Constitutions, Civility and Violence in European History: Mid-Eighteenth Century to the Present

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Introduction

Constitutions, Civility and Violence

This is not an issue about constitutional history per se, but about the history of constitutions in relation to wider historic cultures. A hundred years ago, constitutions lay at the heart of historical studies in Germany, Britain and the United States. In recent decades, however, historians in many countries have been much more interested in class and interest-group politics or in social and cultural movements than in constitutional structures, which have been left largely to the purview of lawyers and political scientists. Why then attempt in 2008 to restore the links between formal constitutional history and the study of wider questions of political, social, cultural and intellectual change?

The answer to this question is partly contemporary and partly historical. No one can have failed to notice that «constitutions» are back with a big bang on the current political agenda, both in the context of the European Union and in relation to the numerous warring trouble spots of the world. In places like Rwanda, Darfur, Iraq, Afghanistan and parts of the former Yugoslavia local, national and international politicians desperately search for «constitutionalist» structures and strategies with which to address problems of civil war, genocide, private militias and many other forms of ethnic, communal and religious violence. At both European and more global levels, however, much of this current debate may appear to historians as unduly simplistic, particularly in its conception of what «constitutionalism» actually entails and in its frequent over-simplification or ignorance of the historic roots of conflict. An extreme example of this simplification is the assumption made by some prominent Western politicians that a «constitution» is synonymous with modern «representative democracy», and that «democracy» can and should be imposed on cultures that have little or no prior democratic or representative traditions. This perspective disregards the fact that democracy itself, no less than any other form of politics, may give rise to an «arbitrary» or «absolutist» form of political authority; and that the definitive purpose of a «constitution» is not to guarantee any one particular electoral or governmental system, but to create a framework of procedural, legal and normative restraints upon the
civil power and upon the public dealings of its individual citizens. Constitutional rules can limit arbitrary government even in the total absence of anything resembling mass democracy (as in eighteenth-century Britain), whereas universal suffrage may prove wholly ineffective in restraining it (as in 1930s Germany, or in Robert Mugabe’s Zimbabwe). Historical study of the key ideas, political construction and viability or otherwise of constitutions in the past may therefore be of some help in informing, refining and critiquing the often confused and contradiction-ridden debate on these matters taking place at the present day.

Quite apart from any pretensions to current «usefulness», however, there are other more austere «academic» reasons for looking anew at the experience of constitutions in past epochs. Having dominated historical studies from the mid-nineteenth century down to the Second World War, the study of constitutional history – as indicated above – has been out of fashion in European and north American universities ever since the 1960s. This decline came about because, despite the brilliance of many of its earlier protagonists such as Maitland and von Ranke, the subject had become entrenched in legal and administrative technicalities, seemingly divorced from the mid-twentieth-century explosion of interest in wider social and political forces. «Constitutions» came to be viewed by many as an area of enquiry that, both methodologically and ideologically, was static, «conservative» and deeply dull. Now in 2008, however, there is a powerful intellectual and scholarly case for the revival or reinvention of some kind of «new» constitutional history, quite apart from its obvious present-day relevance and «topicality». This would be a history that treated constitutions not just as abstract and self-contained juridical codes and systems, but as dramatic, textual and imaginative expressions of wider cultural pressures that interact at many levels with human lives. It would be a history, moreover, that might help to throw a more general explanatory light upon the historic preconditions of sociability, political stability, the forging of personal, local and national identities, and (conversely) on the causes of personal and group alienation from politics and of civic disintegration and breakdown. Within this history, the psychology and culture of «consent», or lack of it, seem all-important, although often ignored by constitutional histories in the recent past. These newer approaches may perhaps be compared to recent developments in military history, where the understanding, not just of battles and high strategy, but of social, intellectual, cultural, gender and even psychiatric history is being greatly enhanced by studies of the much wider impact of the total human experience of war. In pursuit of such a goal, this volume aims to reinvigorate research on constitution-building and constitutional breakdown, not just as exercises in public law and high politics, but as sites and agencies of wider social interaction and structural change.

Such large questions coincide very closely with the policy of the _Journal of Modern European History_ in pursuing complex and multi-layered themes that are

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intrinsic not just to the histories of individual nation-states, but to European history more generally (and indeed to non-European contexts as well). Nevertheless, it is easy to make ambitious generalisations about such large topics; it is more difficult to pin them down into real historic cultures. Hence, the programme of articles commissioned for this special issue focuses in each case both upon the peculiar constitutional histories and characteristics of individual national polities, and upon wider, more theoretical and more universal problems exemplified by specific national episodes and constitutional debates. All the contributors were asked to address certain big historical questions: Were there necessary prerequisites (economic, cultural, political, sociological, legal, personal) for constitutional survival, or was it largely a matter of historical chance and luck? How far were social and political stability and cohesion preconditions of the growth of constitutionalism or its eventual product? How significant was the cross-national and cross-temporal transmission of constitutional ideas from one culture to another? Why did some apparently muddled and pragmatic constitutional experiments become successfully bedded down within their national cultures whilst other much more sophisticated and well-thought-out experiments ended in signal failure? Why were religious, ethnic and language diversity successfully transcended in some polities but not in others? The essays in this volume explore the histories of stable and long-lasting constitutions (Britain and the USA); unstable or contested ones (France and many of the Ottoman successor states); settings where constitutions failed to gain legitimacy and broke down in disorder and revolutionary violence (post-imperial Germany and pre-communist Russia); and constitutions that remain a matter of future aspiration and contingency (most notably that of the European Union).

