

Strategic Digital Constitutionalism: Lessons from the Past for Present Constitutional Struggles*

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Table of contents

1. Introduction: from regulation to confrontation — 2. Methodological considerations. — 3. Bringing the East India Company back under constitutionalism. — 4. The Papacy and its challenges to State-based constitutionalism. — 5. The consolidation of the constitutional order against feudal lords. — 6. Conclusion: lessons from the past for present struggles

«[...] the fight is composed of a greater or lesser number of single acts, complete in themselves, which we call combats [...]. From this arise the totally different activities, that of the FORMATION and CONDUCT of these single combats in themselves, and the COMBINATION of them with one another, with a view to the ultimate object of the War.

The first is called TACTICS, the other STRATEGY.»

K. Von Clausewitz, On War

1. Introduction: from regulation to confrontation

Digital constitutionalism (DC) has primarily focused on creating or adapting constitutional frameworks to the digital sphere, i.e., a series of “tactics” designed to limit power and implement constitutional values in the digital realm (charters of rights, governance boards, etc.). More precisely, it has tried to give an explanatory account of why these constitutional responses are happening, what their guiding principles may be, and what similar counteractions to new digital phenomena can exist, to restore a lost constitutional equilibrium¹. It is important to acknowledge, of course, that DC does not denote a single, unified project. Rather, it encompasses significantly different variants: some centred on the drafting of digital bills of rights and declaratory charters, others focused on the design of

* Peer-reviewed article.

¹ E. Celeste, *Digital Constitutionalism: A New Systematic Theorisation*, in *International Review of Law, Computers & Technology*, 33, 2019, 76 ff, 81

institutional and procedural safeguards, and still others concerned with the substantive reshaping of rights and obligations in the digital environment. In fact, beyond these transversal objectives, the definition of DC and its delimitation as a field is far from settled. Various definitions and areas of application overlap under this polysemic umbrella², and these divergences are not merely terminological but reflect distinct normative priorities and methodological approaches (codification of rights in quasi-constitutional texts, regulatory and institutional architectures, accountability mechanisms, emphasis on structural constraints on digital powers, etc.). Moreover, as clearly explained by De Abreu Duarte, De Gregorio, and Golia, different strands of DC have emerged³. From a liberal perspective, DC seeks to protect rights and freedoms (particularly in their individual dimension) against digital risks, and to envision new safeguards against private powers that have acquired as much or even more power than States⁴, some stressing procedural guarantees (transparency, due process, review mechanisms, etc.), while others advocating for stronger substantive limitations on data exploitation, algorithmic decision-making, or platform governance. Due to the potential limitations of a state-centric view and a rigid public-private divide, the societal perspective of DC has aimed to extend constitutional values to different autonomous societal orders (science, the press, sports, commerce, etc.), and to explain, through a constitutional lens, the complex contemporary interactions between public powers, private actors, individuals, and groups⁵. In an even broader sense, without losing sight of the importance of the nation-state and liberal institutions in its implementation, a global strand of DC asserts the existence of a transnational constitutional moment, in which diverse public and private sources interact, in a new «de facto governance structure for the global political economy»⁶.

In any of these accounts, a long-term history of constitutionalism has not played a central role. According to some critics, this may be due to a tendency to overestimate digital exceptionalism, which may overlook other historically comparable phenomena of power, either because of the digital sphere's proximity to the Global North, in contrast to postcolonial contexts, or due to its perceived invasion of functions traditionally associated with the public sphere in the Western imaginary⁷. In some cases, however, a long-term historical perspective may have been consciously left aside. In

² E. Celeste, *Digital Constitutionalism: A Socio-Legal Approach*, in *European Data Protection Law Review*, 10, 2024, 146 ff.

³ F. de Abreu Duarte – G. De Gregorio – A. Golia, *Perspectives on Digital Constitutionalism*, in B. Brožek – O. Kanevskaia – P. Palka (eds.), *Research Handbook on Law and Technology*, Cheltenham, 2023, 315 ff.

⁴ E.g., explicitly adopting the Lockean paradigm, G. De Gregorio, *The Rise of Digital Constitutionalism in the European Union*, in *International Journal of Constitutional Law*, 19, 2021, 41 ff.

⁵ G. Teubner – A. Golia, *Societal Constitutionalism in the Digital World: An Introduction*, in *Indiana Journal of Global Studies*, 30, 2023, 1 ff., 4-7

⁶ S. Gill – A.C. Cutler, *New Constitutionalism and World Order: General Introduction*, in S. Gill – A.C. Cutler (eds.), *New Constitutionalism and World Order*, Cambridge, 2014, 1 ff., 13

⁷ P. Terzis, *Against Digital Constitutionalism*, in *European Law Open*, 3, 2024, 336 ff., 342

particular, it may have remained outside the scope of inquiry just because the focus was on the contemporary constitutional framework, rather than on earlier historical forms of constitutionalism⁸. DC would thus focus on how constitutionalism can be adapted to the digital world, sometimes in very specific instances, such as the emergence of digital bills of rights or the application of the rule of law to online platforms⁹. In the case of societal constitutionalism, the investigation of contemporary social dynamics seems already complex enough to add a historical dimension. Moreover, given its theoretical grounding in the emergence of autonomous social systems through progressive functional differentiation (as developed by Luhmann and Teubner), the study of long-term historical dynamics, especially in otherwise differentiated societies (segmentation, centre/periphery, hierarchy, etc.), may not be particularly meaningful from this perspective. Such dynamics cannot easily be transferred to or assimilated within today's complex societal structures. We will return to this point in the following section on methodology.

All this does not mean that history has been completely absent from DC scholarship. For instance, the history of DC in the short term, at least in the EU, has been thoroughly analysed and mapped out. Since the first phase of digital liberalism in the 2000s, based on directives, to judicial activism and, finally, a third phase of intense regulatory strategy, DC has progressively strengthened the protection of fundamental rights in the digital realm¹⁰. The rise of transnational powers and the transformations of the internet leading to the need for a polyhedral constitutional response to these new powers have also been explored¹¹. In the version closest to our purposes, DC has also been analysed in terms of whether it constitutes a new normative paradigm, i.e., a qualitatively distinct form of constitutionalism, or simply a new phase (or a specific strand) within contemporary constitutionalism. However, even in these cases, the analysis has tended to focus on comparing the 'essence' of constitutionalism with its adaptations or responses to the digital world, rather than examining the historical dynamics of constitutionalism in relation to those of DC¹².

In the same sense, when situated within broader paradigms, it becomes clear that history is part of those frameworks, even if it has not been directly or expressly connected to DC. This is the case, for instance, of societal constitutionalism, whose historical development has been thoroughly examined in much broader works¹³. Similarly, multiple studies an-

⁸ E. Celeste, *Digital Constitutionalism: A New Systematic Theorisation*, cit., 78

⁹ D. Redeker – L. Gill – U. Gasser, *Towards Digital Constitutionalism? Mapping Attempts to Craft an Internet Bill of Rights*, in *International Communication Gazette*, 80, 2018, 302 ff.; N. Suzor, *Digital Constitutionalism: Using the Rule of Law to Evaluate the Legitimacy of Governance by Platforms*, in *Social Media+Society*, 2018, 1 ff.

¹⁰ G. De Gregorio, *The Rise of Digital Constitutionalism*, cit.

¹¹ O. Pollicino, *The Quadrangular Shape of the Geometry of Digital Power(s) and the Move Towards a Procedural Digital Constitutionalism*, in *European Law Journal*, 29, 2023, 10 ff., 18

¹² P.J. Leonesi Maluf, *The Emergence of Digital Constitutionalism within the Historical Trajectory of Constitutionalism*, in *Beijing Law Review*, 15, 2024, 1861 ff., 1873

¹³ *Inter alia*, see G. Teubner, *Constitutional Fragments: Societal Constitutionalism and Globalization*, Oxford, 2012, 17 ff.

analyse, from a historical perspective, the transformation of power in the era of digital capitalism in comparison with earlier periods, most notably modernity and industrial or financial capitalism, which are essential for understanding DC as a whole. I am thinking in particular of Zuboff's "capitalism of surveillance", Cohen's "informational capitalism", or Myers West's "data capitalism", each of which frames digital power structures as unprecedented yet historically grounded phenomena.

However, by not explicitly linking these historical dynamics to DC, all these accounts may have overlooked part of the rich history of constitutionalism, assuming that contemporary constitutionalism can be detached from previous forms, or treating it as a cyclical pattern, rather than a series of struggles, setbacks, and responses to evolving power dynamics. Depicting and analysing DC as an ideology that adapts the values of contemporary constitutionalism to the digital society¹⁴, though fruitful in many ways, may lose sight of this more dynamic strategy. That is, the conscious and deliberate steps needed to ensure the long-term success of DC.

Our hypothesis is that we may achieve a deeper understanding of DC and valuable insights to consolidate it by examining specific historical examples that illustrate how various actors and power structures were brought under constitutional control in the past. Law may play a central role in this process, as it currently does in the European Union to address abuses of power in the digital realm¹⁵, but broader socio-political efforts may also be required, such as widespread resistibility and contestability, as proposed from a societal constitutionalism perspective by Teubner and Golia¹⁶. Most likely, a combination of both will be necessary. We argue that concrete historical instances drawn from the long-term evolution of constitutionalism may help clarify and inform this process.

We believe our hypothesis is especially compelling when considering that past historical moments allow us to examine contexts in which nation-states were not yet consolidated. This enables us to move beyond state-centric frameworks (even if not necessarily with a transnational or global reach) and explore how constitutional orders prevailed under conditions of institutional fragility or contested authority. In fact, as it is well known, historical analysis is already widely used in addressing contemporary constitutional crises, well beyond the digital realm. Numerous studies have recently revisited, for instance, the 1930s, particularly the collapse of the Weimar Republic. They assume we can draw lessons for the defence of liberal constitutionalism today, based on the premise that history can inform how we respond to similar threats¹⁷.

More fundamentally, history reminds us that constitutionalism has rarely prevailed solely by virtue of its normative coherence or moral superior-

¹⁴ E. Celeste, *Digital Constitutionalism: A New Systematic Theorisation*, cit., 88

¹⁵ O. Pollicino – F. Paolucci, *Digital Constitutionalism*, in L. Floridi – M. Taddeo (eds.), *A Companion to Digital Ethics*, Hoboken, 2025, 313 ff.

