento ha nel Medioevo sia per l'eco nei secoli successivi, specialmente durante la Rivoluzione Americana. Il Capitolo 61 prevede una clausola di sicurezza, che si traduce in una resistenza dell'aristocrazia e del clero inglesi contro un monarca che agisce contrariamente alla Carta. Dalla formulazione contenuta nel documento è possibile estrarre gli stessi elementi riscontrati nella tradizione cattolica precedentemente analizzata. Nell'ultima sezione, si entra nell'Età Moderna con l'esperienza delle guerre di religione e lo sviluppo di teorie protestanti (ma, diversamente dal pensiero comune, anche cattoliche) sul tirannicidio. Il *De regno et regali potestate* di William Barclay, pubblicato inizialmente nel 1600, conia la parola *Monarcomachi,* termine volto a designare una serie di autori che fanno di una giustificazione del tirannicidio ben più esplicita di quella medievale la loro filosofia. Fra questi, spicca un certo Stephen Junius Brutus, pseudonimo di un autore alternativamente identificato tra Philippe de Mornay e Hubert Languet, e autore della *Vindiciae Contra Tyrannos,* il pamphlet più rappresentativo del pensiero

monarcomaco. In aggiunta, le prescrizioni del *Vindiciae* diventano presto anche uno stimolo per ulteriori tentativi di codificazione, come nel caso dell'Atto di Abiura olandese contro Re Filippo II di Spagna del 1581.

Il secondo capitolo segue, oltre che un criterio cronologico, uno dei temi principali della tesi, riguardante il rapporto controverso fra resistenza e rivoluzione. A tale scopo, si esaminano le Rivoluzioni atlantiche, non solo come processi che portano alla codificazione del diritto di resistenza in due dei documenti più importanti del 1700, ma anche come eventi che possono essere reinterpretati attraverso il concetto di resistenza. Il caso americano si presenta come il più adatto a questa reinterpretazione: Pauline Maier, autrice di *From Resistance to Revolution,* applica con successo il concetto di resistenza al periodo prerivoluzionario nelle colonie britanniche in America e mette in risalto come la contestazione dell'autorità nella madrepatria segua un percorso incrementale che si completa solo nel 1775. Non solo la contestazione di Re Giorgio III arriva dunque *in extremis,* dato che le fasi iniziali mirano ad attaccare i governatori locali e il Parlamento, ma è possibile trovare tutti gli elementi che indicano come le dimostrazioni dei cosiddetti *Sons of Liberty* pongano l'accento sulla pianificazione, la non-violenza, il diritto di petizione e soprattutto l'assoluta fedeltà al sistema giuridico esistente. Queste sono tutte caratteristiche più pertinenti ad una resistenza che ad una rivoluzione, la quale comunque si giustifica successivamente attraverso la codificazione di un diritto di resistenza nella Dichiarazione di Indipendenza del 1776 e nelle Costituzioni dei singoli Stati. Il caso francese è sensibilmente differente: tracce di una fase prerivoluzionaria/resistente possono essere identificate, specialmente nel rifiuto dei *Parléments* di registrare la riforma fiscale voluta dalla Corona e nella richiesta di convocazione degli Stati Generali. Tuttavia, risulta più complesso distinguere quando finisce la fase resistente e quando inizia quella rivoluzionaria, specialmente considerando che il disconoscimento e successivo processo a Luigi XVI arriva più di tre anni dopo l'Estate dell'89. La codificazione del diritto di resistenza arriva invece subito, come dimostrano la *Dichiarazione dei diritti dell'uomo e del cittadino* e le precedenti bozze. Successivamente, con l'inizio del Terrore, la protezione indiscriminata delle conquiste della Rivoluzione si trasforma in una resistenza perversa, i cui effetti si vedono nell'eredità che gli eventi francesi lasciano all'Ottocento. La Rivoluzione francese innesca anche un processo di indipendenza nella colonia di San Domingo, le cui basi erano già ben stabilite nella resistenza degli schiavi neri contro i coloni. *A Secret Among the Blacks* di John D.

Garrigus riesuma i vari tentativi di resistenza attuati già da inizio secolo in quello che diverrà lo Stato indipendente di Haiti, attraverso le poche fonti ad oggi disponibili. Specialmente nel 1789, parallelamente alle discussioni in madrepatria, vari dibattiti sul diritto di resistenza interessano anche i liberi di colore di San Domingo, ad indicare ancora una volta il legame esistente fra le tre rivoluzioni atlantiche. Segue, in Europa, un periodo silente, quasi un ritorno alle vecchie teorie monarcomache, questa volta degenerate nel terrorismo dell'*Ère des attentats*.

Il terzo capitolo presenta la ripresa del dibattito sul diritto di resistenza dopo la Seconda Guerra Mondiale, con il *boom* della codificazione di tale diritto nelle costituzioni nazionali e una sua possibile individuazione nel diritto internazionale. Come è possibile osservare nei processi di scrittura delle nuove Costituzioni europee, il tema del diritto di resistenza è centrale, anche se col tempo trascurato. Ne sono dimostrazione il progetto di Costituzione francese di Aprile, poi rigettato tramite referendum, e l'Articolo 50 del Progetto di Costituzione italiana, secondo la proposta di Giuseppe Dossetti, anch'esso cancellato dall'Assemblea Costituente. A queste due proposte abortite, comunque rilevanti, fa da contrappeso l'emersione di tante altre formulazioni in altri Paesi, fra cui primeggia il caso tedesco. In generale, il diritto di resistenza costituzionalizzato in Europa assume la funzione di una garanzia per i nuovi sistemi democratici, specialmente dopo le esperienze autoritarie e totalitarie del Novecento. Anche in America Latina si assiste ad una significativa costituzionalizzazione del diritto di resistenza. Differentemente dal caso europeo, nei Paesi latinoamericani il diritto di resistenza mira a giustificare e legittimare movimenti e gruppi ribelli usciti vittoriosi dai rispettivi disordini interni. Tali gruppi non sono sempre più democratici dell'autorità precedente. Lampante è l'esempio del Venezuela di Hugo Chavez, che dopo la vittoria presidenziale nel 1998 si affretta ad approvare una nuova Costituzione che riconosca il diritto di resistenza. Parallelamente, un interessante dibattito ha luogo nel campo del diritto internazionale, provando a giustificare un'eventuale presenza del diritto di resistenza come costume e diritto fondamentale riconosciuto dai trattati universali e regionali. Per quanto la questione non sia ancora abbastanza chiara e la discussione ancora aperta, è possibile individuare tracce del diritto di resistenza nell'ambito dei diritti fondamentali e del diritto internazionale penale.

Possiamo raggiungere tre importanti conclusioni: primo, uno *ius resistendi* esiste ed è sempre esistito, non solo nelle teorizzazioni accademiche, ma anche nella codificazione e costituzionalizzazione che lo hanno interessato a partire dall'Età Moderna fino ad oggi. Secondo, contrariamente alla confusione generata dalla disciplina storica, che associa il concetto di resistenza con quello di rivoluzione, così come i rispettivi diritti, una resistenza non costituisce un atto sovversivo o ribelle. Al contrario, il diritto di resistenza promuove valori conservatori per sua natura: invece di mettere in dubbio la legittimità di un'autorità, ne mette in discussione i suoi abusi e le sue ingiustizie. Terzo, conseguentemente al suo carattere conservatore, una sua codificazione non è incompatibile con il sistema costituzionale democratico, rappresentando invece una sorta di garanzia per la stabilità di questi regimi.

I. Introduction

A right to resist: it exists, but it cannot be seen

What do Philippe de Mornay, Thomas Jefferson and Alexei Navalny have in common? Apparently, such comparison may cause a certain degree of surprise, if not consternation: there is distance both in time and space considered, as well as in the cultural and social landscapes. More in depth, the issues that characterised their lives may not present direct links among each other: Mornay was active during the French Wars of Religion, not always as a fighter, but surely with an impacting theoretical and organisational contribution in favour of the Huguenots. Jefferson's fight did not involve religious liberty, as in the case of Mornay, but the liberty of the thirteen American colonies to govern themselves independently from the British rule, leading to the birth of what will become, according to the common perception, the land of the free[1]. In the case of Navalny, main opposer of Putin's regime in Russia, we observe the strong willingness of a man that dedicated his political life to the denounce of corruption and Russian authoritarianism, even if only time will say if his sacrifice was sufficient.

Freedom of belief, independence and democracy do not seem linked concepts, if not for the histories of oppression that delayed their affirmation and, consequently, for the experiences of resistance that resulted as a consequence, not only in their own fights, but also with effects on the wider area. When in 1579 the *Vindiciae contra tyrannos* was published in Basel, many of the suspects on the real authorship of the treaty fall on Mornay itself, with some kind of collaboration with Hubert Languet. [2] Whatever the authorship of the pamphlet is, the *Vindiciae* represents a seminal work on the preconditions that make resistance against an unjust monarch acceptable, to the extent it became one of the theoretical foundations of the independence of the United Provinces and the 1581 Act of Abjuration. About 200 years later, Jefferson wrote *A Summary View of the Rights of British America* to the delegates of the First Continental Congress, as a critique against King George III and the 'series of oppressions' that

[1] This is how Francis Scott Key defined the young US in *Defence of Fort M'Henry* (1814), poem that will be adopted as the lyrics of the American national anthem.

[2] On the authorship of the work, see Barker, E., "The Authorship of the Vindiciae Contra Tyrannos", *The Cambridge Historical Journal*, Vol.3, No.2 (1930): 164-181. Barker acknowledges that there is no conclusive answer to the issue, presenting a body of theories that recollects testimonies and evidence on the authorship, and only narrows down the search to the two names of Mornay and Languet. In the following pages, the pseudonym of the anonymous author of *Vindiciae*, Stephen Junius Brutus, will be used.

"too plainly prove a deliberate and systematic plan of reducing us [the Colonies] to slavery".[3] Even though he did not directly participate to the draft of the following Declaration of Independence, many of his ideals were displayed on the document, of which he did not wait to become an exporter; in 1789 Revolutionary France, La Fayette, himself a main character of the American Revolution, collaborated with Jefferson on the draft of the *Déclaration,* displaying again the same ideals, among which the right to resist. Regarding Navalny, it is evident that his opposition to the Russian authoritarianism is just the last act (so far) of a renewed path of new theorisations on resistance, starting from the Gandhian non-violent approach and following with many other authors that recognised, either through words or actions, the legitimacy of resistance.

Assessing the legitimacy of a right to resist is not a task with no purpose, as one might wonder. Moreover, it is not an easy one. A hypothetical *ius resistendi* lays in a liminal space between the legality that does belong to every natural right and the violation of norms that characterises an act of resistance. In other words, the right to resist comes into play in any situation of oppression that cannot be solved through legal means. Achieved this point, wondering if an unlawful act might become legally justifiable in protection of some higher values is a central question, which even involves a broader set of problems: for example, is obedience towards tyrants or oppressors always a duty? Is the right to resist a natural right or must be codified? And what if a right to resist ends up legitimising any violation of law, paving the way to revolutionary outcomes?

The general view scholars studying resistance gives is that the topic was not able to meet enough attention in social sciences, even if it has the potential to be a fruitful one. It is particularly true today, when one of the major causes of regime change has been found in resistance movements.[4] Similarly, only a few works on the right to resist can be found, and only a small portion succeeds in providing a detailed overview of the topic. Among those, Italian

[3] Jefferson, T., *A Summary View of the Rights of British America: set forth in some resolutions intended for the inspection of the present delegates of the people of Virginia, now in convention* (1774)

[4] According to Freedom House, non-violent resistance has been found as a key feature enabling democratic transition between 1966 and 1999. Freedom House, *How Freedom is Won. From Civic Resistance to Durable Democracy*, (2005). On the topic, there is also Ackerman, P., DuVall, J., *A Force More Powerful: A Century of Non-violent Conflict*, St. Martin's Press, New York, (2000)

jurist Marchesiello's work *Diritto di resistenza*[5] provides important juridical insights on the nature of the right to resist. In addition, Marchesiello's essay has the merit of drawing clear boundaries between the concept of resistance and the use of other terms that historians and political scientists use improperly and indiscriminately. However, Marchesiello probably reviews too quickly the historical experiences that contributed to the emergence of this right. The work of Ginsburg, Lansberg-Rodriguez and Versteeg[6] represents another milestone on the topic, providing an updated dataset of right-to-resist constitutional provisions since the eighteenth century, therefore including both historical and in force Constitutions. In this case, the main concern of the authors is to predict the adoption of the right to resist, once again dealing too quickly with the historical traces of the right to resist. The rest of the body of works on the topic is made of specific study cases (most of them dealing with the American and French declarations), missing the broader picture of a right that, although being the most essential, is also the one that escapes any attempt of research the most.

This work aims at investigating the legitimacy of a hypothetical *ius resistendi,* writing an history of the development of this right since late Middle Ages through some essential experiences of codification and philosophical theorisations. At the same time, I consider of great importance the inclusion of some historical moments that contributed to the general rooting of the idea of resistance and its legitimacy on the Atlantic space, even though not strictly accompanied by sources explicitly endorsing such right. This task requires a reinterpretation of a set of events that were commonly labelled under other categories, especially the one of revolution, *"concept that results by this time inflated, worn out and ideologically contaminated"*.[7] The issue of the categorisation of these phenomena under the label of revolution or resistance involves their respective rights as well, leading to a commonly used, but wrong idea of two rights overlapping. Instead, this work aims at defining with clarity the distinction between a potentially destabilising right of revolution and the one of resistance, conservative and stabilising by nature.

---

[5] Marchesiello, M., *Diritto di resistenza. Come fare la rivoluzione attraverso il diritto,* Edizioni Gruppo Abele, Torino, (2020)

[6] Ginsburg, T., Lansberg-Rodriguez, D., Versteeg, M. "When to Overthrow your Government: The Right to Resist in the World's Constitutions," 60 UCLA Law Review 1184 (2013).

[7] Portinaro, P.P "La teoria della rivoluzione tra ideologia e revisionismo" in D.L. Caglioti, E. Francia (Eds.), *Rivoluzioni. Una discussione di fine Novecento,* (2001), Accessed at https://www.sissco.it/la-teoria-della-rivoluzione-tra-ideologia-e-revisionismo-1089/. When not indicated otherwise, all the translations in English are provided by me.

The time and space considered should not be seen with a limiting or excluding intention, but with the purpose of analysing a fruitful period (from the Early Modern Age to some contemporary references) in a stimulating space (the Atlantic one) in terms of opposition to any form of oppression. In this regard, it is worth briefly noticing that theorisations of the right to resist are not exclusive of the context I chose for this research, but also existed in Ancient times, both in the Western and Eastern spaces. For example, Confucian philosopher Mencius established a principle of popular revolt as soon as the king lost his Mandate of Heaven, direct consequence of an inappropriate behaviour.[8] Still in the religious sphere, Bernard Lewis analyses the Islamic tradition through the Quran and identifies two verses that may suggest disobedience as a duty against a ruler that forces a person to the violation of divine law.[9] Similarly, the Ancient Greek tradition provides a set of tyrant-killing laws, in order to encourage mass uprisings against anti-democratic threats,[10] while the *secessio plebis* in Rome still resonates as an Ancient form of pacific resistance, with recurrent echoes even in modern and contemporary times.[11] Thus, the choice I made must be interpreted as a forced limitation in front of the wideness of the topic in socio-political history, and it cannot do anything but hope for a renewed attention on the topic of resistance.

As the reader may have realised yet, the object of this investigation belongs to the field of conceptual history. Due to the same interdisciplinary nature of the subject, this investigation includes a wide set of primary sources of different origin. Most of the texts considered are State Constitutions or, when we refer to the period before the eighteenth century, documents with a similar constitutional value, such as Acts of Independence or Charter of Liberties. In this regard, it is possible to observe that the right of resistance is strongly linked with the emergence of the first Constitutions, similarly to many other rights. Since we refer to a gradual development, and not a sudden one, it is essential to stress the importance of the drafting

[8] On Mencius' theorisation of the Mandate of Heaven, see Bloodworth, D., *The Chinese Looking Glass,* Farrar, Straus and Giroux, New York, (1967): 30

[9] Lewis, B., "Freedom and Justice in the Modern Middle East", *Foreign Affairs* (May/June 2005): 36,39-40

[10] On tyrant-killing legislation in Ancient Greece, see Teegarden, D.A., *Death to Tyrants!: Ancient Greek Democracy and the Struggle Against Tyranny,* Princeton University Press, Princeton (2014)

[11] For an account of the three plebeian secessions and the significance of the Aventine Hill in following experiences, see Mignone, L.M., 'Remembering a Geography of Resistance: Plebeian Secessions, Then and Now' in Galinsky, K. (Eds.), *Memoria Romana. Memory in Rome and Rome in Memory*, The University of Michigan Press, Ann Arbor (2014): 137-150

processes, which help us to shed light on the critiques and potential issues around the idea of resistance, and how drafters have overcome these problems in each study case. Despite the relevance of constitutional texts, this development had been possible only thanks to the number of debates and theorisations by prominent scholars. For this reason, I considered the inclusion of writings, essays, and pamphlets as vital for the purposes of this research. Other sources of relevance are purely historical and extremely various, including newspapers, letters, speeches and accounts, and contribute to create a more complete understanding of the flow of the events examined. To this purpose, the contributions of some historians proved essential: Ralph V. Turner and James C. Holt for the drafting of Magna Carta in 1215, William A. Dunning and Robert M. Kingdon for the Monarchomachs, Pauline Maier for the American Revolution, Simon Schama for the French Revolution, John D. Garrigus and C.L.R. James for the Haitian Revolution, Antonio Trampus for the use revolutionaries and scholars made of Vattel and the right to resist in the eighteenth century's Italian peninsula, Francesco Benigno for the evolution of the concept of Revolution and the nineteenth century's decline of the right to resist. Here I listed only the most relevant authors, even though many others are cited throughout the text. Finally, several legal sources are considered as well: in many cases, they deepen once again our knowledge of the events, for example through parliamentary acts. In addition, universal and regional treaties constitute the main body of the final part of this dissertation, in order to assess whether an enumerated right to resist may be recognised in international law. The combination of these different sources represents the methodology for this dissertation, here considered as ideal to highlight the development of the right to resist on three levels – historical, philosophical and juridical.

This thesis is organised as follows: in the first chapter, a theoretical history of the right to resist from the Middle Ages to the sixteenth century is provided, considering this period as the very first moment of emergence of resistance as a Modern concept. The medieval scholars that are presented detected from the very start some of the issues that characterise our whole discussion on the right to resist, especially on the right and duty-bearers of resistance and the modalities through which such right can be invoked. At the same time, one of the first documents that codifies a *proto*-right to resist dates back to 1215: Chapter 61 of the Magna Carta is by its own an unsuccessful story of codification, but the echo it had in the following attempts of constitutionalisation is incredibly relevant. The sixteenth century presents other

important theoretical contributes to the cause of the right to resist. The so-called Monarchomachs enlarged the theories of medieval scholars, this time explicitly endorsing a right to resist through the institute of tyrannicide. In this regard, the publication of the 1579 *Vindiciae Contra Tyrannos* constituted a milestone of this theoretical history, up to the point that it immediately fosters new attempts to put the right to resist into writing, such as in the case of the 1581 Dutch Act of Abjuration.

In the second chapter, the development of the right to resist during the Revolutions of the eighteenth century is analysed. In particular, the Atlantic Revolutions in North America, France and Saint-Domingue present fundamental aspects, in part linked to the previous European tradition, in part completely new. The fact that a right to resist has been debated in the British colonies of America and in France during their revolutionary phases requires us to reinterpret the concept of resistance in connection with the one of revolution, as the same pre- and post-revolutionary periods in both areas demonstrate. Moreover, the two cases are also milestones of the codification of the right to resist, respectively in the 1776 Declaration of Independence and 1789 French Declaration of the Rights of Men and of the Citizen. In this discourse, the French colony of Saint-Domingue plays a slightly different role, introducing the matter of slave resistance, in a process that led to the first black colony achieving independence from the motherland. The chapter also presents a brief summary of the nineteenth century, a period on which the debates on the right to resist temporarily lost importance and even degenerated on terroristic dynamics directly derived from the French revolution.

The third and last chapter discusses the renaissance of the right to resist during the second half of the twentieth century. The tragedy of the Two World Wars and the threat of totalitarian regimes contributed to the resume of the debate. In particular, the emergence of constitutional provisions on the right to resist boomed, up to the point that today about one out of five constitutions contain such right. The meaning it assumes varies from one constitution to another. In general, it is possible to distinguish between a function of democratic consolidation and prevention from authoritarian declines, highly present in the European area, and a function of legitimation of past overthrows of government, whether democratic or not they are, especially in Latin America. Parallelly, the right to resist enters the dominion of international law: several universal and regional sources may suggest at least the presence of such right as

an international custom, especially when applied as a last resort to the cases of self-determination, enforcement of human rights and international criminal law. The debate remains still open, but the commentaries of several scholars and an in-depth analysis of the drafting process of many international treaties may reinforce the idea that a right to resist is recognised as an unenumerated right in international law.

What is (not) a resistance?

Before we start conducting this research, it might be useful to clarify the meaning of some concepts that are commonly and wrongly used as synonyms of resistance. Differently from what emerges from the majority of historiographical or juridical works on the general topic of opposition to constituted powers, resistance represents a phenomenon *per se*. Stressing this difference represents a first essential step to establish a distinction between a widely recognised right to protest, the more subversive right of revolution and the object of this work, the right to resist.

A quick review of the meaning that *protest* assumes in several dictionaries highlights the elements of dissent, objection, disapproval and disagreement, generally through a public demonstration.[12] What these definitions struggle to indicate is the means through this aversion is expressed. It is easy to observe as a common denominator the act of the march or the sit-in, actions that clearly oppose a situation perceived as unjust, or support a policy that is ignored by the public authority. As these two examples underline, protesting only includes some kind of visible proof of disagreement, but rarely involving the violation of some existent norm. A protest may be accepted, repressed or just maintained under control by the ruler for reasons of public order, but a right to protest is widely recognised in contemporary constitutions through provisions on the freedom of assembly, expression and opinion.[13] The difference between an act of protest and one of resistance becomes clear, since the latter involves an

[12] Some of the consulted definitions are: *Merriam-Webster.com Dictionary*, s.v. "protest," (Accessed March 24, 2024 at https://www.merriam-webster.com/dictionary/protest); Collinsdictionary.com, s.v. "protest" (Accessed March 24, 2024 at https://www.collinsdictionary.com/dictionary/english/protest)

[13] The *Constitute Project* (Accessible at https://www.constituteproject.org) is a dataset including a wide range of Constitutions adopted, either in force or amended. Similarly, it classifies and compares some common constitutional provisions declaring rights, duties, limitations to various organs of the State. A quick research on the presence of the freedom of assembly, expression or opinion shows the widespread diffusion of these provisions.

active contestation of the public authority through unlawful acts that clearly surpasses the simple demonstration of opposition.

As its etymology stresses (*rebello*, restart a war), a *rebellion* always involves some element of violence or physical force. Similarly, the idea of *insurrection* contains the same elements. Although during the last decades resistance assumed a prominent non-violent character, this same work will highlight how for centuries resistance has been violent as well, even endorsing the assassination of the oppressor, as we will see regarding the so-called Monarchomachs. Marchesiello follows a different path and focuses on the evolution of an insurrection in civil war: once this point is achieved, the opposition to the authority gains importance through the effective control the insurgents can guarantee in a given territory, an element that does not necessarily characterise a resistance movement. In other words, *"the insurgents consider themselves as an entity in a nascent state that wants to be recognised by the international order, side by side or in substitution of the opposed state order"*.[14]

The concept of *revolution* is the one that creates more issues in this field. From the original astronomical meaning, indicating the full movement of a celestial object around another one, it started to be used as an unclear label for political upheaval,[15] until the *Révolution* par excellence set a common standard for defining what features a revolution has. Although the emergence of a model could have promoted a useful tool for the categorisation of revolutions, more issues arose. Today, the term is the equivalent of a *passe-partout*[16] that ranges from the general cultural, economic or scientific change to any kind of radical political transformation, while it started embracing progressivity as a fundamental characteristic of the label.[17] Such transformation had its consequences in the same historiographical area, as it is visible from the 1791 slaves revolt in the French colony of Saint-Domingue and the following events that will lead to the independence of Haiti in 1804. As Jeremy D. Popkin outlines in his *A Concise History of the Haitian Revolution,* the event has been ignored for decades, and only recently it gained

[14] Marchesiello, M.: 21
[15] Benigno, F. *Rivoluzioni. Tra storia e storiografia.* Officina Libraria, Roma, (2021): 24
[16] Benigno, F.: 7
[17] In addition, Benigno reflects on the impact this new meaning had on similar terms, like "revolt", "rebellion", "civil war" and "coup d'etat", all of them unable to stand up to the comparison of the new category and resigning to the negative connotation of "non-revolutions": 25

an equivalent revolutionary status alongside with the American and French Revolutions.[18] Similarly, Benigno wonders if the real nature of the British events starting in 1640 is 'rebellious' or 'revolutionary', indicating how various historical interpretations may give different ideas on one same event.[19] In this wide debate, the concept of resistance may represent a valid alternative to the overuse of the one of revolution: even though commonly mistaken, a revolution is generally violent, collective and rigorously transformative, while resistance can also be pacific, individual, and always accompanied by a more conservative nature, a desire to protect a system that is being threatened.[20] For the same reason, establishing an equivalence between a right to resistance and one of revolution is incorrect and misleading. Even though this work is not specifically on a reinterpretation of revolutionary moments in favour of an explanation that favours the 'resistance' label, I hope the reader will be surprised to observe how the two concepts are intertwined, how they chase each other and how many revolutionary stories hide acts of resistance.

The concept of *civil disobedience* is probably the closest one to resistance, although some different shades between the two terms can be still detected. It is behind the landscape of the slavery crisis of New England during the 1840s and 1850s and the Mexican-American War that Henry David Thoreau publishes *Resistance to Civil Government* in 1849, reprinted in 1866 under the title *Civil Disobedience,* which also marks the first appearance of the expression. Even though the original though of Thoreau coincides more with the concept of resistance, the concept of civil disobedience assumes its independence on the basis of an historical-cultural distinction between the European and the American spaces and the nature of the injustice that is opposed. For example, John Rawls presents civil disobedience as a tool to respond to minor violations within a substantially just society.[21] Instead, Hannah Arendt focuses on the peculiarities the 'American' civil disobedience has in comparison with the 'European' resistance, but underlining common issues on the legalisation of a right to resist in the two

[18] Popkin, J.D., *A Concise History of the Haitian Revolution*, Wiley-Blackwell, Oxford (2012): 6-9
[19] Benigno, F.: 25-26
[20] Marchesiello argues: 'Resistance does not nourish utopias, but it is founded on the hard ground of a challenged order. On the contrary, a revolution is essentially utopic […]': 14
[21] In Rawls, J. *A Theory of Justice,* Cambridge, (1971), sec.55, the author argues:' […] this theory is designed only for the special case of a nearly just society, one that is well ordered for the most part but in which some serious violations of justice nevertheless occur'.

juridical cultures.[22] Clearly, the recommended use of resistance would suggest the reference to a systematic violation of fundamental values of a society, like the opposition to an authoritarian rule in a formally democratic State, whereas civil disobedience refers to the opposition to specific injustices in a fundamentally just society, like in the case of today's environmentally-guided civil disobedience, the fight for the legalisation of euthanasia or the recreational use of drugs.[23]

To sum up, the concept of resistance has been regularly mistaken by a whole semantic field directed at indicating the broader area of political upheavals, including terms like *protest*, *insurrection*, *rebellion* and *revolution*. To provide the reader with a clear definition of *resistance*, it may be argued that a resistance is an intrinsically unlawful act, individually or collectively conducted, both through violent and non-violent means, aimed at representing the last resource to protect a political order against a serious and systematic condition of oppression and injustice. Marking a difference between an act of resistance and whatever other act of political change allows us to establish the foundations for a better understanding of the real nature of the right to resist and disprove a whole set of misassumptions on its potentially subversive character.

[22] Arendt, H., *Crises of the Republic: Lying in Politics, Civil Disobedience on Violence, Thoughts on Politics, and Revolution*. New York: Harcourt Brace Jovanovich, (1972), as cited in Marchesiello, M.: 95

[23] On the topics, see Bamford, D., 'Can Climate Civil Disobedience be Justified?', *Think,* Vol.22, Issue 64 (Summer 2023): 65-70; Loguercio, L. "'I'm down for it': Why Italian right-to-die activists are embracing civil disobedience", *Euronews.com,* (2023). Accessed March 25, 2024 at https://www.euronews.com/my-europe/2023/03/01/im-down-for-it-why-italian-right-to-die-activists-are-embracing-civil-disobedience); Luoma-aho, M. 'Drugs, disobedience, and democracy: Civil disobedience and drug policy', in Nykänen, T., Seppälä, T., Koikkalainen, P. (Eds.), *Civil Disobedience from Nepal to Norway. Traditions, Extensions, and Civility,* Routledge India (2022)

II. A religious resistance: Christian paths towards an early right to resist

The first moment that will be treated in order to outline a shape of an early right to resist covers approximately a period of five hundred years, from the twelfth century to the 16th century. It is a fundamental point of departure, from which scholars started wondering how a tyrannical degeneration of power can be avoided. Such a question must not be underestimated, especially in an age when the Monarch is such for a divine right, and their will coincides with the one of God. Still for this reason, it is easy to understand why the early theories of a right to resist have little if not anything secular, even though it is also true that many of the issues of this period have deep religious causes, like the demands for a greater liberty of the Church in England and the later Reformation in the whole Europe. Despite the religious character of these first theories, it is important to stress how the proposed solutions present a great degree of originality, and they even go further in some aspects that are commonly thought to belong to a later age, like in the case of the first approaches to contractualism and Natural law.

In the first section, the contributions of four medieval authors are proposed. John of Salisbury, Thomas Aquinas, Bartolus de Saxoferrato and Coluccio Salutati contributed with a detailed framework for the study of the right to resist, trying to find an answer for a number of issues that will remain in the debate for the next centuries. As the reader will see, these Catholic scholars do not pose significant problems to passive resistance against a tyrant, while the violent idea of killing the bad ruler is seriously discussed in its moral value. In the second section, the 1215 Magna Carta and its original Chapter 61 are analysed as an early form of codification of the right to resist, even if doomed to fail in just a few months. However, the resistant character of the Magna Carta can be still discussed even after the removal of Chapter 61: it will be argued that Magna Carta is a resistant document *per se,* as a result of the events that led to the negotiations of Runnymede in June 1215 and the following use English history has made of this constitutional text, until the present day. In the third section, the Monarchomachs' line of thought is studied, with a number of scholars that contributed to solidify the right to resist as an Early Modern concept. However, this analysis requires us to consider the context in which these theories developed, which is the one of the Reformation and the consequent Counter-Reformation. The answer of these scholars can be found in a further development of the right to resist, this time even endorsing direct violence against a tyrant. More importantly, for the first

time the theoretical aspect enormously impacts the practical one, as the Huguenot activism and the Dutch fight for independence can prove.

i. Comparing Early Catholic approaches: John of Salisbury, Thomas Aquinas, Bartolus de Saxoferrato and Coluccio Salutati

At first glance, the reader may be surprised to find out that the first seeds of the right to resist were planted in Middle Age's feudalism, the system *par excellence* that most promotes the value of obedience in exchange with the protection a lord can provide to his vassal. More surprisingly, those seeds were planted by the main Catholic scholars of the time, another group that, in the common view, should have based their faith on the obedience to God and whoever represents him in earthly life. In this case, Catholic obedience is rooted in the New Testament, with Paul the Apostol establishing the divine investiture authorities directly receive from God, and the equivalence between the insubordination against a King and God itself.[24] It is still early to observe the emergence of a legal instrument endorsing a right to resist, like in the case of the constitutional provisions of the eighteenth century's revolutions. But that is due to the prevalently customary character of medieval law, [25] inviting us to search for traces of the right to resist in the writings of medieval authors.

At this stage already, there is a clear vision of some of the issues the right to resist presents: who can be opposed? Who can disobey? Through which means an authority can be resisted? Also, is resistance a right or a duty as well? Although writing in three different centuries, John of Salisbury, Thomas Aquinas, Bartolus de Saxoferrato and Coluccio Salutati present a communality of ideas in their theorisations on the right to resist. These thoughts assume the predominant shape of the tyrannicide, in an age that has a morbid obsession for the tyrannical degeneration of power.[26] Such similarity invests many other aspects, including the definition of tyrant and the source of power of the legitimate ruler, but also a general prudence that suggests a limited action of the people, in the hope that God will punish the unjust authority. As

---

[24] In *Romans* 13:1–2 (New International Version): *'Everyone must submit himself to the governing authorities, for there is no authority except that which God has established. The authorities that exist have been established by God. Consequently, he who rebels against the authority is rebelling against what God has instituted, and those who do so will bring judgment on themselves.'*

[25] Cosi, G., *Saggio sulla disobbedienza civile: storia e critica del dissenso in democrazia*, Giuffré, Milano (1984): 165-166

[26] Moroni, E., "Tirannide e resistenza in Bartolo da Sassoferrato", *Cultura Giuridica e diritto vivente*, Vol.1 (2014): 1

emphasised by Nevio Taucer, it is with particular reference to the theories of Bartolus and Coluccio that the gap between the medieval philosophy and the Monarchomachs' thought can be covered.[27] This section will widen this statement, proving that acknowledging the older scholars John of Salisbury and Thomas Aquinas can just reinforce the idea of a linear evolution of the right to resist towards the Early Modern Age.

