# Christianity and Constitutional Law*

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## Abstract

Modern constitutional law is the product of several important historical influences. These include elements of Greek philosophy, Roman law, Christian theology, and Enlightenment principles. Greek philosophy proposed a classification of the basic types of constitution and introduced the idea of the rule of law. Roman law contributed the legal concept of jurisdiction, which is an essential feature of contemporary constitutional law. Christian theology offered a conceptual framework in which the authority of civil government was effectively qualified by a higher natural or divine law, and in which the spiritual authority of the church posed a practical limit on the temporal powers of the civil authority. Christian theology also provided the context in which the powers of civil and ecclesiastical rulers were tempered through various means, including the administration of oaths of office and the issuing of charters guaranteeing the rights of religious, social, economic, and civil associations of many kinds. The principle of the separation of powers and the establishment of written constitutions enforced by judicial review, although associated with the Enlightenment, also owed a great deal to these earlier principles and practices. This chapter surveys the contribution of each of these influences and argues that although the Greek, Roman, and Enlightenment contributions have been important, constitutional law would not be what it is today if it were not for the influence of Christianity.

## Keywords

Greek philosophy, Roman law, Christian theology, Enlightenment principles

Modern constitutional law is the product of several important historical influences. Four of these are arguably of the greatest significance: Greek philosophy, Roman law, Christian theology, and Enlightenment principles. While the exact contribution that each of these has made—and should continue to make—is a matter of debate, there is little doubt that each has contributed substantially to how constitutional law is conceived and practiced in our day. In this chapter, I argue that although the Greek, Roman, and Enlightenment contributions have been important, constitutional law would not be what it is today if it were not for the influence of Christianity.

**Greek Philosophy and Roman Law**

The term "constitution" can be used to designate either a *description* of the institutions and powers of government that exist within a particular political community or a *prescription* of what those institutions and powers ought to be and how they should operate. Aristotle adopted an apparently descriptive approach when he distinguished several kinds of *politeia* (constitution, regime) based on whether a political community is ruled by one, few, or many persons. But also intrinsic to his analysis was an assessment of whether rulers govern in their own interests or for the common good. The result was six fundamental types of constitution: *monarchy*, *aristocracy*, and *polity* when powers of governance are exercised for the common good, and *tyranny*, *oligarchy*, and *democracy* when they are exercised in the interests of those who govern. Aristotle's analysis was descriptive insofar as it offered a method of classification of constitutions. But it also offered a moral evaluation of those systems on the basis of the purposes for which governmental power is exercised.[1]

A further dimension to our understanding of constitutional law arises when questions of law and legality, and especially the rule of law, are brought into consideration. Aristotle

raised this issue when he asked whether it would be better to be governed by a good ruler or by good laws.[2] The advantage of governance by wise and virtuous rulers is that they are able to govern in a manner that is responsive to specific circumstances and changing conditions. The advantage of government by good laws is that this makes it difficult for bad rulers to govern in their own self-interest. Aristotle seems to have considered that the absolutely ideal form of government is monarchical rule by a wise and virtuous individual. However, he recognised that for many political communities the best constitution might realistically involve a mixture of oligarchy and democracy tempered by the rule of law.[3]

What does the rule of law mean in this context? At a minimum, it could mean that governance occurs through promulgation of general rules. But it might also mean that the identity of those who rule and the powers they exercise are themselves defined and controlled by law. Here the Roman law concept of *iurisdictio* is relevant. In its broadest sense, *iurisdictio* referred to the authority to administer justice. In Roman law, a general power of jurisdiction was conferred on all higher magistrates (*magistratus maiores*), whereas magistrates of lower rank (*magistratus minores*) had only limited jurisdiction. In a territorial sense, *iurisdictio* also referred to the judicial district over which magistrates were authorized to exercise judicial power. The term therefore came to be used to designate the administration of provinces under governors within the Roman Empire. Conceived in this way, the authority to govern was capable of being legally defined. The rule of law might mean not only governance through law but also governance under law.