¹⁶ G. Teubner – A. Golia, *Societal Constitutionalism*, cit., 8

¹⁷ *Inter alia*, D. Dyzenhaus, *Legal Theory in the Collapse of Weimar: Contemporary Lessons?*, in *The American Political Science Review*, 91, 1997, 121 ff.; S. Choudhry, *Resisting Democratic Backsliding: An Essay on Weimar, Self-Enforcing Constitutions, and the Frankfurt School*, in *Global Constitutionalism*, 7, 2018, 54 ff.

ity over alternative paradigms. Rather, it has often been established and sustained through long and painful struggles¹⁸. Not coincidentally, sovereignty has historically been asserted through concrete and often violent confrontations. Recent events suggest that we may be witnessing a return to raw power and a retreat in the constitutional struggle, sometimes even under the guise of constitutionalism itself. In this sense, if DC has so far been able to account for the progressive “constitutionalisation” of the digital world, as Celeste has argued¹⁹, it must also be capable of addressing and confronting its possible “deconstitutionalisation”, i.e., a regression in guarantees, rights, and governance mechanisms that does not seem far-fetched in light of recent developments.

Regrettably, the examples seem to be growing in number. Just to illustrate this point, as already pointed out by De Abreu Duarte, De Gregorio and Golia²⁰, when Elon Musk acquired Twitter and unilaterally decided to “liberate” the platform from any form of content moderation, he effectively abandoned the traditional safeguards and balancing mechanisms inherent to the principle of freedom of expression. Meta has not lagged in this regard. Not coincidentally, shortly after Donald Trump came to power, Mark Zuckerberg announced a drastic shift in the company’s moderation policies, triggering a conflict with its external Oversight Board that persists to this day, further intensified by the company’s revised hate speech rules. More recently, Meta openly defied European regulatory efforts, notably through its symbolic rejection of the European Commission’s voluntary Code of Practice for general-purpose AI models. This move has reinforced its confrontational stance, shared with Google, Amazon, and many other big tech companies, towards European authorities on artificial intelligence, following its public opposition to the AI Act. In this same sense, though without naming specific actors, some scholars argue that the AI Act itself, a cornerstone of the latest digital constitutionalist efforts, was already diluted at birth, as a result of intense and partially successful lobbying efforts by major digital platforms²¹.

In parallel, we have witnessed the withdrawal of the proposed AI Liability Directive, and intense lobbying efforts against the Digital Services Act and the Digital Markets Act²², together with apparent widespread non-compliance, if we trust the multiple investigations launched by the European Commission²³. In turn, in the United States, a ten-year ban on State

¹⁸ H. López Bofill, *Law, Violence and Constituent Power: The Law, Politics and History of Constitution Making*, London, 2021

¹⁹ E. Celeste, *Digital Constitutionalism: A New Systematic Theorisation*, cit., 81

²⁰ F. de Abreu Duarte – G. De Gregorio – A. Golia, *Perspectives on Digital Constitutionalism*, cit.

²¹ S. Wachter, *Limitations and Loopholes in the EU AI Act and AI Liability Directives: What This Means for the European Union, the United States, and Beyond*, in *Yale Journal of Law & Technology*, 26, 2024, 671 ff., 686, 695

²² F. Pratty, EU lawmakers warn against ‘dangerous’ moves to water down AI rules, in *Financial Times*, 25 March 2025; A. Harcourt, *Big Tech in the European Union*, in D. Coen – A. Katsaitis (eds.), *Handbook on Lobbying and Public Policy*, Cheltenham, 2024, 432 ff.

²³ *Inter alia*, Directorate-General for Competition, Directorate-General for Communications Networks, Content and Technology, Commission opens non-compliance investigations against Alphabet, Apple and Meta under the Digital Markets

AI laws approved by the House of Representatives could only be struck down in the Senate (admittedly, by an overwhelming 99-1 vote). All this could point to a broader deregulatory wave in the near future, one that, as previously noted, may amount to a potential process of “digital de-constitutionalisation”. Historical examples focusing on past constitutional clashes may help us abort and, if needed, reverse this trend.

2. Methodological considerations

The hypothesis we propose requires a careful methodological approach. Attempting to draw historical lessons for DC is a risky endeavour, and we are fully aware of the numerous objections it may raise, particularly from a methodological standpoint. They should not lead to discarding our approach, but to refining it. They relate to the three main parts of our endeavour: first, diving into the history of constitutionalism, second, drawing lessons from it, and third, applying them to the digital realm.

Concerning the first step, constitutionalism is not a monolithic or uniform tradition. Along with the well-known divide between ancient and modern constitutionalism, constitutionalism manifests in multiple local forms (Anglo-Saxon, Continental, Latin American, among others), each shaped by its own legal cultures, institutional legacies, and social struggles. There is no single history of constitutionalism, but rather multiple, sometimes competing, histories. Global constitutionalism cannot help us here, since its origins are more recent than the long-term history we want to explore²⁴. In this sense, as in comparative law, there is always the risk of turning historical and constitutional scholarship into a mere form of intellectual tourism. Cherry-picking isolated episodes for their illustrative value while ignoring the specific contexts that gave them meaning would definitely undermine our approach. Can such examples truly guide contemporary strategy? If so, which examples are appropriate, and why? The issue becomes considerably more complex once we consider the distance between constitutional texts, the ideas that inform them, and the reality of their application²⁵. This gap hinders our understanding of the cases that nourish the history of constitutionalism.

Second, if we focus on the tools needed to draw lessons from the past, the very concept of history is philosophically contested and difficult to grasp. Are historical dynamics repeatable? Are there structural patterns that impose themselves regardless of agency? Or is historical development contingent and chaotic? Debates in the philosophy of history highlight deep disagreements about whether and how the past can illuminate the present²⁶. In fact, in a hyper-polarised world, «distinct worldviews commonly

Act, in *European Commission*, 25 March 2024

²⁴ M. Kumm, *Global Constitutionalism: History, Theory and Contemporary Challenges*, in *Revista Direito e Práxis*, 13, 2022, 2732 ff., 2734

²⁵ D.T. Butleritchie, *The Confines of Modern Constitutionalism*, in *Pierce Law Review*, 3, 2004, 1 ff., 8

²⁶ R. Unger, *The Problem of Historical Objectivity. A Sketch of Its Development to the Time of*

lead to distinct uses of history»²⁷, sometimes unconsciously and at other times in ways instrumental to specific purposes. These concerns are not mere abstractions. They impact how we interpret analogies and assess their validity. The challenge, then, is how to draw lessons from these processes to cultivate a more conscious and strategic form of action, such as the one proposed here. Is this even possible?

Closely related to it, the history of constitutionalism itself is neither linear nor universally progressive. Framing it as a steady march toward liberty and reason is more myth than reality. Instead, its path is fractured, marked by revolutions, regressions, contested values, and regional variation, i.e. «many detours and setbacks» until its wider recognition²⁸. Even foundational moments such as the 1848 Revolutions reveal internal tensions: between liberal aspirations and social demands, between elites and popular movements, etc.²⁹ In all these cases, extraordinarily complex and diverse factors have shaped developments over time, making it impossible to discern any deliberate, coordinated plan behind them. Rather, it is an interplay of ideas articulated in different historical contexts with the social conditions prevailing at particular moments, either consolidating constitutionalism or, as in the present, apparently contributing to global democratic backsliding. And these scenarios are certainly more difficult to assess.

Finally, if we turn to the third step of our project, i.e. applying lessons from the past to present struggles, the entire effort rests on the assumption that meaningful analogies can indeed be drawn between past and present. Without such analogies, how could lessons derived from history be meaningfully applied to contemporary challenges? In that sense, some defend the «consistent, unchangeable measure of value, purpose, goodness, and identity, both personal and collective»³⁰. This would make the «wisdom of the past atemporal»³¹. However, this remains highly debatable. Indeed, we cannot neglect that many current powerful actors differ vastly from those of the past. Their global reach, their digital nature, the structures of power embedded in it, and their direct interaction with human cognition, causing anthropological transformations³², place them in a radically distinct position concerning motivations, means of influence, and relations with the public. Some digital challenges to fundamental rights, such as freedom of expression, are also new, or at least more severe than before³³. Declarations about “beating death” or “remaking the human be-

Hegel [1923], in *History and Theory*, 11, 1971, 60 ff.

²⁷ M. Jouet, *Projecting the Past into the Future of Constitutionalism: History, Atemporality and American Society*, in *University of Pennsylvania Law Review Online*, 173, 2025, 79 ff., 100

²⁸ D. Grimm, *Constitutionalism: Past, Present, and Future*, Oxford, 2016, 357

²⁹ J. Sperber, *The European Revolutions, 1848-1851*, Cambridge, 2005, 133

³⁰ J.D. Hunter, *Culture Wars: The Struggle to Define America*, New York, 1991, 44

³¹ M. Jouet, *Projecting the Past into the Future of Constitutionalism: History, Atemporality and American Society*, in *University of Pennsylvania Law Review Online*, 173, 2025, 79 ff., 81

³² D. Miller, *Digital Anthropology*, in F. Stein (ed.), *The Open Encyclopedia of Anthropology*, Online, 2018.

³³ A. Masferrer, *The Decline of Freedom of Expression and Social Vulnerability in Western democracy* in *International Journal for the Semiotics of Law*, 36, 1443 ff., 1461-1462

ing” from a transhumanist perspective heavily rely on digital technologies and illustrate aspirations that far exceed the horizons of earlier historical actors³⁴. General drivers such as the pursuit of power, wealth, and ambition must therefore be qualified in light of these motives, as well as of novel dynamics and phenomena, such as social media virality, algorithmic amplification, and artificial intelligence³⁵. In this context, referring to transhistorical constants may sound tempting, but it is probably illusory. Are the bases for historical analogies used in our work truly analogous to present conditions and dynamics? Can they yield meaningful insights for what many describe as an unparalleled present?³⁶

To address the previous caveats, some basic methodological cautions include identifying structural rather than superficial similarities, accounting for contextual differences (particularly those related to power relations and dynamics), and carefully addressing the possibility of alternative explanations. Ultimately, our aim is not to provide comprehensive social explanations or complete causal inferences, which are notoriously difficult to achieve in any historical account or even, more broadly, in any social science³⁷. Instead, we are concerned with a novel heuristic for DC, i.e. a way to reflect on the challenges and perspectives of DC, rather than definitive courses of action for the future derived from the past. That is why the most we can reasonably hypothesise and expect are broad and flexible strategies for the future, based on experiences from the past, to be learned from, not replicated.