The essential point of departure of all the medieval theories is represented by the definition of the subject. One common element highlighted by all medieval scholars is the unlawfulness of the tyrant, whether due to the means through which power was originally obtained or the way it is exercised during their rule. John of Salisbury's *Policraticus* provides a classical distinction between a legitimate ruler, the prince, and an illegitimate one, the tyrant, whose distinction is obedience to law.[28] The following definition of law is as much abstract as unclear, relying on some elements of divine nature, realisation of the well-being and opposition to any kind of injustice,[29] but a punctual interpretation of his words may lead us to the conclusion that John interprets law as the customs.[30] Thomas Aquinas articulates more in detail John's idea of the tyrant, identified as the one that *"encourages discord and sedition among his subjects",* and defining tyranny as *"being conducive to the private good of the ruler, and to the injury of the multitude".*[31] In addition, he proposes a distinction between the tyrant who rises to power unlawfully (*a titulo* or *regimine*) and the tyrant who, having obtained power legally, does not rule in accordance with justice (*ab exercitio* or *usurpatione*),[32] a difference already present in John's *Policraticus,* but probably not analysed with the same attention of Thomas. From their side,

---

[27] Taucer, N., *La disobbedienza civile. Profili storici e temi attuali*, Luglio Editore, Trieste (2021): 70

[28] The quotations of John of Salisbury's *Policraticus* are taken from the authoritative edition of Webb, C.C.J., *Policratici sive de nugis curialium et vestigiis philosophorum libri viii* (92 vol., Oxford, 1909), as cited in Richard, H., Rouse, M.A., 'John of Salisbury and the Doctrine of Tyrannicide', *Speculum*, Vol.42, No.4 (October 1967): 695: *'Between a tyrant and a prince there is this single or chief difference, that the latter obeys the law, [while the former] brings the laws to nought'*

[29] John of Salisbury: 695: *'[Law is] the gift of God, the model of equity, a standard of justice, a likeness of the divine will, the guardian of well-being, a bond of union and solidarity between peoples, a rule defining duties, a barrier against the vices and the destroyer thereof, a punishment of violence and all wrong-doing'*

[30] Richard, H., Rouse, M.A.: 696

[31] The quotations of Thomas Aquinas' *Summa Theologiae* are taken from the Second Edition of the translation of the Fathers of the English Dominican Province (1920). In this specific case, 2.2, q.42, art.2: *''[…]there is no sedition in disturbing a government of this kind, unless indeed the tyrant's rule be disturbed so inordinately, that his subjects suffer greater harm from the consequent disturbance than from the tyrant's government. Indeed it is the tyrant rather that is guilty of sedition, since he encourages discord and sedition among his subjects, that he may lord over them more securely; for this is tyranny, being conducive to the private good of the ruler, and to the injury of the multitude."*

[32] Thomas Aquinas, *Commentarium super quattuor Libros sententiarum Magistri Petri Lombardi*, as cited in Taucer, N.: 39

Bartolus de Saxoferrato and Coluccio Salutati do not miss this categorisation, showing acknowledgment of Thomas' writings:[33] Bartolus reflects on the distinction between a tyranny *'ex defectu tituli'*, thus 'by title', and *'ex parte exercitii'*, thus unlawfully ruling,[34] while Coluccio reproposes the same distinction using a different terminology.[35] Moreover, Bartolus also notices that tyranny can be manifest or disguised, considering this distinction as mutually related with the one between *'ex defectu tituli'* and *'ex parte exercitii'*.[36]As it can be observed, the work of the definition of the tyrant is represented by a linear evolution from an abstract delineation provided by John of Salisbury to the wide and rich analysis in Bartolus and Coluccio's theorisations.

Similarities can be drawn in the conception of resistance promoted by the four scholars as well. There are many passages that justify a right to resist in John's *Policraticus,* from a straightforward declaration on the need to kill the tyrant in accordance to both secular and divine law[37] to an even more radical endorsement of a duty to slay the unjust ruler, alongside with the respective right.[38] Similarly, Thomas' *Summa Theologiae* endorses a right to resist, but rooting it in his distinction between *lex aeterna*, *lex naturalis*, *lex divina* and *lex humana*.[39] Thomas recognises that the *lex humana* that is not in accordance with *lex naturalis'* principles is corrupted. In particular, resistance is always lawful when positive law disregards divine law, while positive law that disobeys natural law, but not necessarily divine law, must evaluated on a case-by-case basis.[40] In general, obedience to the authority derives from a divinely ordered prescription.[41] Thus, if it is not as such, the subjects can consider themselves as not bind to the

[33] Taucer, N.: 62
[34] Bartolus, 'Tractatus De Tyrannia', *Consilia Quaestiones Tractatus,* Venetiis, 1519, nn.12,13,23,27,38 as cited in Taucer, N.: 59
[35] Coluccio, 'Tractus De Tyranno' in Ercole, F. (Eds.), *Il Trattato "De Tyranno" e lettere scelte* (1942): 6
[36] See note 32
[37]John of Salisbury: 696: 'the tyrant, the likeness of wickedness, is generally to be even killed [...] according to both temporal and divine law'
[38]John of Salisbury: 697: 'It is not merely lawful to slay a tyrant but even right and just. [Who does not take action] sins against himself and against the whole body of the secular state'.
[39] As explained in Taucer, N.: 29-30, the *lex aeterna* is God's reason; the *lex naturalis* is the part of the *lex aeterna* that the human reasoning can understand; the *lex divina* is God's revealed law; the *lex humana* coincides with positive law, including all the particular provisions that derive from the *lex naturalis*.
[40] Taucer, N.: 30
[41] Thomas Aquinas, *Summa Theologiae,* 2.2., q.105, art.1: *'[...] to be disobedient to the commandments of God is a mortal sin, because it is contrary to the love of God. Again, the commandments of God contain the precept of obedience to superiors. Wherefore also disobedience to the commands of a superior is a mortal sin, as being contrary to the love of God, according to Romans 13:2 [...]'*

ruler's law, with the exception of scandals or public dangers.[42] Moreover, who opposes a tyrannical rule does not commit a sin of sedition, unless the act of sedition causes more harm than the unjust rule itself.[43] Bartolus' *De tyranno* does not mention a right to resist: it is the *De Guelphis et Gebellinis* that does, according to the principle of *vim vi repellere licet,* as long as it is not possible to rely on a *superior,* and a *iusta causa* exists, to be identified on the threat to the commonwealth.[44] In a few decades, Coluccio would have 'violently' endorsed resistance, justifying without any afterthought tyrannicide and assigning this faculty both to superior authorities and common people, a detail that introduces the issue of the subjectivity of the right to resist.[45] In synthesis, all the authors mark a turning point: from the classical Catholic position, which prescribes the obedience to secular authorities in name of their divine entitlement, these scholars introduce the possibility to resist to the unjust ruler through the tool of the tyrannicide.

Defining the subjectivity of the right to resist constitutes a central issue. Especially in the medieval Catholic tradition, the positions on who can exercise such right differ from scholar to scholar. John's contribute on an organic model of the political body, establishing an analogy between each part of society and the organs of the human body, has important repercussions on his resistance theory as well. The principle of cooperative harmony that aims at the achievement of a commonwealth according to the dictates of justice assumes that every organ is called to "*resist the disease of injustice when it threatens to infect the organism"*, even if it originates from the head/ruler.[46] Thus, it is an indication that all classes, from the lowest to the highest, may be required to exercise resistance, especially considering that John's justice does not simply constitute a negative obligation to avoid the commission of harm, but also a positive duty to protect others from injustice.[47] The Thomasian and Bartolian traditions do not deny the

---

[42] Thomas Aquinas, *Summa Theologiae*, 2.2, q.104, art.6: *'Man is bound to obey secular princes in so far as this is required by order of justice. Wherefore if the prince's authority is not just but usurped, or if he commands what is unjust, his subjects are not bound to obey him, except perhaps accidentally, in order to avoid scandal or danger.'*

[43] See note 31.

[44] Moroni, E.: 6

[45] Coluccio: 7: *'who will deny to the whole people or even to the majority of citizens, or even to whatever nucleous of these, […] or even to be more specific to whoever only citizen the right to resist against whoever usurps people's freedom or to whoever unjustly seize the government?'*; p.15: *'rightfully, not only a part of the people, but also every private citizen may resist without punishment to whoever want to make themself a tyrant, cruelly squashing such a monster with weapons and blood'*

[46] Nederman, C.J., 'A Duty to Kill: John of Salisbury's Theory of Tyrannicide', *The Review of Politics*, Vol.50, No.3, (1988): 374

[47] Nederman, C.J.: 370-375

possibility of such a scenario within the so-called *'superiorem non recognoscentes'* community, where individuals do not recognize any superior authority to rely on. Differently it happens in a *'superiorem recognoscentes'* one, a condition that denotes an exclusive faculty of those same authorities that recognised the legitimacy (or illegitimacy) of the ruler.[48] This way, Thomas and Bartolus establish a connection between the source of the ruler's power and the possibility of withdrawn such legitimacy in case of an unjust ruler: in other words, the subject that concedes power has also the faculty to take it away. Instead, as already seen from Coluccio's words, it is evident that even the single individual can exercise this right without punishment, even by violent means.[49] Thus, it can be noticed how there is disagreement on the subjectivity of the right to resist, fluctuating from an extensive exercise in John and Coluccio's theorisations to a more restricted attribution in the cases of Thomas and Bartolus.

Recently, the debate has been focusing on the limits that these theories encompass, especially in John's general thought. Although a support in favour of tyrannicide and resistance is apparently visible, several scholars argued that the examined theories lack the coherence that a full endorsement for the right to resist would require. The *Policraticus* constitutes an exemplary case: Richard and Rose highlight the presence of a continuous tension between 'John the Dialectician', who argues that the right to resist is theoretically valid, and 'John the Academic', who decides to express a contrary position in virtue of his policy of moderation.[50] Therefore, John's posture soon changes towards a series of limitations that reduce the right to resist to the minimum terms: first, he adopts a 'doctrine of the last straw', according to which a resort to tyrannicide could be made only as a last resource.[51] Later, his approach suggests strenuous patience, in the hope that God will punish the unjust ruler.[52] Still, other limitations are posed on the conditions and means of the assassination.[53] Among the main supporters of John's reluctance for tyrannicide, Van Laarhoven brings the *Exitus tyrannorum* as a proof of

[48] Taucer, N.: 50; Moroni, E.: 6
[49] See note 45
[50] Richard, H., Rouse, M.A.: 696. In particular, John places moderation as the foundation of virtue. Regarding his 'academic' position, he argues that *'[he] will not presume to state definitely what is true in each and every case'*, allowing him to contradict the practical aspects of his same arguments.
[51] John of Salisbury: 698: *'it is honest to kill them [the tyrants] if they can be curbed in no other way'*
[52] John of Salisbury: 699: *'the method of destroying tyrants which is the most useful and the safest, is for those who are oppressed to take refuge humbly in the protection of God's mercy, and lifting up undefiled hands to the Lord, to pray devoutly that the scourge wherewith they are afflicted may be turned aside from them'*
[53] For example, John discourages tyrannicide when the killer is bound to the tyrant by an oath or by a relation of fealty (pretty common condition in a feudal system); the use of poison is 'unlawful'; the act must happen *'without loss of religion and honour'*. Richard, H., Rouse, M.A.: 698

such interpretation: the attached booklet that lists a series of historical tyrants from the Roman Empire, the Bible and the same English history, would be a more simple illustration of how 'all tyrants come to a bad end', but surely not evidence brought to actively support tyrannicide.[54] Probably, the same Coluccio Salutati had this list in mind, when he stated that *'the learned John of Salisbury, [who] declares that it is right to kill a tyrant and tries to prove this by a multitude of illustrations, seems to me to reach no result. His illustrations prove, not that the murder of tyrants is right, but that it is frequent'*.[55] With an opposed stance, Nederman invites to not take John's words too literally, especially in relation to the highly developed idea of men's freedom contained in the *Policraticus*.[56] In addition, he argues in support of a parallelism between the secular obligations imposed by the monarch on the members of the political body and their divine duty to live in accordance with God's law, making assassination a divine-ordered obligation if committed against a tyrant that does not rule in accordance with divine law.[57] Following this way, John's theory resists even when presented with its limitations, which only apparently contradict the author's endorsement in favour of a right to resist.

One may argue, as Van Laarhoven does, that a theory without any practical outcome is all but useful.[58] However, such conclusion ignores the likely purpose the treatise has been written for, as well as the small act of resistance the same John conducted with it. According to Richard and Rouse, John had no intention on killing King Henry II or promoting his murdering. In addition, John had hopes on Henry II good ruling, differently from his predecessor King Stephen. However, the author's correspondence sheds light on a phase of disfavour between him and the King on the protection of ecclesiastical liberties. Such a turbulent relation could have suggested to John the use of his *Policratus* as a handbook for the personal edification of royal chancellor Thomas Becket, in the hope that the treaties would have reached and admonished the King on the dangers of ruling tyrannously. Under this interpretation, the purely theoretical work of John of Salisbury becomes practical through the instructive task his work should have

[54] Van Laarhoven, J., "Thou shalt not slay a tyrant! The so-called theory of John of Salisbury", *Studies in Church History Subsidia*, Vol. 3, (1984): 324
[55] Coluccio Salutati, *De Tyranno*, as cited in Nederman, C.J.: 366
[56] On John's notion of liberty, see Nederman, C.J., "The Aristotelian Doctrine of the Mean and John of Salisbury's Concept of Liberty," *Vivarium*, Vol.24, No.2 (November 1986): 128-42
[57] Nederman, C.J.: 376
[58] Van Laarhoven, J.: 328

had on the King, placing him in front of the possibility that he could have been punished if he did not rule in accordance with law.[59]

A similar issue may be posed by Thomas' theory as well, which endorses a prudence that, in many aspects, resembles John's one. The conformity of ideas between the two scholars hits the same points: both authors make an argument for prudence through the obedience to secular authorities, as stated by Paul the Apostol,[60] and both seem to exclude tyrannicide among the instruments of resistance. However, Thomas' positions seem to be far less debated by scholars and result much more practically justified than John's ones. In *De Regimine principum,* he excludes tyrannicide as a valid solution, simply because most of times the disposal of a tyrant only brings a worse one.[61] Nonetheless, as Alessandro Passerin d'Entrèves notices, it is necessary to analyse the whole body of works to deduce Thomas' position:[62] it results that Thomas endorses tyrannicide in the case of a tyrant *'ex defectu tituli'*, while in the *'ex parte esercitii'* cases he promotes passive resistance. Moreover, as we already mentioned, the disposal of the tyrant may be forbidden by the people if they live in a *'superiorem recognoscentes'* community.[63] According to Breidenbach and McCormick, the prudence promoted by the author is not a denial or a proper vilification of the right to resist. Instead, it must be examined through Thomas' vision of the ends of the community. Thomas would suggest moderation to promote reflection over impulse among the citizens, in order to discern if such a radical action really contributes to the true end of politics, which coincides with the religious end, and not to some secondary aim.[64] Thus, Thomas prioritise education of the citizen, in order to teach them when resistance can be applied with the best tools on a case by case basis. In general, Thomas' theory does not present the same issues of John's *Policraticus*, confirming his stance in favour of the legality of resistance.

---

[59] Richard, H., Rouse, M.A.: 704-709

[60] See note 24. Both John and Thomas make reference to the same passage

[61] Thomas Aquinas, *De regimine principum*, as cited in Taucer, N.: 48-49: *'It would be dangerous for the people and their governors, if it could be possible to arbitrarily harm the life of rulers, even in the case of tyrants. […] Such a faculty would be more likely to cause to the people the loss of a good king than the remedy of the expulsion of a tyrant'*

[62] Passerin d'Entrèves, A., *Appunti di storia delle dottrine politiche – La filosofia politica medioevale*, Torino, 1934, as cited in Taucer, N.: 49

[63] Taucer, N.: 49-50; Garancini, G. "Diritto di resistenza, disobbedienza civile, obiezione di coscienza: profili storici", in Perrone, B. (Eds.), *Realtà e prospettive dell'obiezione di coscienza. I conflitti degli ordinamenti*, Atti del Seminario nazionale di studio, Milano (April 9th-11th 1992): 99

[64] Breidenbach, M.D., McCormick, W., "Aquinas on Tyranny, Resistance, and the End of Politics", *Perspectives on Political Science*, Vol.44, No.1, (2015): 14

In synthesis, Late Middle Age guards the origin of the right to resist in its modern conception. Tyrannicide constitutes the definite tool of disposal of the bad ruler, inaugurating a theoretical phase that validates violence. Nonetheless, it would be erroneous to reduce these theories to a justification to slay tyrants: as we observed, when the subjectivity of tyrannicide is denied, medieval scholars do not pose relevant issues to passive resistance, as long as the ruler is an actual usurper. Still, the issues of obedience and prudence stand out, but they can be easily figured out, as the debate on John of Salisbury and Thomas Aquinas has shown. Moreover, these apparent limits will be overcome with the Monarchomachs' theories, but still maintaining the religious foundations that characterise the early thoughts on the right to resist.

ii. The Myth of Magna Carta: Chapter 61 and the resistance of the Barons

In February 2001, Queen Elizabeth II was 'formally' addressed by a group of 'Barons' in a petition aimed at vetoing any Parliamentary Bill that, without a clear popular assent, would have ratified the Treaty of Nice on the institutional reforms of the European Union. However, there was little formality in this request, and the Barons were not actual barons, but simple amateurs of conspiracy theories.[65] What is extremely interesting is the legal basis this opposition group invoked. Chapter 61 of 1215 Magna Carta constituted a safety clause against any attempt by King John of violating the provisions of the new document, through a targeted action by Twenty-Five elected barons who, in such a circumstance, would have reacted in every possible way. A bridge between past and present is established, between the faculty of resistance octroyed to the Barons in 1215 and the '*lawful rebellion'* invoked in the bio of the Magna Carta Society Blog, the group that drafted the petition to Queen Elizabeth II.[66] The case of the 2001 Magna Carta Lawful Rebellion is not even an isolated one: in 2021, during the Covid-19 pandemic, another group of 'barons' decided to occupy the Edinburgh Castle, with the intention of "*restoring the*

[65] On the Magna Carta Lawful Rebellion, see Netolitzky, D.J., "Ten Seconds to Implosion: The Magna Carta Lawful Rebellion", *International Journal of Coercion, Abuse, and Manipulation 6 (2023).* The article also contains the original petition at p.5

[66] The blog, accessed at http://magnacartasocietyblog.blogspot.com/ on April 2nd, 2024, gives an idea of the positions that guide this group: in the section *MCS A Short History,* it is said that it was founded by a certain Bob Lomas, in order to face the menace of an '*increasingly despotic'* British government, and denouncing the control of politicians in everyone's life. They claim, after the unsatisfactory response given by the Queen to their petition and the ratification of the Treaty of Nice, *'the requirements of Chapter 61 of Magna Carta were satisfied and transfer of allegiance from her to the Barons Committee became lawful.'*

rule of law", invoking once again Chapter 61 of the original Magna Carta.[67] These two contemporary events tell us much on the significance of Magna Carta in today's British constitutional order, especially if people do consider themselves rightful in invoking *in toto* a 800 year old Charter that stayed in force only a few months, and if scholars continue debating on the supposed 'myth' embedded in this document. In addition, they rise a number of questions on Chapter 61 itself, strongly intertwined with our research topic: some regard the 'rebellious' events that led to the agreement represented by the Magna Carta; some coincide with some previously analysed issues, as the means of resistance and its subjectivity; some others involve more directly the development of the right to resist in its codification on a document that has the semblance of an *ante-litteram* Constitution.

To give a correct interpretation of the events that led to the Runnymede agreement[68], it might be useful to provide the reader with a summary of the causes that fostered the reaction of the Barons. In particular, of great usefulness are two of the most authoritative texts on the topic, directly based on the accounts of Matthew Paris.[69] James Clarke Holt dedicates an entire chapter of his *Magna Carta* to analyse the socio-political context of medieval Britain and the Norman and Angevin policies that led to the opposition of the Barons, which can be summarised in a general centralisation of the Kingdom's administration.[70] Holt's reference is principally on the exploitation of the traditionally feudal lordship-attached financial policies that would have allowed the King to accumulate resources for warship and internal control.[71] As the author stresses, even though such policies had a 200 year old history, it was only with King John that they could be refused not simply due to the 1214 failure of his campaign in Normandy, but more probably due to the necessity to gradually develop a political theory of monarchical responsibility, other than the need to patiently observe the outcome of such line of development.[72] Thus, the Runnymede's events were both the result of a political crisis and

[67] Badshah, N. "Protesters claim to 'seize' Edinburgh Castle citing Magna Carta", *The Guardian* (August 17th, 2021). Accessed at https://www.theguardian.com/uk-news/2021/aug/17/protesters-claim-to-seize-edinburgh-castle-citing-magna-carta on April 2nd, 2024

[68] For clarity's sake, as the following lines will show, the use of the expression *Magna Carta* does not refer to the 1215 document, but it is a later denomination. In this work, I will use the expressions 'Runnymede Charter', '1215 Magna Carta' or 'original Magna Carta' to designate the first version.

[69] Matthew Paris was an English Benedictine monk, whose illustrated accounts provide historians with a direct witness of the 13th century. As a reference work, historians generally consider his *Chronica Majora*.

[70] This is a policy that even interested the above-mentioned Henry II, with Turner, R.V., *Magna Carta Through the Ages*, Pearson Longman (2003): 10 talking about the establishment of an 'administrative kingship'

[71] Holt, J.C. *Magna Carta,* Cambridge University Press, Third Edition, (2015): 52

[72] Holt, J.C.: 53

the emersion of a primitive idea of rule according to law,[73] while we encounter for the first time one of the themes that will spring movements of resistance: taxation. The years immediately preceding 1215 are characterised by the first attempts of conspiracy by the aristocracy and the clergy, with plans for murdering King John in 1209, 1212 and winter 1214-1215.[74] At this point, the issue turns much wider than the simple financial issue: part of the discontent against King John is caused by the military service in Poitou, while another significant role was played by the secular conflict between the English monarchy and the Church, achieving its highest point in the Canterbury succession crisis.[75] Thus, it can be observed that many factors participate in the evolution towards the opposition of the Barons against King John, involving both an increasingly impacting internal reform of administration and the foreign elements, at that time constituted by the failed campaign in Normandy and the erratic relation with the Church.

The first half of 1215 was dynamic: it is the moment that marks the end of the promises of King John for the achievement of a settlement, the exhaustion of the patience of the Barons and the double game of the clergy. Also, the following events show much of the nature of the Barons' actions, and allow us to recognise in them a resistant movement in accordance to the definition we previously accepted. In fact, despite the attempts of both parties to achieve an agreement since January until April, the King failed in meeting his promises, probably not available to make any concession that would have threaten the traditional rights of the Crown. Faced with this situation, the Barons renounced their fealty to the King on May 5, endorsing a rebellion against the Monarch, by then considered a tyrant. However, the rebellious phase against King John must be seen as an isolated moment, as the evidence of the facts and the same outcome of the crisis can demonstrate. English chronicler Roger of Wendover talks about a secret meeting between archbishop Langton and a group of barons, on which the former would have shown to the latter a Charter by Henry I as a justification for the reclamation of their ancient liberties through the drafting of a new Charter. Such an event would not be unusual as we could think,

[73] Holt, J.C.: 174

[74] For a more detailed account of each crisis, see Turner, R.V.: 53-59

[75] The Canterbury succession crisis originated from the difficulties aroused for the election of Hubert Walter's succession. The subsequent election of Stephen Langton in 1206 resulted in a long confrontation between the King, eager at exercising control in the election, and Pope Innocent III, who alternated negotiations with pressures like the interdict and the following excommunication. In Spring 1213, King John accepted the pontiff peace proposal, placing himself and his domains under papal lordship. This way, King John obtained protection in the external and internal scenarios, with Pope Innocent eager to obtain support for his crusade. For a more detailed account, Turner, R.V.: 37-41

especially considering that the practice of conceding charters of liberties was not that uncommon during the thirteenth century.[76] Although scholars consider these stories of exchanges between Langton and the aristocracy as doubtful, it must be recognised that it is Langton itself that urges the King to resume negotiations, giving a definitive impulse for the Runnymede agreement. In addition, a document kept as a copy in Paris and known as the Unknown Charter of Liberties would be dated to a date subsequent to August 1213, consisting in a copy of Henry I's charter with some baronial proposals added as notes.[77] It is unclear the role it played during negotiations, but a similarity with the Runnymede Charter can be observed. A second document known as the Articles of the Barons[78] was found at Lambeth Palace (official residence of the Archbishop of Canterbury) and not only demonstrates the negotiating role played by Langton, but together with all the other documents proves the intention to follow a non-rebellious strategy and to achieve new liberties without threatening the King's authority. This gives a new reinterpretation of the events that led to June 15, a date which is more conventional than actual, but that formally marks the issue of the Magna Carta as new instrument of the liberties of the Barons.

For the purposes of this investigation, Chapter 61 plays a central role, being the one traditionally mentioned by scholars of the right to resist. What is often overlooked are the weaknesses of this provision, which can be partly deduced by the same text, and partly as a consequence of the events following the Runnymede's agreement. The text reads:

> The barons shall elect twenty-five of their number to keep, and cause to be observed with all their might, the peace and liberties granted and confirmed to them by this charter.[79]

As it is evident, the modalities of election of the Twenty-Five Barons are left undefined, both in this portion of the text and in the others. The issue is complicated by the fact that the events of

[76] Roger of Wendover, as cited in Turner, R.V.: 57
[77] For a study on the *Unknown Charter* and direct reference of the primary source, Round, J.H., "An Unknown Charter of Liberties", *The English Historical Review*, Vol. 8, No. 30 (Apr. 1893): 288-294
[78] Transcription of the document can be accessed at https://magnacarta.cmp.uea.ac.uk/read/articles_of_barons
[79] All translations of the *Magna Carta* (June 1215) are taken from The National Archives, accessible at https://www.nationalarchives.gov.uk/education/resources/magna-carta/british-library-magna-carta-1215-runnymede/

Runnymede remain pretty obscure, even in the accounts of the chronicles of that time.[80] Holt argues that presumably the Twenty-Five Barons were elected immediately after the settlement was achieved,[81] but also emphasises that the clarification and enforcement of many provisions contained in the Charter was guaranteed by a series of writs and letters.[82] Namely, one of this letters ensured compliance with the oath of obedience to the Twenty-Five Barons, still skipping the issue of the modalities of election.[83] Much clearer is the procedure of 'impeachment' of the Crown:

> If we, our chief justice, our officials, or any of our servants offend in any respect against any man, or transgress any of the articles of the peace or of this security, and the offence is made known to four of the said twenty-five barons, they shall come to us – or in our absence from the kingdom to the chief justice – to declare it and claim immediate redress. If we, or in our absence abroad the chief justice, make no redress within forty days, reckoning from the day on which the offence was declared to us or to him, the four barons shall refer the matter to the rest of the twenty-five barons, who may distrain upon and assail us in every way possible, with the support of the whole community of the land, by seizing our castles, lands, possessions, or anything else saving only our own person and those of the queen and our children, until they have secured such redress as they have determined upon. Having secured the redress, they may then resume their normal obedience to us.[84]

In this case, the reader can observe a detailed procedure of resistance, with the Barons' faculty to seize all Monarch's possessions, even with the cooperation of the community. It partially refers to the already mentioned doctrine of a *'superiorem recognoscentes'* system, thus potentially enlarging the right to resist to all individuals, but only under a previous recognition of the Barons. At the same time, the provision excludes the appeal to tyrannicide, one of the

[80] For examples, Wendover summarises the event in a few lines, simply *mentioning 'a long discussion about terms of peace and [...] liberties'* and the subsequent grant of the Charter, after realising that he was '*inferior in strength to the barons'*. Roger of Wendover, *Flowers of History*, translated by Giles, J.A., London: Henry G. Born, (1849), Vol. II: 308-309

[81] Holt, J.C.: 221

[82] Holt, J.C.: 222-223

[83] General letters patent from the king to his bailiffs (June 191215) (Rot. Litt. Pat. p. 180b), reproduced in Holt, J.C.: 415-416

[84] Magna Carta (June 1215)

main themes of the medieval literature, as we previously observed: the preservation of the Royal family is the only limitation to resistance, with the obedience to be restored after the damage is repaired. Although some scholars may talk of a provision that would have allowed a *'licensed civil war'*,[85] it seems like a strained interpretation, coherent with the traditional idea of a rebellious flow of events. Although Chapter 61 permits a sort of suspension of obedience to the Crown, the concept of *civil war* may suggest the intention of replacing the hostile authority with a more accommodating figure for the opposing group. As it was above-mentioned, no element suggesting the replacement of the authority may be deduced by the text, with the Monarch's rule never put under serious discussion. In addition, it is unlikely that King John would have accepted such concession if likely to provoke a political crisis every other day.

Had the Runnymede Charter the opportunity to deploy its effects for a longer amount of time, it could have been possible to directly observe its working system. Instead, with the risk of repeating again a maxim that has been identically replicated from author to author, the Magna Carta was a failure.[86] A few weeks after the settlement, King John sent a letter to Pope Innocent III, claiming that its terms were obtained by coercion of the King and thus to be considered not binding. The pontiff acted in support of the King, annulling the Magna Carta[87] and marking the first violation of the Charter in the final clause of Chapter 61:

> We will not seek to procure from anyone, either by our own efforts or those of a third party, anything by which any part of these concessions or liberties might be revoked or diminished. Should such a thing be procured, it shall be null and void and we will at no time make use of it, either ourselves or through a third party.[88]

The deceived Barons decided to proceed through the modalities of the Charter, ignoring royal officials and withholding all money owed to the Crown. However, this time plans for a replacement of the King gained strength and concreteness: the invitation to invade Britain was

[85] Jones, D., *Magna Carta, The Making and Legacy of the Great Charter*, Head of Zeus (2014), Ch. 8
[86] Jones, D., Ch. 9; Holt, J.C.: 33; Carpenter, D. "Magna Carta 1215: its social and political context", in Goldman, L. (Eds.), *Magna Carta: History, context and influence,* University of London Press (2018): 22
[87] The papal letter can be consulted in Rothwell, H. (Eds.), *English Historical Documents*, Vol. III (1975): 324-326. Pope Innocent stated that the Charter *'null, and void of all validity forever'*.
[88] Magna Carta (June 1215)

sent to several foreign princes, among whom certainly outstand Louis of France, better-known as 'The Lion', as an illustration in Matthew Paris' Chronicles shows.[89] Louis landed in Britain in May 1216, conducting a successful campaign that ended with King John's death in October and the accession to the throne of his son Henry III. For him, who was only 8 years old at the coronation, the death of the father represented the opportunity to make the Barons believe that now that the conditions have mutated, a new reconciliation was possible. In November, the foundations of the new reign took the shape of a reissue of the Magna Carta, with the exclusion of many of the previous provisions, including Chapter 61.[90] However, peace was not immediate, and it was only achieved with another reissue of the document the following year. The accompanying *Charter of the Forests* introduced the need to distinguish it from the other, that officially assumed the name of Magna Carta, but eventually losing that explicit resistant character represented by the original Chapter 61.

Even if the issue of the presence of a right to resist in the Magna Carta may be apparently closed, it could be useful to analyse a related problem, involving the use of the document throughout British history and the deep significance it had in the evolution of modern constitutionalism. It is Max Raidin that effectively summarises the debate over the document, using, similarly to the reference to its failure, another common *topos* of the Magna Carta, this time involving its mythical semblance. Raidin decides to name his article *The Myth of Magna Carta* on purpose, exactly as the more dated Edward Jenks' work was titled, and exactly as many other following works on the topic, each one siding for two different answers to the proposed dilemma: is the Magna Carta, according to the 'Whig' interpretation, an early reference to the defence of human liberties or is it simply the result of the Barons' jealousy for their privileges, following a more conservative vision? The latter interpretation is effectively expressed by Jenks, who targets the common misunderstanding of the 'free men' (*liberi homines*) used in the Charter and argues that *'a very natural confusion of ideas has created the belief, that this highly favoured person corresponds to the "simple freeman" of Teutonic legend, the "man in the street" of the modern Press'*.[91] A few lines below, Jenks insists on his theory and denies that the Charter represented a milestone of English constitutionalism. He argues, the

[89] The illustration can be found in Jones, D., Ch. 9
[90] The 1216 Magna Carta is preserved in the Archives of Durham Cathedral and its translation can be accessed at https://www.bsswebsite.me.uk/History/MagnaCarta/magnacarta-1216.html
[91] Jenks, E. "The Myth of Magna Carta", *Independent Review,* Vol.4, Issue 14 (1904): 268

following conquests were *'the work of men who were unborn, or in their cradles, when the Charter was signed at Runnymede',*[92] with the burden of this huge deceit falling on the head of Sir Edward Coke, a man who was *'mingling his politics with his historical research'*.[93] On the contrary, Raidin follows an opposite direction. In the *Statutum de Tallagio,* a document that was attached to the Magna Carta in 1297, the fourth provision reads:

> We will and grant for Us and our Heirs, that all Clerks and Laymen of our realm shall have all their laws and liberties and free customs as freely and wholly as they were used to have them at any time when they had them best and most fully; and if any statutes have been made by us and our ancestors, or any customs brought in contrary to them or contrary to any article contained in the present charter we will and grant that such statutes and articles be void and none forever.[94]

Raidin argues that especially the last part confirms the super constitutional status of the Charter way before Coke's attempt of historical revisionism. Later, he insists:

> Magna Carta was not merely a *liber feudorum* and with the *Statutum de Tallagio* a sort of constitution; it was also a permanent and abiding symbol of a successful resistance to royal power, a resistance within the realm itself, and not merely a phase of the great struggle between the secular and ecclesiastical powers in Western Christendom.[95]

Later, he mentions a number of historical cases where the Charter was used as a tool of resistance against the Monarch's privileges, concluding that *'no half-obsolete document, dealing in vague generalities with the rights of a baronage that had disappeared, could have been effectively used to justify open disobedience to a peremptory order of one of the most peremptory of sovereigns'.*[96]

---

[92] Jenks, E.: 272
[93] Jenks, E.: 272
[94] As reported in Radin, M., "The Myth of Magna Carta", *Harvard Law Review*, Vol. 60, No.7 (September 1947):1075
[95] Radin, M.: 1075-1076
[96] Radin, M.: 1077

It becomes clear that, as long as the debate remains open, is hard to join one of the two factions. Certainly, a conservative interpretation would leave little time of validity for the right to resist contained in the Runnymede, namely the seventeen months that passed between the first achievement of the settlement and the reissue that cancelled forever the original Chapter 61. Instead, adopting a Whig posture to the issue allows us to take the Charter as a more general recognition of men's liberties, as well as a bastion of resistance whenever the monarchic power would overcome its own limits, beyond the presence or not of the security clause of Runnymede. At the same time, the debate could partially involve the issue of subjectivity as well: a purely baronial Charter would leave the faculty of resistance to the only aristocratical and ecclesiastical classes, leaving apart all the other categories. On the contrary, a Charter recognising the rights of all free men would recognise such faculty as a collective one, assuming an incredibly progressive stance already during the thirteenth century.