Within a Roman imperial context, the idea of particular and limited jurisdiction applied to subordinate officials, such as magistrates and governors. Although the emperor was formally bound by *ius publicum* (public law), this had diminishing practical effect, especially as more and more offices and powers were consolidated in the emperor's hands.[4] Roman law came to be replete with references to the virtually unlimited power of the

emperor, derived in theory from the people but increasingly absolute in practice.[5] The rule of law could not apply to the emperor unless he was understood to be exercising a kind of delegated authority pursuant to a law to which he himself was subject. Greek and Roman thought had imagined a kind of law that might possibly play this role, such as when Aristotle distinguished between the particular laws adopted by each political community and the general laws recognized by all people in accordance with nature, and when Cicero proposed that "true law" is that which is in accord with nature, and that this "one eternal and unchangeable law" is "valid for all nations and all times."[6]

**Christian Theology**

It was Saint Paul who expressly applied these propositions to all political authority as a matter of principle, when he said that rulers are "servants of God" responsible to administer divine justice.[7] Saint Peter similarly taught that while Christians ought to be submissive to kings, governors, and other rulers, their ultimate allegiance must be to God rather than men.[8] This gave rise to charges that the early Christians were "acting against the decrees of Caesar, saying there is another king, Jesus."[9] The Caesars had increasingly asserted the prerogatives of deity, proclaiming themselves to be gods.[10] Under the influence of Christian teaching, however, later Roman emperors "abandoned their claim to be true divinity on earth and recognized instead in God the origin of their power."[11] From as early as the eighth century, kings and emperors were expected at their coronations to swear oaths that they would, among other things, execute justice and mercy in their judgments, and later, that they would govern in accordance with the established customs and laws of the realm.

Two observations of Saint Augustine (354–430) would prove influential. In his treatise on the *Freedom of the Will*, he observed that "an unjust law would seem to be no law at all," while in the *Confessions* he concluded that the "greater authority" of the divine and

natural law is to be obeyed in priority to the "lesser authority" of human laws.[12] Gratian, citing this latter passage in his systematizing commentary on canon law in the early twelfth century, drew the inference that legal customs and ordinances are to be held "null and void" if they are contrary to natural law.[13] Building on these ideas, Saint Thomas Aquinas (1225–74) defined law as an ordinance of reason for the common good, made and promulgated by him who has care of the community.[14] He proposed that four principal categories of law be recognized: the *eternal* law by which God governs the entire cosmos; the *divine* law, which is those aspects of the eternal law revealed in the Bible; the *natural* law, which is those aspects of the eternal law known by natural reason; and *human* laws, which are specific determinations of law applying the general principles of law to the conditions and circumstances of a particular time and place.[15] Like Augustine and Gratian, Aquinas considered that a human law that contains anything contrary to natural law has no binding force, that even a sound judgment issued without proper authority lacks justice, and that it is therefore expedient that the system of government should be organized and the powers of rulers tempered so as to avoid or prevent tyranny.[16]

Aquinas also recognized a distinction between the authority of the civil government and the authority of the church, the former being responsible to make laws for the common good in temporal affairs, the latter responsible to make laws for the common good of the faithful in spiritual matters.[17] This distinction reflected a defining feature of medieval society, grounded in the teaching of Jesus Christ distinguishing between the things that belong to Caesar and the things that belong to God, and Saint Paul's teaching that Christians are citizens of an alternative *politeuma* and ambassadors of the kingdom of heaven.[18] Building on these ideas, in his masterwork *De civitate Dei*, Saint Augustine proposed that there are two cities: the earthly city characterized by love of self, and the heavenly city characterized by love of God.[19] Pope Gelasius I (492–96) taught that, whereas the role of kings and the role of

priests had once been combined (as when the Roman emperors bore the title *pontifex maximus*), after Christ the two roles were separated on account of "human weakness," each operating in "its sphere of operation."[20] Consequently there were "two swords" by which the world is ruled: the consecrated authority of the priests and the royal power.[21] Especially after the investiture contest of the eleventh and twelfth centuries, the Roman concept of jurisdiction was used by civil lawyers and canon lawyers to identify the particular matters that fell within the authority of church and state.[22] In the striking words of Étienne de Tournai (1128–1203):