Our analysis will adopt comparative history as our framework. This approach is primarily devoted to extensive research projects and the study of complex macro-processes and drivers, such as those required to account for the triumph of constitutionalism in each particular context and vis-à-vis the actors considered here³⁸. Traditionally, comparative history examines two different past contexts, sometimes contemporaneous, others not. In contrast, we employ it to compare the past and the present³⁹. Our ra-

³⁴ As one of Silicon Valley’s tycoons, P. Thiel, put it, «I stand against [...] the ideology of the inevitability of the death of every individual» (P. Thiel, *The Education of a Libertarian*, *CATO Unbound*, 13 April 2009).

³⁵ *Inter alia*, P. Cui, *Dynamics and Inequalities in Digital Social Networks: A Computational and Sociological Review*, in *arXiv*, 12 February 2025; S. Karnouskos, *Artificial Intelligence in Digital Media: The Era of Deepfakes*, in *IEEE Transactions on Technology and Society*, 1, 2020, 138 ff.

³⁶ S. Feldstein, *The Rise of Digital Repression. How Technology is Reshaping Power, Politics and Resistance*, Oxford, 2021

³⁷ From the classical and more general objection to causal inference raised by Hume, there have been countless attempts to address this objection, or at least to mitigate its impact: causal association, probabilistic approaches, process tracing, identification of broad social mechanisms, etc.

³⁸ As is obvious, we cannot fully engage in such a task within the limited scope of this contribution.

³⁹ We thereby acknowledge the «presentist tendency» criticised by D. Kelley, i.e., the desire to find «present wisdom in the infinite variety of historical experiences» (D.R. Kelley, *Grounds for Comparison*, in *Rivista di storia della Storiografia*, 39, 2001, 3 ff.). Admittedly, the difficulty of applying findings beyond the subset of cases under study (T. Skocpol, *States and Social Revolutions*, Cambridge, 1979, 288-291) casts a shadow over our findings, even if not focusing on strong causation, generalisation, and strict replication.

tionale is that comparative history enables us to look beyond the national framework and situate problems over time, while compelling us to «clearly specify the criteria of the choice of the case studies and units, develop the logic of comparison and discuss the causalities»⁴⁰. It also makes us aware of the correlation of multiple intertwined processes, which undermines strict causal inference, as we already pointed out⁴¹. In particular, we will adopt within-case methods, which «constitute the “historical” in comparative-historical analysis»⁴², trying to unveil causal narratives that describe the processes within each case, and exploring their causal determinants. The danger of simplifying the past to serve present narratives always exists, or, as some have put it, «facile analogies, pseudo-similarities, and questionable generalizations»⁴³ is a phantom we have to live with. Other limitations include the restricted number of case studies, the unavoidable reliance on specialised historiography for each period (whose systematic examination would demand far more resources than are available here), the tendency to select case studies that confirm rather than challenge the assumed theoretical framework, and the necessity of simplifying historical processes to isolate variables. Such simplification overlooks, for instance, mutual influences and transfers between systems, or the influence of national imaginaries in the selection of cases⁴⁴. However, they should not prevent us from engaging in a dialogue with such a past, recognising both its lessons and its limits⁴⁵. If DC is to confront the scale and complexity of today's power structures, it cannot rely solely on normative arguments and evolving institutional designs. It must also understand how constitutional orders were historically imposed, resisted, and transformed, and the conditions that made their triumph possible.

Therefore, we will analyse three cases in the history of constitutionalism in which constitutional orders confronted and eventually constrained powerful non-state actors. Through a comparative historical lens, we will focus on three recurring traits of such actors as guiding coordinates: their private nature coupled with extraordinary powers, transnational nature, operating on a global scale and penetrating traditional jurisdictions (despite having well-known headquarters and leaders), and their proximity to citizens, influencing their most intimate and everyday experiences. These traits have oriented the selection of three case studies, drawn from different epochs, in which constitutional values gradually prevailed over com-

⁴⁰ H-G. Haupt, *Comparative History - A Contested Method*, in *Historik Tidskrift*, 127, 2007, 697 ff., 700

⁴¹ J. Mahoney – D. Rueschemeyer, *Comparative Historical Analysis in the Social Sciences*, Cambridge, 2014, 10. For instance, the rise and triumph of constitutionalism over competing actors most time coincided with equally large-scale processes of secularisation, industrialisation, or nation-building.

⁴² M. Lange, *Comparative Historical Methods*, London, 2012, 4.

⁴³ M. Mörner – J. Fawaz de Viñuela – J.D. French, *Comparative Approaches to Latin American History*, in *Latin American Research Review*, 17, 1982, 55 ff., 55

⁴⁴ *In extenso*, H-G. Haupt, *Comparative History*, cit., 704-707; J. Kocka, *Comparative History: Methodology and Ethos*, in *East Central Europe*, 36, 2009, 12 ff., 15-17

⁴⁵ R. Grew, *The Case for Comparing Histories*, in *The American Historical Review*, 85, 1980, 763 ff., 768

peting rivals: the East India Company (EIC), the Papacy, and feudal lords. Our aim is not to provide an exhaustive or conclusive historical account of any of these moments, which is far beyond the possibilities of this contribution, but rather to shed partial light on the strategies followed to impose constitutionalism in those times, resulting in some preliminary and probably fragmented findings, more akin to flashlight beams in a dark room, as opposed to a fully illuminated landscape.

3. Bringing the East India Company back under constitutionalism

The comparison with the EIC serves as the first analogy for our analysis. The initial step to extract meaningful lessons from this case is to explain the rationale behind its selection. In that sense, modern tech moguls are by no means the first private actors to exercise unprecedented influence. Yet, a presentist bias often leads us to underestimate, or even forget, the scope of power historically amassed by earlier corporations. At its height, the EIC controlled vast trade networks, generated revenues comparable to those of modern states, maintained extensive political influence through officials on its payroll, and even commanded private armies⁴⁶. The EIC's directors and shareholders had close ties with the Crown, frequently sat in Parliament, securing lucrative government contracts and influencing public finance. In fact, the Company survived many of its seventeenth-century challenges largely because of its fiscal importance to the Crown⁴⁷. Beyond its political role, the EIC «minted coins in its name, established law courts and prisons, sponsored scientific expeditions, prosecuted wars and signed treaties, and accounted for about 14% of all imports to Britain during much of the eighteenth century»⁴⁸.

Admittedly, in a way that undermines our analogy, his unprecedented accumulation of power was, however, conditioned by the legal framework of the time. The Company's monopoly stemmed from its Royal Charter, a privilege that contrasts sharply with today's recognition of the freedom to conduct business as a fundamental right. Nevertheless, the EIC also anticipated key features of modern corporations⁴⁹. As a joint-stock company, different from regulated companies, anyone could invest capital and receive profits in the form of dividends. Investors were able to trade their shares, whose value fluctuated, and an elected board managed the pooled resources on behalf of shareholders⁵⁰.

A further limitation of our analogy is that, although the EIC was a Brit-

⁴⁶ W. Dalrymple, *The Anarchy*, London, 2019, 9

⁴⁷ L.S. Sutherland, *The East India Company in Eighteenth-Century Politics*, in *The Economic History Review*, 17, 1947, 15 ff., 23-24

⁴⁸ I. Barrow, *The East India Company, 1600–1858: A Short History with Documents*, Indianapolis, 2017, xxiii

⁴⁹ N. Robbins, *The Corporation that Changed the World: How the East India Company Shaped the Modern Multinational*, 2nd ed., London, 2012, 22-26

⁵⁰ I. Barrow, *The East India Company*, cit., 2

ish corporation, much of its activity unfolded in colonial India, a context radically different from modern constitutional regimes. Following the collapse of the Mughal Empire, the EIC took advantage of a fragmented political landscape, forging strategic alliances to undermine local rulers. Similar dynamics can be observed in other chartered corporations, such as the French and Dutch East India Companies⁵¹. In our case, however, the focus will remain on the EIC, not only because of the unprecedented scale of its power, but also because part of the struggle to curb its dominance took place on British soil itself. While local resistance in India (most notably the Sepoy Rebellion in 1857) severely undermined its authority and precipitated its decline, constitutional checks in Britain also played a decisive role in limiting the EIC's influence, as we will see.

Due to the limited scope of this contribution, we will not delve into how the EIC evolved from a chartered trading company into the main ruling power in India, nor cover its military campaigns, nor the well-documented economic plunder it carried out. It suffices to recall that the Company was founded under a Royal Charter granted by Elizabeth I on 31 December 1600, which authorized the creation of «one Body Corporate and Politick, in Deed and in Name, by the Name of The Governor and Company of Merchants of London, Trading into the East Indies [with a] Licence to be granted unto them, that they, at their own Adventures, Costs and Charges, as well as for the Honour of this our Realm of England, as for the Increase of our Navigation, and Advancement of Trade of Merchandize»⁵². The Charter granted the Company a fifteen-year monopoly over East Indies trade⁵³, later renewed indefinitely by James I in 1609, a period in which ties between the Company, London's financial interests, and the nobility deepened⁵⁴. Over time, opposition to its monopoly led to the creation of a rival company, and eventually, in 1708, to the merger of both entities into the United Company of Merchants of England Trading to the East Indies. The new Company retained most of the organisational structure of its predecessor, with a governor and 24 directors elected annually by the Court of Proprietors. By then, Indian policy was shaped by shareholders' meetings, where voting rights were directly tied to share ownership, effectively allowing influence to be purchased along with the shares.