For sure, a category (would have) benefitted more than the others from the spirit of resistance emanated by the Magna Carta, namely the Church. We have already referred to the role of the clergy within the front of the Barons, certainly in opposition of the King, but also represented by a faction aiming at a negotiated solution, led by Archbishop Langton. The concessions the Church obtains from the Runnymede Charter are significant and once again they have their roots not simply in King John's policy toward the ecclesiastical dimension of the Kingdom, but also in the ones of his predecessors. Coming back to John of Salisbury and his resistance against Henry II, one of the main worries was on the King's future intentions toward the role of the Church within the Kingdom, later menaced by the 1166 *Assize of Clarendon* and 1176 *Assize of Northampton*, transferring power out of the clergy and laying the groundwork for the system of jury trial of common law. According to Fryde, it is likely that, among the readings of the archbishop and negotiator of the Runnymede Charter Stephen Langton, John of Salisbury had a vital role, even ending up speculating on the influence John's difference between the good ruler and the tyrant and his idea of a Monarch subject to the law may have had on the Runnymede Charter.[97] Nederman reviews this thesis, highlighting how the document does not present a clear confrontation between good and bad ruler, but instead may have been

[97] Fryde, N. *Why Magna Carta? Angevin England Revisited*. Muenster, Germany: LIT Verlag (2001), as cited in Nederman, C.J., "The Liberty of the Church and the Road to Runnymede: John of Salisbury and the Intellectual Foundations of the Magna Carta", Cambridge University Press (2010): 458-459

influenced by John's view on the freedom of the Church.[98] That is visible from Chapter 1, which reads:

> First, that We have granted to God, and by this present charter have confirmed for us and our heirs in perpetuity, that the English Church shall be free, and shall have its rights undiminished, and its liberties unimpaired. That we wish this so to be observed, appears from the fact that of our own free will, before the outbreak of the present dispute between us and our barons, we granted and confirmed by charter the freedom of the Church's elections – a right reckoned to be of the greatest necessity and importance to it – and caused this to be confirmed by Pope Innocent III. This freedom we shall observe ourselves, and desire to be observed in good faith by our heirs in perpetuity.[99]

The liberty of the Church is reconfirmed in Chapter 63:

> It is accordingly Our wish and command that the English Church shall be free, and that men in our kingdom shall have and keep all these liberties, rights, and concessions, well and peaceably in their fullness and entirety for them and their heirs, of us and our heirs, in all things and all places for ever.[100]

Finally, this freedom remained unchanged in the 1216 reissue, with Chapter 1 suffering almost no change from the original one:

> In the first place granted to God, and by this our present Charter, have confirmed for us and for our heirs for ever, that the English Church shall be free, and shall have her whole rights, and her liberties, inviolable.[101]

Such analysis allows us to build a bridge between the first Catholic approaches to the right to resist and one of the first codifications of such right, if not as a widespread right, as guaranteed

[98] Nederman, C.J.: 459
[99] Magna Carta (June 1215)
[100] Magna Carta (June 1215)
[101] Magna Carta (1216)

by Chapter 61, at least as the specific concession the Church was able to earn. Moreover, this interpretation reduces the common idea of the 'failure' of the 1215 Magna Carta. For sure, it is true that the Runnymede Charter was not able to build an immediate peace, but it is equally correct to argue that Magna Carta succeeded in establishing a series of principles that resisted in the following reissues.

One piece of evidence on the resistant nature of the Magna Carta still needs to be examined, and it is directly linked to the aforementioned "Whig" or conservative interpretations historically given to the document. Although the debate remains open on the actual meaning of the original Runnymede Charter, very little can be denied on the role the Charter played in limiting the royal power in the following centuries, even echoing in contemporary times. This happened in a number of British historical cases, again reproposing the issue of Church rights in 1340, with the quarrel between Archbishop Stratford against Edward III, and in the 1399's deposition of Richard II; the Charter reappears in the 1587 *Cavendish's case,* when Queen Elizabeth granted a certain Richard Cavendish an office, and she was reminded that such a decision was violating the *"ley de terre"*.[102] On this case it is also worth highlighting how scholars have generally assumed an eclipse of Magna Carta during Elizabeth's reign,[103] while instead the document never ceased to pique the interest of jurists and the same British people.[104] Coke's *Reports,* meant to be a collection of key court cases of English jurisprudence, acknowledged in the preface of its Eighth edition the historical importance of Magna Carta, assuming a prominent role as a tool to prevent the Monarch's attempts to sidestep parliament.[105] Similarly, the same principles were reconfirmed in the following *Institutes*, another attempt to recollect all English law achievements, with Magna Carta again representing a milestone.[106] Still, Magna Carta also travelled through the Atlantic Ocean, becoming one of the symbols of the eighteenth century American Revolution, under the assumption, replicated in 1606 Virginia Charter, that the colonists *'shall have and enjoy all Liberties, Franchises, and Immunities as if they had been abiding and born, within this our realm*

[102] Radin, M.: 1076-1077
[103] Radin, M.: 1068
[104] Garnett, G., "Sir Edward Coke's Resurrection of Magna Carta", in Goldman, L. (Eds.), *Magna Carta: History, context and influence,* University of London Press (2018): 52
[105] Garnett, G.: 53-54
[106] Garnett, G.: 58

of England',[107] thus also including the ones of Magna Carta.[108] Finally, the above-mentioned Magna Carta Lawful Rebellion and the invocation of Chapter 61 against the supposed illegality of Covid-19 regulations are only the last acts of a document that still survives as a tool of resistance against the oppressor, even if perversely manipulated like in these two last cases. The same British institutions consider four of the original 63 clauses as still legally binding, among which they highlight Chapter 39 and 40:

> No free man shall be seized, imprisoned, dispossessed, outlawed, exiled or ruined in any way, nor in any way proceeded against, except by the lawful judgement of his peers and the law of the land. To no one will we sell, to no one will we deny or delay right or justice.[109]

Curiously, the UK Parliament website also feels the urgency to not completely dismiss the conservative interpretation, underlining in a footnote how *'Magna Carta was not intended to be a great charter of rights for all people, but designed by the barons to ensure that their rights were protected against the king's power'*.[110] Despite this argument, it is clear that today the Parliament gives to those clauses the widest interpretation, making Magna Carta an instrument of general freedom and not of simple confirmation of aristocrats' privileges. The natural consequence is that, even though Chapter 61 is not explicitly recognised, the rest of the document can constitute a justification for resistance, as the reported historical examples have demonstrated, with a wide subjectivity.

In conclusion, Magna Carta has represented a central document in British constitutional history since its very first issue at Runnymede. Although not commonly recognised, the document constitutes one of the first attempts in medieval history to codify the right to resist through Chapter 61. This experience does not end with the removal of the clause in the

---

[107] Virginia Charter (April 10, 1606), as cited and readapted in Dickinson, H.T., "Magna Carta in the American Revolution" in Goldman, L. (Eds.), *Magna Carta: History, context and influence,* University of London Press (2018): 80

[108] For a better review on the influence of Magna Carta in the American events of the 1700s, see Chapter 3, sec. i

[109] Magna Carta (June 1215)

[110] UK Parliament, *The contents of Magna Carta* (no date). Last accessed on May 2, 2024 at https://www.parliament.uk/about/living-heritage/evolutionofparliament/originsofparliament/birthofparliament/overview/magnacarta/magnacartaclauses/

following reissues but continues through the use jurists and people have made of the remaining provisions of the Charter in the following centuries, and it finds its justification in the same resistant nature of the events that led to Runnymede, for which the label of rebellion may be limited and too simplistic. This is not to deny a pragmatic interpretation that would consider the Magna Carta as an affirmation of the Barons' privileges in a feudal system: although not originally thought to be as such, through time the Magna Carta ended up including all individuals, making a so-called 'Whig' interpretation absolutely valid.

iii. 'Kill the King': theories and practices of the Monarchomachs in sixteenth century's Europe

As it has been briefly mentioned in the introduction, in 1579 the *Vindiciae Contra Tyrannos* appeared as one of the most tangible results of the protestant movement in Europe, laying the foundations for the right of freedom of religion during the long-standing contrast between the Catholic and Protestant Churches. The *Vindiciae* also represents a point of arrival for a tradition of opposition against the absolute authority and a milestone in the path of affirmation of a right to resist. This last point can be proved by the diffusion the French pamphlet had in the following years throughout Europe: for example, the early editorial history of the *Vindiciae* in Britain provides interesting elements on the impact of the Huguenot's idea of resistance in the debate that precedes the 1688 Glorious Revolution. Already in 1588 an anonymous pamphlet titled *A short apologie for Christian souldiours,* published in London, was no less than the English translation of the fourth question of the Vindiciae, while the official one arrived later, in 1648. Additionally, the influence of the *Vindiciae* can be also analysed in other documents: a pamphlet published in 1690 and named *Political Aphorisms* mixed passages from *Vindiciae* with ones from the *Treatises of government* by Locke, in an operation that used plagiarism to link the contractual part of the French pamphlet with Locke's theory on the state of nature.[111]

This is only one of the proofs that demonstrate the future impact of the so-called Monarchomachs, label that first appeared in 1600 in William Barclay's *De regno et regali*

[111] Tutino, S., "Huguenots, Jesuits and Tyrants: Notes on the Vindiciae Contra Tyrannos in Early Modern England", *Journal of Early Modern History,* Vol.11, No.3 (2007): 175-196

potestate.[112] Apparently, their contribution can appear as nothing new in relation to the early experiences we previously analysed: again, tyrannicide constitutes the elected tool of resistance against an unjust ruler, here to be meant as the one who persecutes the protestant movement to protect the orthodoxy of the Catholic Church. Very much of this body of theory can remind of John of Salisbury, whose principal goal was the guarantee of the liberty of the Church from the monarchical authority, as well as the theories of Thomas Aquinas, according to which the legitimacy of a Monarch directly depends on the respect of divine law. A *fil rouge* connects these two ages, but also ends with different results: theoretically speaking, the uncertainty of Medieval authors seems to be substituted with a more convinced support of the lawfulness of resistance. From a practical point of view, it is not only about the very famous cases of tyrannicides of the period, namely the ones of Henry III and Henry IV of France, but also about the transposition of the right to resist from a theoretical perspective to reality, as we will observe with the Dutch Revolt of the end of the century, and the impact Monarchomachs' theories will have in future events.

To detect the origins of the Monarchomachs' theoretical path, many contributions have been provided by scholars. Although many of these authors enclosed this tradition within the movement of the Reformation, it is important to stress that the Monarchomachs' phenomenon is wider than the boundaries that are commonly set for it. For example, a tradition of Catholic Monarchomachs existed and developed within the so-called School of Salamanca, especially in the writings of Luis de Molina, Francisco Suárez and Juan de Mariana. In this case, the results are pretty similar to the ones of the Protestant tradition: of course, the Catholic tradition considered the bad ruler as the Protestant one, making these theories functional for the goals of the Counter-Reformation.[113] Probably Barclay himself, when he started writing *De Regno,* fell into the same temptation of exclusively taking into account the Protestant contributions to the topic, and only later included Catholic league preacher Jean Boucher in his critique,[114] once more paying attention to a parallel path of theories that converge in results with the Protestant

[112] Barclay, W., *De Regno et Regali Potestate adversus Buchananum, Brutum, Boucherium, et reliquos Monarchomacos*, Paris (1600). This work is meant as a critique to those essays written during the second half of the 16th century which advocate the disposal or even the assassination of the unjust monarch.
[113] For a review of the main approaches of the School of Salamanca, see Izbicki, T., Kaufmann, M. "School of Salamanca" in Zalta, E.N., Nodelman, U. (Eds.), *The Stanford Encyclopedia of Philosophy* (Fall 2023 Edition). Accessible at https://plato.stanford.edu/archives/fall2023/entries/school-salamanca/
[114] Nicholls, S., "Introduction" in *Political Thought in the French Wars of Religion,* Ideas in Context, Cambridge University Press & Assessment (2021): 2

one. Still, Barclay's critique shows a limited extent, missing to acknowledge the body of works that started spreading even before Calvin's death, like in the cases of John Ponet's *Short Treatise on Political Power* (1556), Cristopher Goodman's *How Superior Powers Ought to be Obeyd of their Subjects* and John Knox's *The First Blast of the Trumpet* (1558).[115] Continuing on this line of inquiry, another limitation is set by the so-called 'St. Bartholomew's Day trauma': according to Henri Strohl, the massacre of August 23-24, 1572 against the Huguenots represented a turning point for the behaviour and opinions of protestant scholars, by then convinced to support more strongly a right to resist against the tyrant. This way *"an historical event has potentially contributed to modify the traditional thesis",*[116] thus representing the actual birth of the Monarchomachs' line of thought as it is acknowledged today. Again, the issue with the 'trauma thesis' is to ignore a previous tradition that endorsed a right to resist even before the St. Bartholomew massacre. More specifically on the Protestant body of theories, Ralph Giesey notices that the politicisation of Calvinism was already on-going, as Beza's writings between the 1550s and the 1560s and François Hotman's drafts of *Francogallia* before 1572 can prove.[117] In this regard, it would be more correct to recognise 1572 as a moment of transition from a phase of prevalently theoretical approaches to a moment in which Protestant scholars seriously assess if prudence should be replaced by a more practical behaviour. All these elements suggest considering numerous authors under the label of the Monarchomachs, both Catholic and Protestant, and not only belonging to the later phases of the Reform, but also flourishing in early stages.

The links with the previous tradition are undeniable, not only because of the form assumed by resistance, namely tyrannicide, but also on the definition of tyrant and the conditions under which this right can be invoked. Beza's *Du droit des magistrats* introduces the topic with an argument that is not new: God must be obeyed, and so the rulers whose legitimacy derives from

[115] It is also true that especially Goodman and Knox's pamphlets alternate significant contributions in favour of the right to resist to misogynist declarations against the rule of women. The attacks are mostly directed against Queen Mary I Tudor, considered not apt to rule mostly for being a woman. Especially in the case of Knox, it is difficult to recognise some kind of generality to his theory of resistance, since it focuses on resistance against female rulers and Catholic clergymen. To analyse more in-depth the issue, see Kingdon, R.M., "Calvinism and resistance theory: 1550-1580" in Burns, J.H. (Eds.), *The Cambridge History of Political Thought 1450-1700,* Cambridge University Press (2008): 194-200

[116] Strohl, H., "Le droit à la résistance d'après les conceptions protestantes", *Revue d'histoire et de philosophie religieuses*, 10e année n.2 (March-April 1930): 135

[117] Giesey, R.E., "The Monarchomach Triumvirs: Hotman, Beza and Mornay", *Bibliothèque d'Humanisme et Renaissance,* T.32, No.1 (1970): 41-42

God. However, this does not apply to sinful behests, and such condition may justify a right to resist.[118] Again, a distinction between tyrants for usurpation and tyrants by exercise is proposed,[119] remarking the classification between tyrants *ab exercitio* and *usurpatione* firstly proposed by Thomas Aquinas and then re-elaborated by Bartolus and Coluccio. Junius Brutus' *Vindiciae Contra Tyrannos* starts from similar stances, as the numerous examples on the first three questions of the essay show.[120] Although *"it is God that appoints and chooses kings"*,[121] their actual power derives from the people, thus *"it follows that the whole body of the people is above the king"*[122]. Hence, Monarchs are established only to protect the commonwealth and guarantee protection, since *"to govern is nothing else but to provide for"*.[123] In reference to the definition of tyrant, the author describes it in opposition to the king, and, remarking the medieval tradition once again, he distinguishes between tyrant without title and tyrant by practice.[124] Johannes Althusius' *Politica* represents a later work, but also one of the most complete of the whole Calvinist political theory and widely acknowledging the previous tradition since the Middle Age. Althusius reaffirms the complete distinction between a monarch and a tyrant, but also clarifying that a weak office is not a sufficient condition to define a tyrant, as well as in the case of the presence of a character of exceptionality.[125] Similarly, he recognises the distinction between *tyrannus exercitio* and *tyrannus absque titulo,* and still in conformity with other scholars, he even questions the validity of the former: a tyrant without title would not even be a tyrant, but a simple usurper, and the real object of study would be the

---

[118] Beza, T., *Du droit des magistrats sur leurs sujets* (1574): Q.1: *"Inasmuch as only the will of almighty God is the eternal and immutable Rule of all Justice, we declare that it must be unconditionally obeyed. As regards however the obedience due to Princes, they too would doubtless have to be obeyed always and unconditionally if they ruled constantly in accordance with the utterance of God. Since however theirs is often the contrary case, such obedience must be made subject to the following condition, namely that they command nothing impious, nothing unjust."* Q.3: *"Does the Ruler command what God forbids [...]? Then you will rightly perform your duty if you do not carry out a command of that kind [...]."* The translations are provided by Henry-Louis Gonin, accessible at https://www.yorku.ca/comninel/courses/3020pdf/Beza.pdf

[119] Beza, T., Q.5: "*Of such tyrants there are two kinds: for some, in violation of the laws laid down and received, usurp tyranny over their fellow-citizens [...]. Others however, not content with that absolute power which they rightfully acquire over their own people, extend their dominions at the cost of their neighbors' liberty and increase them by means of fortified boundary-lines".*

[120] Stephen Junius Brutus, *Vindiciae Contra Tyrannos* (1579). English translation accessible at https://www.yorku.ca/comninel/courses/3020pdf/vindiciae.pdf

[121] Stephen Junius Brutus: 34

[122] Stephen Junius Brutus: 38

[123] Stephen Junius Brutus: 49

[124] Stephen Junius Brutus: 75: *"[...] he is reputed a tyrant, which, as opposite to a king, either gains a kingdom by violence or indirect means, or being invested therewith by lawful election or succession, governs it not according to law and equity, or neglects those contracts and agreements, to the observation whereof he was strictly obliged at his reception. All which may very well occur in one and the same person. The first is commonly called a tyrant without title: the second a tyrant by practice."*

[125] Johannes Althusius, *Politica*, Third Edition (1614), translated by Carney, F.S., Liberty Fund (1995): 191.

tyrant by practice. As a consequence, the usurper does not deserve any respect and may be resisted by private citizens, while the tyrant by practice can be resisted only by public authorities that are entitled of this responsibility,[126] as the previous classification between '*superiorem non recognoscentes'* and *'superiorem recognoscentes'* communities already stressed. Thus, both Monarchomachs and medieval scholars share the same foundations in terms of definitions and recognition of a faculty to resist.

If everything looks the same, one might wonder where the difference lays. The first great difference that must be acknowledged consists in the clarity of the Monarchomachs on the subjectivity of the right to resist, through a specificity that previous scholars lacked, especially in detecting which superior authorities may be entitled to resist a tyrant in a *'superiorem recognoscentes'* community. This same idea is shared by Giesey, according to who *"medieval resistance theory is sophisticated when defining tyranny, and bold when declaring the general right to resist it; but it usually stops short of specifying the persons who could act against an erstwhile legitimate ruler".*[127] The Monarchomachs' contributions help overcoming this defect. In Hotman's *Francogallia,* conceived not as a political essay, but rather a constitutional history of France, it is argued that from early times a Public Council, made of the several classes of the population, represented the counterbalance of the monarchical power, co-participating in the legislative process regarding taxation and religions' regulation, and with the ultimate power to depose the bad ruler.[128] This Public Council would have taken the form of the more recent *Estates Generals,* whose authority would have been undermined by the tyrant Louis XI.[129] According to Giesey, Hotman's focus here is to recover the practice of a regular institution entitled to restrain royal power on a daily basis, and to apply it in the present time. In opposition, Beza would recognise in the *Estates* the solution for an emergency condition, to be meant as the sudden appearance of a tyrant.[130] However, it is Beza himself that acknowledges how the *Estates* may be incapable of assemble in the context of a tyrannical rule.[131] From this point of

[126] Johannes Althusius: 194-195
[127] Giesey, R.E.: 45
[128] Kingdon, R.M.: 208-209
[129] Hotman, F., *Francogallia* (1574), translated by Molesworth, R. (1721). In the preface, Hotman talks about the *'great Blow which our Constitution received about 100 Years ago from that Prince [Louis XI], who ('tis manifest) first of all broke in upon the noble and solid Institutions of our Ancestors'.*
[130] Giesey, R.E.: 44
[131] In Q.7, Beza wonders what can be done in such a case. The answer reminds John of Salisbury's one, suggesting *'no other just remedy but reflection combined with patience and prayers which God will assuredly not always reject and without which all other remedies however legitimate will be subject to His curse.'*

view, Beza fails to find an effective institution to resist the bad ruler, even though succeeds in proposing a specific one. In *Vindiciae*, a more detailed answer is given: Junius Brutus recognises a defensive right to resist, faculty of the local officers, and a coercive one, belonging to the so-called 'Officers of the Crown', to be identified, depending on the study case, in several subjects.[132] The coercive power would belong to the *Estates* as well, despite recognising the likely inefficiency already discussed by Beza.[133] To this issue, the author of the *Vindiciae* answers endorsing the most radical solution ever proposed by the Monarchomachs: tyrannicide becomes totally justifiable, not only if committed by an authority, but also by any individual, in opposition to the policy of tolerance of those who prefer to live under an oppressive rule.[134] In Althusius' work, the right to resist is recognised to the Ephors (a direct reference to the five magistrates in Ancient Sparta), who act in emergency situations, including the tyrannical regression of the supreme magistrate. In this case, the author proposes a clear framework, wondering which ephors, when, in what manner and how far they can resist a tyrant. At the same time, Althusius does not refuse a communal action, calling every individual to join a resistant ephor through an analogy previously proposed in the *Vindiciae*.[135] Therefore, the Monarchomachs enormously contribute to the theoretical debate on the right of resistance in two ways: first, as already mentioned, they specify the subjects and institutions that may possess such right, building on the medieval tradition. Second, especially with reference to the latest contributions of the *Vindiciae* and Althusius, they confirm the tendency to enlarge the beneficiaries of such faculty, arguing that all individuals may be called to resist a tyrant and, in some cases, even through extreme remedies, like tyrannicide.

The second aspect to take into account regarding the differences between the two lines of thought regards the practical application of the Monarchomachs' theories on the events of the time and the impact they had in fostering following movements of resistance. The above-mentioned 'trauma thesis' indicates that the historical dynamics of the time might have given a significant impulse on the development of the Monarchomachs' theories. As we have seen, the French Wars of Religion were of primary importance for the development of Huguenots' theories of resistance and the *Vindiciae* represents the direct consequence of St.

[132] The matter is treated in Q.3, citing the cases of Germany and Poland: 42
[133] Giesey, R.E.: 47
[134] Stephen Junius Brutus: 82-83.
[135] Johannes Althusius: 194. Stephen Junius Brutus: Q.3. Both authors use the metaphor of the tyrant as a fire, that must be dominated not by the only contribution of the magistrate, but through the help of the whole population.

Bartholomew's Day massacre backed by the Queen Mother Catherine de' Medici. Although much attention is given to the *Vindiciae*, it must be acknowledged that Hotman's *Francogallia* contributed to the emergence of several *assemblées politiques* in the South and West of the kingdom, including both Protestants and malcontent Catholic, even mobilising armed forces against the central government. According to Jacques Auguste de Thou, copies of the work circulated among these circles, supporting the anti-monarchical cause.[136] Similarly, Buchanan's *On the Law of the Realm among the Scots* directly stemmed from the Marian civil war in Scotland, not simply as a war of succession between the supporters of Mary Stuart and the ones of her son James VI, but also as a conflict between respectively Catholicism and Presbyterianism. Hence, together with Knox's works, Buchanan might have contributed to the establishment of Presbyterianism in Scotland, as well as to the introduction of an early doctrine of contractualism in opposition to a divine entitlement of the Monarch, as argued by Dunning.[137] However, it is in the Dutch case that one of the most striking examples of the Monarchomachs' theories can be found. The war between the Spanish monarchy and the Northern provinces of the Netherlands had, among all the causes, the spread of Calvinism and the persecutions first promoted by Charles V and then by Philip II of Spain, up to the point that they culminated in the introduction of the Inquisition and the 1567 action of the Duke of Alba to put down the rebellion. The following resistance led the Union of Utrecht, emerged in 1579, to issue the 1581 Act of Abjuration, declaring that all magistrates of the provinces of the Union were to be considered freed from their oath of allegiance to King Philip II. Referring to the King as constituted by a divine right to rule the people, the text reads:

> And when he [the Monarch] does not behave thus, but, on the contrary, oppresses them [the people], seeking opportunities to infringe their ancient customs and privileges, exacting from them slavish compliance, then he is no longer a prince, but a tyrant, and the subjects are to consider him in no other view. And particularly when this is done deliberately, unauthorized by the states, they may not only disallow his authority, but legally proceed to the choice of another prince for their defence.[138]

[136] De Thou, J.A., *Histoire Universelle,* as cited in Kingdon, R.M.: 209
[137] Dunning, Wm. A., "The Monarchomachs", *Political Science Quarterly,* Vol.19, No.2 (June 1904): 287
[138] Act of Abjuration (July 26, 1581). English translation taken from Thatcher, O.J., *The Library of Original Sources*, Milwaukee: University Research Extension Co., Vol. 5: 9th to 16th Centuries (1907): 189-197, accessible at https://www.age-of-the-sage.org/history/dutch_independence_1581.html

The similarity between the words of the Act and the Monarchomachs' theories is striking, with some elements being recurrent. It can be observed the repetition of the distinction between the good ruler and the tyrant, as well as the promotion of the lawfulness of resistance as a last resort when this one is directed to a tyrant. According to Quentin Skinner, a powerful relation between the Huguenot theories of resistance and the Dutch events can be established. In particular, the Dutch decided to apply the teachings of the *Vindiciae* to their own struggle, culminating with the 1581 Act.[139] Martin Van Gelderen is more cautious, arguing that it is likely that even before the development of the Huguenot theories, the Dutch already started wondering how to give a legal basis to their actions.[140] Even in this case, Van Gelderen does not deny a resemblance between the two lines of thought, preferring to talk about a mutual influence, especially considering the strong relations of the Huguenot authors with the Provinces of the Netherlands.[141] In conclusion, France, Scotland and the Netherlands represent strong study cases for the practical application of resistance theories. In particular, the Dutch events constitute a milestone of this line of thought, in consideration of the fact that a right to resist is codified and justified in one of the texts that will turn to be essential for the independence of the Netherlands.

To sum up, the Monarchomachs introduce new elements to resistance theory, but building on the foundations already set during the Middle Age. The scholars that have been analysed share many similarities on the definition of the tyrant, the lawfulness of the right to resist and who can be entitled of such faculty. In relation to this last point, for the first time there is a clear statement in favour of a wide subjectivity of this right, which can be entitled to all individuals. In addition, the influence the Monarchomachs had in their time was significant, as the study cases of France, Scotland and especially the Netherlands show. As the reader may have noticed, this analysis was not exhaustive, starting from the above-mentioned Catholic Monarchomachs.[142] However, I think the contributions that have been chosen for the purposes

[139] Skinner, Q., *The Foundations of Modern Political Thought*, Vol. II, London, Cambridge University Press (1978): 337-338

[140] Van Gelderen, M., "A Political Theory of the Dutch Revolt and the Vindiciae Contra Tyrannos", Il Pensiero Politico, Anno XIX, No.2 (1986): 165

[141] Van Gelderen, M.: 180-181

[142] For example, in Dunning, Wm. A.: 293-299, great space is given to Spanish Jesuit Juan de Mariana, as one of the main representatives of the School of Salamanca, whose work has nothing to envy to the Protestant approaches.

of this analysis may be sufficient to outline a clear direction towards the next development of a right to resist in the so-called Age of Revolutions.

III. A revolutionary resistance: understanding the two concepts through the Atlantic Revolutions

It is commonly told that during the Storming of the Bastille in 1789, King Louis XVI had a denial of reality: receiving in Versailles the news of the furious crowd of revolutionaries only the following day, he curiously asked about the nature of the uprising: *"Is it a revolt?"*. The Duke of La Rochefoucauld promptly answered with one of the most known replies of the Modern Age: *"No, Sir, this is a Revolution"*. What made wonder the King about the events in Paris will probably remain obscure. It is striking to see that the King completely misinterpreted the previous events in France, especially after the refusal of the Third Estate to disband themselves as the new National Assembly. From a certain perspective, we could blame Louis XVI of lack of political ability and understanding. From the other side, we should remember how easy it is to make judgements in retrospective and recognise the suddenness and newness of the situation. Who knows if a similar question had been formulated by King George III as well, before declaring the American colonies in a state of open rebellion in 1775, or what the reaction of plantations owners in the French colony of Haiti was after the slaves uprising in 1791. In any case, the common denominator of all these events is a basic misinterpretation of their nature by authorities.

This work started with an introduction that aimed at achieving an agreement on the definitions of some concepts that will frequently resonate in this chapter. To some extent, even this preliminary work will result insufficient, since some of these concepts changed of meaning in the turn between the seventeenth and eighteenth centuries, as we will see with the concept of revolution. However, such a premise is useful to introduce the concept of resistance, scarcely used by historians, but extremely apt to this period. In fact, for the first time the right to resist gains an explicit recognition in two of the main documents of the century, namely the 1776 American *Declaration of Independence* and the 1789 French *Declaration of the Rights of Man and of the Citizen*, as well as numerous other references in other secondary sources. This would be enough to establish a link between our object of study, the right of resistance, and the Atlantic Revolutions of the 1700s.

However, there is more. The following pages will highlight one of the main misunderstandings the right to resist suffers, generally confused with a more easily understandable right of revolution, but conceptually having a totally opposite meaning. Despite this differentiation, the American and French revolutionaries did not hesitate in using this misunderstanding to justify their actions. Neither the counterrevolutionaries nor the anarchists of the nineteenth century did worry too much on the deep meaning of the right to resist, officially marking a dormant phase of the *ius resistendi*. In other words, with the Atlantic Revolutions, the right to resist achieves its point of highest importance, as well as the start of a quick and sharp decline that will last until the second half of the twentieth century.

The first section of this chapter analyses the American events between the 1760s and 1770s. After acknowledging the significance of English law in the colonies and the theoretical influences that nourished the American culture of resistance, a new reinterpretation of the American Revolution will be given. Following Pauline Maier, a division between a resistant phase and a revolutionary one will be supported, emphasising the new elements that distinguished the American resistance from the events analysed in the previous chapter. Then, an analysis of the American documents and their version of the right to resist will be given. The second section will conduct a similar work on the French Revolution, highlighting differences and peculiarities with the American events. Again, a review of the main events and an analysis of the drafting process of the French documents will be provided. At the same time, particular attention will be given to two fundamental questions to better understand the nature of the French events: first, what is the turning point between the resistant phase and the revolutionary one? Second, what is the relation between the so-called Terror and the right to resist? The third section gives to the reader the opportunity to move to a slightly different context, the one of the French colony of Saint-Domingue, later independent under the name of Haiti. Although historical research has always suffered a lack of sources on the Haitian facts, very recently some scholars succeeded in reconstructing an history of resistance in the Caribbeans as well, highlighting theories and practices of black slaves in their struggle against the colonial system. In the fourth and last section, the reader will be presented with a brief review on the developments of the nineteenth century. Defined by some as an *Ère des attentats,* we will outline the differences with the previous tradition of resistance and evaluate the degeneration of the right to resist as a legacy of the Terror regime in revolutionary France.

i. The American Revolution: resisting the colonial rule

One of the most debated issues in the US concerns the country's legislation on the possession of weapons. This right to keep and bear arms has been confirmed in numerous state and federal laws, and even a 2008 ruling by the Supreme Court recognised on a constitutional level the legitimacy for average citizens of the ownership of handguns for self-protection.[143] Most importantly, it is the Second Amendment to the United States Constitution that recognises such right, stating that *"a well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed"*.[144] Whatever the personal opinion on this right and its implications on the general security of the State may be, it must be recognised that the possession of arms lays at the very foundations of the American history, involving once again the issue of resistance against an oppressor. In the words of David B. Kopel, the attachment of twenty-first century Americans to their weapons is a result of a traditional belief, derived by the British tradition, that citizens have a God-given right and consequently a moral duty to overthrow tyrants.[145] Even though the average American is likely to ignore the origins of this right, it is not hard to trace them. Charlton Heston, President of the National Rifle Association (NRA), which advocates for gun rights in the US, expressed his pro-guns opinion, arguing that it is the Second Amendment itself that, by making governments fearful of the risk of revolution, would avoid the concrete threat of tyranny:

> And, so, when they ask you well, indeed you would bear arms against Government tyranny? The answer is no. That could never happen, precisely because we have the Second Amendment. Let me be absolutely clear. The Founding Fathers guaranteed this freedom, because they knew no tyranny can ever arise among a people endowed with the right to keep and bear arms. That's why you and your descendants

[143] For an history of the evolution of gun laws in the US, see Spitzer, R.J., "Gun Law History in the United States and Second Amendment Rights", *Law and Contemporary Problems*, Vol.80, No. 2 (2017): 55-83. The mentioned ruling of the Supreme Court is *District of Columbia v. Heller*, 554 U.S. 570 (2008).

[144] The 1789 Bill of Rights is preserved in the National Archives. A transcription can be found at https://www.archives.gov/founding-docs/bill-of-rights-transcript

[145] Kopel, D.B., "The Scottish and English Religious Roots of the American Right to Arms: Buchanan, Rutherford, Locke, Sidney, and the Duty to Overthrow Tyranny", *Bridges*, Vol.12, Nos. ¾ (Fall/Winter 2005): 291-292

> need never fear fascism, state-run faith, refugee camps, brain-washing, ethnic cleansing, or especially submission to the wanton will of criminals.[146]

This is only one of the legacies of the American Revolution and it could be enough to include it in the theoretical history of resistance. However, there are many hidden elements on which a resistant history of the American Revolution can be build, as well as many important developments compared to the previous period. This progress can be observed both in the theoretical though of the scholars of this period, as in the cases of John Locke, Samuel Rutherford and Emmeric de Vattel, and in practice, analysing the decade that preceded the events of the 1770s in America and the inclusion of an explicit right to resist in several documents, from the Constitutions of each of the former colonies to the 1776 Declaration of Independence itself. Although we started this discussion with a brief reference to gun rights in the US, the resistance that preceded the actual revolution shows new elements of non-violence that separate this tradition with the previous one, as we will highlight with the need of the so-called *Sons of Liberty* to control the demonstrations and make sure that no violent outcome would result, at least in the early phases. Still, the resistant nature of these events can be recognised from the goals of the colonists' groups, which stopped recognising the authority of London, and thus the Parliament and the King, later than it is generally recognised.