> In the same city under the same king there are two people. With two people there are two types of life. With two types of life there are two forms of government. From the two forms of government arise two jurisdictions, the city and the church. The king of the city is Christ. There are two peoples and two orders in the church, clerics and laypeople. There are two types of life, the spiritual life and the life of the flesh. There are two types of government, priestly authority and princely power. There are two jurisdictions, divine and human justice, rights, and equity. If each is rendered its due, all things will be harmonious.[23]

**Jurisdictional Boundaries and Higher Law**

According to Brian Tierney, it was this insistence on jurisdictional boundaries between popes and emperors, bishops and kings, priests and princes, that largely explains the emergence of what we know today as constitutional government.[24] In *Law and Revolution,* Harold Berman has shown how the Western legal tradition came to be characterized by a plurality of jurisdictions and legal systems—not only ecclesiastical and imperial but also royal, urban, feudal, manorial, and mercantile. Berman argues that "this plurality of jurisdictions and legal systems" made "the supremacy of law both necessary and possible."[25] The result was a kind

of “complex space” in which a diversity of intermediate corporations and associations—religious, scholarly, commercial, and professional—operated within an overarching framework of law, qualifying the power claims of secular rulers and helping to keep them within constitutional bounds.[26]

Political authority was accordingly understood as a responsibility to administer justice according to law.[27] John of Salisbury (ca. 1110–80) expressed a widely shared ideal when he said that the king should rule by law, according to justice, and with the counsel of the wise.[28] Although the authority exercised by medieval kings was extensive, it was nonetheless considered to be subject to God and the law. As Henry of Bracton (ca. 1210–ca. 1268) put it, “the law makes the king,” and there is no king where “will” rules rather than “law.”[29] Similarly, when Sir John Fortescue insisted in 1469 that English kings possess *dominium politicum et regale* (“political and regal lordship”) rather than *dominium regale*, he meant that they could rule only through laws to which the lords and commons had assented in Parliament.[30] Otto von Gierke thus observed:

> The properly medieval . . . theory declared that every act of the Sovereign that broke the bounds drawn by natural law was formally null and void. As null and void therefore every judge . . . was to treat, not only every executive act, but every unlawful statute, even though it were published by Pope or Emperor. Furthermore, the unlawful order or unlawful act was null and void for the individual subjects of the State. It was just for this cause that their duty of obedience was conceived as a conditional duty, and that the right of actively resisting tyrannical measures was conceded to them.[31]

Bracton’s statement was cited by Chief Justice Coke in the case of *Prohibitions del Roy* (1607) to support the proposition that an English king cannot personally act as a judge but must allow the ordinary courts to fulfill that function in accordance with the law of the land.[32]

In *Dr Bonham's Case* (1610),[33] Coke went further when he claimed that there had been many cases in which the common law had "controlled" Acts of Parliament and sometimes "judged them to be void," particularly when it was found that they were "against Common right and reason, or repugnant, or impossible to be performed." Most scholars have argued that Coke did not mean that the courts would regard unreasonable statutes as simply void, but rather that they would be interpreted in accordance with reason.[34] However, some scholars, especially in the United States, have understood him to have been suggesting that unreasonable statutes would be declared entirely void and inoperative by the courts.[35] Sir William Blackstone (1723–80), another English writer who exercised significant influence in the United States, said:

> The law of nature, being coeval with mankind, and dictated by God himself, is of course superior in obligation to any other. It is binding over all the globe in all countries, and at all times; no human laws are of any validity, if contrary to this: and such of them as are valid derive all their force, and all their authority, mediately or immediately, from this original.[36]