The first significant reforms to this system arrived only in the second half of the 18th Century, following the acquisition of vast territories in Bengal and the subsequent *divani* or revenue-collection rights from those

⁵¹ Later in actors, like the United Fruit Company, also gained enormous influence abroad despite being based within constitutional systems, going so far as to support coups and authoritarian regimes across Latin America.

⁵² J. Shaw (ed.), *Charters Relating to the East India Company from 1600 to 1761*, London, 1887, 2

⁵³ «For the said Term of Fifteen Years, [the Company shall] have, use and enjoy, the whole entire and only Trade and Traffick, and the whole entire and only Liberty, Use and Privilege of trading and trafficking, and using Feat and Trade of Merchandize, to and from the said East-Indies» (*ibid.*, 10-11).

⁵⁴ K.N. Chaudhuri, *The English East India Company: The Study of an Early Joint-stock Company 1600-1640*, London, 1999, 35

lands⁵⁵. They marked the beginning of the fall of the EIC, progressively surrounded by growing social pressures and increasingly stringent regulations. Struggling with the financial aftermath of the Seven Years' War, Lord Chatham's government of 1766-1767 sought to break the longstanding balance between EIC and the Crown by initially threatening to undermine the EIC's territorial revenues and even its survival, and ultimately reaching a profitable compromise: the imposition of an annual revenue of £400,000 to be paid by the EIC. This made it increasingly dependent on the City's financial groups and the state itself, and almost bankrupted it in 1772, suspending the payments and failing to meet its obligations⁵⁶. More interestingly even, the compromise was leveraged by a parliamentary inquiry in 1767, which brought the affairs of the company to widespread public notice for the first time. Secret and select committees of the House of Commons were formed to investigate the EIC and determine the extent of corruption, as a matter of national concern⁵⁷.

The logic of state revenue pushed successive governments to intervene further in Company affairs⁵⁸. Dividends were statutorily limited. And Lord North's Regulating Act of 1773 went further still, establishing the office of the Governor-General for India, his Council, and a Supreme Court. Among other things, the Act established annual elections of 6 board members with a limitation to hold office for 4 years, no person employed in any civil or military capacity in the East Indies could be appointed director until such person had returned and been resident in England for at least 2 years, fraudulent transfers of stock for voting purposes were forbidden, and proxy limitations for small stock proprietors were enacted⁵⁹. In parallel, the mid-eighteenth century also marked what Brooks Adams termed «a revolution in the economic system, from the principles of mercantile capitalism to the principles of free-trade capitalism»⁶⁰. This required replacing the old monopoly with a free market. The first tangible expression of this shift came in 1769, when Parliamentary interference stipulated that the Company should export a fixed quota of British merchandise to India annually. British manufactures were forcibly introduced into India, while Indian manufactures were systematically excluded from Britain by prohibitive tariffs, thus seriously affecting the business model of the EIC. These changes were accompanied by an ideological offensive against monopolies and the EIC itself. To cite only one of the most renowned authors, Adam Smith denounced exclusive companies as «nuisances in every

⁵⁵ R. Connors – B. Gilding, 'Hereditary Guardians of the Nation': *The House of Lords and the East India Company in the Age of the American Revolution*, in *Parliamentary History*, 39, 2020, 159 ff., 163

⁵⁶ H.V. Bowen, *The Business of Empire: The East India Company and Imperial Britain, 1756–1833*, Cambridge, 2005, 38

⁵⁷ R. Connors – B. Gilding, 'Hereditary Guardians of the Nation', cit. 164; P. Lawson, *Parliament and the First East India Inquiry, 1767*, in *Parliamentary History*, 1, 1982, 99 ff.

⁵⁸ L.S. Sutherland, *The East India Company*, cit., 20-21

⁵⁹ M. Ramsay, *The Making of British India 1756-1858*, Manchester, 1917, 133-139

⁶⁰ B. Adams, *The Law of Civilisation and Decay: An Essay on History*, New York, 1897, 108-109

respect» and explicitly cited the EIC as a harmful anachronism⁶¹.

The intellectual case against monopoly and mercantilism reinforced the emerging regulations. In 1783, Charles Fox's attempts to approve different India Bills sought to abolish the EIC's Courts of Directors and Proprietors, transferring governance of India to parliamentary commissioners. The bills aimed at establishing a body of seven Commissioners to control the EIC's affairs and the management of commercial business, placing the EIC patronage at the disposal of the Ministers. While those bills were finally defeated, they prepared the ground for securing the decisive breakthrough with the East India Act of 1784, introduced by the new government of William Pitt the Younger. The new Act created a Board of Control composed of 6 members of the Privy Council to supervise the EIC. Pitt's legislation differed from Fox's only in appearance: while the former ostensibly preserved directorial power, in reality, it shifted control to the Crown⁶². However, the process to approve both bills was very different. While Fox had turned his back on the EIC, thus provoking the outcry of both its Court of Directors and its Court of Proprietors, Pitt did not hesitate to invite the Directors to discuss his bill. He secretly interviewed the Directors twice and the Proprietors once to make them accept a compromise: the Government would not interfere in commercial matters whereas «the political control over the Company's affairs should be in the hands of the Crown, which shall appoint the Governors and Commanders in Chief of the three Presidencies; the Council to consist of four members, the other two to be appointed by the Company, subject to the negative of the Crown»⁶³.

This subtle transfer of power reflected not only ministerial advantage but also the growing influence of the English industrial bourgeoisie, empowered by the Industrial Revolution, who increasingly opposed the EIC's monopoly as the main obstacle to capitalist expansion. At the same time, the abuses of the EIC in India became all the more apparent. Therefore, legal attacks were also directed at relevant individuals within the EIC. The most important and notorious one was the impeachment trial of Warren Hastings, Governor-General of Bengal, led by Edmund Burke from 1787 to 1795. Although Hastings was acquitted, the trial turned into a national debate on the behaviour of the EIC, corruption, and the rights of the colonised populations. Burke's denunciations helped consolidate public opinion against the EIC's arbitrary power, in line with industrial interests⁶⁴. The critical blow came with the renewal of the EIC's charter in 1813, which abolished its monopoly on trade with India due to industrial groups' pressure and growing EIC dependence upon state subsidies⁶⁵.

⁶¹ A. Smith, *An Inquiry into the Nature and Causes of the Wealth of Nations*, New York, 1937 (original work 1776), 603-606

⁶² R. Mukherjee, *The Rise and Fall of the East India Company*, Berlin, 1955, 228-229

⁶³ C.H. Philips, *The East India Company 1784-1834*, Oxford, 1961, 23-24

⁶⁴ R. Stone, *The Trial of Warren Hastings*, in *American Bar Association Journal*, 13, 1927, 398 ff., 403

⁶⁵ A. Webster, *The Political Economy of Trade Liberalization: The East India Company Charter Act of 1813*, in *The Economic History Review*, 43, 1990, 404 ff., 406

Industrial pressure had already forced the surrender of limited concessions in the 1793 Charter Act, which allowed private traders in Britain to use large EIC shipping to engage in private trade between Britain and India, subject to EIC control of shipping and sales. However, the new Act almost completely opened trade between Britain, India, and south-east Asia to merchants outside London and the EIC, although trade was restricted to the main EIC settlements, and the China trade monopoly was preserved. The main business of the EIC was not profitable anymore. According to some historians, the somewhat surprising «failure of London business to defend the E.I.C. monopoly and London's control of the Indian import trade, was largely a result of division in its ranks [resulting in] the apathy and low morale which pervaded the Court of Proprietors»⁶⁶. In parallel, new land-tenure systems in India further entrenched British fiscal control while enabling industrial capital to penetrate Indian society more systematically: public officials took the place of the EIC's workers to collect revenues and exploit the Indian soil. By 1813, the EIC seemed to have exhausted its main economic role, though it lingered as a political shell. To contemporary politicians, «the idea of consigning over to a joint stock association [...] the political administration of an Empire peopled with 100 million souls [had become] preposterous»⁶⁷.

Two further Charter Acts strengthened public control of the EIC. The first one, in 1833, removed any limitations established by the EIC for immigration to India and ended the monopoly with China. Moreover, the Governor-General was granted the power to create legislation applicable to anyone resident in EIC territory⁶⁸. The second one, the Charter renewal of 1853, transformed the EIC into «a shadow of its former self, [...] nothing more than a managing agency for the administration of India subject to the British government's direction in matters of policy»⁶⁹.

The Sepoy Mutiny of 1857 sealed the fate of the EIC and accelerated demands for a new system of governance in India. In the wake of the revolt, the year after, the British government, led by Lord Palmerston, debated alternatives and even tested reaction to the immediate abolition of the EIC⁷⁰, with proposals envisioning a Secretary of State supported by a representative Council. After Palmerston's resignation, new attempts were made by the conservative Disraeli government, finally resulting in the Government of India Bill of 1858. The Act created a Minister of the Crown, responsible for Indian affairs, assisted by a Council. The Council numbered 15 members who held office for life. 7 members were to be elected by the Court of Directors of the EIC, the remaining 8 members to be nominated by the Crown⁷¹. From then on, the EIC, fully under gov-

⁶⁶ *Ibid.*, 417

⁶⁷ W. Dalrymple, *The Anarchy*, 390

⁶⁸ M. Cartwright, *Fall of the East India Company*, in *World History Encyclopedia Online*, 26 October 2022

⁶⁹ P. Spears, *A History of India*, vol. II, London, 1965 (repub. 1979), 148

⁷⁰ A. Hawkins, *British Parliamentary Party Alignment and the Indian Issue, 1857-1858*, in *Journal of British Studies*, 23, 1984, 79 ff., 86

⁷¹ *Ibid.*, 105

ernmental control and the Crown's sovereignty, only lingered in name until its formal dissolution. This happened with the East India Stock Dividend Redemption Act of 1874, which provided for the commutation or redemption of dividends on EIC stock, vested its fund in the Secretary of State for India, and mandated its dissolution effective 1 June 1874⁷².

In reality, these were not reforms in the emancipatory sense, but «the necessary measures to clear the ground for the more scientific exploitation of India in the interests of the capitalist class as a whole»⁷³. The demise of the EIC was thus not the end of exploitation, but the removal of a private monopoly whose functions were absorbed into the constitutional machinery of the British state and redirected to serve industrial capitalism. Yet, it is an example of private power progressively tamed by a constitutional regime, albeit one that was itself responsible for (and continued thereafter to uphold) a despotic colonial order.