A good starting point for this discussion could be found in the influence Magna Carta had on the American events. As we previously highlighted, the document suffered numerous changes and reeditions, to the point that the following resistant nature of Magna Carta and the appeals that were made to the document in the following centuries have been referred to the 1225 reissue, and not the original one of 1215. Although Chapter 61 was quickly cancelled (and consequently forgotten), the real spirit of the Magna Carta remained, becoming a symbol of restraint for the unjust authority, and the so-called Whig posture contributed to maintain this interpretation. Dickinson reconstructs the history of Magna Carta in America: the author's work starts from the previously mentioned 1606 Virginia Charter, which first recognised to the colonists the same rights British people already had in the motherland. Similar provisions can be found in other colonies, like in the cases of Maryland, Massachusetts and Georgia.[147] In the

[146] Heston, C., Keynote Speech to Annual Convention of the National Rifle Association of America (May 2, 1999), as cited in Kopel D.B.: 301

[147] Howard D., *The Road From Runnymede*: 25, as cited in Dickinson, H.T.: 80

first case, a 1638 law guaranteed to the inhabitants of Maryland *'all their rights and liberties according to the Great Charter of England'*, allowing colonial courts to appeal Magna Carta in a number of lawsuits.[148] Regarding Massachusetts, a Body of Liberties made reference to Chapter 29 of the 1225 Magna Carta to reconfirm trial by jury, equal justice and legal process.[149] In the case of Georgia, the link with Magna Carta can be found in its foundational Charter in 1732, with the Crown granting legislative power to the colony's government, to be in accordance to British law.[150] Still, founder of the colony of Pennsylvania William Penn, after appealing Magna Carta in London when he was charged with disturbing peace, drafted in 1681 other two Charters, this time for Pennsylvania and Delaware, directly inspired by the British document, while in 1687 published the first American editions of the 1225 and 1297 Magna Carta.[151]

In all these attempts to recognise Magna Carta as a foundational document not only for British individuals, but also for American colonists, there is a clear goal to equate the two groups, with the latter progressively realising the unequal treatment suffered in comparison with the motherland. Nonetheless, British politicians were of a different opinion. In the words of Josiah Tucker:

> the principal End and Intention of Magna Charta [...] was to assert the Authority and Jurisdiction of the three Estates of the kingdom [King, Lords and Commons], in Opposition to the sole Prerogative of the King; so that if you [the colonists] will now plead the Spirit of Magna Charta, against the Jurisdiction of Parliament, you will plead Magna Charta against itself. [152]

Tucker's interpretation follows the general tendency in the motherland: Magna Carta restrains the rule of the King through the combined Parliament in Westminster, but without any

[148] Hazeltine, H.D., "The influence of Magna Carta on American constitutional development", *Columbia Law Rev.*, XVII (1917): 12
[149] Howard, D.: 37-48
[150] Charter of Georgia (1732). Transcription accessible at https://avalon.law.yale.edu/18th_century/ga01.asp. The Charter states that '*the said corporation assembled for that purpose, shall and may form and prepare, laws, statutes and ordinances, fit and necessary for and concerning the government of the said colony, and not repugnant to the laws and statutes of England'*
[151] Howard D.: 213-214
[152] Josiah Tucker, *A Letter from a Merchant in London to his Nephew in North America* (1766): 5, as cited in Dickinson, H.T.: 83

possibility for the colonial legislative assemblies to challenge this constitutional authority. Similarly, according to the British general view of the issue, not all American colonies were granted by the Crown a Charter of Liberties, resulting in a different treatment of American colonists in reference to the rights and liberties conferred to Englishmen, like in the case of the right to vote.[153] The issue of the validity of Magna Carta in the colonies will remain as a permanent presence in the whole debate of the American events: first, in the problem of the prosecutions, conducted by courts made by judges appointed by the Crown or even by the juryless vice-admiralty courts, and not made of locals,.[154] Second, in the British obsession for taxation, with colonists arguing that Westminster could not levy direct internal taxes without the approval of the colonial assemblies.[155] Third, in the agitated days of the Revolution, when during a provincial convention in Philadelphia in January 1775 and the second Continental Congress in 1776, James Wilson addressed the audience drawing an analogy between the 1215 Barons' resistance toward Runnymede and the American colonists' one at the time he was speaking. [156] The only inaccuracy in Wilson's reasoning was that in 1775 it was not merely a resistance anymore, but a revolution: the idea of a cohabitation with the motherland was no more an option at that point, as the outbreak of violence and the yet explicit goal of independence can point out. Although the nature of the events completely switched during the 1770s, Magna Carta continued justifying the colonists' goals and inspiring the idea of the fight against the tyrannical rule of the British Crown.

Among the sources of inspiration for the American revolutionaries, there is also a whole body of theoretical contributions that departs from the previously discussed Monarchomachs' ideas. It is particularly true for Scottish scholar Samuel Rutherford, who confirmed once again the principle of rule of law. He does it in 1644 *Lex Rex: or the Law and the Prince*, reproposing the difference between the good ruler and the tyrant, and explaining that the rule of the latter,

---

[153] Dickinson, H.T., "Britain's imperial sovereignty: the ideological case against the American colonists", in Dickinson, H.T., *Britain and the American Revolution,* Routledge (1999): 73–80.

[154] This is particularly true for the implementation of the 1764 Sugar Act, when the legislative assemblies of several colonies decided to establish their own courts and appoint their own judges to bypass the Crown's vice-admiralty courts. This was an attempt to reaffirm once again the principles of Magna Carta, among which trial by jury. Dickinson, H.T., "Magna Carta: history, context and influence": 87-88

[155] In September 1765 the Maryland assembly reaffirmed the so-called principle of 'no taxation without representation' in a resolution of the lower house. In October, a similar statement came from the Massachusetts assembly, and later the New York assembly joined the demand as well. In all these cases, Magna Carta was the legal source of reference. Dickinson, H.T., "Magna Carta: history, context and influence": 90-91

[156] Dickinson, H.T., "Magna Carta: history, context and influence": 94-95

being intrinsically contrary to God's law, must be not obeyed.[157] Although being censored in England and Scotland and Rutherford facing charges of high treason, the book became an essential reading for Presbyterian dissenters, until King George III openly denounced the American Revolution as *"a Presbyterian rebellion"*.[158] The term the King used also referred to Congregationalists, who were the ones leading the revolutionary ideas, but Presbyterianism was widespread in America. From this point of view, King George III's statement was an explicit denounce against Rutherford's ideas of resistance against a bad ruler.

The transmission of Rutherford's *Lex Rex* to the American revolutionaries should be principally entitled to another important influencer of the events of the eighteenth century. John Locke's *Two Treatises of Government*, with particular reference to the second one, develops the Calvinist thought on resistance into a secular version that recognises the presence of inalienable rights to all humans and endorses a faculty of violent resistance for each individual against a government that abuses these rights.[159] In addition, Locke provides reassurances on why such a right would not lead to a state of anarchy, since the right of resistance is exercised only in extreme cases and when the people are sure of a victory of their opposition. If the resistance is set to win, people are likely to restore most of the previous form of government.[160] In this context, I find useful to clarify some doubts the reader of Locke's work may have on his use of terminology: although the term *resistance* is used quite often, it is sometimes alternated with the terms *revolution* and *rebellion*, and the lines between these three concepts seem blurred. As a consequence, the right to resist we are studying may be mentioned in Locke's treaties as a right to revolution, simply because before the French Revolution, the concept of *revolution* did not indicate a radical change of the form of government. Instead, in the words of Benigno, it was more of '*a transformation almost inscribed in the regime of nature, a transmutation within well-known forms'*.[161] Carlo Galli shares a similar opinion and, comparing

---

[157] Samuel Rutherford, *Lex Rex, or the Law and the Prince*, Harrisonburg, Va.: Sprinkle Pubs., reprint of 1644 London edition, (1982), question IX, as cited in Kopel, D.B., 295 : *"a power ethical, politic, or moral, to oppress is not from God, and is not a power, but a licentious deviation of a power; and is no more from God, but from sinful nature and the old serpent, than a license to sin"*

[158] Kelly, D.F., *The Emergence of Liberty in the Modern World: The Influence of Calvin on Five Governments form the 16th Through 18th Centuries*, Philipsburg, N.J., P&R Publishing (1992): 131

[159] John Locke, *Two Treatises of Government: In the Former, The False Principles, and Foundation of Sir Robert Filmer, and His Followers, Are Detected and Overthrown. The Latter Is an Essay Concerning The True Original, Extent, and End of Civil Government*, Chapter XVIII

[160] John Locke, Chapter XIX, sects. 223-230

[161] Benigno, F., *Parole nel tempo. Un lessico per pensare la storia*, Viella (2013): Chapter 7.

the Classical Age with the American revolutionaries, inscribes the concept of revolution in the return of a new order that resembles the Ancient one.[162] Thus, in Locke's view the joint definition of resistance and revolution assumes these features, which remained untouched in the transmission to the American revolutionaries. Inspired by Locke to address their right to resist, their goals were far away from the ones of a revolution and, if they were, they probably referred to something that conceptually reminds more of a resistance than a revolution.

One of the greatest merits that can be assigned to recent historical research is the rediscover of a complex network of cultural influences and exchanges between the two sides of the Atlantic. These contacts will become always more evident as soon as the reader will be presented with the Sons of Liberty's interest for the Irish and Corsican events, as well as the inspiration the drafters of the French 1789 Declaration took from the American revolutionaries. These exchanges include scholars as well, not only from the British scenario, where the involvement of England can be expected for obvious reasons, but also from continental Europe. Emer de Vattel's *Le Droit des gens,* published in 1758, was a seminal essay of the eighteenth century in both Europe and North America, and met an increasing popularity especially with the 1773 second edition. Although the author's principal focus is the reorganisation of the spheres of law of nature and that of law of nations,[163] many interesting suggestions on the right to resist are given throughout the book. For example, he does it in paragraph 51, where it is argued that oppressed people are allowed to *"curb an insupportable tyrant, pronounce sentence on him (still respecting in his person the majesty of his rank), and withdraw itself from his obedience".*[164] Therefore, Vattel was interpreted by most of his contemporaries as a supporter of the right to resist, despite voluntarily avoiding any reference to political issues of the time. Especially scholars from small states unsatisfied by the control of bigger ones commented Vattel's essay to justify their right to resist external powers, such as in the cases of

[162] Galli, C., "Modernità e Rivoluzione", YouTube video, lecture delivered during the cycle "Rivoluzioni. Trasformazioni sociali e politiche nella storia e nella cultura moderna e contemporanea", *Fondazione Collegio San Carlo*, 05:00-05:30, (November 22, 2022). Accessed at https://www.youtube.com/watch?v=vD73I_xTj28&list=PLNvkJ7tCgn4rdccDe3xykLcng0xva_VKY&index=3&t=1637s

[163] Vattel, *Le Droit des gens, ou principes de la loi naturelle appliqués à la conduite et aux affaires des nations et des souverains* (1758), Preface. English translation accessible at https://oll-resources.s3.us-east-2.amazonaws.com/oll3/store/titles/2246/Vattel_1519_LFeBk.pdf

[164] Vattel: book I, par. 51

Sicily and Corsica.[165] No wonder then that Vattel's ideas soon reached North America. William Ossipow and Dominik Gerber reconstruct the history of the circulation of this essay, remembering how a certain Charles Guillaume Frédéric Dumas sent to Benjamin Franklin three copies of the book, surely unaware that an English version was already circulating in North America,[166] but also reporting a number of both explicit and implicit quotations of the work in several colonial documents between 1762 and 1776.[167] Of course, alongside Vettel's right to resist, many other ideas crossed the Atlantic: for example, it happened with Vettel's concept of good government, to be identified in the provision of the necessities of the Nation[168] and in the procurement of its true happiness,[169] with both ideas very present in the final documents of the Revolution. Still, it comes with no surprise that the influence was reciprocal: with the revolutionary events unfolding during the 1770s, Catholic authors in Europe started criticising Vattel as a Protestant scholar who contributed to the American disorders through his re-elaboration of the right to resist,[170] almost assuming the semblance of the old debate between the Protestant Monarchomachs and the Catholic Counter-Reformist. As in the sixteenth century, it is also true that some Catholic scholars had a more comforting judgment towards Vettel, like in the case of Appiano Buonafede, who used Vattel to endorse a right to resist against tyrants.[171] Overall, these reciprocal transfers confirm Vattel's influence on the American facts, with the right to resist playing a central role in inspiring new ideas among American colonists.

As stated in the introduction, this work does not have the purpose to completely redefine events that are unanimously recognised as revolutions and label them as resistances. This also applies to the American events, of which it is impossible to not recognise the feature of regime change that characterise this concept. In addition, it is worth noting the significance of the emergence of a new country through the independence from England, as well as the

[165] Trampus, A., *Emer de Vattel and the Politics of Good Government. Constitutionalism, Small States and the International System*, Palgrave Macmillan (2020): 6. The two cases are further discussed in Trampus, A.: 59-72, with the reinterpretation of Vattel's work by law graduate Vincenzo Gaglio and the rediscovery of an annotated copy of the essay in Bastia.
[166] Ossipow, W., Gerber, D., "The Reception of Vattel's Law of Nations in the American Colonies: From James Otis and John Adams to the Declaration of Independence", *American Journal of Legal History* (2017): 3-4
[167] Ossipow, W., Gerber, D.: 11-13
[168] Vattel: book I, par. 72-76
[169] Vattel: book I, par. 110-124
[170] Trampus, A.,: 159
[171] Trampus, A.,: 162

establishment of a new body of human rights and liberties that the previous system struggled to recognise. For all these reasons, briefly summarised, the American one is a revolution. Nonetheless, looking at the reality of the events prior to 1770s, it is possible to notice elements and tendencies that could lead us to reevaluate the resistant nature of the American Revolution. That is exactly what historian Pauline Maier does in *From Resistance to Revolution,* an essay that reinterprets the American history through a correct use of the two concepts. The thesis at the core of Maier's work is that until the 1770s American leaders were still not thinking of a total break of relations with the British institutions: after all, as previously mentioned, they were still seeking recognition for themselves of the rights and liberties recognised by English law, for example through Magna Carta; at the same time, there was still high respect for Westminster and English politicians, believing that their wrongdoing was caused by misinformation; even when trust for the Parliament fell down, there was still confidence on the Crown, until the King marked distance with the colonists' aims. Before that point, referring to a revolution as we mean it in this work is substantially incorrect: instead, the American events will take ten years of development between 1765 and 1776 to become a Revolution, as we are accustomed to recognising it.[172]

In the early phases of the conflict, the principal concern for American leaders was order, realising very soon that uncontrolled popular violence could have been counterproductive.[173] This need emerged as soon as the first points of contrast appeared, with the riots against the 1765 *Stamp Act* quickly degenerating in violent demonstrations. In these early demonstrations, the preferred practices were parades and setting fire to effigies of the principal executors of the law. We can clearly observe that in the demonstrations on August 14, when the effigy of Massachusetts' designated stamp distributor Andrew Oliver was burnt, and his house attacked. The following day Andrew Oliver asked the Treasury to be exempt from his new office.[174] Twelve days later, a similar demonstration, this time more violent, took place in Boston, whereas in Newport the situation descended to anarchy.[175] The *Constitutional Courant*, a single-issue newspaper printed in response of the Stamp Act, quickly judged the violent demonstrations as likely to *"startle men [...] and to make them doubt the justice of the cause*

[172] Maier, P., *From Resistance to Revolution. Colonial Radicals and the Development of American Opposition to Britain, 1765-1776,* Alfred A. Knopf (1972): Preface
[173] Maier P.: Preface
[174] Maier, P.: Chapter 3, sec. I
[175] Maier, P.: Chapter 3, sec. I

attended with such direful consequences".[176] Thus, it is from this moment that the need to set some guidelines for future action becomes urgent, setting some criteria for just resistance. Among those, there was not only the refusal of any kind of overt violence, but also the priority given to more institutional ways, before appealing to public demonstrations. This is the reason why during the first phase, alongside protests, colonists opted for trials in courts and individual and collective petitions to authorities. Those indications were applied already during the Connecticut demonstrations in September, when demonstrators were carefully organised and restrained in their most extreme behaviours, although the same success could have not been replicated during the New York's riots in November.[177] The difficulties in maintaining a peaceful profile had one of their biggest causes in the behaviour of the British soldiers, in charge of maintaining quiet, but rarely peaceful themselves: in March 1770 five colonial rioters were killed during the so-called Boston Massacre, marking a pivotal moment that would have accused soldiers to operate tyrannically in civilian spaces.[178]

Different was the approach of the American colonists: with the aim to maintain a non-violent posture, the establishment of the first *Sons of Liberties*' committees in New York, Connecticut, Rhode Island and Massachusetts between 1765 and 1766 contributed to the emergence of an organised resistance, reproposing the typically common Enlightenment's institution of the masonic lodges, and not only being referred to the specific struggle against the *Stamp Act*, but also to a more general awareness of being *"born free"*.[179] More surprisingly, those clubs did not act alone in their fight, but they soon established an intercolonial network where news and experiences of their common struggle were shared. There are numerous correspondences sent from one group to another proving these exchanges, and a private communications network was soon built, especially thanks to the contribution of New York's Son of Liberty John Lamb, to maintain the necessary secrecy against English authorities.[180] Despite this need to maintain their communications secret, excluding in the early planning phases the lower members, the Sons of Liberties certainly did not have a low profile, and they demonstrated excitement to

[176] *Constitutional Courant* (September 21,1765), as cited in Maier, P.: Chapter 3, note 17
[177] Maier, P: Chapter 3, sec. III
[178] Colley, L., *The Gun, The Ship, and The Pen. Warfare, Constitutions, and the Making of the Modern World*, Liveright Publishing Corporation, New York (2021): Chapter 1.4
[179] Maier, P.: Chapter 4, sec. I
[180] Miller, J.J., "Sons of Liberty: organization and influence, 1765-1766", *Legacy Theses & Dissertations (2009-2024),* (2012) : 44, 51

advertise their operations once it was time to involve the audience.[181] These elements can produce new reflections on American colonists capability to organise a cohesive and strong resistance movement, pretty distant to the revolutionary interpretation of the American events.

After the Stamp Act was repealed on March 1766, the *Sons of Liberties* found other causes to fight for: within the American colonies, there were still many other unpopular measures to contrast, such as the *Townshend Acts*, the *Quartering Act* and the *New York Restraining Act*.[182] However, it is worth recognising that soon the extent of the network widened beyond North America, at least in the support the American sections were giving to many other international fights for freedom. It is the case of the Irish parallel struggle to obtain the recognition of the same rights America was demanding. In particular, Ireland did not have anything like a *Habeas Corpus Act*. Moreover, Irish patriots had demands on the right to initiate legislation, denied first by the 1494 *Poynings' Law* and later by the 1719 *Declaratory Act*, on which England asserted its constitutional superiority through the right to legislate in Ireland and to appeal Irish court cases.[183] American colonists were carefully following the Irish events and rooting for them: not by chance, Son of Liberty Silas Downer dedicated Providence's Liberty Tree to his companions in Ireland, together with all the others fighting in the rest of the world.[184] A few months before this discourse, Corsica was being sold to France, after decades of struggle against the Genoese rule and a growing international sympathy towards the people of the island. Colonial papers were already republishing the 1754 *Corsicans' Manifesto* long before the emergence of the Sons of Liberty.[185] This admiration grew alongside the development of the Corsican events during the 1760s. In particular, the character of Pascal Paoli was constantly praised by the American Sons of Liberty through toasts, poems, dedications on monuments and numerous

[181] Maier, P.: Chapter 4, sec. I

[182] Respectively, the *Townshend Acts* implemented between 1767 and 1768 a series of regulations and taxes to enable English administration in America; the 1765 *Quartering Acts* required local authorities to provide British soldiers with food and housing; the 1767 *New York Restraining Act* limited the legislative power of the governor of New York until they complied with the previous *Quartering Acts*. All these measures were principally aimed at raising revenues from the colonies, but they were also establishing the British position on the faculty to tax colonies and, in the case of the *New York Restraining Act*, punishing uncomplying colonies.

[183] For an account of the Irish context, see Hayton, D.W., "The Stanhope/Sunderland Ministry and the Repudiation of Irish Parliamentary Independence", *The English Historical Review,* Vol.113, No.452 (June 1998): 610-636

[184] Silas Downer, *Discourse, Delivered in Providence, in the Colony of Rhode Island, upon the 25th Day of July, 1768. At the Dedication of the Tree of Liberty* (1768): *"We do therefore, in the name and behalf of all the true Sons of Liberty in America, Great-Britain, Ireland, Corsica, or wheresoever they are dispersed throughout the world, dedicate and solemnly devote this tree, to be a Tree of Liberty".* Available at https://quod.lib.umich.edu/cgi/t/text/text-idx?c=evans;cc=evans;rgn=main;view=text;idno=N08514.0001.001

[185] Maier, P., Chapter 6, sec. II

celebrations.[186] What is important to mention is how all these struggles shared the same theme of resistance against tyranny and oppression, whatever it was the English, the Genoese or the French one. The establishment of an international network, almost resembling some kind of *Freedom International,* shows once again the commitment of the Sons of Liberty to organise their own resistance movement in America, also looking for inspiration from previous and simultaneous experiences in other parts of the world.

Another reason why the early American events represent a resistance refers to the definition we agreed on. At the start of this work, we set the boundary between a resistance and a revolution on the willingness of the opposing group to overthrow or not the established regime and its representatives. In the case of the American colonies, seeking a revolution would have meant aiming at the overthrow of the colonial administrators appointed by London, the Parliament and, above all, the Crown. The evolution of the American distrust against England followed this hierarchy, with the first actions targeting local authorities and progressively moving towards the English Lords and Commons in Westminster and the government. If we were to mark a turning point from the resistant phase to the revolutionary one, it would coincide with the realisation that the top of this hierarchy, the Crown, was not simply misinformed or deceived, as American colonists used to think, but complicit in its government's policies. Thus, before this moment came, and after realising the total non-cooperation by the executive in London, American Sons of Liberty directly targeted King George III, with the strong belief that *"the King could do no wrong"* and *"his public acts, if considered oppressive, could be ascribed to his ministers"*.[187] Any new appeal for redress had to be addressed directly to the Crown, marking the start of a new wave of petitions from the American assemblies and, in some cases, from English people in the motherland. Actually, colonial newspapers decided to give wider importance to the English petitions, not only because they could have been presented directly to the King, but also because it paved the way to link England's cause with the North American one. Some of these are quite exemplar: for example, the so-called *Middlesex petition*, published in the South Carolina Gazette on August 24, 1769, hurled numerous accusations against the King's government, among which the violation of the freedom of election, military

[186] Anderson, G.P., "Pascal Paoli. An Inspiration to the Sons of Liberty", Colonial Society of Massachusetts, *Transactions*, 1924-1926, Vol.26. Available at https://www.colonialsociety.org/node/718#ah1302
[187] Maier, P., Chapter 7, sec. I

violence and the same *"unjust treatment of petitions"*,[188] while in the *London Petition* on September 14 the colonists even inform that *"[The Ministers] have established numberless u[ncon]sti[tutiona]l regulations and taxations in the colonies"*.[189] Thus, the goal of these petitions confirmed the intentions of the colonists: in their view, the King simply had to be informed of the serious injustices the colonists were suffering, in order to put a remedy to them. According to Maier, *"if the petitions failed to win the King's support, their defeat would strongly suggest that the entire British government, including the monarch, was intent on extending executive power at the cost of constitution and British liberties"*,[190] reason why the executive showed clear signals of alarm.

The results of the movement were disappointing from the start. In first stance, the two above-mentioned petitions were completely ignored by the King: the same issue of the South Caroline Gazette also presents an account of the delivery of the London petition, *"which was graciously received [by the King]"*,[191] supposedly without any other sign of acceptance. Another account on the same newspaper tells like this: *"Lord Mayor delivered the petition into his Majesty's hands and at the same time made the above speech, to which the King made no answer, but turned about to Baron Dieden, the Danish Minister, and delivered the petition to the lord in waiting"*.[192] The following attempts to present the King with the colonists' demands were pointless. If there was still a hope for the innocence of the Crown, it quickly disappeared after the 1773 *Boston Tea Party*.[193] London reacted through the so-called *Intolerable Acts*, which received the Crown's assent. In particular, the *Quebec Act*, personally endorsed by the King, represented another serious blow for the colonists, who saw the act as a threat for their political liberties. [194] At that point, it was clear that the King was implicated in his government's policies, and the development of the events started assuming the shape of a downward spiral.

---

[188] The Middlesex Petition (no date), *South Carolina Gazette* (August 24, 1769). Accessible at https://history-commons.net/artifacts/12032504/the-south-carolina-gazette-august-24-1769/12926078/

[189] London Petition (July 6), *South Carolina Gazette* (September 14, 1769). Accessible at https://history-commons.net/artifacts/12032397/the-south-carolina-gazette-september-14-1769/12925984/. In the original, the word *"unconstitutional"* is censored, as well as several others

[190] Maier, P., Chapter 7, sec. I

[191] London Petition (July 6), *South Carolina Gazette* (September 14, 1769).

[192] London Petition (July 6), *South Carolina Gazette* (September 14, 1769).

[193] With the 1773 Tea Act, the government decided to assign to the British East India Company the monopoly of the tea trade in North America, as a way to damage the trade of smuggled tea and convince the colonists to purchase Company tea, on which taxes were paid. The reaction was tough: in December, the Boston Sons of liberty, disguised as Native Americans, boarded the Company ships stationed in the port and threw an entire load of tea into the sea.

[194] Maier, P., Chapter 8, sec. I

By late 1774 the First Continental Congress in Philadelphia drafted a new petition to the King, demanding the repeal of the *Intolerable Acts*.[195] Again, no answer was received. Instead, in February 1775, the English Parliament declared Massachusetts in a state of open rebellion, forcing the Second Continental Congress to consider the establishment of a Continental Army. Even at that point, the idea of a straightforward separation from London worried many colonists and such a concern led to a desperate attempt of negotiation by John Dickinson, who argued that the threat of the Continental Army was directed to the Parliament rather than the King. In August, the King made his choice and declared all American colonists rebels.[196] It is this last act that marks the point of no return in the relationship between the colonies and the motherland, as well as the transition between the resistant phase and the purely revolutionary one of the American events.

From that moment on, the Revolution was officially a work in process, and the new colonists' priority was, together with winning against London, put into writing their justifications for the armed resistance. After all, this was one of the main purposes of the *1776 Declaration of Independence*, which lists all the King's usurpations suffered by the colonists and the American attempts of petition. Some passages even remark the previously discussed 1581 Dutch *Act of Abjuration*:

> In every stage of these Oppressions We have Petitioned for Redress in the most humble terms: Our repeated Petitions have been answered only by repeated injury. A Prince whose character is thus marked by every act which may define a Tyrant, is unfit to be the ruler of a free people.[197]

In another passage, the Founding Fathers establish an inherent right to overturn a form of government that denies the unalienable rights of Life, Liberty and Happiness, establishing a *de facto* right to resist:

---

[195] Petition to King George III, First Continental Congress of Philadelphia (October 1774). Accessible at https://americainclass.org/sources/makingrevolution/crisis/text7/petitionkinggeorge3.pdf

[196] De Francesco, A., *Repubbliche atlantiche. Una storia globale delle pratiche rivoluzionarie 1776-1804,* Raffaello Cortina Editore (2022): 31-32

[197] *Declaration of Independence*, National Archives Museum (July 4, 1776): para. 31. Transcription available at https://www.archives.gov/founding-docs/declaration-transcript

> That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness.[198]

It is significant to observe that a similar justification of resistance does not appear only in the *Declaration of Independence*. In fact, it is even more evident in the documents of the single States. This is such the case of the *Virginian Declaration of Rights*, specifically directed to Virginians, but more broadly to mankind. The third article states:

> whenever any government shall be found inadequate or contrary to these purposes, a majority of the community hath [sic] an indubitable, unalienable, and indefeasible right to reform, alter or abolish it, in such manner as shall be judged most conducive to the public weal.[199]

The Constitutions of New Hampshire and Tennessee report the same following provision in different parts of the texts: *"The doctrine of nonresistance against arbitrary power, and oppression, is absurd, slavish, and destructive of the good and happiness of mankind."*[200]

Finally, a brief reflection on the US *Bill of Rights* must be made, with a certain focus on the first two amendments. The first one mentions *"the right of the people peaceably to assemble, and to petition the Government for a redress of grievances"*,[201] displaying the clear reference to the resistant phase of the colonial struggle against England. The second one establishes *"the right of the people to keep and bear Arms"*, [202] to be read as the right of the colonists to start a violent resistance against the unjust ruler.

---

[198] *Declaration of Independence*: para. 2

[199] *Virginia Bill of Rights* (June 12, 1776): art. III. Transcription available at https://en.wikisource.org/wiki/Virginia_Declaration_of_Rights

[200] *New Hampshire Constitution* (June 2, 1784): art. 10. Transcription available at https://www.nh.gov/glance/bill-of-rights.htm ; *Tennessee Constitution* (June 1, 1796): art. 11, sec. 2. Transcription available at https://tsla.tnsosfiles.com/digital/teva/transcripts/33633.pdf

[201] American Bill of Rights (December 15, 1791): First Amendment. Transcription available at https://constitutioncenter.org/the-constitution/amendments/amendment-ii

[202] American Bill of Rights (December 15, 1791): Second Amendment

To summarise, the importance of the American events does not simply reside in its revolutionary nature. Although being rarely mentioned, there is a huge number of theoretical contributions from the seventeenth century that inspired the actions of the colonists to deny their allegiance to the British Crown. One of the aims of the new historical research is to unveil these links. Regarding the development of the American events, differently from what is commonly told, the colonists put into practice a detailed strategy of non-violent resistance for almost a decade before looking for violence as a last resort. Even when the actual revolution started, the Founding Fathers kept in mind the principles that characterised their previous strategy against London, and they put it into writing in the principal documents of the Revolution. Neither the resistance of the Barons in 1215 nor the Dutch resistance against King Philip II demonstrated such organisation, which involved, during the American one, a strong leading body (represented by the Sons of Liberty), a wide use of advertising tools (through the numerous pamphlets and newspapers that influenced the audience) and a compact participation of the public.

ii. The French Revolution: the degeneration of resistance

Introducing the French Revolution in our debate is not easy. It may be like that if we would focus on the most superficial layers of the French events at the end of the eighteenth century, maybe citing the references to resistance in the 1789 *Declaration* and in the following two Constitutions and mentioning the demonstrations of the French people opposing the desperate attempt of the King to fortify Paris during the revolutionary summer. The comparison between the American events and the French ones would represent the best key to discuss this topic. However, as soon as we enter the debate, we realise that the comparison is pitiless. As we previously saw, the American resistance demonstrated a level of organisation and strategy that past events did not have, and the same legal justification was based on centuries of theoretical contributions that strengthened the colonists' arguments against England. The French events were something completely new and, to some extent, totally unexpected:[203] if we were to apply a measure of judgement to the two events, we could not deny that the French Revolution was way more revolutionising than the American one.

[203] De Francesco, A.: 83

Thus, why should we dedicate a section to the French Revolution? Firstly, the French codification of the right to resist covers another important step in the historical evolution that this work is tracking. Not that it constitutes a new element *per se*, since the Americans codified a right to resist less than twenty years before. However, it represents part of a tendency, especially if we focus on the high volume of cultural exchanges between the American colonists and the main French authors of that time. Secondly, the concept of resistance can be applied to a very brief phase before 1789, to be identified in the refusal of the *parlements* between 1787 and 1788 to register any royal edict and the following demand to summon the *Estates-General*. Thirdly, and more importantly, the French Revolution gives clear indications of the degeneration that the right to resist can suffer in two ways: in first stance, in the juxtaposition with the right to revolution, and the use revolutionaries can make of an hypothetical right to resist to justify their goals of regime change; in second stance, with the phase of the Terror, when the need to protect the conquests of the formally completed Revolution from the counterrevolutionary threats led the authorities to apply a corrupted form of resistance, simultaneously sharing the same features of the definition we agreed on, like its extra-legal nature, and giving hints of dystopia and authoritarianism.

This section will start with an analysis of the pre-revolutionary period, in order to detect traces of resistance in the reaction of the *parlements* and the demonstrations in their favour. In this regard, it is essential to set the boundaries between the resistant phase and the revolutionary one, as it has been done in the case of the American events, and to determine the turning point between the two periods. I will argue that this turning point can be found in the 1789 Tennis Court Oath, when the Third Estate remarked its non-negotiable demand for a Constitution. Other interpretations will be given as well, identifying this turning point either in August 1789's abolition of feudalism or in the repudiation and consequent decapitation of King Louis XVI in January 1793. Then, a review of the drafting process of the Constitution will be proposed, to establish how a right to resist emerged, how it was perceived and with which implications. Finally, we will ask if the Terror should be interpreted as a continuation of the Revolution or a phase of degenerated resistance. In this work, the second interpretation will be chosen, following the idea that Robespierre's main aim was to protect the revolutionary conquests. I will not deny that the interpretation of the continuation of the Revolution is valid, but at the

same time I will stress the situation of emergency France was experiencing in that phase, and consequently the need to protect the newborn order.

Scholars dedicated many efforts and time in identifying what the causes of the French Revolutions were, all coming up with one of the premises I have previously proposed: although we could mention the new philosophical contributions of the Enlightenment, the progressive strengthening of the bourgeoisie and the consequent weakening of the feudal system, the French Revolution happened all of a sudden, differently from an American flow of events that lasted several decades. Among all the causes, the worsening indebtment of the French monarchy is probably the central one, if not by importance, surely by being the spark that started everything. In addition, the French treasury seriously suffered the financial support given to the American Continental Army. In fact, even if King Louis XVI presented the American Independence as a French victory, the expected commercial gains were completely shadowed by the huge financial costs of the war. [204]After Calonne's failure to obtain the approval of the upper two Estates (clergy and nobility) for a new levying during the 1787 Assembly of Notables,[205] King Louis XVI opted for the harsher proposals of Calonne's replacer Étienne Loménie de Brienne, who immediately dissolved the Assembly on May 25 and followed a new strategy. After a relatively short phase of cooperation between the *Parlement* of Paris and the new Minister of Finance, in July Brienne's proposal was rejected. Louis XVI tried to bypass the *Parlement*'s opposition ordering a *lit de justice,* thus a parliamentary ceremony where the King would have formally imposed his royal edicts, regardless of the magistrates' approval. The following day, the *Parlement* declared the act of registration as null and void, and the popular demonstrations in the capital were giving reason to the magistrates. The same forced registration in lesser courts was met with loud protests from the local population.[206] This was

[204] De Francesco, A.: 79. It is essential to underline that Louis XVI's support for the American cause does not certainly respond to a revolutionary sympathy. The goal of the French participation was to undermine England in the Atlantic, forecasting a more favourable commercial position in the Caribbean.

[205] Calonne's proposal aimed at circumventing the tax-exempted aristocracy and clergy, directly threatening their privileges. The summon of the Assembly of Notables was directed at avoiding a problem that Calonne's successor will face as well, thus the reluctancy of the *parlements* against a taxation of the highest classes of the French society. The Assembly, started on February 1787, failed to reach an agreement. For a more detailed history, see Mark, H.W., "Assembly of Notables of 1787", *World History Encyclopedia* (March 29, 2022): par. 2. Accessible at https://www.worldhistory.org/Assembly_of_Notables_of_1787/

[206] Mark, H.W., "Revolt of the Parlements", *World History Encyclopedia* (April 14, 2022): parr.12-15 Accessible at https://www.worldhistory.org/Revolt_of_the_Parlements/

just the earliest act of resistance against the royal authority, which started to be perceived as unjust, but still recognised in its legality.