By the nineteenth century, the rule of law had come to mean that the powers of government can be exercised only according to preexisting law, and that all persons, no matter what their rank and status, are subject to the same set of legal rules and principles. As Albert Venn Dicey put it, "the rule of law is contrasted with every system of government based on the exercise by persons in authority of wide, arbitrary, or discretionary powers of constraint," for it involves the principle that "every official, from the Prime Minister down to a constable or a collector of taxes, is under the same responsibility for every act done without legal justification as any other citizen."[37]

**Written Constitutions**

The modern notion of adopting a written constitution that defines the institutions and powers of government has similarly deep roots in the biblical account of the covenant between King David with the tribes of Israel (2 Samuel 5:1–3), which served as a model for the later use of oaths, covenants, contracts, and constitutions as means of defining the responsibilities of rulers and ruled, especially in Reformed political theology.[38] Another important source was the widespread medieval practice by which kings issued charters guaranteeing the rights of monasteries, abbeys, churches, hospitals, orphanages, universities, and towns. These included the famous Magna Carta of 1215 and Forest Charter of 1216, which, as John Witte has pointed out, became key "anchor texts for Anglo-American constitutionalism."[39]

Revolutionary political events in seventeenth-century England brought these ideas and practices into sharp focus. Following their military success in the first two phases of the English Civil War (1642–46, 1648–49), the parliamentary forces under the leadership of Oliver Cromwell deposed, tried, and executed King Charles I for breach of his oath of office.[40] During this period, a series of constitutional manifestos were prepared under the title of *An Agreement of the People* by participants in Cromwell's New Model Army.[41] One of these documents read as follows:

> We the free People of England, to whom God hath given hearts, means and opportunity to effect the same, do with submission to his wisdom, in his name, and desiring the equity thereof may be to his praise and glory; Agree to ascertain our Government, to abolish all arbitrary Power, and to set bounds and limits both to our Supreme, and all Subordinate Authority, and remove all known Grievances.[42]

While these agreements never became law, an *Instrument of Government* (1653) was adopted as the written constitution of England during the rule of Cromwell, following the

deposition and execution of Charles I in 1649. Around the same time, English colonists in North America had established political communities in which ideas of independent self-government were developing. Viewed from the perspective of British law, the constitutional foundations of these settlements derived from the authority of the Crown, but the practice of many of the colonies was to self-constitute themselves as a body politic through a solemn pact or covenant. One of the most famous was the Mayflower Compact of 1620, subscribed by the first inhabitants of the colony established at Plymouth in what is now the Commonwealth of Massachusetts. The compact declared the formation of the colony in the following terms:

> In the name of God, Amen. We, whose names are underwritten, the loyal subjects of our dread Sovereign Lord King James, by the Grace of God, of Great Britain, France, and Ireland, King, defender of the Faith, etc.
>
> Having undertaken, for the Glory of God, and advancements of the Christian faith and honor of our King and Country, a voyage to plant the first colony in the Northern parts of Virginia, do by these presents, solemnly and mutually, in the presence of God, and one another, covenant and combine ourselves together into a civil body politic.[43]

Another example was the original constitution of Connecticut, which was based upon a federating covenant between the people of three separate towns. The *Fundamental Orders of Connecticut* declared as follows: "[W]e the Inhabitants and Residents of Windsor, Hartford and Wethersfield . . . do . . . associate and conjoin ourselves to be as one Public State or Commonwealth; and do for ourselves and our successors and such as shall be adjoined to us at any time hereafter, enter into Combination and Confederation together."[44]

Drawing inspiration from these kinds of documents, the highly influential English philosopher and publicist John Locke (1632–1704) gave elegant expression in his *Second*