All in all, the gradual subordination of the EIC illustrates several strategies by which constitutional regimes could try to discipline private powers. At first, regulation targeted the EIC's revenues, and fiscal dependence was created through compulsory levies and state limitation of dividends, which bound the fortunes of the EIC to those of public finance. Second, mechanisms of parliamentary scrutiny (including inquiries, statutory limits on directors, and the establishment of new offices specifically designed to control the EIC) progressively curtailed the autonomy of EIC governance while enhancing governmental oversight. Third, ideological and legal challenges, from Adam Smith's critique of monopolies to Burke's impeachment of Warren Hastings, mobilised public opinion and legal accountability to delegitimise arbitrary corporate authority. Fourth, market restructuring, by dismantling the EIC's monopoly and opening trade to wider participation, eroded its economic base and shifted the balance of influence toward industrial capital and the state. Finally, ultimate absorption into the constitutional framework was achieved through legislation that transferred sovereign functions to the Crown and formally dissolved the EIC, mainly accepted due to the internal division within the EIC's managing bodies, partly provoked by external actors.

4. The Papacy and its challenges to state-based constitutionalism

The second analogy we will analyse focuses on the power held by the Papacy in many territories formally ruled by other parties, mostly monarchs who often allied but other times antagonised the head of the Catholic Church. The way in which two very different powers, in nature and in scope, coexisted may offer a base to understand contemporary power dynamics between the State and global private corporations. Those corporations, like the Papacy, are mostly located outside State territory (from a European perspective), have an immediate and overarching influence on

⁷² The Act is available at [legislation.gov.uk](https://www.legislation.gov.uk).

⁷³ R. Palme Dutt, *India Today and Tomorrow*, London, 1955, 47-48

a significant part of the population under the State's jurisdiction, and are difficult to counteract despite the existence of agents within the national territory and a well-located extraterritorial base for such power, as happened with the Catholic Church.

As is obvious, the limitations to this analogy are even more evident than with the EIC, as are the challenges to employ comparative historical methodologies in this case. To name only a few, first, the nature of the power exercised is fundamentally different. The Papacy's spiritual authority is hardly comparable to the economic power of digital multinationals, even though both have a strong cultural dimension and both seek to influence the values and practices of a large part of the population⁷⁴. Second, their objectives diverge significantly. While global corporations are oriented towards profit maximisation through data-driven business models⁷⁵, the Catholic Church has historically pursued proselytism of faith and broad social control, exercised through moral norms that often competed with, and sometimes directly opposed, those enacted by the State⁷⁶. Indeed, traces of this competition can still be observed in contemporary regimes through some of the religiously grounded claims of conscientious objection by Catholics. Third, in contrast to contemporary corporations, the Papacy for much of its history (and arguably even today, considering The Vatican) behaved as a State in its own right⁷⁷. Its power was territorial as much as spiritual, a fact made evident by the Papal States. These existed from the end of the 7th Century when a series of Popes allied with the Roman nobility to emancipate central Italy from the Byzantine empire and form the Republic of St. Peter⁷⁸ to the final Italian invasion of Rome in 1870, the subsequent self-imprisonment of the Pope in the Holy See, and the settlement of the so-called Roman Question by the Lateran Agree-

⁷⁴ Following Bourdieu and modern conceptions of power, we could see the spiritual as an important part of the cultural capital, developed alongside economic, social and symbolic capital as elements of power in a wide social field. An interesting convergence of both spiritual and digital power is analysed in H.A. Campbell – A. Vitullo, *Popes in Digital Era Reflecting on the Rise of the Digital Papacy*, in *Problemi dell'Informazione*, 3, 2019, 419 ff.

⁷⁵ *In extenso*, see V. Morabito, *Big Data and Analytics: Strategic and Organizational Impacts*, Cham, 2015, 65-88

⁷⁶ As is well known, this did not prevent the Papacy from claiming, at many stages of its history, «primacy of jurisdiction as “monarch of all Churches”, headship of the ecclesiastical world». Besides, as we will see, «in addition to these two types of jurisdiction, spiritual and temporal, it laid claim to a third: over a state of its own. By virtue of the Patrimony of St Peter, it possessed in its own right territorial jurisdiction over a central Italian state, wherein the pope ruled like any other European monarch» (J.A. Watt, *The Papacy*, in D. Abulafia (ed.), *Cambridge Medieval History*, vol. 5, Cambridge, 1999, 107 ff., 107).

⁷⁷ P. Prodi, *Il Sovrano Pontefice. Un Corpo e Due Anime: La Monarchia Papale nella Prima Età Moderna*, Bologna, 1982; C. Shaw, *The Papacy and the European Powers*, in C. Shaw (ed.), *Italy and the European Powers. The Impact of War, 1500-1530*, Leiden, 2006, 107 ff.

⁷⁸ Formally, the Papal States were not established until the year 754, when Pepin, king of the Franks, bestowed upon the Pope Stephen II free and independent authority over twenty cities (J.M. Woods, *The Rise of the Papal States up to Charlemagne's Coronation*, in *The Catholic Historical Review*, 7, 1921, 44 ff., 45).

ments, with the corresponding birth of the Vatican City State⁷⁹. The Papacy engaged in inter-State relations rather than private-public relations: it controlled territories, fielded armies, signed international treaties, and still today enjoys public international legal personality and sends plenipotentiary representatives abroad⁸⁰. These features make the analogy more problematic, insofar as the Papacy has always had one foot in the sphere of Statehood rather than operating purely as a *sui generis* extraterritorial power.

On the other side, as regards methodology, we do not face here a roughly two-century phenomenon tied to a single constitutional regime, albeit operating in colonial territories. Unlike the EIC, the Papacy and other powers have engaged in a millennial process so far. Its relations with other centres of secular power have shifted radically across time and space⁸¹. From the fragile position of the early Papacy vis-à-vis the Roman Empire until Constantine's conversion and the Edict of Milan, tolerating it and paving the way to make Christianity the official religion of the Empire some years later⁸²; to its complex interactions with the Holy Roman Empire (to some, «the highest expression of the universal struggle of the spiritual and temporal swords» and «the central event of the Middle Ages»⁸³; to its evolving and heterogeneous relations with the emerging modern States, some of which had even the power to veto the election of a new Pope⁸⁴. Which temporal framework and geographical context should be chosen as a reference point for the analogy? Should we emphasise relatively abrupt disruptions of Papal influence, such as Henry VIII's break with Rome and the subsequent reformation and foundation of the Church of England⁸⁵ (developments that invite a provocative comparison with sudden attacks on platforms like TikTok by the Trump administration)? Or should we focus instead on more gradual erosions of influence through religious wars, as with the Lutheran Reformation in the German lands⁸⁶? Should we consider long-standing organic alliances between the Papacy and national authorities in authoritarian contexts, like the Hungarian Catholic Primate's

⁷⁹ N. Picardi, *Alle Origini della Giurisdizione Vaticana*, in *Historia et Ius*, 1, 2012, 1 ff., 3

⁸⁰ C. Shaw, *The Papal States*, in N.H. Minnich (ed.), *The Renaissance Papacy 1400–1600*, Leiden, 2025, 78 ff.

⁸¹ *In extenso*, see J. Rollo-Koster – R.A. Ventresca – M.H. Eichbauer – M. Pattenden, *The Cambridge History of the Papacy*, Cambridge, 2025.

⁸² J. Mutie, *A critical examination of the Church's reception of Emperor Constantine's Edict of Milan of AD 313*, in *Perichoresis*, 19, 2021, 35 ff., 41-44

⁸³ T.F. Tout, *The Empire and the Papacy 918-1273*, 2nd ed., London, 1903, 6

⁸⁴ This was the case, for example, in the 1740 conclave, which lasted for half a year due to national disputes and monarch's influence over the cardinals who had to elect the new Pope, with the Holy Roman Emperor and the Kings of France, Spain and Portugal retaining the right to veto a potential pontiff (F.J. Coppa, *The Modern Papacy, 1798-1995*, London, 2016, 5).

⁸⁵ *In extenso*, see G.W. Bernard, *The King's Reformation: Henry VIII and the Remaking of the English Church*, New Haven, 2005.

⁸⁶ P.H. Wallace, *The Long European Reformation: Religion, Political Conflict, and the Search for Conformity, 1350-1750*, 3rd ed., London, 2020.

legal claim to be the regent of the Kingdom well into the 20th century⁸⁷, or, alternatively, the slow accommodation of the Catholic Church within consolidated modern constitutional democracies, such as in present-day Italy and Spain?

Moreover, while the decline of the EIC almost completely unfolded in the era of modern constitutionalism, after the great 18th-century revolutions, many of the decisive challenges to Papal authority occurred under the paradigm of ancient constitutionalism, whose instruments, frameworks, and conceptions of power are scarcely comparable to contemporary constitutionalism⁸⁸. As they were intertwined with larger historical processes, such as the emergence of modern nation-states, which overshadow conflicts with the Papacy itself⁸⁹, methodological difficulties are all the more evident in this case, and the choices we make may certainly seem somewhat arbitrary⁹⁰.

Considering these significant substantive and methodological caveats, we have chosen the temporal and spatial framework where more fruitful lessons may be drawn for the present challenge posed by digital platforms. We have therefore concentrated on a modern constitutional regime, closer to our contemporary context. By doing so, we avoid the difficulties linked to ancient constitutionalism and to mechanisms of power limitation more rooted in sovereign struggles, such as religious wars or armed conflicts, that characterised those earlier epochs when the Papacy functioned much like any other monarchy. In that context, we have also decided to avoid the Italian case, where the entanglement between territorial issues and national unification with the control of the Papacy could obscure the issues at stake⁹¹. Instead, we have taken the Spanish case as our reference, where the State had to evolve from a context of strong and organic Church-State relations under Franco's authoritarian National-Catholic regime, towards a constitutional framework in which Papal authority is subject to the limits of a modern constitutional State.