Brienne continued his negotiation, proposing some modifications to his financial measures, but also showing availability to meet one of the demands that started arising among the aristocracy, thus the summon of the *Estates-General*, expected by 1792.[207] The following discussions of the terms saw an increasingly irritated King, up to the point that another *lit de justice* was issued in November, but opposed by the Duke of Orléans, who declared the King's forced registration illegal.[208] Even the exile of the Duke failed to stabilise the situation, which remained frozen until Spring 1788. In April, the *Parlement* of Paris was reinforcing its position, stating that *"the will of the King alone is not enough [to make] law"* and refusing to conduct any further collection of revenues. In early May, the demand for the summon of the *Estates-General* was reaffirmed.[209] In order to contrast these demands, the government started drafting a set of new judicial reforms, represented by Keeper of the Seals Lamoignon, and aimed at suppressing the opposition of the *parlements* once and for all. On the contrary, the opposite effect was obtained and resistance in provinces intensified: on June 7, in a violent demonstration in Grenoble, soldiers were directly attacked from the rooftops, in an event that history will remember as the *Day of Tiles*.[210] Then, on June 19, a violent demonstration in Pau broke into the Palais de Justice and asked for the reinstatement of the *parlement*. Similar protests happened in Besançon, Rennes, Metz, Dijon, Rouen and Toulouse as well.[211] In August, Brienne finally met the protestants' demands, scheduling the summon of the *Estates-General* for May 1789. Simultaneously, the Minister was informed that the Treasury had officially suspended all payments, and the Kingdom was in bankruptcy. In this tragic situation, Brienne and the King agreed on the former's substitution with Genoese banker Jacques Necker.[212]

The following months were dominated by the debate on the form of the *Estates-General*, regarding their composition and the vote procedure, as well as the single positions each

[207] The *Estates-General* were conceived as an organ with consulting powers, especially on fiscal policy. At that time, the institution had not been called since 1614, following a tendency of monarchical centralisation and absolutism.
[208] Mark, H.W., "Revolt of the Parlements": parr. 17-20; De Francesco, A.: 80
[209] Schama, S., *Citizens: A Chronicle of the French Revolution*, Penguin Group (2004): Chapter 7, sec. III
[210] Schama, S.: Chapter 7, sec. IV
[211] Schama, S.: Chapter 7, sec. III; De Francesco, A.: 81
[212] Mark, H.W., "Revolt of the Parlements", parr. 26-27; De Francesco, A.: 81

Estates would have assumed. In September, the *Parlement* of Paris ruled with a surprising decision in favour of the traditional set of rules, according to which each Estate would have been represented by the same number of representatives and granted a single vote per group. This decision proved to be highly unpopular, representing a serious step back for the reputation of the *parlements* in their resistance.[213] On the contrary, the Assembly of Notables held in November discussed for the first time the doubling of the Third Estate and, even though the Notables refused the proposal, it was resumed by Necker as a preventive measure to avoid any other popular opposition.[214] Although the elections of the following months to choose the representatives of the *Estates* were anything but similar to the ones we hold nowadays, William Doyle describes them as *'the most democratic spectacle ever seen in the history of Europe'.*[215] This position can be maintained analysing the number of debates and discussions that accompanied the electoral procedures, already envisioning what the results of the *Estates-General* would have been. The observation of these contributions can support the resistant interpretation of the pre-revolutionary events: most of the participants at the elections were envisioning something similar to the 1688 Britain's *Glorious Revolution*, with a power sharing system between the King and an assembly, and only a few were advocating for a complete regime change towards the republic.[216] In this regard, the contribution of Jean-Jacques d'Eprémesnil is significant: Simon Schama describes his rhetoric as *'conservative, even reactionary'*, championing the *Parlements*' responsibility to guard the fundamental laws against the ministerial oppressive policies and supporting a constitutional reconstruction aimed at *de-Bourbonizing* France.[217] This to demonstrate that, even in the works for the preparation of the *Estates-General,* the revolutionary voices were yet of minor importance, and no real review of the monarchical authority was among the principal aims of the French *Estates*.

On May 5, 1989 the *Estates-General* started their work and already stalled in the second day, with the Third Estate asking for the works to be conducted altogether with the other two Estates, and not in isolation, and the votes to be counted by head and not by group.[218] The following

[213] Mark, H.W., "Estates-General of 1789", World History Encyclopedia (April 25, 2022): par.9. Accessible at https://www.worldhistory.org/Estates-General_of_1789/
[214] Mark, H.W., "Estates-General of 1789": par.11
[215] Doyle, W., *The Oxford History of the French Revolution*, Oxford University Press (2018): 97
[216] Mark, H.W., "Estates-General of 1789": par.14
[217] Schama, S.: Chapter 7, sec. III
[218] Mark, H.W., "Estates-General of 1789": parr.17, 19-20

weeks were marked by the attempts of the Third Estate, who was referring to themselves as the Commons by then, to convince the other two Estates to form a National Assembly, but receiving no response. As Harrison W. Mark puts it, *'this was a significant move and a point of no return, as the Third Estate was not only denying the authority of its fellow estates but was also taking power into its own hands without the king's consent'*.[219] This means that the Third Estate's decision to break the rules, not only in name of resistance, but also envisioning a role that would have disregarded the legitimacy of the other institutions, can represent a central moment of this analysis, marking a moment of transition towards the revolutionary phase. On June 11, a formal request for the other Estates to join the new National Assembly was issued, to which the First Estate (the nobility) and part of the Second Estate (the clergy) replied positively.[220]

In the next days, the situation degenerated due to a misunderstanding. The King was suggested by Necker to reconciliate the Third Estate through a royal session to reassert his authority, to be held on June 23. The Third Estate, not informed of this change of plan, met on June 20 to find the doors of the hall where works were conducted locked and guarded. Interpreting this lack of information as another act of oppression and authoritarianism, they agreed on continuing their works in the royal tennis court, and to pronounce the following oath in front of the President of the Assembly:

> *We swear never to separate ourselves from the National Assembly, and to reassemble wherever circumstances require, until the constitution of the realm is drawn up and fixed upon solid foundations.*[221]

The Revolution had officially started. In the following royal session, the King's promises on taxes and end of privileges did not produce any effect. Same happened when the King reminded the deputies of his authority, declaring that the power of the Estates derived from him. On the contrary, the King's authority was completely ignored, if not challenged. New representatives from the other Estates joined the National Assembly on a daily basis, up to the point that the

[219] Mark, H.W., "Estates-General of 1789": par. 22
[220] Mark, H.W., "Estates-General of 1789": par. 23
[221] *Gazette Nationale, ou Le Monituer universel*, translation by Mason, L., in Mason, L., Rizzo, T. (Eds.), *The French Revolution: A Document Collection*, New York: Houghton Mifflin (1999): 60-61.

King was forced to concede the formal joining of the First and Second Estates to the new National Assembly.[222]

The events of Summer 1789 are central in the narration generally made by historians and experts of the French Revolution. However, it happens frequently to overfly on a simultaneous development that may particularly interest the reader, especially in relation to our analysis to the right to resist. Alessandro Fontana speaks about a considerable literature on the sources and drafts of the Declaration, but still recognises the lack of a detailed study capable of recollecting all these contributions.[223] Reviewing this history with a focus on the right to resist can give important results on the codification of this right and in the understanding revolutionaries had about it. After the nominee of a *Comité de Constitution* on July 6, the first project to be presented was the one of Lafayette, on July 11. Former hero of the American Revolution, he obviously had the American model in mind. In addition, he presented his project to Thomas Jefferson himself, who was at that time Ambassador in France, and who was of great support to Lafayette in some particular moments.[224] In Lafayette's project, we can read:

> Every man is born with inalienable rights; such are the right of property, the care [of his honor and] of his life, the entire disposition of his person, of his industry, of all his faculties, the search for well-being and resistance to oppression.[225]

At the same time, it is worth mentioning the last article, which tells:

> And as the progress of enlightenment, the introduction of abuses and the rights of successive generations require the revision of any human establishment, constitutional means must be indicated which ensure in certain cases an

[222] Mark, H.W., "Estates-General of 1789": par. 25-27
[223] Fontana, A., "Du droit de résistance au devoir d'insurrection", in Zancarini, J., (Eds.), *Le Droit de résistance*, ENS Éditions, (1999): note 4
[224] In a letter to Jefferson, dated August 25, 1789, Lafayette asks for a consultancy to eight members of the National Assembly. The friendly language may suggest a close relationship between the two characters. Lafayette, "To Thomas Jefferson from Lafayette", National Archives (August 25, 1789). Transcription accessible at https://founders.archives.gov/documents/Jefferson/01-15-02-0349
[225] Lafayette's Draft of the Declaration of the Rights of Man and of the Citizen (July 11, 1789): art.2. Accessible in its French and English versions at https://www.battlefields.org/learn/primary-sources/lafayettes-draft-declaration-rights-man-and-citizen

> extraordinary convocation of representatives whose sole purpose is to 'examine and modify, if necessary, the form of government.[226]

On this provision an important reflection on the features of resistance can be made. Lafayette's formulation simultaneously justifies a right to resist, but also sets the boundaries for the following times. Introducing constitutional means through which abuses of power can be faced, Lafayette brings resistance back to a realm of legality and envisions an ordered procedure for changing the form of government.

The following projects drafted in July by Sieyès, Target, Servan and Thouret do not include any provisions on the right to resist. Instead, Mounier's draft of July 21 does,[227] and this provision remains in the following draft of July 27:

> In particular, the government must guarantee the imprescriptible rights that belong to all men, among which freedom, property, safety, care of their honour and their lives, free expression of their thoughts, resistance against oppression.[228]

On August 17, the Committee in charge of writing the final Declaration, the so-called *Sixième Bureau*, proposed its version, whose article 5 reads:

> The freedom of the citizen consists in being subject only to the law, in being required to obey only the authority established by the law, in being able to make any use of one's abilities without fear of punishment, as long as it is not forbidden by the law, and consequently in resisting oppression.[229]

Apparently, in the debates that followed the release of the project, Mirabeau-Tonneau argued in favour of the removal of the last part of the article, considered as too dangerous in view of

---

[226] Lafayette's Draft of the Declaration of the Rights of Man and of the Citizen (July 11, 1789): art. 13
[227] Fontana, A.: par. 4
[228] Mounier, "Projet de déclaration des droits de l'homme et du citoyen par M. Mounier" (July 27 1789). In *Archives Parlementaires de 1787 à 1860 - Première série (1787-1799) Tome VIII - Du 5 mai 1789 au 15 septembre 1789*, Paris, Librairie Administrative P. Dupont (1875): 289-290
[229] Fontana, A.: par. 5

the agitation of the provinces.[230] Mirabeau-Tonneau may have been only one of the several representatives worried about the inclusion of the right to resist in the Declaration, insisting on the hypothetical risks for the stability of France. In any way, the final document, resulting from a compromise among Lafayette, De Sieyès and the *Sixième Bureau*'s visions, included the right to resist. Article 2 reads:

> The aim of all political association is the preservation of the natural and imprescriptible rights of man. These rights are liberty, property, security, and resistance to oppression.[231]

It is curious to analyse article 7 as well. It reads:

> No person shall be accused, arrested, or imprisoned except in the cases and according to the forms prescribed by law. Anyone soliciting, transmitting, executing, or causing to be executed, any arbitrary order, shall be punished. But any citizen summoned or arrested in virtue of the law shall submit without delay, as resistance constitutes an offense.[232]

This last article proves the contrasts and part of the inconsistency of the French Revolution. Differently from the American events, when the right to resist has been invoked and reaffirmed without any hesitation, in the French Declaration two opposed elements coexist, one seeking the justification of resistance and one condemning resistance when applied against a lawful act. As the cases that have been proposed until this point can easily demonstrate, almost every decision emanating from an oppressive authority remains technically lawful. As a consequence, the choice on the lawfulness of an act is totally discretionary and hard to enclose in a constitutional document.

The following debates on the Constitution that was approved on September 3, 1791 produced a document that replicated the same discrepancy. The French Declaration had to cohabit with

---

[230] Fontana, A.: par. 5
[231] National Assembly of France, *Declarations of the Rights of Man* (August 26, 1789). English translation available at https://avalon.law.yale.edu/eighteenth_century/rightsof.asp
[232] National Assembly of France, *Declarations of the Rights of Man* (August 26, 1789).

article 17 of Chapter V of the new Constitution, being itself unclear on the allowed modalities of *'censuring the acts of the constituted authorities'*:

> No man may be questioned or prosecuted because of writings he has had printed or published concerning any matter whatsoever, unless he has intentionally incited disobedience to the law, disparagement of the constituted authorities, resistance to their acts, or any of the acts declared crimes or offences by law. Censure of acts of the constituted authorities is permitted; but intentional calumnies against the probity of public functionaries and the rectitude of their intentions in the performance of their duties may be prosecuted by those who are the object thereof.[233]

In the meanwhile, the developments in France were quick and sudden. The 1791 Constitution left France with a system doomed to fail, result of the contradictions of all factions. The King, entitled with an executive power, could have nominated a government responsible only after him. The legislative arm, elected only by the 'active citizens', had total freedom to discuss its laws, but threatened by the veto power of the King. Although his authority had been protected by the violence of the revolution, up to the point that, according to many, his figure had been reconciled with the new system, the King felt alienated by a situation that deprived him of his immense power. In these conditions, the King attempted during the night of June 21 a flight to The Netherlands, failing in Varennes, where he was recognised.[234] Still, a considerable part of the National Assembly believed that the King had been kidnapped, demonstrating willingness on preserving stability. This event had been particularly favourable for the Jacobin faction, which started radicalising the debate and marked an end to the unanimity of the early phase of the Revolution. To worsen the situation, the international environment soon turned tough to live in for France, with all the major powers of the continent being opposed to the French developments. In Spring 1792, the war against Austria and Prussia further divided internal politics, leaving pro-peace constitutional monarchists in minority. The context of the Revolution started being more complicated, with the emergence of the so-called *sans-*

[233] French Constitution (September 3, 1971). English translation accessible at https://wp.stu.ca/worldhistory/wp-content/uploads/sites/4/2015/07/French-Constitution-of-1791.pdf

[234] For more details on the flight, see Mark, H.W., "Flight to Varennes", *World History Encyclopedia* (August 9, 2022)

culottes, thus those passive citizens who were excluded by most of the French political life, but that by that moment were demanding the 'holy equality' prescribed by the documents of the Revolution. Eventually, on August 10 they stormed the Tuileries Palace, imprisoned the King and started volunteering to avoid the Prussian penetration towards Paris, in a military irrelevant, but psychologically significant victory in Valmy on September 20. The following day, the new National Convention, appointed to the drafting of the new Constitution, proclaimed the abolition of the monarchy, only the first step towards the trial against Louis XVI and his execution on January 1793. In Alessandro Fontana's opinion, the whole trial against the King until his decapitation marks a turning point on the evolution of the French events and the opportunity to compare it with the American Revolution. He argues:

> The call to resistance in the Philadelphia Declaration represented a weapon of struggle in the war waged by the colonies against the mother country, considered as a foreign, usurping, and enemy power. Such was not the status of the monarchy in 1789 France, which had retained all the sovereign attributes of legality and legitimacy. These attributes would be lost after the king's flight and arrest at Varennes, the trial where he would be treated as an 'enemy,' and his decapitation in January 1793.[235]

This way, marking the end of the resistant phase and the start of the revolutionary one becomes more complicated. Choosing one of the many interpretations may require us to identify what is the real moment of radical change in the French events. As I previously anticipated, I consider the 1789 Tennis Court Oath as the real start of the Revolution, with the establishment by the Third Estate of a clear willingness to repudiate the old order and build a new one through the Constitution. Following another interpretative direction, less linked to the dimension of the goals of the opposition group and closer to the institutional one, the decree that established the abolition of feudalism in August 1789 may have marked concretely the separation between an era of privileges and one of liberties, enclosing one of the meanings we can attribute to the concept of *revolution*. Fontana's way of thinking looks more linked to the status of the monarchy, maintaining all its lawfulness for a large part of the French events, and only the refusal of it would have eventually marked the turning point. This last interpretation, which may

[235] Fontana, A.: par. 11

be considered valid in many points, ignores the regime change happened with the approval of the Constitution. Even with the preservation of a symbolical old authority, it cannot be denied that all old rules of the *Ancient Régime* have been disregarded yet in 1789. In addition, such interpretation does not follow the criterion we adopted with the American events, that we have started labelling as a revolution even before the approval of the Declaration, more precisely when the allegiance to the King started falling during the first Continental Congress. Whatever interpretation the reader decides to follow, it is extremely interesting how the understanding of an historical period can change with the adoption of different criteria to our definitions.

The period between Spring 1793 and Summer 1974 showed to the world all the violence and cruelty of the French Revolution, in the so-called Terror. By then, the political scene had been completely dominated by the Jacobins, who succeeded in silencing the most moderate Girondin faction and the local authorities of the Republic. Much ca be debated on the Terror and its links with resistance. In particular, it is important to wonder if the real nature of the Terror was 'offensive' or 'defensive' or, in other words, if the Terror was a defence of the Revolution or part of the revolutionary phase itself. A bipartisan opinion would probably be the best answer, supporting the defensive position in the government's aim to protect the new Republic by both internal and external enemies and the offensive one in the declared need to regenerate a society corrupted by the values of the *Ancien Régime*. Looking at the conditions of France during the Terror, it is evident that the Terror was not a simple result of years of paranoia and fear: France had to face other European monarchies, threatened by the developments of the revolution, while internally the federalist revolt was having a tough impact. Specifically, the Vendée revolt had been read by the revolutionaries as a royalist, catholic and counter-revolutionary struggle, which undermined the overall stability of France. It is also true that in one of the most famous speeches delivered by leader of the Terror Robespierre, we can read:

> In our land we want to substitute morality for egotism, integrity for formal codes of honour, principles for customs, a sense of duty for one of mere propriety, the rule of reason for the tyranny of fashion, scorn of vice for scorn of the unlucky; self-respect for insolence, grandeur of soul for vanity, love of glory for the love of money, good people in place of good society. We wish to substitute merit for intrigue, genius for wit, truth for glamor, the charm of happiness for sensuous boredom, the greatness

> of man for the pettiness of the great, a people who are magnanimous, powerful, and happy, in place of a kindly, frivolous, and miserable people—which is to say all the virtues and all the miracles of the republic in place of all the vices of the monarchy.[236]

This speech alone can clearly indicate the offensive nature of the Terror, meant as a continuation of the revolution in moral terms. However, it is important to recognise that, as every parliamentary discourse, it may present an excess of rhetoric and lack of political planification.

On the relationship between resistance and the Terror, it is worth reminding a few elements on the legal status of the executive. In the works for drafting the new Constitution of 1793, the one supposed to mark the transition between the constitutional monarchy and the Republic, Robespierre contributed with his new idea of resistance, redefined not as a right, but as a duty. In his article 30 of the new Declaration of rights, the subjection of resistance to legal forms becomes *'the ultimate refinement of tyranny'*. [237] The final version will not include this reference, limiting itself to a generic justification of the right to resist and of insurrection in articles 33 and 35.[238] This Declaration will never enter into force, leaving the terrorist government total freedom on the means through which the Revolution had to be protected, and exposing the final de-legalisation of the right to resist that Robespierre envisioned in his project. In Fontana's words:

> [...] With the Jacobin constitution, resistance has moved from being a right to being a fact. It is no longer a power granted by law in specific and circumstantial cases of abuse and oppression, but open insurrection – in other words, civil war – against the established authority. The insurrection no longer targets the possible abuses of power, but power itself as an abuse. This *de facto* qualification of resistance, which subtly suggested the suspicion that power is always the enemy of the sovereign

[236] Robespierre, "On Political Morality", speech delivered on February 5, 1794 to the National Convention. In Bienvenu, R., *The Ninth of Thermidor*, Oxford University Press (1970): 32-49
[237] Fontana, A.: par. 13
[238] Declaration of the Rights of Man and Citizen from the Constitution of Year I (1793). English translation available at https://www.columbia.edu/~iw6/docs/dec1793.html. Article 33 reads: *"Resistance to oppression is the consequence of the other rights of man"*. Article 35 reads: *"When the government violates the rights of the people, insurrection is for the people and for each portion of the people the most sacred of rights and the most indispensable of duties."*

> people, foreshadowed and prepared all the revolutions of the 19th century. It radically questioned public order in all its forms, seen simply as the unstable balance of a perpetual struggle. The 'de-legalization' of resistance brought with it the 'delegitimization' of power.[239]

By then de-legalised, the right to resist would not make any other appearance in the following Constitutions of revolutionary France, returning only in the discussions after the end of the Second World War. If the debate on the right to resist as we meant it until now can be temporarily suspended, a new one on the legacy to the nineteenth century can start, while the guillotine beheads thousands of Frenchmen, and the Revolution, like Saturn, devours its children.

iii. The Haitian Revolution: how the Declaration triggered the resistance of black slaves

Before discussing the idea of resistance that the nineteenth century inherited from the French Revolution, it would be useful to investigate the parallel line of developments in the French colony of Saint-Domingue and its process of independence from the motherland. As we mentioned in the introduction, the events in Haiti have been categorised under the label of *revolution* only recently, after being shadowed by the other two Atlantic Revolutions for a long time.[240] We may have two main reasons to recognise the revolutionary potential of the facts in Saint-Domingue, both coming respectively from the American and French examples: in first stance, Saint-Domingue experienced the overthrow of a colonial regime, and with that established a whole new set of institutions. In short, in Haiti there was the disregard of the motherland in favour of new authorities. In second stance, the one of Haiti was not simply the history of a colony demanding its independence, but also *'the only successful slave revolt in history',* [241] as several sources define it.

---

[239] Fontana, A.: par. 15

[240] Popkin, J.D., *A Concise History of the Haitian Revolution*, Wiley-Blackwell, Oxford (2012): 6-9

[241] "Overview essay: Haitian Revolution", *A Revolution in Haiti*, University of Miami (Spring 2000). Last accessed on July 13, 2024 at https://scholar.library.miami.edu/slaves/san_domingo_revolution/revolution.html; Sutherland, C., "Haitian Revolution (1791-1804)", *Blackpast.org* (July 16, 2007). Last accessed on July 13, 2024 at https://www.blackpast.org/global-african-history/haitian-revolution-1791-1804/

The problem with the use of the term *revolt,* indicating a generally violent uprising against the constituted authorities, is the idea of suddenness that it may suggest. Also, the concept of revolt can give the impression of a temporary limited demonstration, instead of a prolonged one. Despite being scarce, historical research on the decades before the Haitian Revolution is getting more and more detailed, up to the point that examples of resistant practices against plantation owners are now available. Once again, we may not be able to observe a level of organisation as the one of the American Sons of Liberty, but there is evidence of a resistance network that was largely invisible to colonists.[242] Later, it was the arrival of the news of the French Declaration at Cap Français in September 1989 that spotlighted all the contradictions of a document that, despite declaring all men and citizens equal before law, ostensibly forgot to include several categories, among which slaves and free men of colour. At that point, the resistance network, nourished by the debates in intellectual circles and the inconsistencies of the National Assembly, make itself visible, starting its fight for the abolition of slavery under the eyes of the entire world.

Before entering the debate, some premises must be made. Historians who worked on the study of Saint-Domingue's colonial system had to face a substantial lack of sources, differently from scholars specialised in other colonial areas of the Americas. An important historical source proving the practices of resistance of black slaves would have been represented by the records of criminal trials in the French colony, unfortunately lost due to violence, carelessness, disorganisation and generally unfavourable environmental conditions. [243] In addition, the same colonial courts used to systematically destroy the records on slave criminal trials, equated to other useless items.[244] According to John D. Garrigus, such practice might have served the interests of the same planters, helped by colonial judges in eliminating any trace of abuses and tortures against slaves. Differently from what we could imagine, a system of norms, the so-called *Code Noir*, granted slaves some rights (very few). Simply, it was punctually disregarded, to the point that so far only five prosecutions for cruelty against an enslaver are documented.[245] What we know comes principally from various accounts, epistolary exchanges between the

[242] Garrigus, J.D., *A Secret among the Blacks. Slave Resistance before the Haitian Revolution,* Harvard University Press (2023):145
[243] Garrigus, J.D.: 4
[244] Vignols, L., "La destruction d'archives coloniales," *Revue d'histoire des colonies françaises*, 22 (1929): 45–52
[245] Ghachem, M.W., "Prosecuting Torture: The Strategic Ethics of Slavery in Pre-Revolutionary Saint-Domingue (Haiti)," *Law and History Review*, Vol. 29, No. 4 (November 2011): note 31

colonists, but also fugitive advertisements on colonial newspapers, trying to track slaves that succeeded in fleeing and, in many cases, engaged in marronage.

On this last practice and its impact on the outbreak of the open resistance of 1791, the community of scholars is divided, and soon realised, in the words of Crystal Eddins, that *"scholarly debate surrounding the role and relevancy, or lack thereof, of enslaved runaways before and during the Revolution seems to have reached a stalemate"*.[246] In general, there is no reason why we should not recognise at least a minimum impact to maroons in fostering black resistance, even if scholars like David Geggus emphasise the very small numbers associated with slaves' runaways, with most of the slaves failing this opportunity, being recaptured or returning on their own.[247]

Instead, much more attention has been given to other forms of resistance, including strikes and sabotages, but also the feared practice of poisoning, on which the entire myth of Haitian hero François Mackandal is based. John Garrigus recognises that a significant debate on what constitutes resistance has been dominating research on Haiti until now and cites Frédéric Régent and Randy Browne's visions of the issue. According to the former, a form of resistance can be recognised exclusively in all those practices that damaged the colonial economic system, adopting a narrower definition.[248] On the contrary, Browne recognises a resistant attitude in the simple attempts of surviving the colonial system, championing for a more inclusive definition.[249] The final position of Garrigus is closer to Browne's one,[250] to which the following analysis will not adhere, since the concept of resistance we adopted until now requires the presence of concrete acts. Instead, it is possible to agree on one of the justifications Garrigus gives to his position: for sure, not all slaves in Saint-Domingue aimed at

[246] Eddins, C.N., "Runaways, Repertoires, and Repression: Marronnage and the Haitian Revolution, 1766–1791," *Journal of Haitian Studies*, Vol.25, No. 1 (2019): 5.
[247] Geggus, D., "Saint-Domingue, le marronnage et la révolution haï- tienne," in Moomou, J. (Eds.), *Sociétés marronnes des Amériques: Mémoires, patrimoines, identités et histoire du XVIIe au XXe siècles*, Matoury, French Guiana, Ibis Rouge Editions, (2015): 132.
[248] Régent, F., *La France et ses esclaves*: *De la colonisation aux abolitions (1620–1848),* Paris: Grasset & Fasquelle, (2007)*:* 155, 156, 162.
[249] Browne, R.M., *Surviving Slavery in the British Caribbean*, Philadelphia: University of Pennsylvania Press (2017): 4
[250] Garrigus, J.D.: 10

the end of slavery. Probably, the colonial system could have survived many more years in more tolerable conditions, which was what all slaves were seeking.[251]

To analyse the Haitian's practices of resistance, it is useful to start with the account of the trail against one black slave, a certain Médor, described in detail by Garrigus.[252] Médor did not work in plantations, as most of his other companions: instead, he was enslaved in the Delavaud's house, working as a manservant for his owner. To some extent, the life of a black slave working as a valet was way more comfortable than in the fields, allowing them to avoid injuries and illness. Among those, Saint-Domingue had an history of frequent epidemics of smallpox and yellow fever, killing indiscriminately both black slaves and colonists. With the need to continuously replace epidemics' victims, the volume of slave trade in Saint-Domingue never fell. In the 1750s, Monsieur Delavaud decided to move from Cap Français to Les Perches, with the goal to build a new coffee plantation cutting hundreds of acres of forest and win the scarcity of food that characterised the previous years. Under conditions of near starvation, many black slaves started felling ill, with Médor administering African medicines to his companion and to the livestock. However, his patients started dying within days of consuming his medicines. It was May 1757 when, interrogated, Médor told that it was his "poison" that was killing black slaves, alarming his owner.[253] The following testimony shed light on many aspects: Médor confessed that he has been given medicines for the Delavaud for many years from a community based in Cap Français, but then, with the family moving to Les Perches, he was forced to replace his supplier. Most importantly, in an attempt to prove its innocence and win the interrogators' trust, he suggested the existence of a sort of long-term strategy to gradually shift the balance of power in favour of free blacks and lead the colony to rediscussing the colonial terms. In this strategy, drugs were supposed to play a facilitating role, making masters more willing to keep their promises on manumission of the black slaves.[254] Still, Médor was suggesting that there was a large network between slaves of neighbouring ranches, developed during night-time visits and collective gatherings at calendas.[255] From this confessions,

[251] Garrigus, J.D.: 11
[252] Médor's history is told more extensively in Garrigus, J.D.: Chapter 1
[253] Garrigus, J.D.: 34-35. Garrigus notices that a linguistic misunderstanding started the Médor's affaire. In THE African languages, the term "poison" could have had either the meaning of medicine or poison. The use of the French word convinced Mr. Delavaud that Médor was confessing a premeditated murder.
[254] Garrigus, J.D.: 41.
[255] Garrigus, J.D.: 42. For clarity's sake, calenda is a traditional Haitian dance rooted in the African origins of black slaves.

colonists started being very worried by the words on this developing network of resistance, ignoring what the real goal of the "secret among blacks" was, thus the establishment of the foundations for a future negotiation between free blacks and colonists, and not a grand plan to kill all plantation owners.[256] In any case, Médor failed in saving himself from the accusations and killed himself while imprisoned.

Therefore, great concern was given on the immediate threat of poisoning. Médor's testimony had provided a useful starting point to find and stop black poisoners as soon as possible. Many of the slaves accused by Médor resisted any attempt by their owners to get information on the poisoners, protecting the network. Many others were forced under torture to accuse other companions, this way supporting colonists' investigation. Slaves were continuing to die in huge numbers, tired out by famine, fatigue and illness. Whites were in constant fear of their black slaves, as several accounts suggest.[257] In addition, the Médor affair was able to exhume another case, involving this time the death of enslaver Monsieur Chiron in 1756, who was later found to be killed by poisoning. Soon, all tracks took to Mackandal.

The history of Mackandal is one of his kind, shaped in several eras by different perceptions. At the time he was executed, the colonists developed an idea of Mackandal as a white-killer, a version that met quite popularity in France. This perception clearly matched the concern of the time for the above-mentioned plan to kill all colonists and free Saint-Domingue. Soon, a second version, made popular by a work of fiction titled *Makandal: Histoire veritable,* mixed authentic facts with other fictional elements and portraited him as a madman. This one is also the version that met most of popularity in the following editions in Europe and in the United States, especially at the time of the Haitian Revolution. Only later he was described in more positive terms, highlighting his resistance against the oppressive rule of the colonists, whereas C.L.R. James praised him as the precursor of the Haitian Revolution.[258] In particular, James gives the following portrait:

---

[256] Again, the same linguistic misunderstanding between "poison" and simple medicines impeded a correct understanding of the situation by the colonists.

[257] An account written in 1776 by Michel-René Hilliard d'Auberteuil says that "*most whites live in fear [of poison]; nearly all feel that their slaves are right to hate them and to take justice into their own hands"*. Michel-René Hilliard d'Auberteuil*, Considérations sur l'état présent de la colonie française de Saint-Domingue, 2 vols*. Paris: Grangé, 1 (1776): 138–139.

[258] Garrigus, J.D.: 6-8

> He [Makandal, the greatest of the maroons' chiefs] conceived the bold design of uniting all the Negroes and driving the whites out of the colony. Mackandal [*sic*] was an orator, in the opinion of a white contemporary equal in eloquence to the European orators of the day, and different only in his superior strength and vigour. [...] He was fearless and, though one-handed from an accident, had a fortitude of spirit which he knew how to preserve in the midst of the most cruel tortures. [...] For six years he built up his organisation, he and his followers poisoning not only whites but disobedient members of their own band.[259]

The question arises: with the scarcity of sources we have on Makandal, what does remain of this character, apart from his mythical semblance? For the purposes of this work, Makandal remains a leader of the black resistance in Haiti and, leaving apart the religious or spiritual significance of his assemblies with other slaves, a gatherer of people that enforced the connections of black people even after his execution.

We cannot deny that this interpretation lays on fragile premises: in his influential V*audou, Sorciers, Empoisonneurs*, historian Pierre Pluchon gives a totally different opinion of the whole Makandal conspiracy of the 1750s, arguing that the famed diviner was not heading an organised resistance against colonists, and all poisoners that used his medicines actually killed their victims for personal reasons, totally foreign to the "secret among blacks" Médor suggested in his testimony.[260] For sure, further research is still needed on this topic. However, it is unlikely that, despite the hidden meaning behind the history of Makandal, colonists have been living in an unmotivated paranoia for decades, fearing their own slaves and the concrete possibility that one day they could have decided to rebel against the colonial system. Similarly, there would be no apparent reason why an ordinary diviner and poisoner ended turning into a national hero, and his ghost feared even before the 1791 uprising. For example, in 1785, a certain Kingué, another Congo diviner, was described by the attorney general of Cap Superior Council, Louis

[259] James, C.L.R., *The Black Jacobins. Toussaint L'Ouverture and the San Domingo Revolution*, Random House, Second Edition (1989): 20-21
[260] Taber, R.D., "Navigating Haiti's History: Saint-Domingue and the Haitian Revolution", *History Compass*, Vol.13, No.5 (2015): 237

François de Neufchâteau, as a new Makandal,[261] almost suggesting the degree of concern for the return of the character.

The following years passed with mounting tensions and the adoption of new strategies by the black population, still including poisoning, but also strikes and even a judicial trial between a free black woman and a plantation owner's agent. In 1773 Delribal, estate agent of the Carré estate, blamed slaves of poisoning the livestock, even though it had been already demonstrated that the cause was epidemical, and decided to arrest and torture three of them to obtain a confession. When one of them killed himself and another attempted suicide, twenty-five of their companions struck and returned to work only when Delribal was fired.[262] In 1777, a certain Lizette, a black freed woman, tried to protect through a judicial trial her son, a certain Kangal, from the attempt of estate agent Avalle to re-enslave him, after finding that his manumission had not been completed. Such an extreme act of resistance transcends the examples of resistance we have analysed until now, not only for its legal nature, but also for the cooperation in the black community, which succeeded in collecting an amount of money that the only Lizette could never provide alone.[263] This last example of resistance was, differently from the former, unsuccessful, but demonstrates how the resorts of black slaves had multiplied to the point that a generalised uprising was just to be awaited.