*Treatise of Government* (1689) to the underlying idea of a "social contract," by which the people constitute themselves into a political society and a "contract of government" by which they establish a government that is accountable to them. But the basic idea of a founding covenant was much older than Locke. Johannes Althusius (ca. 1563–1638), a German jurist and early theorist of a kind of "social federalism,"[45] had more than half a century earlier offered an account of society in which all groups—families and villages, towns and cities, guilds and religious associations, provinces and commonwealths—are formed and joined together by a series of federative compacts and agreements that together constitute a kind of *lex fundamentalis*, which binds rulers to their duties of office.[46]

**Judicial Review**

The institution of judicial review is today one of the primary mechanisms by which constitutional limitations on the powers of government are practically enforced. It can be exercised in relation to executive action and legislative enactments, and it can be exercised by specialist constitutional courts or generally by all courts of competent jurisdiction.[47] It can also be implemented in relatively "weak" or "strong" forms, particularly in relation to the protection of human rights.[48] In all of these forms, judicial review has a complex and controversial relationship with another important contemporary constitutional doctrine: the separation of powers. Writing in 1748, the French political thinker Baron de Montesquieu (1689–1755) famously claimed in his *The Spirit of Laws* that liberty is most effectively protected where legislative, executive, and judicial powers of government are distributed among three distinct and separate institutions.[49] Writing about two decades later, Blackstone similarly observed in his *Commentaries on the Laws of England* that the English constitution established a "balance" between the Crown and the two houses of Parliament so that each performed a "mutual check" upon the other.[50] Influenced by these ideas, one of the leading

architects of the United States Constitution, James Madison, advocated the separation of powers in the following terms:

> It may be a reflection on human nature, that such devices should be necessary to control the abuses of government. But what is government itself, but the greatest of all reflections on human nature? If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary. In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself.[51]

Madison's colleague Alexander Hamilton argued that the judiciary would be the "least dangerous" of the three branches of government because it would have "neither force nor will, but merely judgment," but he also maintained that the courts would have the weighty responsibility to "declare all acts contrary to the manifest tenor of the Constitution void."[52]

Hamilton's reasoning was repeated about fifteen years later by Chief Justice John Marshall in the first United States Supreme Court decision to exercise the power of judicial review. The argument was that judicial review is the result of an application of two principles: first, that it is the particular function of courts to determine and apply the law, and second, that the constitution is a superior or paramount law binding on the executive, the legislature, and the courts alike.[53] Judicial review is controversial, however, from the point of view of democratic theory, principally because it empowers unelected judges to overrule laws enacted by democratically accountable legislatures.[54] One line of argument is that judicial review is democratically legitimate because it is the people themselves who establish the constitution and authorize the courts to enforce it.[55] A second argument is that judicial review is necessary to protect the rights of minorities from interference by oppressive majorities.[56] Opponents of judicial review respond that constitutional language is often vague, and that

judges inevitably impose their own moral and political views when interpreting and applying constitutional restrictions on power.[57] Others argue that judicial review should be limited to ensuring that the democratic system is operating fairly.[58] Controversies about constitutionalism and constitutional law thus often turn into debates over legal language and its interpretation.[59] Interestingly, these debates are shaped by differences in the approach to the interpretation of the Bible and church tradition adopted by Catholics and Protestants.[60]

One of the paradoxes of contemporary constitutionalism is that, while almost every independent nation-state in the world today has a written constitution, the average constitution lasts only nineteen years,[61] and many countries have what scholars have called "sham," "façade," or "nominal" constitutions, which neither constrain state power nor accurately describe the practical operation of the government.[62] As with human rights,[63] it is possible that we can entertain utopian hopes for a kind of constitutionalism that seeks to harness "the power of narrative, symbol, ritual and myth" in order to reshape not only political reality but also social life and human nature.[64] Jean-Jacques Rousseau began his *Du contrat social* with the promise that he would reason with "men as they are and laws as they can be,"[65] but his scheme was utterly utopian and "unwittingly set the stage for the totalitarian states of the twentieth century."[66] Several recent titles have explored the way in which constitutions can function as a kind of civil religion within a society and have analyzed them in terms of theological categories such as faith, redemption, scripture, and tradition.[67] This approach reflects something of a theological turn in constitutional scholarship, not altogether out of place perhaps in the postmodern climate of our age. In this context, it may be beneficial to observe that Christianity offers not only a constructive contribution to the development of constitutional law but also a salutary warning against constitutional perfectionism and the pride of reason.[68]

**Recommended Reading**


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[*] This chapter draws on Nicholas Aroney and Ian Leigh, "Introduction: Christianity and Constitutionalism," in *Christianity and Constitutionalism*, ed. Nicholas Aroney and Ian Leigh (Oxford: Oxford University Press, 2022).