Indeed, despite the formal confessionalism of the Spanish authoritarian regime led by General Franco, and the close ties between national authorities and the Church, especially at the beginning⁹², the relationship between the Catholic Church and the Spanish State underwent profound transformations between the end of the Spanish Civil War and the adoption of the 1978 Constitution. During Franco's dictatorship, as we said, Catholicism had become the official religion of the State, organically intertwined with the regime. This was formalised in the *Leyes Fundamentales*, which

⁸⁷ J. Pollard, *The Papacy in the Age of Totalitarianism, 1914-1958*, Oxford, 2014, 545

⁸⁸ C.H. McIlwain, *Constitutionalism: Ancient and Modern*, repub., Indianapolis, 2007.

⁸⁹ P. Tusor, *The Baroque Papacy (1600–1700)*, Rome, 2016, 30-33

⁹⁰ The danger of selecting apparently arbitrary sets of cases corresponding to priorly accepted theories has been pointed out as a permanent danger in historical sociology as a whole (T. Skocpol, *Vision and Method in Historical Sociology*, Cambridge, 2012, 356 ff., 365-368).

⁹¹ F.J. Coppa, *The Modern Papacy*, cit., 9-11

⁹² J.J. Linz, *Church and State in Spain from the Civil War to the Return of Democracy*, in *Daedalus*, 120, 1991, 159 ff., 164-168

prevented all public religious celebrations other than those of the Catholic religion (private practice of other faiths was permitted), and consolidated through the Concordat signed with the Holy See in 1953⁹³. According to the Concordat, the Church was granted an extraordinary degree of privilege and protection. However, a historical privilege of Spanish Heads of State was left untouched: the prerogative to select Bishops to be appointed in Spanish territory, instead of the Pope, the so-called right of presentation (*derecho de presentación*).

From the mid-1960s onwards, however, important fissures between the Church and Franco's regime began to emerge. This change was significantly due to the well-known and very profound internal change initiated by the Catholic Church with the Second Vatican Council. Among others, the Second Vatican Council stressed the importance of freedom of religion and supported non-confessional political regimes, while claiming independence and autonomy for the Church, all at odds with the Spanish case and with the right of presentation. These tensions were aggravated by the proximity of some sectors of the Catholic church (Social-Catholics) to left-wing Spanish movements, as well as to independentist movements in the Basque Country and Catalonia⁹⁴, sometimes producing paradoxical cases. For example, the first congress of the clandestine left-wing trade union *Comisiones Obreras* in 1964 took place in a parish church in Barcelona under the shelter of the autonomy granted to the Church by the 1953 Concordat⁹⁵.

Although Spain adopted the 1967 Law of Religious Freedom, which sought to move from a regime of mere tolerance to one of genuine religious freedom, in line with the principles of Vatican II, tensions with the Vatican grew steadily. By the early 1970s, before Franco died, diplomatic frictions between the Spanish regime and Pope Paul VI had become acute, if not practically broken⁹⁶. The dispute concerning the right of presentation had even left twenty Spanish dioceses without a bishop, with their sees vacant for years⁹⁷.

Following Franco's death in November 1975, Church–State relations became a central issue in the transition to democracy. In January 1976, the

⁹³ E. Relaño Pastor, *Catholic Church in Franco Regime: A marriage of convenience*, in *Kirchliche Zeitgeschichte*, 20, 2007, 275 ff., 279

⁹⁴ A. Cazorla-Sánchez, *Did You Hear the Sermon? Progressive Priests, Conservative Catholics, and the Return of Political and Cultural Diversity in Late Francoist Spain*, in *The Journal of Modern History*, 85, 2013, 528 ff., 531-544

⁹⁵ P. Martín de Santa Olalla Saludes, *La Iglesia y su Nuevo Status en la Constitución de 1978: la Mención Expresa del Término 'Iglesia Católica'*, in *Estudios Eclesiásticos*, 92, 2017, 509 ff., 537

⁹⁶ M. Oreja Aguirre, *Anotaciones de 40 Años de Relaciones Iglesia-Estado en España*, in *Anales de la Real Academia de Ciencias Morales y Políticas*, 1, 2009, 249 ff., 254. The confrontation reached its peak in the Añoveros affair of 1974. When the Bishop of Bilbao, Antonio Añoveros, publicly defended the Basque people's right to liberty and cultural identity, the Franco government attempted to expel him from Spain. The Spanish Episcopal Conference even threatened excommunication against any official executing the order (A. Brassloff, *Religion and Politics in Spain: The Spanish Church in Transition, 1962-96*, London, 1998, 66-67).

⁹⁷ E.J. Heubel, *Church and State in Spain: Transition toward Independence and Liberty*, in *Journal of Church and State*, 30, 1977, 125 ff., 134

first official meeting between the new Spanish government and representatives of the Holy See opened the path towards renegotiating the 1953 Concordat. Both the new democratic government and the Church advocated for a declaration of principles or general agreement to redefine the respective positions of Church and State. These principles would later be developed in specific areas through the negotiation of detailed rules within sectoral bilateral commissions. A decisive moment came in July 1976, when King Juan Carlos I spontaneously and unilaterally renounced the historic privilege of the Spanish Head of State in the nomination of bishops⁹⁸. This act symbolised a clear break with the authoritarian past. It also facilitated negotiations that would eventually replace the Concordat with a series of new agreements within the framework of a new Concordat. Another key element was the referral of some Church-State matters to agreements between the newly created autonomous communities and ecclesiastical authorities for more specific issues⁹⁹. The Spanish Episcopal Conference, i.e., the permanent assembly of the country's bishops which represents the Spanish Church both before national authorities and the Vatican, increasingly assumed a leading role in Church-State dialogue¹⁰⁰. Finally, from 1976 to 1979, five international agreements were signed between the Spanish government and the Holy See, *de facto* representing a new concordat between the State and the Church. The agreements covered a wide range of topics and culminated with the rejection of the historical State patronage over ecclesiastical administration. However, the Spanish regime retained the privilege of presentation with respect to the military chaplaincy and the Bishop of Urgell, for evident political and historical reasons¹⁰¹. In turn, the Church formally recognised the pluralistic nature of Spanish society, including the right of all citizens to full religious liberty. A compromise was reached in the two most sensitive matters: education and finance. The agreements allowed the Church to secure some vital interests. At the same time, national authorities avoided converting the religious issue «into a source of division at a time when the threat from extremist supporters of the Franco regime remained a constant danger»¹⁰². The drafting of the 1978 Constitution provided the framework for the definitive redefinition of the Church's role in Spain. Political forces had to navigate between two very different legacies: the radical secularism of the 1931 Constitution of the Second Republic, and the Catholic confessionism enshrined in the *Leyes Fundamentales* of Franco's regime¹⁰³. The final compromise, embodied in Article 16, proclaimed the non-confessional character of the State while recognising, at the same time, the religious

⁹⁸ P.M. Heywood, *The Government and Politics of Spain*, London, 1995, 50

⁹⁹ M. Oreja Aguirre, *Anotaciones de 40 Años de Relaciones*, cit., 260

¹⁰⁰ F. Montero, *La Iglesia y la Transición*, in *Ayer*, 15, 1994, 223 ff., 234-237

¹⁰¹ It must be recalled that the Bishop of Urgell simultaneously serves as Co-Prince of Andorra, an independent and sovereign State bordering Spain and historically bound to it by close ties.

¹⁰² W.J. Callahan, *Church and State in Spain, 1976-1991*, in *Journal of Church and State*, 34, 1992, 503 ff., 506-508

¹⁰³ P. Martín de Santa Olalla Saludes, *La Iglesia y su Nuevo Status*, cit., 510

beliefs of Spanish society and establishing a duty of cooperation between public authorities and religious denominations, with explicit reference to the Catholic Church¹⁰⁴. This carefully negotiated solution represented neither the open separation of Church and State defended by some sectors, nor the continuation of confessional privilege. Rather, it enshrined a model of «amicable separation»¹⁰⁵, coupled with institutionalised cooperation, structured around four main principles: religious freedom, equality, neutrality, and cooperation¹⁰⁶. It acknowledged the historical and sociological weight of Catholicism in Spain while ensuring constitutional guarantees of religious freedom and equality for all faiths.

This tailor-made formula secured the vote of a wide range of parliamentary actors, from right-wing and centre parties, to the Communist party, and the abstention of the Socialist party, the second political force at the time in Spain. It was a form of consensual progress that, as in many other aspects of the Constitution, represents one of the main characteristics of the Spanish transition to democracy¹⁰⁷. Overall, the Spanish transition marked the end of a profound shift: the Church moved from being an organic ally of an authoritarian State to a problematic actor, maintaining a dual relationship with the regime before Franco died, until finally becoming one religious actor among others in a pluralist constitutional democracy, expressly acknowledged in the Spanish Constitution.

Despite the methodological limitations acknowledged at the beginning of this section, we believe that the Spanish experience in redefining the role of a historically entrenched extraterritorial power (such as the Catholic Church and the Papacy) under a modern constitutional regime offers potentially fruitful strategies for addressing the power of global digital platforms today. In the specific historical case analysed, these strategies included gradually reducing privileges through renegotiated general and sectoral agreements, voluntarily replacing unilateral State prerogatives (such as the State's historic right to nominate bishops) with bilateral procedures. These agreements stemmed from broader constitutional principles, thereby subjecting ecclesiastical authority to general norms of constitutional and democratic accountability, but tried to reach a consensual balance and acknowledge the specific position the Church played in Spanish society, maybe comparable to that of digital platforms in current society. In turn, affirming the equal rights of other religious denominations diluted the Church's monopoly over the public sphere, an approach that could be pursued to tackle the current asymmetries between traditional media and digital platforms¹⁰⁸.

¹⁰⁴ F. Requena, *The Catholic Church and consolidation of democratic civil society in Spain*, in *Journal of Civil Society*, 15, 2019, 249 ff., 256

¹⁰⁵ P. Martín de Santa Olalla Saludes, *La Iglesia y su Nuevo Status*, cit., 524

¹⁰⁶ J. Martínez-Torron, *Freedom of Religion in the Case Law of the Spanish Constitutional Court*, in *Brigham Young University Law Review*, 2, 2001, 711 ff., 719

¹⁰⁷ *In extenso*, see J.M. Colomer, *Transitions by Agreement: Modeling the Spanish Way*, in *The American Political Science Review*, 85, 1991, 1283 ff.