In France, as we have previously observed, society was in ferment, between the resistance of the *parlements* and the demand for the summon of the *Estates-General*. Still, central authorities did not ignore the threat of Saint-Domingue, recommending several times the respect of the *Code Noir*, as they did with a 1785 law aimed at preventing colonists' cruelties on slaves, also establishing a system of inspections and punishments against violators.[264] From the other side, colonists felt the urgency to control the political process in the motherland before this opportunity escaped from their hands to the ones of the freemen of colour. For this reason, they quickly sent their representatives in France to promote the revolutionary development, seen as an opportunity to adopt an American-style order that would have promoted new forms of self-government and federalism. This influence could be also weighted

[261] Nicolas-Louis François de Neufchâteau, "[Instructions to arrest Kingué]," (September 16, 1785), AN AP27/ Neufchâteau 12, dossier 2, as cited in Garrigus, J.D.: 132
[262] Garrigus, J.D.: 103-104
[263] Garrigus, J.D.: 112-119
[264] Garrigus, J.D.: 140

in their request to the representatives in Paris to contrast the *Societé des Amis Noirs,* founded by Brissot in 1788, where freemen of colour were lobbying for the recognition of their rights.[265] The demand for self-government was accepted in March 1790 by the National Assembly, establishing a local assembly, the so-called assembly of Saint-Marc, where white colonists had no difficulties in excluding black people from any political process. In reality, the new assembly struggled in controlling the new developments in Haiti, due to either the contrast with the central authority of Paris, threatened of a hypothetical independence of the island, and the new discourses of liberties among black people and their white supporters, yet triggered by a Declaration that recognised the rights of all men, but black people.[266]

The result of all these factors, together with the history of resistance that characterised black slaves for half a century by then was the slaves' uprising in August 1791. James gives a detailed description of how the events developed, stressing the phase of planification and the underestimation of the white colonists. In his vision, the plan was ready by the end of July, aiming at exterminating the whites and overturning the rule of the colony under the leadership of maroon Dutty Boukman. On or about August 14 a ceremony was organised with priestess Cécile Fatiman in Bois Caïman, defining the last details of the upcoming revolt. Historians have debated on what really happened in that occasion, on which the myth says that Boukman pronounced the following praying, somehow evoking the tyrannicide's impulses from medieval scholars:

> The god who created the sun which gives us light, who rouses the waves and rules the storm, though hidden in the clouds. he watches us. He sees all that the white man does. The god of the white man inspires him with crime, but our god calls upon us to do good works. Our god who is good to us orders us to revenge our wrongs. He will direct our arms and aid us. Throw away the symbol of the god of the whites who has so often caused us to weep, and listen to the voice of liberty, which speaks in the hearts of us all.[267]

---

[265] De Francesco, A.: 90-91. Also, see Jacques-Pierre Brissot, *Discours sur la nécessité d'établir à Paris une Société pour concourir, avec celle de Londres, à l'abolition de la traite & de l'esclavage*, Paris, (1788), 1–6, 9–11, 14, 16, 22–25, 31. In this pamphlet, Brissot recognises the urgency of the abolitionist cause, drawing comparisons with the American experience.

[266] De Francesco, A.: 91-95

[267] Tickner, A. B.; Blaney, D.L., *Claiming the International*, Routledge (2013): 147.

Still, it constitutes a central event of the history of Haiti, being still taught in schools, appearing in public debates and being referenced in arts. According to Markel Thylefors, *"[the Bois Caïman celebration] forms an important part of Haitian national identity as it relates to the very genesis of Haiti"*.[268] On August 21, colonists took some prisoners and gained few information on an upcoming revolt. They took very bland precautions, judging black slaves as incapable of starting a mass movement.[269] This last point provides important details to the resistance theory: if the colonists were aware, even if not completely, of the revolt, it indicates a significant degree of cooperation and organisation by black slaves, who succeeded in starting a struggle that will last until the turn of the century.

The following events will not be analysed in their entirety, since soon the slaves' revolt turned into a guerrilla, and probably the goals quickly evolved toward a revolutionary change. In particular, it is important to assess again what is the turning point that distinguishes the simple revolt from the revolution. It is worth noticing how, in this sense, the Haitian events followed the French debates on the role of the King in the new system, and only after his execution the independence of the colony started to be seriously rediscussed. This trajectory can be clearly observed in the character of Toussaint Louverture, a black freeman and future hero of the Haitian Revolution. Louverture was *in toto* a man of the *Ancient Régime,* supporting King Louis XVI under the protection of the Spaniards, which in the meanwhile joined the war together with England. Such a position was not alienating the support of the slaves, who still were not disregarding the authority of the monarch. Only in May 1794 Louverture radically changed his position: following the decree on February 4 that abolished slavery in all French colonies, Louverture abandoned the Spanish and became a fervent supporter of the French Republic.[270] In a letter sent to commissioner Polverel, governor Laveaux announced the decision of Louverture in this way:

> Toussaint Louverture, one of the three chiefs of the African royalists, in coalition with the Spanish Government, had at last discovered his true interests and that of his

[268] Thylefors, M. "'Our Government is in Bwa Kayiman:' a Vodou Ceremony in 1791 and its Contemporary Significations", *Review of Latin American Studies*, Issue No. 4 (March 2009): 75
[269] James, C.L.R.: 87
[270] De Francesco, A.: 124-129

> brothers; he has realised that kings can never be the friends of liberty; he fights today for the Republic at the head of an armed force.[271]

It is hard to tell if Louverture's *volte-face* sincerely expressed this view, as described by Laveaux. Historians have largely debated on the issue, to simply conclude that *"Toussaint's motivation may well remain a mystery"*.[272] For sure, with Louverture's turnabout the events of Haiti assumed a new meaning: from the first practices of resistance of the 1750s and the organisation of the 1791 revolt, the aims of the rebels become explicitly revolutionary, starting a process that soon would have led to the independency of Haiti.

iv. Counterrevolution and anarchy in the nineteenth century: a trail of dead monarchs

During our previous discussion on the right to resist as conceived by the French revolutionaries, we agreed with Fontana's thesis on the transformation of such right into a simple fact,[273] losing many of the features that characterised it until the eighteenth century. In the analysis that I proposed since Late Middle Age, I detected some common issues scholars faced in their justification of the right to resist: medieval authors stressed the matter of the subjectivity, and their principal discussions dealt with the definition of the unjust ruler. This topic remained important in Modern authors' theorisations, who identified the conditions on which a ruler turns out to be a tyrant, namely when they do not guarantee freedom of belief. In addition, the Monarchomachs have also deepened the discourse on subjectivity, this time dealing with the identification of which actor may be entitled to resist the tyrant. Eventually, during the eighteenth century and its Revolutions, the topic of resistance started to be loaded with the new theories on contractualism and rule of law, as we could see in the American's attention for Magna Carta's validity in the colonies and the French dissatisfaction with the institutions of the *Ancient Régime*. Moreover, in this last period of time humanity also experienced the most

---

[271] Letter cited in Forsdick, C.; Høgsbjerg, C., *"Black Jacobin Ascending", Toussaint Louverture: A Black Jacobin in the Age of Revolutions*, Pluto Press (2017): 59

[272] Geggus, D.P., "Front His Most catholic Majesty to the godless Republic: the «volte-face» of Toussaint Louverture and the ending of slavery in Saint Domingue", *Revue française d'histoire d'outre-mer*, Vol.65, No.241, (4e trimestre 1978): 482.

[273] See note 237.

important examples of codification of the right to resist, namely in the 1776 American Declaration of Independence and in the 1789 French Declaration.

An evocative line graph is provided by Ginsburg et al., in an article that aimed to study the variables that can predict the adoption of the right to resist in a given country and in their constitutional texts.[274] Taking in consideration the period of time between 1800s and 2000s, their analysis highlights the percentage of country with a constitutional provision on resistance against oppression. As the results show, after a boom that coincided with the Atlantic Revolution, the percentage of Constitutions with a right to resist plummeted during the first half of the nineteenth century. Although a slight increase can be observed during the second half of the century, the tendency remains negative, until the end of the Second World War marked a new surge that continues today. The explanation provided by the authors is that this early decline is caused by the emersion of new countries and, consequently, new constitutional systems that did not include a *ius resistendi*. This explanation does not clarify why these new countries did not adopt such a provision, especially considering the degree of exchanges between the Latin American colonies in struggle against Spain and the revolutionary processes across the Atlantic. At the same time, it does not explain how France itself denied that right in its original form, de-legalising resistance with the Terror regime. Last but not least, it leaves big questions on the missed role the right to resist could have had in the rich constitutional experience of the Italian peninsula. In this regard, the newborn Republics largely imitated revolutionary France, but then preferred to *"maintain a prudent silence"*[275] on the right to resist, ignoring one of the most significant legacies of the Enlightenment. How could such a significant revolutionary process like the French one forget about one of its main hidden conquests on the recognition of a right to resist the unjust ruler?

Elaborating more on Latin America, this absence of the right to resist does not match the linear development we have analysed until now, not only in relation to the influence of the revolutionary processes of the 1700s, but also to the more direct inspirator represented by the Spanish events in the early nineteenth century. In 1808, Napoleon established in Spain a new Bonapartist dynasty, placing his brother Joseph in substitution of legitimate King Ferdinand VII.

[274] Ginsburg, T., Lansberg-Rodriguez, D., Versteeg, M: 1218, Figure 1
[275] Trampus, A., *Storia del costituzionalismo Italiano nell'età dei Lumi,* Editori Laterza (2009): 260

Although winning an immediate support by Spanish elites, Joseph Bonaparte never obtained popularity among the masses, who immediately resisted and organised their movement in favour of King Ferdinand through the establishment of the so-called *juntas*. After all, the principle that characterised the Spanish monarchy in such cases was the *consensus populi, ultima ratio iuris*,[276] and in this case the support of the people was clearly favourable to Ferdinand VII. The reunion of these *juntas* in a single *Junta Central,* which established itself in Cadiz in January 1810 resulted in the summoning of an assembly, the *Cortes,* which pretended to exercise the power of King Ferdinand and conduct the resistance of the Spanish people against the oppressor. Following our criteria, the Spanish events can be labelled as a resistance: there is the willingness to preserve a pre-existent order and a considerable degree of planification of the movement. The same document drafted in 1812 in Cádiz was interpreted as a liberationist one, expressing the struggle of the Spanish people against the Napoleonic despotism and, in the case of the South American ones, their fight to obtain the recognition of wider colonial rights.[277] However, the Cádiz Constitution lacked an explicit provision on the right to resist, limiting itself to the recognition of the legitimate power of King Ferdinand. An explanation for this absence could be given by the need to draft a document which aimed at conciliating liberal and democratic aspirations with the monarchical system, especially in a period of relevant changes as the early 1800s.[278] It is likely that the right to resist had to be sacrificed in order to achieve this compromise. Therefore, the proclamation of the Cádiz Constitution represents a key moment of transition between the eighteenth century, whose Constitutions produced numerous references to the right to resist the tyrant and to overthrow the unlawful government, and the nineteenth century, when the codification of this right dramatically slowed.

Although the independence process of Latin America inherited the resistant posture of the Spanish people in the Iberian Peninsula, the same cannot be said for the codification of such right, which is scarce in the Constitutions of the newborn States of South America. The influence of the Latin American colonies in the process of Cadiz can be assessed by several factors. First, and most notably, by the participation of some representatives of the region in

[276] Fernández-Sebastián, J., Capellán, G., "Democracy in Spain. An Ever-Expanding Ideal" in Innes, J., Philip, M. (Eds.), *Re-imagining Democracy in the Mediterranean, 1780–1860,* Oxford University Press (2018): 56
[277] Colley, L.: Chapter 4.4
[278] Trampus, A., *Emer de Vattel and the Politics of Good Government:* 221

the *Cortes,* an essential element to take in consideration when we want to underline the links between the two contexts. Second, by the emergence in the same colonies of numerous pro-monarchy *juntas* and *ayuntamientos* that supported the legitimacy of Ferdinand VII even in a phase of power vacuum.[279] Even though this power vacuum would have represented one of the key causes of the following independence of the Spanish colonies, it might be useful to draw a parallelism with the previously discussed Haitian case, where the anti-monarchical sentiment was not immediate. Third, by the considerable public participation of the region, which contributed to the development of the ideas of constitutional liberalism, including national sovereignty and denial of any form of absolutism.[280] Despite evidence of such links between Europe and Latin America, the right to resist was excluded from these transfers, if not for some very limited references: for example, the 1816 Declaration of Independence of the United Provinces of Río de la Plata does simply mention *'the dystopic power of the Monarchs of Spain',*[281] resuming the topic of tyranny that we extensively analysed. In this way, the independence process evokes an idea of resistance and resembles some events that we have mentioned in Chapter 2. Differently from those, the events of Latin America do not bring any significant progress to the cause of the codification and further theorisation of the right to resist.

Coming back at our original question, the re-elaboration of eighteenth century ideas by counterrevolutionaries during the 1790s and later the actors of the Restauration in the early 1800s is a significant indicator of the decline of the right of resistance. To support this argument, Vattel's *Droit des gens* gains a renewed importance among scholars of the turn of the century, this time with opposite conclusions compared to the ones of the previous decades. In 1792, simultaneously to the overheating situation in France, Naples' government censor Giovanni Francesco Conforti proposed a ban to the treaty. Conforti argued that Vattel had given a completely wrong interpretation of the theory of popular sovereignty, up to the point that his essay was legitimating revolutionary ideas and destabilising monarchies all over the continent.[282] Still, it must be recognised that at the time the flow of events was still fluid and

[279] Landavazo, M. A., "La influencia de Cádiz en la América española: política, gobierno y constitucionalismo", *Revista de Historiografía*, 20 (2014): 82
[280] Landavazo, M.A.: 77
[281] *Acta de Independencia, Declarada por el Congreso de las Provincias-Unidas en Sud-America* (July 9, 1816). In the original version: *"[el] poder despótico de los reyes de España"*.
[282] Trampus, A., *Emer de Vattel and the Politics of Good Government:* 178-179

pretty sensitive to revolutionary developments: in January 1799, after the French conquest, the Neapolitan Republic was proclaimed, and with that a new project of Constitution mainly drafted by Francesco Mario Pagano was proposed. The project contained an explicit reference to the right to resist both in the Preamble and in Article 9, which read:

> Resistance against anyone who prevents the free exercise of one's abilities is a human right. Without it, every other right is precarious.
> The aforementioned resistance is a human right in a pre-social state. In the social state, individual resistance is permitted only against perpetual and hereditary authorities, which are always tyrannical.[283]

This formulation remarks the traditional interpretation given to Vattel's theories, according to which the right to resist derives as a consequence of tyrannical abuses and their violations of constitutional guarantees.[284] However, the Neapolitan Republic survived only for a few months, and the Constitution never came into force. This last experience marked a turning point on how Vattel had to be interpreted, with most of the following experiences proposing a reactionary interpretation of the author: for example, it happened in the specific case of Bologna, where law professor Vincenzo Beri degli Antoni used Vattel to justify Pope's influence on the city, according to the ancient agreements, while refusing the republican experience of 1796.[285] In general, it is possible to argue that a wide use of Vattel has been made during the deliberations of the Congress of Vienna, aiming at reestablishing the old authorities of the *Ancien Régime*.[286] It results clear that the right to resist, as traditionally conceived during the previous century, had to be removed from Vattel's thought.

It is much more striking if we look at the events of the nineteenth century, when assassination attempts against the authorities and especially monarchs were highly frequent, up to the point that, if in Chapter 2 we recognised that the Middle Age had a morbid obsession for the tyrannical degeneration of power,[287] we may equally say that the nineteenth century had a

[283] Costituzione Napoletana del 1799. Rapporto del Comitato di legislazione al Governo provvisorio: Art.9. Italian transcription available at http://www.dircost.unito.it/cs/docs/napoli1799.htm
[284] Trampus, A., *Emer de Vattel and the Politics of Good Government:* 164-165
[285] Trampus, A., *Emer de Vattel and the Politics of Good Government:* 179-181
[286] Trampus, A*., Emer de Vattel and the Politics of Good Government:* 183
[287] Moroni, E.: 1

morbid obsession for tyrannicides. However, the deep meaning of these tyrannicides is very different from the past, like the ones which characterised the Monarchomachs in 1500s: in these new cases, the attacks against the authorities alternatively include elements of counterrevolution and anarchy, rejecting all the developments of the right to resist in the last six centuries. In other words, it does not matter if the tyrant is really a tyrant; the debate on the subjectivity of the right to resist loses importance, allowing each individual to conduct an action against whatever authority; at the same time, this action is generally violent, marking a considerable distance from the resistance of the American Sons of Liberty and of the French *parlements* in their respective early phases; finally, the goal is not the conservation of the principles of an old rule, like the definition of resistance indicates, nor the transition to a new rule. It is the power itself that it is targeted, in the belief that any form of public order, institution or authority ends establishing an oppression. This view is expressed very clearly in Bakunin's idea of anarchism, arguing that *"if there is a State, there must be domination of one class by another and, as a result, slavery; the State without slavery is unthinkable, and this is why we are the enemies of the State".*[288]

In *Terrore e terrorismo,* Francesco Benigno investigates the history of terrorism from the very first experiences of terror, namely the French one. For the purposes of this section, it is important to directly move to the turn of the century, with particular regard to the character of Napoleon. It is from the very start that the young Corsican general had to deal with the dagger, symbol *par excellence* of tyrannicide since the times of the murder of Caesar, when he had to justify his companionship with Robespierre arguing that *"if he had aspired to tyranny, [he, Napoleon] would have stabbed him with [his] own hands".*[289] The events following the Coup of 18 Brumaire in 1799 did not break this link: it happened when he entered the Council of Five Hundred and he was attacked by a group of radicals shouting: *"Down with the tyrant!"*. Slightly wounded on the face, soon the news that he escaped an attempt of murder spread. After a few months, yet become First Consul, four Jacobin radicals planned an attack at the Opera of rue de Richelieu, promptly foiled. Some time later, Napoleon suffered another attack, this time planned by a group of nostalgic pro-monarchy counterrevolutionaries.[290] As we can see, with

[288] Bakunin, M., *Statism and Anarchy*, (1873), Translation by Marshall S. Shatz, Cambridge: Cambridge University Press (1990): 178
[289] Benigno, F., *Terrore e Terrorismo,* Giulio Einaudi Editore, Torino (2018): 21
[290] Benigno, F.: 21

Napoleon the idea of tyrannicide married both the radical and monarchical positions, both incompatible with the idea of resistance, since they reject the established form of government.

The attacks did not end with the figure of Napoleon: in 1820, the duke of Berry, nephew of King Louis XVIII and his potential successor, was killed by republican worker Louis Louvel. On July 28, 1835, it is King Louis Philip d'Órleans that was attacked by Corsican republican Giuseppe Fieschi, and on June 25, 1836 another republican, this time soldier Louis Alibaud, shoot him at the exit of the Tuileries.[291] Some years later, in January 1858, Felice Orsini attempted one of the attacks most discussed by historiography: launching bombs to the procession of Napoleon III, he failed in murdering the Emperor, but he killed eight guards and harmed more than one hundred people. In the meanwhile, in Italy, patriot Agesilao Milano attempted to shoot King Ferdinand II on December 8, 1856. Especially these two last examples assume a variety of meanings, all foreign to a correct invocation of the right to resist. First, the attempt of murder becomes a pure punishment for the tyrant: especially Napoleon III started to be seen as a traitor after his decisions in favour of the Roman Republic and the Pope in 1849.[292] Second, in these acts there is a clear propagandistic aim: Carlo Pisacane, commenting the attack against Ferdinand II, argued that *"it produced a much more effective campaign than one thousand of essays written by doctrinaires, which are the real plague of our country and of the whole world"*.[293] Third, the attack against a tyrant is an alarm for the people unaware of their conditions, thus becoming a pedagogical act.[294] Although they may be vaguely related to the whole topic of resistance, they do not constitute the principal aim for which the right to resist has been conceived, thus the protection of a constitutional order from its violation by an unlawful authority.

If the attacks we mentioned had a limited extent and caused a few victims, this trend started rocketing in the second half of the century, with actions that increased both in individuals involved and violence. Contributing to this degeneration of violence there was a developing line of thought, based on the Heinzen's idea that reactionaries might have been opposed not only

[291] Benigno, F.:29
[292] Benigno, F.: 33
[293] Pisacane, C., "Carlo Pisacane: il testamento", Genoa (June 24, 1857). Transcription accessible at https://milanosifastoriabl.wixsite.com/fifi/carlo-pisacane-il-testamento
[294] Benigno, F.: 34

targeting monarchs, but also their supporters.[295] This way, we can understand not only the attack to Prussian Emperor William I in 1861, but also the shooting against Chancellor Otto von Bismarck in 1866. The same tensions developed in Russia: we could mention the failed attack against Emperor Alexander II in 1866, as well as the shooting of a certain Vera Zasulič against the governor of Saint Petersburg. With the killing of Alexander II in 1881, we could mark the start of a sort of *Ère des attentats,* different from the previous period because of the success of the new attacks, which involved a long trial of monarchs and political authorities, among which French president Carnot (1894), Austro-Hungarian Empress Elisabeth, better known as Sissi (1898), Italian King Umberto I (1900) and, exiting from the European scenario, also American President McKinley (1901). Not to count the number of 'secondary' victims, among which officials, nobles and ministers, that many of these attacks produced. Most importantly, reminding of the new aims of these actions, we observe a renewed centrality of the punishing goal,[296] increasingly distancing itself from the forms of resistance we have been studying until now.

Thus, the progressive loss of the criteria that characterised for centuries the right to resist until its de-legalisation with the French Terror regime contributed to its same decline in two forms: first, new emerging countries started associating the right to resist with the feared right of revolution, opting for its exclusion in the new constitutional texts. Second, and most importantly, the new opposition groups of the nineteenth century, to be identified in an early phase in counterrevolutionary movements and later in anarchic ones, rejected this same notion of resistance through a whole new set of *modi operandi* and goals that disregard the definition we used until now. This way, the *Ère des attentats* fell in a spiral of increasing violence and finished in the tragic attack against Archduke Franz Ferdinand in June 1914. With the two World Wars and the emergence of the totalitarian regimes, we will not hear about the right to resist for almost half a century.

[295] Benigno, F.: 34
[296] Benigno, F.: 49

IV. Codifying the right to resist in the twentieth century

The exclusion of the right to resist in the political debate continued throughout the Two World Wars, with only a few exceptions still linked to the revolutionary era of the eighteenth century. Neither the Russian Revolution seems to provide us with a rich theoretical ferment on resistance as other revolutions in the past did. From the start, the Russian events presented a clear revolutionary nature. Despite the presence of strikes and non-violent protests, which are generally the preferred instruments of resistance, these demanded very soon the Tsar's abdication and a deep political and economic reconstruction. The following violent response of Nicholas II, the mutinies in the army and the emergence of parallel governing institutions quickly escalated into the collapse of the Tsar's authority, leaving no room for any kind of preservation of the old regime.[297] Later, the sudden emergence of totalitarian regimes throughout Europe made any debate on resistance almost inexistent, except for discussions in hidden circles of opposition. For sure, no mention was made of the codification of this right in Statutes or any other constitutional document.

It was after 1945 that the codification of the right to resist blossomed not only in Europe and the Americas, but also in numerous countries in Asia and particularly in Africa. Reminding of the line graph provided by Ginsburg et al. and already mentioned in the previous Chapter,[298] it is possible to observe that the number of provisions containing an implicit or explicit right to resist in national constitutions suddenly rose in the second half of the 1940s. After a fall, probably caused by the emergence of new States and the consequent increase of constitutional texts, the presence of the right to resist boomed: today, about one constitution out of five contains a provision on the right to resist, and rarely such provisions were amended throughout the years. At the same time, the establishment of the United Nations, together with its new international institutions and universal treaties, renewed an important debate on a hypothetical presence of the right to resist as a custom in international law. Scholars discuss whether the *Universal Declaration of Human Rights* and the *UN Charter* may be interpreted as containing an unenumerated *ius resistendi*. Moreover, when it comes to regional human rights

[297] Cochran, D.C., "Why the Russian Revolution actually owes its success to nonviolent resistance", *Waging Nonviolence* (July 13, 2021): par. 8-11. Last accessed on August 29, 2024 at https://wagingnonviolence.org/2021/07/why-the-russian-revolution-actually-owes-its-success-to-nonviolent-resistance/

[298] See note 272

instruments, it is possible to find explicit references to such right, namely in Article 20(2) of the *African Charter on Human and Peoples Rights* and Article 2(4) of the *Arab Charter on Human Rights*.

This chapter is structured as follows: in the first part, a trajectory of the constitutional codification of the right to resist in Europe and Latin America will be presented through some emblematic cases. As we will observe, the two areas differ substantially in the scope given to resistance: in Europe, it has been seen as a way to consolidate emerging democratic system after the defeat of an authoritarian or totalitarian regime. This is equally true for Germany after the Second World War, Portugal and Greece at the start of the new wave of democratisation of the 1970s, and Estonia, Lithuania and Slovakia in the aftermath of the fall of the Soviet Union. Even though some countries failed to include a right to resist in their constitutional documents, the idea had been widely discussed, like in the Italian case, or it almost made it to approval, like in the French one. Different is the case of Latin America, where provisions on the right to resist struggled to strengthen democratic regimes. Instead, its codification had been used after several military coups as a way to legitimate *a posteriori* the overthrow of a past regime and to support the legality of the new one. This is the case of Guatemala, which substituted frequently its Constitution without renouncing to the right to resist, and Hugo Chavez's Venezuela, where the new democratically elected President proposed the codification of this right to justify his previous undemocratic manoeuvres. In the second part, the presence of the right of resistance in international law will be analysed through the references available in international treaties and the commentaries of prominent scholars. So far, the right to resist is cited in the Preamble of the *Universal Declaration of Human Rights* and in the African and Arab human rights instruments. In addition, it can be argued that the *UN Charter* may be interpreted through the *UNGA Resolution 2625* as legitimising a right to resist when linked to self-determination, and some traces can be detected in international criminal law instruments as well, for instance in the *Nuremberg Principles* and in the 1998 *Rome Statue* establishing the International Criminal Court. Finally, attempts to explicitly codify the right to resist can be found in the drafts of the Universal Declaration and the *UN Declaration on the Right to Peace*, demonstrating that the right to resist received considerable attention in the international arena as well.

i. Once again, the Atlantic: codification experiences in Europe and Latin America

In the aftermath of the Second World War, the right to resist played a renewed role in the constitutional debates for the establishment of the new order. It is easy to assume that such a role consisted of a provision aimed at protecting the new democratic regimes from the totalitarian ghosts of the past, whose memory was still vivid in the second half of the 1940s. This is the case of the constitutional discussions of France, Italy and Germany, which resulted respectively in two aborted attempts and a successful one that still survives today. It is also the case of those countries which replied later to the call of freedom, with the cases of Portugal and Greece during the Southern Europe transition to democracy of the 1970s, and some of the newly independentized countries after the fall of the USSR, namely Estonia, Lithuania and Slovakia, all in 1992. However, it is possible to identify another function, opposed to the intrinsic meaning of the right to resist, and partially observed during the Revolutions of the eighteenth century: the right to resist can also serve opposing groups in their struggle against the regime, seeking for a legitimisation of their actions during the previous phase of confrontation against the old authority. This function is not necessarily linked to a democratic turn and the precommitment of a State to these values, up to the point that Ginsburg et al. define it as an *'Ex-Post Legitimation of Dictatorial Rule',*[299] and it perfectly refers to the cases of the Guatemalan regimes under the civil war and the 1999 Venezuelan one under Hugo Chavez.

As we briefly anticipated, the Contemporary history of the codification of the right to resist is not always marked by success. Although the Nazi-Fascist emergency during the first half of the century stimulated the following adoption of constitutional provisions on the right to resist, this does not mean that some of the worries on resistance were left apart, especially regarding the potential degeneration into a right of revolution. The French and Italian Constitutional Fathers widely discussed this issue, assuming contrasting stances. In France, discussions on resistance have been frequent since the inter-war period, fuelled by the *Déclaration* that inspired French republicanism since the eighteenth century. In 1925, the Minister of Education Charles Dupuy wrote:

[299] Ginsburg, T., Lansberg-Rodriguez, D., Versteeg, M: 1212. Here, the authors recognise two main explanations for States to adopt a right to resist. The first one is a forward-looking commitment to the democratic values, whereas the second is a backward-looking legitimisation of undemocratic movements which emerged as new rulers.

> A citizen has the right to refuse obedience to an arbitrary order [...]. The right to resist oppression mentioned in Article 2 [of the 1789 Declaration] should not be confused with resistance to the law. There is oppression when the law is violated by arbitrary or illegal measures. In such cases, resistance is more than a right; it is a duty.[300]

Similarly, Raymon Fabry and abbot Émile Borceau wrote in a 1933 handbook for civic education that:

> There is only one case where it would not only be excusable but praiseworthy to resist a law and actively campaign for its repeal: when the law is manifestly unjust, violates an essential freedom, or infringes upon the fundamental rights of conscience.[301]

Thus, references on the right to resist were infrequent in comparison with the revolutionary period, but certainly not absent. A revival of the topic took place with the start of the Second World War, especially during the agitated days of the German invasion of France and the establishment of the collaborationist Vichy France, headed by Marshal Philippe Pétain. With the vote of July 10, 1940, Marshal Pétain was completing the constitutional revision of the new France, aiming at obtaining full powers. The so-called *Laval Project* was approved by a wide majority of the two Chambers of the National Assembly (357 deputies and 212 senators voted in favour). However, a group of eighty voters, the so-called *Quatre-Vingts*, voted against, opposing a project *"that would [have] inevitably [led] to the demise of the republican regime".*[302] According to socialist Jean Biondi and the count of Chambrun, *Les Quatre-Vingts* exercised the right to resist oppression, in this case personified by the attempt of Marshal Pétain to force a constitutional change and obtain full powers.[303] In addition, an exercise of the right to resist can

[300] Dupuy, C., *Livret d'instruction civique avec la Déclaration des droits de l'homme* (1925), as cited in Gros, D., "Le droit de résistance selon la Résistance (1940-1946)", *Le Genre Humain*, 2005/1, No. 44 (2005): 210
[301] Borceau, E., Fabry, R., *Manuel de morale et d'instruction civique: à l'usage des écoles primaires* (1933), as cited in Gros, D.: 210
[302] *Motion opposée au projet de loi du 10 juillet 1940* or *Motion Baudie* (July 10, 1940). French transcription accessible at https://mjp.univ-perp.fr/france/badie.htm
[303] Gros, D.: 211

be observed in the following clandestine *Résistance* conducted by numerous representatives and a widespread use of newspapers.[304]

With the end of the war in Europe, France was involved in a new constitutional process, which also included the topic of resistance. In 1943, André Philipp and François de Menthon proposed a project of the Declaration of rights that included resistance among the *"imprescriptible rights of Man",*[305] whereas a following proposal by Philippe Vianay and Robert Salmon stated that *"the Rights of the Man who live in society are freedom, security, property, education, work, amusement, assistance and resistance to oppression".*[306] The discussion also focused on issues we previously analysed, such as the definition of resistance against oppression and its means. In this latter regard, Félix Gouin and Lavergne had contrasting views, respectively focusing on the economic means of resistance and popular pressures.[307] Finally, and more importantly, the same drafters of the new Constitution included a provision in the 1946 Project of April, with Article 21 declaring that *"when the Government violates the liberties and the rights guaranteed by the Constitution, resistance in all its forms is the holiest of rights and the most imperative of duties".*[308] An interesting debate regarding this provision took place in the Constitutional Assembly, especially about the extent of "all the forms" of resistance that can be allowed and its dutiful nature. In particular, communist Jean Prouteau championed the adoption of the 1793 formulation, highlighting the link between the new project and the old Constitution of the First Year. Instead, it was socialist Gilbert Zaksas who supported the idea of a duty of resistance, which ended in the final draft of the project.[309] The following history of the project is well known: on May 5, a slight majority of voters rejected the project, forcing the election of a new Constitutional Assembly and the draft of a new project. The Constitution that was drafted in October excluded the right to resist, but reaffirmed in its Preamble the validity of

[304] Gros, D.: 215-216
[305] Gros, D.: 217
[306] Gros, D.: 216
[307] Gros, D.: 217. Gouin states that oppression is mainly economic *("l'oppression est économique")*, but probably adopts a definition of resistance that does not resemble ours. In his view, resistance is guaranteed by the free organisation of workers and consumers, the public control of trusts and equal access to employment.
[308] Assemblée constituante, *Projet de constitution du 19 avril 1946* (April 19, 1946): Art. 21. French transcription available at https://mjp.univ-perp.fr/france/co1946p.htm#:~:text=Le%20principe%20de%20toute%20souveraineté,%2C%20soit%20qu'elle%20oblige.
[309] Gros, D.: 218-219

the 1789 *Déclaration,* where such right made one of its first appearances less than two centuries before.

While the April draft of the French Constitution was rejected by the voters, a parallel vote held on June 2 let the Italian people decide on their future form of State and the composition of the subsequent Constitutional Assembly. Although many sources and commentaries can be found on the drafting process of the Italian Constitution, not many scholars decided to investigate the history of one specific provision, promoted by Christian Democrat Giuseppe Dossetti and originally supposed to appear in Article 50. The Italian debate introduces elements of high relevance on several levels: first, it shows the different positions of the three branches of the Assembly, and proves, together with the rest of the Constitution, how the document resulted from a general compromise among the Christian Democracy (DC), the Socialist Party and the Communist one. Second, it resumes the secular issue of the apparent confusion between the right to resist and the right of revolution, a reason that perfectly explains the reluctance of the DC against the project of their companion. Third, it highlights another central issue, which has been partially overlooked until now: can a *ius resistendi* be codified as the rest of rights, even with its evident extra-legal nature? Here we do not simply talk about the problem the Jacobins already faced during the Terror, when resistance was delegalized. In this case, there is a clear confrontation between the legal positivist tradition and natural law, for a right that cannot be easily enclosed in a written provision. Lawyer Vezio Crisafulli, commentator of the Communist journal *Rinascita,* expressed at that time his worries for an excessively vague Constitution, with the risk *"to slip into the realm of purely ideological, moralistic, or didactic statements, which are absolutely to be avoided."*[310] It is clear that, in the case of the right to resist, this problem becomes hard to overcome.

In 2000, historian Umberto Mazzone proposed a detailed review of the numerous discussions on Dossetti's project within the Constitutional Assembly, highlighting how the text and the consensus around it mutated throughout its legal *iter.* Here, the reader will find only a summary of the whole process, but with a complete overview of the main issues faced by the Constituent

[310] Crisafulli, V., "I diritti dell'uomo e del Cittadino", *Rinascita*, No. III, (August, 8,1946): 186.

