More than sixty years ago, Charles Howard McIlwain opened his classic treatise *Constitutionalism Ancient and Modern* with the sentence: ‘The time seems to be propitious for an examination of the general principle of constitutionalism […] and an examination which should include some consideration of the successive stages in its development’. Today, at the onset of the 21st century, after more than two hundred years of modern constitutionalism, we have to admit that our knowledge of its history is still next to nothing. That modern constitutionalism came into being at the end of the 18th century seems to be beyond dispute. The American and French revolutions constituted, according to Maurizio Fioravanti, ‘a decisive moment in the history of constitutionalism’, inaugurating ‘a new concept and a new practice’. Two hundred years later, it is taken for granted that every country in the world, with the exception of the United Kingdom, New Zealand and Israel, boasts a written constitution on the basis of modern constitutionalism. But while we acknowledge the global acceptance of a political principle, singular as it may be, and while scholars such as Bruce Ackerman have already coined the term ‘world constitutionalism’, we uneasily have to admit that in spite of McIlwain, Fioravanti, and numerous other scholars, we definitely do not know how all this came about.

Great numbers of comparative studies have been undertaken in constitutional law and in constitutional history. Though they generally have enriched our

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* For a summary see below, p. 169.

More restrictive is Agnes Headlam-Morley, *The new democratic constitutions of Europe, A comparative study of post-war European constitutions with special reference to Germany, Czechoslovakia, Poland, Finland, the Kingdom of the Serbs, Croats & Slovenes and the Baltic
knowledge, they have told us little about modern constitutionalism and its history. As they departed from the nation-state, they tended to lack any overruling perspective and usually restricted themselves to piling up information state by state. In contrast, the most ferocious opponents of modern constitutionalism already displayed their full awareness of the concept after the conclusion of that decisive event, the revolution of 1848. They thoroughly denounced what they called the ‘essence and nuisance of modern constitutionalism’, as the title of one book put it, and with it its history and its principles or essentials. Though their arguments cannot claim any validity today, the phenomenon they described merits even more attention in our time than it commanded a hundred and fifty years ago.

These principles of modern constitutionalism were the same Carl von Rotteck in the 1830s had defined as the ‘constitutional system [...] as it has evolved since the beginning of the American and – more effectively in Europe – the French Revolutions [and] – completely in theory, at least approximately in practice – is concurrent with the system of pure Staatsrecht according to reason’. Its major principles were human rights, separation of powers, representative government, limited government, accountability, and independence of the judiciary. The principles of modern constitutionalism originated from the question how individual liberty could be made permanently secure against encroachments of the government and with regard to the weaknesses of human nature. How should constitutions be construed taking into account history and political experience as well as theories of politics, law, and philosophy?

Starting from the medieval idea of a king instituted with potestas temperata, the Glorious Revolution in England in 1688–89 had established the principle of limited monarchy as official constitutional doctrine. The American Revolution, striving to make individual liberty more secure, had transformed this doctrine into the constitutional principle of limited government. For the first time the

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10. Cf. the Act of settlement of 1701, the official title of which better underlines the correlation between limiting monarchy and securing rights: ‘An act for the further limitation of the crown, and better securing the rights and liberties of the subject’.