¹⁰⁸ R. Mansell, *Realigning Incentives through Formal Media, Communications and Platform Governance*, in M. Puppis – R. Mansell – H. Van den Bulck (eds.), *Handbook of Media and Communication Governance*, Cheltenham, 2024, 203 ff., 203-205

At the end, relying on structured negotiation and compromise to secure essential public interests while avoiding destabilising confrontation helped the Spanish constitutional order to control a powerful extraterritorial actor by creating a framework for regulated cooperation without renouncing constitutional supremacy. This required a clear delineation of which constitutional minima were non-negotiable for the constituent powers, which issues allowed for compromise, and which could even be deferred to subsequent agreements, to approach bilateral negotiations with other actors with a well-defined objective from the perspective of the national authorities. This approach, albeit broad, could certainly be adopted in the relations between constitutional orders and digital platforms.

5. The consolidation of the constitutional order against feudal lords

The third analogy will focus on the decline and fall of feudal powers. Like the two preceding ones, it is subject to similar limitations both at the level of analogy and at the level of methodology. Therefore, we shall not examine them in such detail. In selecting the case of feudal lords, the purpose is not to emphasise the concentration of economic power in the hands of a few actors, as might be the case with today's digital platforms, whose creators and managers are sometimes colloquially and critically labelled *techno-lords*. Nor is our aim to inquire in depth into whether the digital economy resembles the feudal one, as other authors have attempted (grounding the notion of a “new feudalism” or of “digital serfs” on the economic features of feudalism advanced by Marx, e.g. the non-productive rentier nature of the system of value capture by digital platforms relying on the users' data; the relationships of extreme dependency of both consumers and producers, etc.)¹⁰⁹, and thinkers from both ends of the political spectrum have claimed, on a tenuous and quite questionable basis¹¹⁰. We want rather to highlight the suffocating proximity of digital powers to the everyday lives of citizens, whose actions are directly affected by decisions taken far from them but with immediate consequences. The reach of feudal power was not abstract or distant; it shaped the most intimate dimensions of social, economic, and even personal existence. The influence in that case was physical, not digital, and, when necessary, enforced through coercion over serfs who generally could not choose the lord they served, i.e., a situation quite different from that of digital platforms. Nevertheless, we believe the analysis may prove useful.

Substantively, the difficulties begin with the very definition of feudalism, which remains a matter of controversy within historiography¹¹¹. If one adopts a minimal set of defining characteristics¹¹², one may find traces of

¹⁰⁹ C. Durand, *Techno-féodalisme. Critique de l'économie numérique*, Paris, 2020, 218-221

¹¹⁰ E. Morozov, *Critique of Techno-Feudal Reason*, in *New Left Review*, 133, 2022, 89 ff.

¹¹¹ P.R. Hyams, *The End of Feudalism?*, in *The Journal of Interdisciplinary History*, 7, 1997, 655 ff., 656

¹¹² These characteristics could be social (inequality, subordination, reverentia of the

feudal structures persisting even into the present. For instance, in aspects of the land tenure system in Scotland, Scottish Feudal Law, originating in the 11th Century, was only officially repealed in 2000¹¹³. Yet if one instead proceeds by families of resemblance, then certain regimes conventionally, and often uncontroversially, described as feudal may share little. For instance, those systems in which lords were allied with the King (as in medieval Spain), and those who positioned themselves as defenders of progressive liberties against the Crown (as in Poland), display radically different dynamics. Methodologically, the challenges resemble those faced in analysing the case of the Papacy. We deal with centuries-long relationships, highly heterogeneous across both time and space, which require a careful and selective approach.

In this case, we have focused on England. Although the control of feudal lords took place mostly in times of ancient constitutionalism, the British case offers dynamics that are both more complex and, paradoxically, more intelligible than other contexts. In fact, according to some, «English land law [was] more feudal than that of any other country in Europe»¹¹⁴. By concentrating on England, we aim to avoid the abrupt disruptions that characterise other regions, for example, France with the French Revolution¹¹⁵, or the influence of intermediate regimes that maintained late-feudal social structures, like in Germany¹¹⁶. Besides, being more complex and progressive, the English trajectory seems less affected by sudden individual actions, such as Kościuszko's abolition of serfdom in Poland after the peasants had joined his army against Russia. The greater continuity of the English case makes it possible to trace multiple causal factors over time and renders it particularly suitable for our purposes¹¹⁷.

English feudalism did not terminate in a sudden and clearly identifiable rupture. Instead, it underwent a gradual process of decline, shaped by a succession of conflicts, popular uprisings, and legislative reforms, in which the struggles among successive monarchs, the nobility, the gentry and the peasantry alternated in very different forms. However, some major steps can still be identified. The Peasants' Revolt of 1381 probably represents the first of them. Its emergence is often attributed to a constellation of

vassal), economic (rights over persons, particular organisation of the cultivation of the land), legal (tenure of the land system and status, duties and rights involved in the relationship), military (castles, horsemen, ad hoc armies), etc. (H.M. Cam, *The Decline and Fall of English Feudalism*, in *History*, 25, 1940, 216 ff., 216).

¹¹³ J. Bryden – C. Geisler, *Community-based Land Reform: Lessons from Scotland*, in *Land Use Policy*, 24, 2007, 24 ff., 28

¹¹⁴ H.M. Cam, *The Decline and Fall of English Feudalism*, cit., 217

¹¹⁵ J. Markoff, *The Abolition of Feudalism. Peasants, Lords, and Legislators in the French Revolution*, University Park, 1996, 4

¹¹⁶ S. Ogilvie, *Germany and the Seventeenth-Century Crisis*, in *The Historical Journal*, 35, 1992, 417 ff., 438-439

¹¹⁷ Some say it is unique (G.C. Comninel, *English Feudalism and the Origins of Capitalism*, in *The Journal of Peasant Studies*, 27, 2000, 1 ff., 4). In that sense, it would not be so useful. The large controversy on the passage from feudalism to capitalism, especially due to Marxist historiography, also entails a limitation (on the debate, see *inter alia* R.J. Holton, *Marxist Theories of Social Change and the Transition from Feudalism to Capitalism*, in *Theory and Society*, 10, 1981, 833 ff.).

factors, including demographic shifts following the Black Death, rigid labour laws, changing town-countryside dynamics, growing social mobility, the expansion of trades and services, an active rural land market, the proletarianization of the lower clergy, and the fiscal pressures imposed by the Hundred Years' War. Mostly, the revolt reflected a deep social incoherence between the evolving economic activities of peasants and craftsmen and their continued subordination under outdated seigneurial practices¹¹⁸.

In that context, historical accounts, albeit potentially biased, indicate that the rebels' aims were explicit: to challenge certain royal officials, dismantle feudal lordship, and supplant the legal structures underpinning it with provisions of their own design¹¹⁹. Central among their demands was freedom from serfdom, the reform of land tenure, and the transfer of jurisdiction from manorial to common law courts, which would have fundamentally altered rural hierarchies and social mentality. While the revolt finally failed, mainly due to royal betrayal of the promises made, it marked the beginning of a gradual conversion, in the near future, of villein tenure into copyhold, a more stable form of possession and one of the first blows to English feudal order¹²⁰. Gradual commutation of feudal dues for fixed money payments also became increasingly frequent after the revolt¹²¹.

The second major step came after the accession of the Tudors to the English throne in 1485, a change of dynasty that English historiography traditionally identifies with the division between the Middle Ages and Modernity¹²². In fact, when Henry VII freed some of his villeins in 1485, he justified his decision with almost the same words the leaders of the Peasants' Revolt Tyler and Ball had used a hundred years earlier: «because in the beginning nature made all men free and afterwards the law of nations reduced some under the yoke of servitudes»¹²³. With the very recent Wars of the Roses in mind (1455-1485), one of the main objectives of the new King was to curb the military power of the nobility. He did so by restricting the levying of private armies through the Acts of retaining (at least those of nobles not allied with the King and imposing large fines on those who violated this prohibition¹²⁴.

Henry VIII continued the policy of his predecessor¹²⁵ to such an extent that it instilled fear even among nobles who mustered armies in defence

¹¹⁸ H. Eiden, *Joint Action against "Bad" Lordship: The Peasants' Revolt in Essex and Norfolk*, in *History*, 83, 1998, 5 ff., 7, 28

¹¹⁹ *Ibid.*, 11-13

¹²⁰ R.H. Hilton, *Bond Men Made Free: Medieval Peasant Movements and the English Rising of 1381*, London, 1973, 222-223

¹²¹ E.J. Nell, *Economic Relationships in the Decline of Feudalism: An Examination of Economic Interdependence and Social Change*, in *History and Theory*, 6, 1967, 313 ff., 318

¹²² D'A.J.D. Boulton, *Henry VII and Henry VIII*, in M. Gosman – A.A. MacDonald – A.J. Vanderjagt (eds.), *Princes and Princely Culture 1450-1650*, vol. 2, Leiden, 2005, 129 ff.

¹²³ H. Eiden, *Joint Action against "Bad" Lordship*, cit., 30

¹²⁴ J. Ross, *Lord Bergavenny's Illegal Retaining Revisited, 1501-22*, in *Historical Research*, 94, 2021, 675 ff.; S.J. Gunn, *Early Tudor Government*, London, 1995, 40-41

¹²⁵ R. James, *Henry VIII's Military Revolution*, London, 2007, 120

of the Crown¹²⁶. Paradoxically, to extend royal oversight over feudal land-holding and dues, and to solve his financial problems, he revived feudal institutions, such as wardship¹²⁷. In particular, he prompted the approval of the Statute of Uses (1536), whose purpose was to convert uses into legal estates to extract a revenue for the Crown, substitute formal delivery of land through feoffments with written transfers, and increase the dispositive power of landowners¹²⁸. He also restored the ancient Court of Wards, responsible for collecting the revenues accruing to the Crown from wardships and handling the large range of legal business that wardship entailed¹²⁹. And he ordered a comprehensive survey of the wealth of the monasteries. Subsequently, thanks to these carefully collected data on their wealth, Henry VIII had his allies in Parliament introduce an act dissolving the smaller ones, while waiting to dissolve the larger ones in the following years¹³⁰. In that process, he obliged them to sell monastic estates to private holders under conditions of knight-service, making feudal obligations flow to the monarchy rather than intermediating lords.