Fathers and the positions assumed by the various factions.[311] Dossetti presented its provision for a right to resist in a project of eleven articles to the First Subcommittee of the Commission for the Constitution, charged with discussing the rights and duties of the citizens. The original formulation states that *"individual and collective resistance to acts of public authorities that violate the fundamental freedoms and rights guaranteed by this Constitution is a right and duty of every citizen."*[312] This provision was accompanied by a comment that mentions Article 21 of the French Constitution of April, at that time already rejected. On December 3, the discussion in the Subcommittee started, resulting in a cross-cutting agreement, with the only negative vote by Christian Democrat Carmelo Caristia. In his view, stating the principle of resistance against authority in a constitutional document could have had revolutionary implications.[313] From these results, Mazzone recognises the emergence of a fracture within the Christian Democrats, visible by the contrast between Dossetti, supported by Aldo Moro, and Caristia, with Umberto Tupini reserving several doubts. In addition, it is worth noticing the lack of a strong support from the other sides: it is likely that Palmiro Togliatti voted in favour with much scepticism, however catching a glimpse of political opportunity for other discussions.[314]

This way, the provision was included in the project of Constitution, with article 50 reading: *"When public authorities violate the fundamental freedoms and rights guaranteed by the Constitution, resistance to oppression is the right and duty of the citizen."*[315] The new text lost the references to individual and collective resistance, which had been already criticised by Caristia, and made reference to resistance against general oppression, rather than the original resistance against the acts of public authority. On May 19 the general discussion at the Assembly started and the agreement of the last months seemed to have completely disappeared. Many of the minor parties expressed a negative position towards Article 50: Cesario Rodi of *Uomo Qualunque* warned against the risk of justifying a right to rebel,[316] thus

[311] For a more detailed review, see Mazzone, U., "Il Diritto/Dovere di Resistenza nella proposta di Giuseppe Dossetti alla Costituente" in De Benedictis, A., Marchetti, V. (Eds.), *Resistenza e diritto di resistenza. Memoria come cultura,* CLUEB (2000): 45-73

[312] Dossetti, G., "Lo Stato come ordinamento giuridico e i suoi rapporti con gli altri ordinamenti" (November 21, 1946): Art. 3. Accessible at https://www.nascitacostituzione.it/05appendici/01generali/00/01/10-dossetti.htm

[313] Assemblea Costituente, *Commissione per la Costituzione, Discussioni, Prima Sottocommissione dal 26 luglio 1946 al 19 dicembre 1946* (ACCPS): 451, as cited in Mazzone, U.: 51

[314] Mazzone, U.: 52

[315] Assemblea Costituente, "Testo definitivo del Progetto di Costituzione elaborato dalla Commissione" (January 31, 1947): Art. 50, p. 2. Accessible at https://www.nascitacostituzione.it/02p1/04t4/054/index.htm?art054-999.htm&2

[316] Assemblea Costituente, *Atti dell'Assemblea Costituente, Discussioni*, Vol. IV: 4053

resuming another common misassumption of resistance; Roberto Bencivenga of *Blocco Nazionale della Libertà* underlined the risks of such right when applied to the army;[317] republican Arnaldo Azzi wondered which organ should be entitled of assessing the violations of the authorities;[318] Christian democrat Caristia confirmed the contrariety already expressed in the Subcommittee, this time supported by several other companions of the party, such as Fiorentino Sullo and Corrado Terranova.[319] From the other side, Constantino Preziosi of *Partito Democratico del Lavoro* and socialist Eduardo Di Giovanni expressed shy support for Dossetti's proposal,[320] whereas communist Antonio Giolitti reminded the Assembly of the reason why a right to resistance must have been included in the Italian Constitution: not only the same Italian Republic had to be established on the foundations of the *"wonderful resistance the Italian people opposed to the invader",*[321] but also had to be provided with a counterbalance against the duty of loyalty expressed in the same article.[322] In the following discussion on May 23 the idea of completely suppressing the second paragraph is assessed for the first time: when finally put under scrutiny on December 5, the supporters of the right to resist were outnumbered by its detractors, marking the end of a tumultuous, but potentially fruitful attempt of codification of this right.

Opposed to these two failing experiences, the German one presents significant differences, which led to the introduction of a right to resist through the 1968 amendment of the Basic Law in Article 20(4). Thus, the right to resist was not included in the original constitutional text, promulgated in May 1949, and only valid in the territory of West Germany. Nonetheless, a right to resist had been already codified in the Constitutions of three *Länder.* It is curious to observe that two of these *Länder* were part of the American zone of occupation. Although no evidence was found about the direct role of the Americans in the drafting process of the single *Länder'*s Constitutions, it is an eventuality that cannot be excluded: Richard L. Merritt describes the German events after Second World War as *"one of the more audacious efforts to export American constitutional principles and practices",*[323] almost like the spread of the values of the

[317] Assemblea Costituente, *Atti dell'Assemblea Costituente, Discussioni,* Vol. IV: 4066
[318] Assemblea Costituente, *Atti dell'Assemblea Costituente, Discussioni,* Vol. V: 4079
[319] Assemblea Costituente, *Atti dell'Assemblea Costituente, Discussioni,* Vol. V: 4079, 4103
[320] Assemblea Costituente, *Atti dell'Assemblea Costituente, Discussioni,* Vol. V: 4071-4072
[321] Assemblea Costituente, *Atti dell'Assemblea Costituente, Discussioni,* Vol. V: 4102
[322] Assemblea Costituente, *Atti dell'Assemblea Costituente, Discussioni,* Vol. V: 4101
[323] Merritt, R.L., "American Influences in the Occupation of Germany", *The Annals of the American Academy of Political and Social Science*, Vol. 428, The American Revolution Abroad (Nov., 1976): 92

1776 Revolution was a mission to provide Germany with a set of ideas that may have adapted well to their own case. Therefore, Hesse's Constitution of 1946 states that *"resistance against public force done unconstitutionally is everyone's right and duty."*[324] Similarly, the Constitution of Bremen of the following year declares that *"when the human rights established in the Constitution are unlawfully violated by public authorities, resistance is the right and duty of everyone."*[325] Finally, the Constitution of the State of Brandeburg, later amended, affirmed that *"State authority is limited by the fundamental rights within the framework of the law. [...] There is a right to resist laws that violate morality and humanity."*[326]

Evidence is though present on the participation of American representatives, together with the French and British ones, in the drafting of the Basic Law. More importantly, an American influence was explicit later. For the Allies, the devolution of full sovereignty to West Germany was conditional to the introduction of some emergency clauses in the German constitutional text. Such clauses were gradually included in the following years, with a first revision held in 1955 and allowing the establishment of a military body to protect the country in case of invasion.[327] In 1968, a major amendment, promoted by Chancellor Kurt Georg Kiesinger and his First Grand Coalition between the Christian Democrats and the Socialists, caused numerous disagreements in and out of the Parliament. Carl Christoph Schweitzer commented in 1969 on some of the main issues of the new constitutional reform, highlighting the need for German politicians to address both external and internal emergencies. Especially in this last category, there would be the need to provide guarantees against a *"threat to the integrity of a free and democratic order of the Federal Republic or any of her states"*[328], on which the provision on the right to resist would fall. The author recognised that ambiguities on the reform had to be solved with further legislation, as well as a number of restraints on the action of the executive in case

[324] Constitution of Hesse (December 1, 1946): Art. 147(1). English translation available at https://en.wikisource.org/wiki/Translation:Constitution_of_the_State_of_Hesse#VII._The_justice

[325] Landesverfassung Der Freien Hansestadt Bremen (October 21, 1947): Art.19. German transcription available at http://www.dircost.unito.it/cs/pdf/19471021_germaniaBrema_ted.pdf

[326] Verfassung Für Die Mark Brandenburg (January 31, 1947): Art. 6. German transcription available at http://www.dircost.unito.it/cs/pdf/19470131_germaniaBrandeburgo_ted.pdf

[327] Basic Law for the Federal Republic of Germany in the revised version published in the Federal Law Gazette Part III, classification number 100-1, as last amended by the Act of 19 December 2022 (Federal Law Gazette I p. 2478): Art.87a. English translation available at https://www.gesetze-im-internet.de/englisch_gg/index.html#gl_p0459

[328] Schweitzer, C.C., "Emergency Powers in the Federal Republic of Germany", The Western Political Quarterly, Vol. 22, No. 1 (March 1969): 119

of an internal emergency should have been considered.[329] Although these criticisms were highly spread within the debates on the amendment, the project was approved on May 30, including in Article 20(4) the following provision: *"All Germans shall have the right to resist any person seeking to abolish this constitutional order if no other remedy is available."*[330] Moreover, Article 79(3) affirms the inadmissibility of any amendment or removal of the principles stated in Articles 1 and 20, thus including the right to resist.[331]

Although Germany's codification of the right to resist does not directly spring from the experience of the Second World War, but rather from a sort of international imposition by the Allies, there is no doubt that the debate on the 1968 Emergency Laws shares similarities with the debates within the French and Italian Constitutional Assemblies. More widely, the right to resist occupied a prominent role among the principles and values that characterised the democratisation of these countries. Similarly to this Second Wave of democratisation, as in the classification by Samuel P. Huntington,[332] the Third Wave promoted the same ideas, with the right to resist continuing to represent a central feature of the newly established regimes. This way, the Greek people, exiting a dictatorship that lasted seven years, decided in December 1974 for a republican form of government, and in 1975 the Fifth Revisionary Parliament drafted a Constitution whose Article 120 embodies better than many other constitutional texts the real meaning of resistance, in a well-balanced expression of the duty to protect democracy against any kind of usurpation or unlawful authority and patriotism. Here, it is worth quoting the entire disposition, and not only the last paragraph, which explicitly mentions the right to resist:

> (2) Respect towards the Constitution and the law concurrent thereto, and devotion to the Fatherland and to Democracy constitute a fundamental duty of all Greeks. (3) Usurpation, in any way whatsoever, of popular sovereignty and of powers deriving therefrom shall be prosecuted upon restoration of the lawful authority; the limitation from which punishment for the crime is barred shall begin as of the

[329] Schweitzer, C.C.:120-121
[330] Basic Law for the Federal Republic of Germany: Art.21(4).
[331] Basic Law for the Federal Republic of Germany: Art.79(3).
[332] Huntington, S.P., "Democracy's Third Wave", *Journal of Democracy* (Spring 1991): 12-34. The author classifies three main waves of democratisation: the first one of the nineteenth century, the second one resulting from the Second World War and the third one starting in the mid-1970s. We can clearly observe that with the second wave the right to resist met increasing popularity.

> restoration of lawful authority. (4) Observance of the constitution is entrusted to the patriotism of the Greeks who shall have the right and the duty to resist by all possible means against anyone who attempts the violent abolition of the Constitution.[333]

Simultaneously, the Carnation Revolution in Portugal led the army to a bloodless uprising that overthrew Caetano's regime and a consequent popular civil resistance that resulted in a new constitutional process, starting with the elections of April 25, 1975. The following year, the Constituent Assembly promulgated a new Portuguese Constitution, with numerous references to resistance. Already in the first lines, the long resistance of the *Movimento das Forças Armadas* and the popular riots against the fascist government and its dictatorship are celebrated.[334] Then, Article 7(3) links the principles of self-determination and independence to the issue of oppression, declaring a right of insurrection.[335] Article 21 is more explicit, indicating that *"everyone has the right to resist any order that infringes their rights, freedoms or guarantees and, when it is not possible to resort to the public authorities, to use force to repel any aggression."*[336] Reading so, the Portuguese Constitution distinguishes at least three kinds of resistance, namely: resistance against an authoritarian regime, threatening the regular constitutional order; resistance against the violation of personal rights, including human rights; resistance against an external aggression or occupation. This last point appears as a new shade of the right to resist and will be analysed more in-depth in the next chapter, with the codification of resistance in international law.

Although Huntington does not discuss the democratic transition of Eastern Europe, resulting from the collapse of the Soviet Union in the 1990s, several scholars include these processes in the Third Wave.[337] Here again, the right to resist plays a fundamental role in the constituent process of the newly independentized countries. Regarding the Baltic countries, the events of

---

[333] The Constitution of Greece, as revised by the parliamentary resolution of May 27th 2008 of the VIIIth Revisionary Parliament (May 27th, 2008): Art.120. English translation available at https://www.hellenicparliament.gr/UserFiles/f3c70a23-7696-49db-9148-f24dce6a27c8/001-156%20aggliko.pdf

[334] Constitution of the Portuguese Republic, as in the Seventh revision of 2005. The Preamble writes: *"On the 25th of April 1974 the Armed Forces Movement crowned the long resistance and reflected the deepest feelings of the Portuguese people by overthrowing the fascist regime."*. English translation available at https://www.parlamento.pt/sites/EN/Parliament/Documents/Constitution7th.pdf

[335] Constitution of the Portuguese Republic: Art.7(3): *"Portugal recognises peoples' rights to self-determination and independence and to development, as well as the right of insurrection against all forms of oppression."*

[336] Constitution of the Portuguese Republic: Art.21

[337] Haggard, S., Kaufman, R.R., "Democratization During the Third Wave", *Annual Review of Political Science,* Vol. 19 (2016): 125-144

the Singing Revolution enriched the concept of resistance with the element of non-violence: in Estonia, the renewal of a nationalistic sentiment was accompanied by the rediscovery of traditional patriotic songs, banned during the Soviet occupation, with the consequent mass demonstrations of the Tartu Pop Music Festival in May 1988. With the demonstrations continuing in the following months, political leaders started advocating for independence, and eventually obtained it in August 1991 without bloodshed. The Constitution promulgated during the following year dedicates Article 54 to the loyalty to the Constitution and the right to resist an unlawful rule, establishing once again a link between patriotism and defence of the constitutional order:

> An Estonian citizen has a duty to be loyal to the constitutional order and to defend the independence of Estonia. If no other means are available, every Estonian citizen has the right to initiate resistance against a forcible change of the constitutional order.[338]

Lithuania followed a similar cultural renaissance, this time centralised in the so-called *Sąjūdis*, an environmental movement that soon rejected the processes of *perestroika* and *glasnost* in favour of a greater autonomy. Again, the act of playing national forbidden songs, including Western ones, constituted an explicit act of nonviolent defiance that led to the independence of the country in 1990.[339] The 1992 Constitution follows the same intentions as the Estonian one, linking the independence of the newborn country and the right to resist any foreign occupation:

> No one may restrict or limit the sovereignty of the Nation or make claims to the sovereign powers belonging to the entire Nation. The Nation and each citizen shall have the right to resist anyone who encroaches on the independence, territorial integrity, and constitutional order of the State of Lithuania by force.[340]

---

[338] Constitution of Estonia, as amended in 2015: Art. 54. English translation available at https://adsdatabase.ohchr.org/IssueLibrary/Estonia_Constitution.pdf

[339] On the significance of Arts in the Lithuanian Singing Revolution, see Martinelli, D., "The Lithuanian Singing Revolution as Cultural Heritage and source of Soft Power", *Proceedings of the World Congress of the IASS/AIS, 12th WCS Sofia 2014 New Semiotics. Between Tradition and Innovation* (2014). Accessible at https://doi.org/10.24308/iass-2014-072

[340] Constitution of Lithuania, as amended in 2006: Art. 3. English translation available at https://www.constituteproject.org/constitution/Lithuania_2006

Differently from its neighbours, the Latvian Constitution did not adopt in its original version an explicit provision on the right to resist. In 2014, the Parliament approved and included a Preamble drafted by European Court of Justice judge and future Latvian President Egils Levits. The text also referred to the struggle of Latvian people during its War of Liberation in the late-1910s, stating that *"the people of Latvia did not recognise the occupation regimes, resisted them and regained their freedom by restoring national independence on 4 May 1990 on the basis of continuity of the State."*[341]

Still in 1992, the two main entities of Czechoslovakia agreed to a smooth partition into two independent States, which entered into force in 1993. The Constitution of the newborn Slovakia was prepared quickly, taking inspiration from the 1920 Czechoslovak Constitution in many passages. However, the new Constitution included a right to resist in Article 32, which reads as follows:

> The citizens shall have the right to resist anyone who would abolish the democratic order of human rights and freedoms set in this Constitution, if the activities of constitutional authorities and the effective application of legal means are restrained.[342]

Differently from the other cases, the Slovak provision stresses the exceptional character of resistance, to be invoked only after any other lawful means of enforcement of the Constitution fails. This way, the right to resist is confirmed as a last resort against a serious violation of the constitutional order of the State, and not as a regular procedure to deal with any case.

Parallelly to the European scenario, Latin American countries got involved in a similar process of codification of the right to resist during the twentieth century. As we anticipated at the start of the Chapter, the deep meaning of the new emerging provisions on the right to resist in Latin America is many times opposite to the cases we analysed until now. What these examples

[341] The Constitution of the Republic of Latvia, as updated on June 19, 2014: Preamble. English translation available at https://www.saeima.lv/LapasEnglish/Constitution_Visa.htm
[342] Constitution of the Slovak Republic, as revised in 2017: Art. 32. English translation available at https://www.prezident.sk/upload-files/46422.pdf

reveal is from one side the presence of a similar conservative element associated with the right to resist; on the other side, this conservative feature has not always served democratic values. As argued by Ginsburg et al.:

> there might be circumstances under which constitutionmakers desire to protect and legitimate the past rather than avoid repeating it in the future. In these instances, the right to resist is commandeered into serving a darker purpose: the ex post legitimation of otherwise illegal actions wherein undemocratic coupmakers, caudillos, or commanders have overthrown the previous constitutional order.[343]

This is the case of 1945 Guatemala, where the new military regime that overthrew Jorge Ubico's dictatorship quickly drafted a new Constitution, whose Article 50 stated that *"[a]dequate resistance for the protection of the individual rights [...] is legitimate."*[344] In this case, it is evident that the new military regime of Guatemala used this provision on resistance to legitimate its own resistance against Ubico's regime. In the long civil war that Guatemala suffered during the second half of the century, references to resistance have not disappeared. In 1982 military officer Efraín Ríos Montt gained power and drafted a new Constitution whose Preamble legitimated the Army's action as an expression of the people's will.[345] Later, the current Constitution of Guatemala included an explicit reference to resistance in Article 45, declaring that *"the resistance of the people for the protection and defense of the rights and guarantees granted in the Constitution is legitimate."*[346]

Another example is provided by Venezuela, with the striking case of a democratically elected leader who replaced the original Constitution with a new one aimed at justifying his earlier actions. Hugo Chavez attempted in 1992 a coup against former President of Venezuela Carlos

---

[343] Ginsburg, T., Lansberg-Rodriguez, D., Versteeg, M: 1212.
[344] Constitución Política De Guatemala (March 11, 1945): Art. 50, as cited in Ginsburg, T., Lansberg-Rodriguez, D., Versteeg, M: 1215.
[345] Constitución Política De Guatemala (1982): Preamble, as cited in Ginsburg, T., Lansberg-Rodriguez, D., Versteeg, M: 1250 : *"the Army of Guatemala, in fulfillment of its obligations to the Nation, echoing the feelings of the people and seeking to safeguard the national honor, deposed the ruling regime, the outgrowth of a system completely oblivious of legality that brought the country into a state of anarchy and international isolation which with disregard of human life, of honesty in the management of public affairs, and of the rights of citizens, culminated in an election vitiated by fraud."*
[346] Constitución Política De Guatemala of 1985, as revised in 1993: Art. 45. English translation available at https://www.constituteproject.org/constitution/Guatemala_1993

Andres Perez. After serving in jail for some years, Chavez took advantage of the wave of popularity he gained among the Venezuelan people against the corruption of Perez, eventually winning the presidential elections of 1998. The following year, a new Constitution was drafted to replace the one of 1961. Article 350 declares that:

> The people of Venezuela, true to their republican tradition and their struggle for independence, peace and freedom, shall disown any regime, legislation or authority that violates democratic values, principles and guarantees or encroaches upon human rights.[347]

Although not directly mentioning a right to resist, Article 350 allows individuals to react to any act that denies the Venezuelan constitutional order. Clearly, the adoption of such provision contrasts with the attempts of Chavez to subvert these same democratic values in 1992.

In conclusion, the twentieth century represented a golden age for the codification of the right to resist, in multiple forms. On one side, European countries exiting from dictatorships found in the insertion of the right to resist in their new constitutional texts a safety clause for protecting the newborn democratic regimes. This is particularly true for those countries that directly experienced a form of totalitarianism, namely Italy, Germany and Eastern European countries. It is worth noticing that, apart from the case of occupied France, other countries that suffered an occupation did not always feel the need to protect their pre-existing regimes with new provisions, as in the case of Belgium, The Netherlands or Norway.[348] On the other side, numerous Latin American countries undertook a similar process of codification. Although formally serving the cause of democracy and respect of human rights, it is more likely that in Latin America the right to resist has been instrumentalised as a way to legitimise emerging military and authoritarian regimes.

---

[347] Constitution of the Bolivarian Republic of Venezuela, with amendments through 2009: Art. 350. English translation available at https://aceproject.org/ero-en/regions/americas/VE/venezuela-constitution-english-amended-2009/view

[348] It is though necessary to highlight how their stories are not completely foreign to the topic. Many studies have been done on the cases of resistance against the Nazi occupation. For example, a more detailed history of the Norwegian case is provided in Zezza, S., "Norway: A country dealing with its past. Reflections on civilian resistance in Norway during Second World War", *Trauma and Memory*, 3(3), (2015): 98-109

ii. Does a right to resist exist in international law?

Until now, a theoretical and constitutional history of the right to resist has been presented, underlining a considerable number of debates and juridical solutions for the recognition of this right. This discussion merely focused on an intrastate development, principally due to the same unwritten nature of international law until recent times. Although a strong impulse towards codification took place in the twentieth century, especially during the United Nations period, still explicit provision on a right to resist is lacking, except from some vague references in universal treaties and two very recent recognitions in regional treaties. Moreover, it must be recognised that the international arena presents substantial differences from the national one, reason why a hypothetical right to resist in international law must be adapted to these peculiarities. For example, we might wonder whether the use of the concepts of 'tyranny' and 'authoritarian regime' is compatible with an internationally recognised right to resist, especially considering the principle of non-intervention stated in the UN Charter.[349] In addition, if States are apparently refrained from interfering in other States' affairs, who are the right-bearers of a right to resist? Is a vague subject as the 'people' clear enough in international law? Again, old issues, such as the reluctance to codify this right, reemerge, and new problems make their first appearance, such as the relation of a right to resist with the *ius cogens*.

It is important to note that the topic received considerable attention from prominent scholars, commenting which characteristics this right would have in international law, or how a right to resist could be built from the existing sources. For the purposes of this research, we will avoid a broad discussion on a juridical work of extreme importance, but still fragile due to the lack of jurisprudence and legal cases that could better clarify the issue. Instead, this chapter presents some of the most explicit references to a right to resist in universal and regional treaties, as well as its presence in the drafting processes of the *Universal Declaration of Human Rights* and the *UN Declaration on the Right to Peace*. In some cases, the reader will be provided with a brief commentary of some scholars' arguments, to show the extent of the debate, but rarely we will try to force this discussion, leaving the topic to a more juridically-oriented investigation.[350]

---

[349] United Nations Charter (June 26, 1945): Chapter I, Art. 2(4). Accessible at https://www.un.org/en/about-us/un-charter

[350] In this regard, a detailed research on the right to resist in international law can be found in Murphy, S., *The Human Right to Resist in International and Constitutional Law*, PhD thesis submitted to Middlesex University (June 2018). The author adopts a framework that analyses which features a right to resist would have in international

The first traces of a right to resist in international law can be found in the seventeenth-century development of a just war theory, in particular in the formulations given by Hugo Grotius and the already discussed Emer de Vattel. Although not codified, several scholars argue that a right to resist was already present in customary international law, as indicated by Quincy Wright, writing that *"the political right of revolution, the legal right of recognition, and the policy of recognizing de facto governments [...] were increasingly recognized by all states during the nineteenth century [...]"*.[351] A further development can be found in the League of Nations Covenant: Hans Kelsen argues that the formulation used in Article 10 of the text, and in particular the stress on the "external aggression" would indicate an implicit recognition of a right of revolution,[352] although the reasoning seems constrained. However, such claims give strength to the idea that an established custom legitimating resistance would have existed and still exists today in accordance with the principle of continuity. More recently, also lawyers Hersch Lauterpacht and Mahmoud Cherif Bassiouni suggested the existence of a right to resist as a general principle,[353] whereas jurist Monique Chemillier-Gendreau argued that the right is recognised in the enforcement of self-defence, self-determination and human rights by the UN Charter, as well as by the Preamble of the Universal Declaration.[354]

These two documents provide important insights for the topic, especially when we consider them as having a sort of constitutional nature applied to the international arena. The parallelism is not based on a simple assumption: the Universal Declaration had been directly inspired by some of the documents already examined in the previous chapters. In a speech delivered during the General Assembly held in Paris, Eleanor Roosevelt referred to the document as *"the international Magna Carta of all men everywhere",*[355] a Charter that has been alive in the anglophone world for more than seven centuries at the time. Then, she continued:

---

law, highlighting its subjectivity (as indicated by the author, "right-bearers" and "duty-bearers"), and the conditions that can trigger its application.

[351] Wright, Q., "Recognition and Self-Determination", *Proceedings of the American Society of International Law at Its Annual Meeting* (1921-1969), Vol. 48, The Development of International Law 1914-1954 (April 22-24, 1954): 27

[352] Kelsen, H., *Peace Through Law,* University of North Carolina Press (1944): footnote at 52-53

[353] Murphy, S.: 157

[354] Chemillier-Gendreau, M., as cited in Murphy, S.: 153

[355] Roosevelt, E., *On the Adoption of the Universal Declaration of Human Rights,* speech delivered in Paris (December 9, 1948): par. 11 Transcription and audio accessible at https://www.americanrhetoric.com/speeches/eleanorrooseveltdeclarationhumanrights.htm

> We hope its proclamation by the General Assembly will be an event comparable to the proclamation of the Declaration of the Rights of Man by the French people in 1789, the adoption of the Bill of Rights by the people of the United States, and the adoption of comparable declarations at different times in other countries.[356]

Thus, there is a clear inspiration from those documents that played a main role during the Early Modern Era, in many cases with the direct transfer of some human rights from the revolutionary documents of the eighteenth century to the Universal Declaration itself. Apparently, this transfer did not include the right to resist, at least explicitly. However, analysing more in-depth the drafting process of the 1948 Declaration, it is possible to find two explicit proposals to include a right to resist. This is the case of the original Secretariat Draft Declaration by John P. Humphrey, whose Article 29 reads: *"Everyone has the right, either individually or with others, to resist oppression and tyranny."*[357] In a later stage, representative of France René Cassin submitted some modifications. Article 25 of this draft indicates that *"when a government seriously or systematically tramples the fundamental human rights and freedoms, individuals and peoples have the right to resist oppression and tyranny, without prejudice to their right of appeal to the United Nations."*[358] In the evolution of the proposal, the second formulation results more precise about the conditions that would justify resistance, in this case enclosed in the systematic and serious violation of fundamental human rights. On the subjectivity of the right, both provisions recognise either single individuals or groups as right-holders. Eventually, the proposal was withdrawn, before a negative vote could reject the proposal. Instead, an obscure reference was included in the Preamble of the final Declaration, which states: *"Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law, […]."*[359] The implications of such modification are wider than a simple absence of the right to resist: resistance ceases to be a right *per se,* becoming more of a recourse or a self-help

[356] Roosevelt, E.: par. 11
[357] Draft Outline of International Bill of Rights (prepared by the Division of Human Rights)' UN Doc E/CN.4/AC.1/3 (04 June 1947): Art. 29. Accessible at https://documents.un.org/doc/undoc/gen/ng9/000/25/pdf/ng900025.pdf
[358] International Bill of Rights: Revised Suggestions for Articles of the International Declaration of Rights/Submitted by the Representative of France (June 20, 1947): Art. 25. Accessible at https://documents.un.org/doc/undoc/gen/ng9/001/64/pdf/ng900164.pdf
[359] Universal Declaration of Human Rights (December 10, 1948): Preamble. Accessible at https://www.un.org/en/about-us/universal-declaration-of-human-rights

remedy to be used in a condition of absence of rights.[360] In addition, the use of the term *rebellion* may suggest that recourse to forceful means may be considered as a last resort.[361] The idea of an unenumerated right in international law can also be enforced by the 1966 *International Covenant on Civil and Political Rights*, more precisely in the right to political participation in Article 25 and in the right of peaceful assembly of people in Article 21. This last article also declares that *"no restrictions may be placed on the exercise of this right other than those imposed in conformity with the law",*[362] making wonder whether a restriction unlawfully imposed may trigger resistance. Moreover, Article 2(3)(a) recognises *'an effective remedy'* to any violations of human rights and freedom, and not explicitly limiting such remedy to legal solutions it seems not to exclude self-help.[363] Although not tested in any international judicial case by today, these theories may strengthen the idea of an *International Bill of Rights* recognising a natural right to resist.

The second legal source of an internationally recognised right to resist is believed to be in the *UN Charter*, according to the interpretation given to the UN General Assembly Resolution 2625. Although General Assembly Resolutions are not binding, they provide an authoritative interpretation of international law. Moreover, in the specific case of Resolution 2625, adopted by consensus, it may even represent evidence of a customary nature for the right to resist. The resolution adopts seven principles, whose fifth on equal rights and self-determination of peoples reads:

> Every State has the duty to refrain from any forcible action which deprives peoples referred to above in the elaboration of the present principle of their right to self-determination and freedom and independence. In their action against, and resistance to, such forcible action, in pursuit of the exercise of their right to self-

[360] Taulbee, J.L., "Political Crimes, Human Rights and Contemporary International Practice", (1990), as cited in Murphy, S.: 177
[361] Murphy, S.: 175
[362] International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976), UNGA Res 2200A (XXI) UN Doc A/6316 (1966): Art. 21
[363] Murphy, S.: 198-199

> determination, such peoples are entitled to seek and to receive support in accordance with the purposes and principles of the Charter.[364]

Later, UN General Assembly Resolution 3314 declares in its Article 7:

> Nothing in this Definition [of Aggression] [...] could in any way prejudice the right to self-determination, freedom and independence, as derived from the Charter, of peoples forcibly deprived of that right and referred to in the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, particularly peoples under colonial and racist régimes or other forms of alien domination: nor the right of these peoples to struggle to that end and to seek and receive support, in accordance with the principles of the Charter and in conformity with the above-mentioned Declaration.[365]

Both Resolutions may implicitly recognise a right to resist, meant as a right to self-determination and even rebellion, as an exception to the general prohibition of violence provided in Article 2(4) of the UN Charter. This view is enforced by scholars, with Cassese arguing that a custom has been evolving, according to which:

> If peoples subjected to colonial domination or foreign occupation, as well as racial groups not represented in government, forcibly denied the right to self-determination, such peoples or racial groups are legally entitled to resort to armed force to realize their right to self-determination.[366]

One of the best-reasoned arguments on the existence of a right to resist in international law involves a duty to disobey orders when they imply the commitment of an international crime. Principle VII of the so-called *Nuremberg Principles* declares that *"complicity in the commission of a crime against peace, a war crime, or a crime against humanity as set forth in Principle VI is*

[364] UNGA, "Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations", UNGA Res 2625 (XXV) (24 October 1970): 124.
[365] UNGA, "Definition of Aggression", UNGA Res 3314(XXIX) (14 December 1974): Art. 7
[366] Cassese, A., *International Law*, 2nd ed., Oxford University Press (2005): 374

a crime under international law."[367] More importantly, Principle IV states that *"the fact that a person acted pursuant to order of his Government or of a superior does not relieve him from responsibility under international law, provided a moral choice was in fact possible to him."*[368] This last principle appears as a denial of an absolute duty to obey whatever order, if it constitutes an international crime, and it might suggest a consequent duty to disobey (or resist) such orders. Even though Principle VII mentions a vague *'complicity'*, without explicitly listing planification, instigation or omission, it provides a clear idea of the actions that constitute an international crime and clearly condemns them. Linked to the topic of international crimes, the 1998 *Rome Statute,* which established the International Criminal Court, reiterates the criminal responsibility of individuals in Article 33(1). The text reads:

> The fact that a crime within the jurisdiction of the Court has been committed by a person pursuant to an order of a Government or of a superior, whether military or civilian, shall not relieve that person of criminal responsibility unless: (a) The person was under a legal obligation to obey orders of the Government or the superior in question; (b) The person did not know that the order was unlawful; and (c) The order was not manifestly unlawful.[369]

The used language indicates that for the individual to be relieved of criminal responsibility all three conditions simultaneously should be respected. Therefore, a single missing criterion would deny an absolute duty to obey, implicitly recognising a right/duty to resist unlawful orders.

Moving from the universal human rights system to the regional one, it is possible to find more explicit provisions on the right to resist, namely in the 1986 *African Charter on Human and Peoples Rights* and the more recent 2004 *Arab Charter on Human Rights*. The first instrument affirms in Article 20(2) that *"colonized or oppressed peoples shall have the right to free themselves from the bonds of domination by restoring to any means recognized by the*

[367] Cassese, A. "Affirmation Of The Principles Of International Law Recognized By The Charter Of The Nürnberg Tribunal", United Nations (2009): 4
[368] Cassese, A. "Affirmation Of The Principles Of International Law Recognized By The Charter Of The Nürnberg Tribunal": 3
[369] Rome Statue of the International Criminal Court (July 17, 1998): Art. 33

international community."[370] Again, we find ourselves in front of a provision that has not been applied to any judicial case, therefore being open to further interpretation. As it is by now, the right recognised in the African Charter seems to be linked to the UN Charter as interpreted by UNGA Resolution 2625, affirming a right to self-determination. It is a mutual connection, since the African Charter itself stresses that 'any means' recognized in international law are applicable, returning to all the considerations on the admissibility of forcible measures as a last resort. The second instrument, the *Arab Charter on Human Rights*, declares in Article 2(4) that *"all peoples have the right to resist foreign occupation."*[371] This provision appears more concise than the African one, without any specifics on the conditions that could trigger resistance.

Finally, the last source we can mention is an instrument of soft law, more specifically contained in Article 7 of the draft of the UN Declaration on the Right to Peace. It is important to stress that soft law is not as binding as the so-called hard law. This does not mean that soft law is completely useless, especially when we consider that soft law can gradually evolve in more established provisions, or even in customs. For this reason, analysing the drafting works of the UN Human Rights Council on the Declaration on the Right to Peace is significant to assess to which degree the right to resist is discussed in international law. In particular, the draft proposed by the Advisory Committee in its Article 7(1) declared that *"all peoples and individuals have the right to resist and oppose oppressive colonial, foreign occupation or dictatorial domination (domestic oppression)."*[372] In addition, Article 7(2) stated that *"everyone has the right to oppose aggression, genocide, war crimes and crimes against humanity, violations of other universally recognized human rights, and any propaganda in favour of war or incitement to violence and violations of the right to peace."* [373] This last provision would have established a direct link with the previously discussed duty to disobey orders which would result in the commitment of international crimes, especially in relation to Article 5(2), which explicitly stated: *"Members of any military or other security institutions have the right to disobey orders that are manifestly contrary to the above-mentioned principles and norms. The duty to*

[370] African Charter on Human and Peoples Rights, Organisation of African Unity (October 21, 1986): Art. 20(2)
[371] Arab Charter on Human Rights, League of Arab States (May 22, 2004): Art.2(4). Translation from Arabic available at https://digitallibrary.un.org/record/551368?v=pdf
[372] UNGA, "Report of the Human Rights Council Advisory Committee on the right of peoples to peace", Twentieth session, Agenda item 5 (April 16, 2012): Art. 7(1)
[373] UNGA, "Report [...] on the right of peoples to peace": Art. 7(2)

obey military superior orders does not exempt from the observance of these obligations, […]".[374] None of the above-cited articles obtained the full support of States and were eventually removed from the final version of the document. However, the presence of such proposal highlights once again the relevance of the debates surrounding a hypothetical internationally recognised right to resist. In particular, this last proposal would have given an authoritative interpretation of the UN Charter, other than representing codified law of the right.