[1] Aristotle, *Politics*, especially bks. 3 and 4.

[2] Aristotle, *Politics*, 3.15, 1286a8–9.

[3] See George Duke, *Aristotle and Law: The Politics of Nomos* (Cambridge: Cambridge University Press, 2020).

[4] Werner Eck, "The Emperor, the Law and Imperial Administration," in *The Oxford Handbook of Roman Law and Society*, ed. Paul J. du Plessis, Clifford Ando, and Kaius Tuori (Oxford: Oxford University Press, 2016), 98–110.

[5] For example, Justinian, *Digest*, 1.2.2 (11–12), 1.3.31, and 1.4.1; *Institutes*, 1.2.6.

[6] Aristotle, *Rhetoric*, 1373b; Cicero, *De re Publica*, 3.22.

[7] Romans 13:1–7. See Oliver O'Donovan, *The Desire of the Nations: Rediscovering the Roots of Political Theology* (Cambridge: Cambridge University Press, 1996), 146–51.

[8] 1 Peter 2:13–15; Acts 5:29.

[9] Acts 17:7.

[10] 1 Thessalonians 2:4. See Bruce Winter, *Divine Honours for the Caesars: The First Christians' Responses* (Grand Rapids, MI: Wm. B. Eerdmanns, 2015).

[11] Walter Ullmann, *Principles of Government and Politics in the Middle Ages*, 2nd ed. (London: Routledge, 1966), 27.

[12] Augustine, *De libero arbitrio*, 1.5.11; *Confessions*, 3.8 (15).

[13] Gratian, *Concordia discordantium canonum*, Dist. 8, pt. 2.

[14] Thomas Aquinas, *Summa theologiae*, I-II, 90.

[15] Ibid., I-II, 90–97.

[16] Thomas Aquinas, *Summa theologiae*, I-II, 95.2; II-II, 60.5–6; *De regno*, 1.7.10 [51]; *Sententia libri Politicorum*, 2.7.4 [245]. For more detail, see John Finnis, *Aquinas: Moral,*

*Political, and Legal Theory* (Oxford: Oxford University Press, 1998), 258–66; and Nicholas Aroney, "Subsidiarity, Federalism and the Best Constitution: Thomas Aquinas on City, Province and Empire," *Law and Philosophy* 26, no. 2 (2007): 161–228, at 203–09.

[17] Aquinas, *Summa theologiae*, II-II, 147.3. See also Gratian, *Concordia discordantium canonum*, Dist. 10.

[18] Matthew 22:15–22; Philippians 3:19–20; 2 Corinthians 5:20; Ephesians 6:2.

[19] Augustine, *De civitate Dei*, 14.28.

[20] Gelasius, *The Bond of Anathema*, reproduced in Oliver O'Donovan and Joan Lockwood O'Donovan, *From Irenaeus to Grotius: A Sourcebook in Christian Political Thought, 100–1625* (Grand Rapids, MI: Wm. B. Eerdmans, 1999), 178.

[21] Gelasius, *Letter to Emperor Anastasius*, in O'Donovan and O'Donovan, *From Irenaeus to Grotius*, 179. On the unfolding distinction between "two cities" and "two swords," see O'Donovan, *The Desire of the Nations*, 193–211.

[22] Harold J. Berman, *Law and Revolution: The Formation of the Western Legal Tradition* (Cambridge, MA: Harvard University Press, 1983), 221–24; Martin Loughlin, *Foundations of Public Law* (Oxford: Oxford University Press, 2010), 19–21.