In parallel, the relationship between the Crown and the gentry evolved. Increasingly, the heads of prominent landed families outside the peerage engaged directly in local governance through commissions of the peace, parliamentary service, and management of royal estates. The same was true with urban regimes¹³¹. This alignment not only enhanced the centralisation of authority but also facilitated the gradual conversion of traditional services owed to lords into fixed monetary rents, as we mentioned earlier.

The ultimate erosion of feudal authority in England culminated after the Civil Wars (1642-1651) and the temporary abolition of the Monarchy following the execution of Charles I in 1649. As it is well known, during the interregnum England functioned as a Republic under the authority of Cromwell and the remnants of the Parliament, most notably the House of Commons¹³². During this period, legislative activity was not particularly intense due to political turmoil, but parliamentarians specifically targeted the

¹²⁶ G.W. Bernard, *The Power of the Early Tudor Nobility*, Brighton, 1985, 31-32

¹²⁷ Wardship meant that «only the king could hold land absolutely. Those who held land from him (tenants-in-chief) did so in return for performing specified services, usually military in nature (hence the common freehold tenure, “knight-service”). Tenants-in-chief maintained tenants of their own, who also proffered services in return» (S. Bottomley, *Institutional Change and Property Rights before the Industrial Revolution: The Case of the English Court of Wards and Liveries*, in *The Journal of Economic History*, 83, 2023, 242 ff., 242).

¹²⁸ The main reason for the development of uses lay in the fact that feudal burdens and disabilities were only tied to legal titles, whereas the rights under a use could not be forfeited nor could uses be charged with feudal incidents (D.T. Smith, *The Statute of Uses: Look at Its Historical Evolution and Demise*, in *Western Reserve Law Review*, 18, 1966, 40 ff.).

¹²⁹ Bottomley, *Institutional Change and Property Rights*, cit., 243-244

¹³⁰ C.J. Reid, *The Seventeenth-Century Revolution in the English Land Law*, in *Cleveland State Law Review*, 43, 1995, 221 ff., 237

¹³¹ S.J. Gunn, *Henry VII in Context: Problems and Possibilities*, in *History*, 92, 2007, 301 ff., 307, 316

¹³² R.C. Brown, *The Law of England during the Period of the Commonwealth*, in *Indiana Law Journal*, 6, 1931, 359 ff., 362

Court of Wards, ultimately abolishing it in 1645. The restoration of the monarchy in 1660 under Charles II did little to reinstate noble power or feudal institutions. Indeed, the 1660 Restoration Settlement and the Tenures Abolition Act confirmed the abolition of the Court of Wards. They also eliminated feudal incidents, such as relief and wardship, and established that all future land tenures would be held in free and common socage, effectively terminating any residual feudal obligations. The Tenures Abolition Act also modernised the fiscal mechanisms of the Crown, replacing feudal land-based dues with an excise on beer and other liquors¹³³. Some decades later, the Glorious Revolution of 1688 and the subsequent Bill of Rights entrenched parliamentary supremacy over the monarchy, rendering the king accountable to elected representatives, but this is another story: feudalism as such had long disappeared. The legal system, the military power and land tenure framework had completely changed since the early Middle Ages¹³⁴.

Until then, the English experience may offer, once again, potential strategies of power control that remain relevant for contemporary challenges and digital platform control. First, popular resistance and collective mobilisation, such as the Peasants' Revolt, played a significant role in exposing systemic contradictions and forcing concessions, setting the stage for the whole process. Second, central authorities gradually curtailed the coercive capacity of feudal elites, particularly by restricting their ability to raise armies and by channelling feudal obligations directly toward the Crown. Nowadays, economic power and other resources, particularly data, could be diverted to national authorities to shift the balance of power and increase the digital sovereignty of public bodies. Indeed, in feudal England, the reformation of property rights and fiscal obligations was the key factor in weakening intermediary powers and strengthening royal oversight. Alliances between rulers and emerging social groups, such as the gentry and urban elites at the time (consumers and electors today), redistributed authority and ultimately provoked structural change. Taken together, these strategies amount to a progressive approach that took decades: catalysing social pressures, curbing third-party enforcement mechanisms and means of power, and forging new coalitions to promote legal changes. We believe none of them would be irrelevant in the present context.

¹³³ G.S. McBain, *Modernising the Monarchy—In Legal Terms*, in *King's Law Journal*, 21, 2010, 535 ff., 541

¹³⁴ That being said, both the House of Lords and the Commons remained dominated by landowning elites throughout the late seventeenth and eighteenth centuries. The Industrial Revolution, marked by the concentration of wealth and population in the cities, completed the shift of power from rural aristocrats to urban elites (R. Brenner, *Feudalism*, in S.N. Durlauf – L.E. Blume (eds.), *The New Palgrave Dictionary of Economics*, 2nd ed., London, 2008, 1 ff., 8-12). Accordingly, a succession of Reform Acts subsequently redistributed political authority, described by some contemporaries as the final struggle against feudalism (E. Porritt, *The Revolt Against Feudalism in England*, in *Political Science Quarterly*, 9, 1894, 64 ff.). As land ceased to be the principal source of wealth, the power of the nobility inevitably declined.

6. Conclusion: lessons from the past for present struggles

At the beginning of this contribution, we hypothesised that a deeper understanding of DC and valuable insights to consolidate it could be achieved by examining historical examples that illustrate how various actors and power structures were brought under constitutional control. After considering the significant methodological challenges this endeavour entails, and fully aware of them, we decided to employ within-case historical analysis to study three specific instances in which constitutionalism confronted powerful non-state actors: the EIC, the Papacy, and feudal lords. We then drew parallels between the decline and fall of these actors and potential strategies that DC could adopt to curtail digital powers in the future. What emerges from this comparative exercise are not a closed list of measures or guidelines for immediate regulatory reform, but a broader reflection on the structural conditions under which constitutional authority can effectively confront entrenched and quasi-sovereign powers, and a new perspective on how DC could develop.

Among historical lessons mentioned in this contribution, the gradual subordination of the EIC was based on mechanisms such as fiscal dependency, parliamentary oversight, wider legal and ideological challenges to digital power, market restructuring, with the ultimate absorption of corporate authority into constitutional frameworks. In turn, the Spanish experience with the Papacy and the Catholic Church proves the utility of renegotiating privileges in a balanced and structured dialogue, without renouncing constitutional authority, affirming the rights of competing actors, and pursuing strategic and non-negotiable goals to secure public interests, while compromising other issues to avoid destabilising conflicts. Finally, the English long feudal decline highlights the role of popular mobilisation, the restriction of third-party coercive capacity and the reform of property rights and obligations, redirecting essential assets to the King (or public authorities in our case), forging alliances between central authorities and emerging social groups.

Albeit broad and very general, these strategies confirm our initial hypothesis. They may complement more specific tactics aimed at limiting digital powers in particular domains, or in more limited contexts. Likely, none of them alone can fully tame the multiple and increasingly powerful digital actors of our era, but a combination of them could, in the long run, trigger the structural changes needed to discipline them. Indeed, in none of the cases examined did regulation, by itself, suffice to control extra-state powers and bring them back within the constitutional framework. Nor was it necessarily the initial step toward such control. In most instances, control was not achieved unilaterally, nor solely through coercion or the exercise of force. Yet it was also not attained by yielding to those powers or by uncritically accepting their premises, even when negotiations with them took place. The common denominator was rather the reassertion of constitutional sovereignty in the face of competing centres of power, through a combination of legal, political, economic and social strategies sustained over time.

This broader lesson invites us to revisit the very idea of DC. If DC is conceived exclusively as a regulatory project, focused on drafting ever more refined rules, safeguards, or institutional mechanisms, it risks underestimating the structural and confrontational dimension of the challenge. The historical episodes examined suggest that DC must also be understood as a long-term struggle over authority, legitimacy and the allocation of ultimate decision-making power in the digital sphere.

Recent events illustrate the salience of this perspective. Indeed, as recently as February 2026, the Spanish Prime Minister publicly announced the intention to introduce new restrictive measures concerning digital platforms, including limitations on their use by minors under 16 and stressing the potential personal liability of platform owners. An almost immediate reaction followed: Pavel Durov, the owner of Telegram, disseminated a lengthy and strongly worded message to all users in Spain, warning that the government's proposed measures threatened online freedoms and risked turning the country into a "surveillance state". Beyond the assessment of the proposed measures, this episode reveals how rapidly regulatory initiatives can be reframed as (and indeed are at the same time) existential clashes over power and sovereignty. It also shows how powerful digital actors are capable of directly mobilising their user base in order to resist or delegitimise public authority, an ability reminiscent, in structural terms, of earlier quasi-sovereign entities examined in this article.

Such dynamics confirm that the future of DC cannot depend solely on technical regulatory refinement or societal efforts. It must also grapple with questions of political authority, societal legitimacy, and the redistribution of power. As we said, the contribution of this article is not to advance a specific package of legal reforms, but to propose a new heuristic: a way of thinking about DC as part of a broader historical trajectory of constitutional struggles against entrenched powers. This perspective is intended to complement, rather than replace, existing approaches, by situating them within a wider framework that recognises the inevitability of conflict, negotiation and structural transformation. Further detailed exploration of these strategies and their evolution over time, together with efforts to adapt them to the digital context where possible, or to reformulate them in order to achieve equivalent outcomes, could prove highly fruitful in the future.

Abstract

A deeper understanding of digital constitutionalism and valuable insights to consolidate it may be achieved by examining historical examples that illustrate how various actors and power structures were brought under constitutional control in the past. Employing comparative historical analysis, we turn to three key historical moments when constitutionalism confronted challenges from powerful non-state actors, drawing parallels with the rise of digital platforms: the East India Company, the Papacy and feudal lords. By examining how constitutionalism was ultimately imposed upon these powers, we offer novel perspectives on the challenges posed by digital powers and propose long-term strategies that could make digital constitutionalism prevail.

Keywords

digital constitutionalism – history of constitutionalism – limitation of power - digital platforms – digital powers