In conclusion, the inclusion of a right to resist in international law has been discussed even before the United Nations period. However, it is in the last seventy years that the topic gained importance among scholars, trying to interpret treaties and assess its presence even when not explicitly codified, at least as an unenumerated right or as a custom. Although the lack of jurisprudence on the right to resist and the reluctance of States to clarify the topic contribute to its shadowing, it is possible to observe a growing interest for the matter, parallel to its growing codification in national constitutions.

[374] UNGA, "Report […] on the right of peoples to peace": Art. 5(2)

V. Conclusions

As it has been previously shown, the discussion around the presence of a right to resist in national and international legal systems cyclically returns in the discipline. Also this research is part of a renewed attention for the topic, especially in consideration of the emergence of civil movements seeking their goals through civil disobedience, or peoples struggling for their freedom in authoritarian regimes. On this last matter, which is also our specific object of study, a seminal pamphlet on nonviolent resistance by Gene Sharp, titled *From Dictatorship to Democracy,* has been translated in several languages and widely influenced various developments towards a resistant outcome.[375] Originally written in 1993 at the request of Tin Maung Win, exile Burmese democrat and editor of *Khit Pyaing*, the essay aimed at summarising forty years of research on nonviolent resistance. Instead of writing on the Burmese specific case, Sharp preferred delivering a more generic analysis, potentially applicable to any case. First published in instalments in the same *Khit Pyaing* in English and Burmese, the following editions spread surreptitiously among exiles and sympathizers abroad and, more surprisingly, without any support of the author, up to the point that the same editing staff ignores how the pamphlet reached such a widespread popularity. Among the most relevant examples of the essay's influence, we can mention the 1997 Indonesian edition, which was the result of the autonomous work of a student who translated the English edition; the Serbian one, curated by the organisation *Civic Initiative*, and recognised as highly influential among the opposers of Milosevic regime; the Arabic one, whose nonviolent methods were repeatedly cited during the Arab Spring, and especially during the Egyptian Revolution, as confirmed by founder of the April 6 Youth Movement Ahmed Maher.[376] Sharp's investigation has definitely constituted one of the first inspirations for this dissertation, even though it has not been mentioned until now. Although he did not explicitly discuss about a right to resist, the extent of his research and the impact he had worldwide suggests the importance of such right as a reality, despite States' reluctance to codify it.

[375] Sharp, G., *From Dictatorship to Democracy: A Guide to Nonviolent Resistance,* The Albert Einstein Institution, Fourth Edition (May 2010).

[376] A brief history of the essay is given in Sharp, G.: Appendix 2, 87-90. See also Mackai M., "Gene Sharp: A dictator's worst nightmare", *CNN World* (June 25, 2012). Last accessed on September 7, 2024 at https://edition.cnn.com/2012/06/23/world/gene-sharp-revolutionary/index.html

The pace of adoption of the right to resist in national constitutions has certainly declined. Nonetheless, still a recent case may be quickly mentioned: in April 2012, Hungary equipped itself with a right to resist, which legitimates resistance against anyone *"with the aim of acquiring or exercising power by force, or of exclusively possessing it."*[377] Ironically, this constitutional amendment has been proposed and approved during the conservative rule of Viktor Orbán, frequently accused of slowly eroding Hungarian democracy and freedom. However, the real significance of resistance still survives, as other cases prove: during the funerals of Alexei Navalny, protestor and opposer of Vladimir Putin's authoritarian regime in Russia and presumably murdered under the orders of the regime itself, a multitude of people participated to the event, ignoring authorities' prohibition based on supposed "Covid-19 restrictions".[378] No further signal demonstrates that this could have been the start of a wider movement of defiance in Russia, but surely it can be included among the traditional practices of resistance against an unjust authority.

Turning our attention back to this research, three conclusions can be listed: first and foremost, despite being periodically neglected, the right to resist has a rich history of theoretical development and constitutional codification, equal to all other fundamental human rights. Its non-codification can be explained by a common misassumption according to which a right to resist equals a right of revolution, therefore undermining the stability of the system. This argument had been used in several historical cases, also due to a switch of meaning of the same concept of revolution between the seventeenth and the eighteenth centuries. This misinterpretation took place especially during the nineteenth century, with the terroristic degeneration, and completely unfolded in the French and Italian constitutional debates during the 1940s.

This issue brings us to the second conclusion: *revolution* and *resistance* are two distinct concepts, although commonly mistaken. While the former aims at a complete regime change, the latter aims at a conservation of the system *in extremis*. Consequently, the two respective rights refer to two opposed phenomena. This does not mean that the two concepts are totally

[377] Constitution of Hungary, as revised in 2016: Art. C(2). English translation available at https://www.constituteproject.org/constitution/Hungary_2016

[378] Davies, K.M., Litvinova, D., "Putin foe Alexei Navalny is buried in Moscow as thousands attend under a heavy police presence", *AP News* (March 1, 2024). Last accessed on August 30, 2024 at https://apnews.com/article/russia-alexei-navalny-funeral-9263c4d0688b883fa9f853f5d0310e45

isolated. Many times, a revolution emerges from a frustrated resistance, especially when the only solution that comes to mind to demonstrators is a radical change of fundamental rules and values that do not guarantee a system of justice anymore. The Atlantic Revolutions are an exemplary study case, showing not only the very different strategy used during the resistant phase and the revolutionary one, but also the reluctancy of many demonstrators to switch from a phase to another when the former proved to produce no result.

Third, as a consequence of the previous two conclusions, it is possible to argue that the right to resist is totally compatible with democratic regimes, even consolidating these systems. Again, last century's codification processes proved that the right to resist has not destabilised in any way European countries that decided to adopt it. Different is the case of Latin America, where many other elements may though contribute to the fragility of those regimes. Moreover, the right to resist may have interesting implications in international law: as discussed, an internationally recognised right to resist is linked to the issues of self-determination and last resort enforcement of human rights, but it can also suggest caution when it comes to international crimes, recognising that, despite their semblance, not all orders are lawful, and therefore they can be resisted. This way, resistance can become an insurance against any kind of tyrannical, authoritarian or simply unjust rule of a regime, rectifying politics on a path of justice and respect of fundamental rights.

References

Primary Sources

Act of Abjuration (July 26 1581). English translation taken from Thatcher, O.J., *The Library of Original Sources*, Milwaukee: University Research Extension Co., Vol. 5: 9th to 16th Centuries (1907): 189-197, accessible at https://www.age-of-the-sage.org/history/dutch_independence_1581.html

African Charter on Human and Peoples Rights, Organization of African Unity (October 21, 1986)

Arab Charter on Human Rights, League of Arab States (May 22, 2004). Translation from Arabic available at https://digitallibrary.un.org/record/551368?v=pdf

Assemblea Costituente, "Testo definitivo del Progetto di Costituzione elaborato dalla Commissione" (January 31, 1947): Art. 50, p. 2. Accessible at https://www.nascitacostituzione.it/02p1/04t4/054/index.htm?art054-999.htm&2

Assemblea Costituente, Atti dell'Assemblea Costituente, Discussioni, Vol.IV-V

Assemblée constituante, Projet de constitution du 19 avril 1946 (April 19, 1946): Art. 21. French transcription available at https://mjp.univ-perp.fr/france/co1946p.htm#:~:text=Le%20principe%20de%20toute%20souveraineté,%2C%20soit%20qu'elle%20oblige.

Badshah, N. "Protesters claim to 'seize' Edinburgh Castle citing Magna Carta", *The Guardian* (August 17th, 2021). Accessed at https://www.theguardian.com/uk-news/2021/aug/17/protesters-claim-to-seize-edinburgh-castle-citing-magna-carta on April 2nd, 2024

Bakunin, M., Statism and Anarchy, (1873), Translation by Marshall S. Shatz, Cambridge: Cambridge University Press (1990)

Barclay, W., *De Regno et Regali Potestate adversus Buchananum, Brutum, Boucherium, et reliquos Monarchomacos*, Paris (1600)

Basic Law for the Federal Republic of Germany in the revised version published in the Federal Law Gazette Part III, classification number 100-1, as last amended by the Act of 19

December 2022 (Federal Law Gazette I p. 2478). English translation available at https://www.gesetze-im-internet.de/englisch_gg/index.html#gl_p0459

Beza, T., *Du droit des magistrats sur leurs sujets* (1574). Translation by Henry-Louis Gonin, accessible at https://www.yorku.ca/comninel/courses/3020pdf/Beza.pdf

Cassese, A. "Affirmation Of The Principles Of International Law Recognized By The Charter Of The Nürnberg Tribunal", United Nations (2009)

Charter of Georgia (1732), Accessible at https://avalon.law.yale.edu/18th_century/ga01.asp

Constitución Política De Guatemala of 1985, as revised in 1993. English translation available at https://www.constituteproject.org/constitution/Guatemala_1993

Constitution of Estonia, as amended in 2015. English translation available at https://adsdatabase.ohchr.org/IssueLibrary/Estonia_Constitution.pdf

Constitution of Greece, as revised by the parliamentary resolution of May 27th 2008 of the VIIIth Revisionary Parliament (May 27th, 2008). English translation available at https://www.hellenicparliament.gr/UserFiles/f3c70a23-7696-49db-9148-f24dce6a27c8/001-156%20aggliko.pdf

Constitution of Hesse (December 1, 1946): Art. 147(1). English translation available at https://en.wikisource.org/wiki/Translation:Constitution_of_the_State_of_Hesse#VII._The_justice

Constitution of Hungary, as revised in 2016: Art. C(2). English translation available at https://www.constituteproject.org/constitution/Hungary_2016

Constitution of Lithuania, as amended in 2006. English translation available at https://www.constituteproject.org/constitution/Lithuania_2006

Constitution of the Bolivarian Republic of Venezuela, with amendments through 2009. English translation available at https://aceproject.org/ero-en/regions/americas/VE/venezuela-constitution-english-amended-2009/view

Constitution of the Portuguese Republic, as in the Seventh revision of 2005. English translation available at https://www.parlamento.pt/sites/EN/Parliament/Documents/Constitution7th.pdf

Constitution of the Republic of Latvia, as amended on June 19, 2014. English translation available at https://www.saeima.lv/LapasEnglish/Constitution_Visa.htm

Constitution of the Slovak Republic, as revised in 2017. English translation available at https://www.prezident.sk/upload-files/46422.pdf

Costituzione Napoletana del 1799. Rapporto del Comitato di legislazione al Governo provvisorio: Art.9. Italian transcription available at http://www.dircost.unito.it/cs/docs/napoli1799.htm

Crisafulli, V., "I diritti dell'uomo e del Cittadino", Rinascita, No. III, (August, 8,1946): 186.

Davies, K.M., Litvinova, D., "Putin foe Alexei Navalny is buried in Moscow as thousands attend under a heavy police presence", AP News (March 1, 2024). Last accessed on August 30, 2024 at https://apnews.com/article/russia-alexei-navalny-funeral-9263c4d0688b883fa9f853f5d0310e45

Declaration of Independence, National Archives Museum (July 4, 1776). Transcription available at https://www.archives.gov/founding-docs/declaration-transcript

Declaration of the Rights of Man and Citizen from the Constitution of Year I (1793). English translation available at https://www.columbia.edu/~iw6/docs/dec1793.html

Dossetti, G., "Lo Stato come ordinamento giuridico e i suoi rapporti con gli altri ordinamenti" (November 21, 1946): Art. 3. Accessible at https://www.nascitacostituzione.it/05appendici/01generali/00/01/10-dossetti.htm

Draft Outline of International Bill of Rights (prepared by the Division of Human Rights)' UN Doc E/CN.4/AC.1/3 (04 June 1947). Accessible at https://documents.un.org/doc/undoc/gen/ng9/000/25/pdf/ng900025.pdf

French Constitution (September 3, 1971). English translation accessible at https://wp.stu.ca/worldhistory/wp-content/uploads/sites/4/2015/07/French-Constitution-of-1791.pdf

Galli, C., "Modernità e Rivoluzione", YouTube video, lecture delivered during the cycle "Rivoluzioni. Trasformazioni sociali e politiche nella storia e nella cultura moderna e contemporanea", Fondazione Collegio San Carlo, (November 22, 2022). Accessed at https://www.youtube.com/watch?v=vD73I_xTj28&list=PLNvkJ7tCgn4rdccDe3xykLcng0xva_VKY&index=3&t=1637s

Hotman, F., *Francogallia* (1574). Translated by Molesworth, R. (1721)

International Bill of Rights: Revised Suggestions for Articles of the International Declaration of Rights/Submitted by the Representative of France (June 20, 1947). Accessible at https://documents.un.org/doc/undoc/gen/ng9/001/64/pdf/ng900164.pdf

International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976), UNGA Res 2200A (XXI) UN Doc A/6316 (1966).

Johannes Althusius, *Politica*, Third Edition (1614). Translation by Carney, F.S., Liberty Fund (1995)

John Locke, Two Treatises of Government: In the Former, The False Principles, and Foundation of Sir Robert Filmer, and His Followers, Are Detected and Overthrown. The Latter Is an Essay Concerning The True Original, Extent, and End of Civil Government

Lafayette, "To Thomas Jefferson from Lafayette", National Archives (August 25, 1789). Transcription accessible at https://founders.archives.gov/documents/Jefferson/01-15-02-0349

Lafayette's Draft of the Declaration of the Rights of Man and of the Citizen (July 11, 1789). Accessible in its French and English versions at https://www.battlefields.org/learn/primary-sources/lafayettes-draft-declaration-rights-man-and-citizen

Landesverfassung Der Freien Hansestadt Bremen (October 21, 1947): Art.19. German transcription available at http://www.dircost.unito.it/cs/pdf/19471021_germaniaBrema_ted.pdf

Loguercio, L., "'I'm down for it': Why Italian right-to-die activists are embracing civil disobedience", *Euronews.com*, (2023). Accessed March 25, 2024 at https://www.euronews.com/my-europe/2023/03/01/im-down-for-it-why-italian-right-to-die-activists-are-embracing-civil-disobedience)

London Petition (July 6), South Carolina Gazette (September 14, 1769). Accessible at https://history-commons.net/artifacts/12032397/the-south-carolina-gazette-september-14-1769/12925984/.

Magna Carta (1216), Archives of Durham Cathedral, translation accessible at https://www.bsswebsite.me.uk/History/MagnaCarta/magnacarta-1216.html

Magna Carta (June 1215), National Archives, accessible at https://www.nationalarchives.gov.uk/education/resources/magna-carta/british-library-magna-carta-1215-runnymede/

Motion opposée au projet de loi du 10 juillet 1940 or Motion Baudie (July 10, 1940). French transcription accessible at https://mjp.univ-perp.fr/france/badie.htm

Mounier, "Projet de déclaration des droits de l'homme et du citoyen par M. Mounier" (July 27 1789). In Archives Parlementaires de 1787 à 1860 - Première série (1787-1799) Tome VIII - Du 5 mai 1789 au 15 septembre 1789, Paris, Librairie Administrative P. Dupont (1875): 289-290

National Assembly of France, Declarations of the Rights of Man (August 26, 1789). English translation available at https://avalon.law.yale.edu/eighteenth_century/rightsof.asp

New Hampshire Constitution (June 2, 1784). Transcription available at https://www.nh.gov/glance/bill-of-rights.htm

Petition to King George III, First Continental Congress of Philadelphia (October 1774). Accessible at

https://americainclass.org/sources/makingrevolution/crisis/text7/petitionkinggeorge3.pdf

Pisacane, C., "Carlo Pisacane: il testamento", Genoa (June 24, 1857). Transcription accessible at https://milanosifastoriabl.wixsite.com/fifi/carlo-pisacane-il-testamento

Robespierre, "On Political Morality", speech delivered on February 5, 1794 to the National Convention. In Bienvenu, R., The Ninth of Thermidor, Oxford University Press (1970): 32-49

Roger of Wendover, *Flowers of History*, translated by Giles, J.A., London: Henry G. Born, (1849), Vol. II

Rome Statue of the International Criminal Court (July 17, 1998)

Roosevelt, E., On the Adoption of the Universal Declaration of Human Rights, speech delivered in Paris (December 9, 1948). Transcription and audio accessible at https://www.americanrhetoric.com/speeches/eleanorrooseveltdeclarationhumanrights.htm

Rothwell, H. (Eds.), *English Historical Documents*, Vol. III (1975): 324-326

Samuel Rutherford, Lex Rex, or the Law and the Prince, Harrisonburg, Va.: Sprinkle Pubs., reprint of 1644 London edition, (1982)

Silas Downer, Discourse, Delivered in Providence, in the Colony of Rhode Island, upon the 25th Day of July, 1768. Available at https://quod.lib.umich.edu/cgi/t/text/text-idx?c=evans;cc=evans;rgn=main;view=text;idno=N08514.0001.001

Stephen Junius Brutus, Vindiciae Contra Tyrannos (1579). English translation accessible at https://www.yorku.ca/comninel/courses/3020pdf/vindiciae.pdf

Tennessee Constitution (June 1, 1796). Transcription available at https://tsla.tnsosfiles.com/digital/teva/transcripts/33633.pdf

The Articles of the Barons (1215), accessible at https://magnacarta.cmp.uea.ac.uk/read/articles_of_barons

The Middlesex Petition (no date), South Carolina Gazette (August 24, 1769). Accessible at https://history-commons.net/artifacts/12032504/the-south-carolina-gazette-august-24-1769/12926078/

Thomas Aquinas, *Summa Theologiae,* translation of the Fathers of the English Dominican Province, Second Edition (1920)

UK Parliament, *The contents of Magna Carta* (no date). Last accessed on May 2, 2024 at https://www.parliament.uk/about/living-heritage/evolutionofparliament/originsofparliament/birthofparliament/overview/magnacarta/magnacartaclauses/

UNGA, "Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations", UNGA Res 2625 (XXV) (24 October 1970)

UNGA, "Definition of Aggression", UNGA Res 3314(XXIX) (14 December 1974)

UNGA, "Report of the Human Rights Council Advisory Committee on the right of peoples to peace", Twentieth session, Agenda item 5 (April 16, 2012)

United Nations Charter (June 26, 1945). Accessible at https://www.un.org/en/about-us/un-charter

Universal Declaration of Human Rights (December 10, 1948). Accessible at https://www.un.org/en/about-us/universal-declaration-of-human-rights

Vattel, Le Droit des gens, ou principes de la loi naturelle appliqués à la conduite et aux affaires des nations et des souverains (1758). English translation accessible at https://oll-resources.s3.us-east-2.amazonaws.com/oll3/store/titles/2246/Vattel_1519_LFeBk.pdf

Verfassung Für Die Mark Brandenburg (January 31, 1947): Art. 6. German transcription available at http://www.dircost.unito.it/cs/pdf/19470131_germaniaBrandeburgo_ted.pdf

Virginia Bill of Rights (June 12, 1776). Transcription available at https://en.wikisource.org/wiki/Virginia_Declaration_of_Rights

Virginia Charter (April 10, 1606), as cited and readapted in Dickinson, H.T., "Magna Carta in the American Revolution" in Goldman, L. (Eds.), Magna Carta: History, context and influence, University of London Press (2018): 80

Secondary Sources

"Overview essay: Haitian Revolution", A Revolution in Haiti, University of Miami (Spring 2000). Last accessed on July 13, 2024 at https://scholar.library.miami.edu/slaves/san_domingo_revolution/revolution.html

Ackerman, P., DuVall, J. *A Force More Powerful: A Century of Non-violent Conflict*, St. Martin's Press, New York, (2000)

Anderson, G.P., "Pascal Paoli. An Inspiration to the Sons of Liberty", Colonial Society of Massachusetts, Transactions, 1924-1926, Vol.26.

Arendt, H., *Crises of the Republic: Lying in Politics, Civil Disobedience on Violence, Thoughts on Politics, and Revolution*. New York: Harcourt Brace Jovanovich, (1972)

Bamford, D., 'Can Climate Civil Disobedience be Justified?', *Think*, Vol.22, Issue 64 (Summer 2023), pp.65-70

Barker, E., "The Authorship of the Vindiciae Contra Tyrannos", *The Cambridge Historical Journal*, Vol.3, No.2 (1930)

Benigno, F., Parole nel tempo. Un lessico per pensare la storia, Viella (2013)

Benigno, F., *Rivoluzioni. Tra storia e storiografia*. Officina Libraria, Roma, (2021)

Benigno, F., Terrore e Terrorismo, Giulio Einaudi Editore, Torino (2018)

Bloodworth, D. *The Chinese Looking Glass*, Farrar, Straus and Giroux, New York, (1967)

Breidenbach, M.D., McCormick, W., "Aquinas on Tyranny, Resistance, and the End of Politics", *Perspectives on Political Science*, Vol.44, No.1, (2015): 10-17

Carpenter, D. "Magna Carta 1215: its social and political context", in Goldman, L. (Eds.), *Magna Carta: History, context and influence,* University of London Press (2018): 17-24

Cassese, A., International Law, 2nd edn, Oxford University Press (2005)

Cochran, D.C., "Why the Russian Revolution actually owes its success to nonviolent resistance", Waging Nonviolence (July 13, 2021). Last accessed on August 29, 2024 at https://wagingnonviolence.org/2021/07/why-the-russian-revolution-actually-owes-its-success-to-nonviolent-resistance/

Cosi, G., *Saggio sulla disobbedienza civile: storia e critica del dissenso in democrazia*, Giuffré, Milano (1984)

De Francesco, A., Repubbliche atlantiche. Una storia globale delle pratiche rivoluzionarie 1776-1804, Raffaello Cortina Editore (2022)

Dickinson, H.T., Britain and the American Revolution, Routledge (1999)

Doyle, W., The Oxford History of the French Revolution, Oxford University Press (2018)

Dunning, Wm. A., "The Monarchomachs", *Political Science Quarterly,* Vol.19, No.2 (June 1904): 277-301

Eddins, C.N., "Runaways, Repertoires, and Repression: Marronnage and the Haitian Revolution, 1766–1791," Journal of Haitian Studies, Vol.25, No. 1 (2019)

Ercole, F. (Eds.), *Il Trattato "De Tyranno" e lettere scelte* (1942)

Fernández-Sebastián, J., Capellán, G., "Democracy in Spain. An Ever-Expanding Ideal" in Innes, J., Philip, M. (Eds.), *Re-imagining Democracy in the Mediterranean, 1780–1860,* Oxford University Press (2018)

Fontana, A., "Du droit de résistance au devoir d'insurrection", in Zancarini, J., (Eds.), Le Droit de résistance, ENS Éditions, (1999)

Forsdick, C.; Høgsbjerg, C., "Black Jacobin Ascending", Toussaint Louverture: A Black Jacobin in the Age of Revolutions, Pluto Press (2017): 59

Freedom House, *How Freedom is Won. From Civic Resistance to Durable Democracy*, (2005).

Garancini, G. “Diritto di resistenza, disobbedienza civile, obiezione di coscienza: profili storici”, in Perrone, B. (Eds.), *Realtà e prospettive dell’obiezione di coscienza*. *I conflitti degli ordinamenti*, Atti del Seminario nazionale di studio, Milano (April 9th-11th 1992)

Garnett, G., “Sir Edward Coke’s Resurrection of Magna Carta”, in Goldman, L. (Eds.), *Magna Carta: History, context and influence,* University of London Press (2018): 51-60

Garrigus, J.D., A Secret among the Blacks. Slave Resistance before the Haitian Revolution, Harvard University Press (2023)

Geggus, D., “Saint-Domingue, le marronnage et la révolution haï- tienne,” in Moomou, J. (Eds.), Sociétés marronnes des Amériques: Mémoires, patrimoines, identités et histoire du XVIIe au XXe siècles, Matoury, French Guiana, Ibis Rouge Editions (2015)

Geggus, D.P., “Front His Most catholic Majesty to the godless Republic : the «volte-face» of Toussaint Louverture and the ending of slavery in Saint Domingue”, Revue française d'histoire d'outre-mer, Vol.65, No.241, (4e trimestre 1978): 481-499

Ghachem, M.W., “Prosecuting Torture: The Strategic Ethics of Slavery in Pre-Revolutionary Saint-Domingue (Haiti),” Law and History Review, Vol. 29, No. 4 (November 2011): 985-1029

Giesey, R.E., “The Monarchomach Triumvirs: Hotman, Beza and Mornay”, *Bibliothèque d'Humanisme et Renaissance,* T.32, No.1 (1970): 41-56

Ginsburg, T., Lansberg-Rodriguez, D., Versteeg, M., "When to Overthrow your Government: The Right to Resist in the World's Constitutions," *60 UCLA Law Review 1184* (2013).

Gros, D., “Le droit de résistance selon la Résistance (1940-1946)”, Le Genre Humain, 2005/1, No. 44 (2005): 209-222

Haggard, S., Kaufman, R.R., “Democratization During the Third Wave”, Annual Review of Political Science, Vol. 19 (2016): 125-144

Hayton, D.W., “The Stanhope/Sunderland Ministry and the Repudiation of Irish Parliamentary Independence”, The English Historical Review, Vol.113, No.452 (June 1998): 610-636

Hazeltine, H.D., “The influence of Magna Carta on American constitutional development”, Columbia Law Rev., XVII (1917): 1-33

Holt, J.C. *Magna Carta*, Cambridge University Press, Third Edition, (2015)

Huntington, S.P., “Democracy’s Third Wave”, Journal of Democracy (Spring 1991): 12-34.

Izbicki, T., Kaufmann, M. "School of Salamanca" in Zalta, E.N., Nodelman, U. (Eds.), *The Stanford Encyclopedia of Philosophy* (Fall 2023 Edition)

James, C.L.R., *The Black Jacobins. Toussaint L’Ouverture and the San Domingo Revolution*, Random House, Second Edition (1989)

Jefferson, T., *A Summary View of the Rights of British America: set forth in some resolutions intended for the inspection of the present delegates of the people of Virginia, now in convention*, (1774)

Jenks, E. “The Myth of Magna Carta*”*, *Independent Review,* Vol.4, Issue 14 (1904): 260-273

Jones, D., *Magna Carta, The Making and Legacy of the Great Charter*, Head of Zeus (2014)

Kelly, D.F., The Emergence of Liberty in the Modern World: The Influence of Calvin on Five Governments form the 16th Through 18th Centuries, Philipsburg, N.J., P&R Publishing (1992

Kelsen, H., Peace Through Law, University of North Carolina Press (1944)

Kingdon, R.M., “Calvinism and resistance theory: 1550-1580” in Burns, J.H. (Eds.), *The Cambridge History of Political Thought 1450-1700,* Cambridge University Press (2008): 193-218

Kopel, D.B., “The Scottish and English Religious Roots of the American Right to Arms: Buchanan, Rutherford, Locke, Sidney, and the Duty to Overthrow Tyranny”, Bridges, Vol.12, Nos. ¾ (Fall/Winter 2005): 291-312

Landavazo, M. A., “La influencia de Cádiz en la América española: política, gobierno y constitucionalismo”, *Revista de Historiografía*, 20 (2014): 75-96

Lewis, B., “Freedom and Justice in the Modern Middle East”, *Foreign Affairs* (May/June 2005)

Luoma-aho, M., ‘Drugs, disobedience, and democracy: Civil disobedience and drug policy’, in T. Nykänen, T. Seppälä, P. Koikkalainen (Eds.), *Civil Disobedience from Nepal to Norway. Traditions, Extensions, and Civility*, Routledge India (2022)

Mackai M., “Gene Sharp: A dictator’s worst nightmare”, CNN World (June 25, 2012). Last accessed on September 7, 2024 at https://edition.cnn.com/2012/06/23/world/gene-sharp-revolutionary/index.html

Maier, P., From Resistance to Revolution. Colonial Radicals and the Development of American Opposition to Britain, 1765-1776, Alfred A. Knopf (1972)

Marchesiello, M., *Diritto di resistenza. Come fare la rivoluzione attraverso il diritto*, Edizioni Gruppo Abele, Torino, (2020)

Mark, H.W., “Assembly of Notables of 1787”, World History Encyclopedia (March 29, 2022). Accessible at https://www.worldhistory.org/Assembly_of_Notables_of_1787/

Mark, H.W., “Estates-General of 1789”, World History Encyclopedia (April 25, 2022). Accessible at https://www.worldhistory.org/Estates-General_of_1789/

Mark, H.W., “Revolt of the Parlements”, World History Encyclopedia (April 14, 2022). Accessible at https://www.worldhistory.org/Revolt_of_the_Parlements/

Martinelli, D., “The Lithuanian Singing Revolution as Cultural Heritage and source of Soft Power”, Proceedings of the World Congress of the IASS/AIS, 12th WCS Sofia 2014 New Semiotics. Between Tradition and Innovation (2014). Accessible at https://doi.org/10.24308/iass-2014-072

Mason, L., Rizzo, T. (Eds.), The French Revolution: A Document Collection, New York: Houghton Mifflin (1999)

Mazzone, U., “Il Diritto/Dovere di Resistenza nella proposta di Giuseppe Dossetti alla Costituente” in De Benedictis, A., Marchetti, V. (Eds.), Resistenza e diritto di resistenza. Memoria come cultura, CLUEB (2000): 45-73

Merritt, R.L., “American Influences in the Occupation of Germany”, *The Annals of the American Academy of Political and Social Science*, Vol. 428, The American Revolution Abroad (Nov., 1976): 91-103

Mignone, L.M., ‘Remembering a Geography of Resistance: Plebeian Secessions, Then and Now’ in K. Galinsky (Eds.), *Memoria Romana*. *Memory in Rome and Rome in Memory*, The University of Michigan Press, Ann Arbor (2014)

Moroni, E., “Tirannide e resistenza in Bartolo da Sassoferrato”, *Cultura Giuridica e diritto vivente*, Vol.1 (2014)

Murphy, S., The Human Right to Resist in International and Constitutional Law, PhD thesis submitted to Middlesex University (June 2018).

Nederman, C.J., ‘A Duty to Kill: John of Salisbury’s Theory of Tyrannicide’, *The Review of Politics*, Vol.50, No.3, (1988): 365-389

Nederman, C.J., “The Liberty of the Church and the Road to Runnymede: John of Salisbury and the Intellectual Foundations of the Magna Carta”, Cambridge University Press (2010): 457-461

Netolitzky, D.J., “Ten Seconds to Implosion: The Magna Carta Lawful Rebellion”, *International Journal of Coercion, Abuse, and Manipulation 6* (2023)

Nicholas, M., ‘King Henry II and his Legal Reforms’, *The Histories*, Vol.6, No.2, Art.5 (2019)

Nicholls, S., “Introduction” in *Political Thought in the French Wars of Religion,* Ideas in Context, Cambridge University Press & Assessment (2021)

Ossipow, W., Gerber, D., “The Reception of Vattel’s Law of Nations in the American Colonies: From James Otis and John Adams to the Declaration of Independence”, American Journal of Legal History (2017): 521-555

Popkin, J.D., *A Concise History of the Haitian Revolution*, Wiley-Blackwell, Oxford (2012)

Portinaro, P.P., “La teoria della rivoluzione tra ideologia e revisionismo” in Caglioti, D.L., Francia, E. (Eds.), *Rivoluzioni. Una discussione di fine Novecento*, Ministero per i Beni e le Attività Culturali, Direzione Generale per gli Archivi (2001).

Radin, M., “The Myth of Magna Carta”, *Harvard Law Review*, Vol. 60, No.7 (September 1947): 1060-1091

Rawls, J., *A Theory of Justice*, Cambridge, (1971)

Régent, La France et ses esclaves: De la colonisation aux abolitions (1620–1848), Paris: Grasset & Fasquelle, (2007)

Richard, H., Rouse, M.A., ‘John of Salisbury and the Doctrine of Tyrannicide’, *Speculum*, Vol.42, No.4 (October 1967) pp.693-709

Round, J.H., “An Unknown Charter of Liberties”, *The English Historical Review*, Vol. 8, No. 30 (Apr., 1893): 288-294

Schama, S., Citizens: A Chronicle of the French Revolution, Penguin Group (2004)

Schweitzer, C.C., “Emergency Powers in the Federal Republic of Germany”, The Western Political Quarterly, Vol. 22, No. 1 (March 1969): 112-121

Sharp, G., From Dictatorship to Democracy: A Guide to Nonviolent Resistance, The Albert Einstein Institution, Fourth Edition (May 2010).

Skinner, Q., *The Foundations of Modern Political Thought*, Vol. II, London, Cambridge University Press (1978)

Spitzer, R.J., “Gun Law History in the United States and Second Amendment Rights”, Law and Contemporary Problems, Vol.80, No. 2 (2017): 55-83

Strohl, H., “Le droit à la résistance d'après les conceptions protestantes”, *Revue d'histoire et de philosophie religieuses*, 10e année n.2 (March-April 1930): 126-144

Sutherland, C., “Haitian Revolution (1791-1804)”, Blackpast.org (July 16, 2007). Last accessed on July 13, 2024 at https://www.blackpast.org/global-african-history/haitian-revolution-1791-1804/

Taber, R.D., “Navigating Haiti’s History: Saint-Domingue and the Haitian Revolution”, History Compass, Vol.13, No.5 (2015): 235-250

Teegarden, D.A., *Death to Tyrants!: Ancient Greek Democracy and the Struggle Against Tyranny*, Princeton University Press, Princeton (2014)

Trampus, A., *Emer de Vattel and the Politics of Good Government. Constitutionalism, Small States and the International System*, Palgrave Macmillan (2020)

Trampus, A., *Storia del costituzionalismo Italiano nell’età dei Lumi,* Editori Laterza (2009)

Thylefors, M. "'Our Government is in Bwa Kayiman:' a Vodou Ceremony in 1791 and its Contemporary Significations", Review of Latin American Studies, Issue No. 4 (March 2009)

Turner, R.V., *Magna Carta Through the Ages*, Pearson Longman (2003)

Tutino, S., “Huguenots, Jesuits and Tyrants: Notes on the Vindiciae Contra Tyrannos in Early Modern England”, Journal of Early Modern History, Vol.11, No.3 (2007): 175-196

Van Gelderen, M., “A Political Theory of the Dutch Revolt and the Vindiciae Contra Tyrannos”, Il Pensiero Politico, Anno XIX, No.2 (1986)

Van Laarhoven, J., “Thou shalt not slay a tyrant! The so-called theory of John of Salisbury”, *Studies in Church History Subsidia*, Vol. 3, (1984): 319-341

Colley, L., *The Gun, The Ship, and The Pen. Warfare, Constitutions, and the Making of the Modern World*, Liveright Publishing Corporation, New York (2021)

Vignols, L., “La destruction d’archives coloniales,” Revue d’histoire des colonies françaises, 22 (1929): 45–52

Wright, Q., “Recognition and Self-Determination”, Proceedings of the American Society of International Law at Its Annual Meeting (1921-1969), Vol. 48, The Development of International Law 1914-1954 (April 22-24, 1954).

Zezza, S., “Norway: A country dealing with its past. Reflections on civilian resistance in Norway during Second World War”, Trauma and Memory, 3(3), (2015): 98-109