[23] Stephen of Tournai, *Summa* on Gratian's *Decretum*, cited in Kenneth Pennington, "Stephen of Tournai (Étienne de Tournai) (1128–1203)," in *Great Christian Jurists in French History*, ed. Olivier Descamps and Rafael Domingo (Cambridge: Cambridge University Press, 2019), 45. See, similarly, Henry de Bracton, *On the Laws and Customs of England* [*De Legibus et Consuetudinibus Angliae*, ca. 1235–60], trans. Samuel E. Thorne (Cambridge, MA: Belknap Press of Harvard University Press, 1968–77), 2:304.

[24] Brian Tierney, *Religion, Law and the Growth of Constitutional Thought* (Cambridge: Cambridge University Press, 1982), 8–13.

[25] Berman, *Law and Revolution*, 10.

[26] John Milbank, "On Complex Space," in *The Word Made Strange: Theology, Language, Culture* (Oxford: Blackwell, 1997).

[27] O'Donovan, *The Desire of the Nations*, 233.

[28] John of Salisbury, *Policraticus* [1159], ed. Cary Nederman (Cambridge: Cambridge University Press, 1991), bk. 4, chap. 6, 41–46.

[29] Bracton, *On the Laws and Customs of England*, 2:33. On the Trinitarian and Christological theological context of Bracton's jurisprudence, see Ernst H Kantorowicz, *The King's Two Bodies: A Study in Mediaeval Political Theology* (Princeton: Princeton University Press, 1957), 143–92.

[30] Sir John Fortescue, *De Laudibus Legum Angliae* [*In Praise of the Laws of England*] (London, ca. 1469). See Frederic William Maitland, *The Constitutional History of England* (Cambridge: Cambridge University Press, 1908), 61 and 198–99.

[31] Otto von Gierke, *Political Theories of the Middle Age* (Oxford: Oxford University Press, 1901), 84.

[32] *Prohibitions del Roy* (1607) 12 Co Rep 63; 77 ER 1342.

[33] *Thomas Bonham v College of Physicians* (1610) 8 Co Rep 107; 77 ER 638.

[34] Jeffrey Goldsworthy, *The Sovereignty of Parliament: History and Philosophy* (Oxford: Clarendon Press, 1999), 34 and 109–24.

[35] Edward S. Corwin, "The Establishment of Judicial Review," *Michigan Law Review* 9, no. 2 (1910): 102–25, and 283–316.

[36] William Blackstone, *Commentaries on the Laws of England*, 4 vols. (Oxford: Clarendon Press, 1765–69), introduction, 2:41.

[37] A. V. Dicey, *Introduction to the Study of the Law of the Constitution*, 5th ed. (London: Macmillan, 1897), 180 and 185.

[38] Eric Nelsen, *The Hebrew Republic: Jewish Sources and the Transformation of European Political Thought* (Cambridge, MA: Harvard University Press, 2010).

[39] John Witte Jr., *The Blessings of Liberty: Human Rights and Religious Freedom in the Western Legal Tradition* (Cambridge: Cambridge University Press, 2022), 26. See also Robin Griffith-Jones and Mark Hill, eds., *Magna Carta, Religion and the Rule of Law* (Cambridge: Cambridge University Press, 2015).

[40] T B Howell (ed), *A Complete Collection of State Trials* (T C Hansard, 1816), 1119, discussed in Nicholas Aroney, "The Rule of Law, Religious Authority, and Oaths of Office," *Journal of Law, Religion and State* 6 (2018): 205–6.

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[42] John Lilburne, William Walwyn, Thomas Prince, and Richard Overton, *An Agreement of the Free People of England* (1649).

[43] This compact and numerous others are collected in Donald Lutz, *Colonial Origins of the American Constitution: A Documentary History* (Indianapolis, IN: Liberty Fund, 1998).

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