Thus, the first article – about the impact of American constitutional thought on nation-building discourse in Germany and Austria since the late eighteenth century – examines not just the specific extent of that influence, but the wider issue of why certain political, intellectual and organisational ideas took root and flourished in some contexts, but not in others that appeared quite similar. It suggests also that, despite widespread, long-lasting interest in the American experiment, there was little desire for its direct or detailed emulation in Europe (many central European constitutional arrangements have retained, for example, a much more formal «monarchical» component. Even within the German and Austrian «republican» constitutions of the present day). Moreover, constitutions in German-speaking nations never attained the almost «sacred» role in the national consciousness enjoyed by the constitution of the USA.

The second article, on the Russian constitutionalist experiments of the mid-1900s, looks primarily at the intellectual, cultural and political origins of those experiments and of their development within the Duma after 1906. It suggests that the causes of ultimate failure lay partly in the very diverse goals of different groups of reformers – but also in the failure of both the Duma and the Tsarist
government to face up to the practical realities of policing and public order that constitutionalism required. It hints also at questions of what might have happened if perchance the experiment had been successful (a question that must surely rank as one of the most potent 'counterfactuals' of European and global history throughout the twentieth century).

The third essay on Great Britain – a polity virtually unique over many centuries in the long-lastingness, malleability, and uncodified character of its constitutional procedures – poses the question of how such complex evolutionary adaptation was historically possible (concentrating particularly on the period from the 1832 Great Reform Bill down to the Great War). It criticises the long-held views that such evolution was an uninterrupted continuum, and that it was contingent upon a step-by-step transition to popular electoral democracy. It suggests instead that progressive expansion of the political nation in some respects eroded rather than strengthened the public culture of popular consent by shifting the locus of effective power away from the British parliament into the hands of the mass party. It also draws attention to the permanent fly in the British constitutional ointment, namely Ireland; an issue that ultimately forced much, largely reluctant, revisionist thought about British constitutional practice (though this was an outcome that lay largely outside the time-frame considered in detail here).

The contribution on France adopts a rather different approach. France since 1789 has experienced a long series of republican and imperial constitutionalist experiments, all of which (except, so far, the current one) have terminated in various kinds of internal violence and/or external defeat. These experiences have all been reflected in deep and ongoing sectoral and ideological divisions, but appear to have done little to weaken (and may indeed have reinforced) France’s long-lasting identity as a strongly cohesive historic society and culture. One possible explanation for this is the apparently paradoxical suggestion that it was not lack of civic zeal, but a superabundance of such zeal in many competing quarters which generated recurrent constitutional conflict and deadlock. And another interesting suggestion is that the powerful practical and symbolic importance of the Napoleonic Civil Code – endorsed by rival factions who agreed on no other matter – may have acted as a kind of surrogate constitution or universally endorsed set of public social norms that held French society together at times when formal constitutionalism was in crisis.

The article on the Ottoman Empire, treated here in both its 'European' and 'middle eastern' manifestations, considers a range of largely historical but nevertheless highly topical questions; at the same time, it offers an important comparative backcloth to the other, primarily Eurocentric studies in this issue. It examines the apparently paradoxical tensions between centralised autocracy and a high degree of local autonomy, between Islamic orthodoxy and religious pluralism, between permissive toleration and periodic violent coercion – that characterised the Ottoman state over much of its long history. And it contrasts
them with the constitutional arrangements that emerged during the later and post-Ottoman periods. These included the independence gained by the Balkan territories of Greece, Bulgaria and Serbia (each of them established under the umbrella of ‘invented’ European-style, constitutional monarchies); the tentative development of both central and provincial constitutionalism within the Ottoman Empire itself; and the later creation of a secular, republican Turkish state, straddling both Asia and Europe, together with the quasi-colonial Western-dominated mandates (or less formal spheres of influence), set up in the Middle East after the First World War. Such variety offers a rich laboratory for testing out a wide range of key issues. These include the questions of how far ‘constitutionalism’ is, or has been, a distinctively ‘European’ phenomenon; and how far its very patchy and imperfect realisation in the post-Ottoman territories in more recent years should be ascribed to ‘orientalism’, colonialism, economic imperialism, the culture of Islam, the subversive influence of competition for oil – or to some other as-yet unidentified variable.

The final essay in the collection, on the historic and intellectual roots of proposals for a ‘European’ constitution, differs from the others in that it deals with a political entity that, in a fully-fledged form, may never come into existence. But, quite regardless of eventual historic outcomes, the theme of ‘Europeanisation’ is part of the cultural and political history of our own times, and it seems appropriate to subject such proposals to the same kind of analysis that we might apply to the constitutionalist thought of earlier eras. The paper reviews a long series of proposals, dating back to the post-Versailles epoch, which envisaged closer cooperation between western European states on an economic, social and cultural plane, together with promulgation of loosely shared ‘constitutionalist’ values (though initially with no thought of an explicit formal ‘constitution’). This low-key, largely instrumentalist view of European unity shaped the foundation in 1957 of the European Common Market (later ‘Community’, and then ‘Union’), and has persisted in many quarters down to the present day. But it has increasingly been supplemented by a much more ambitious vision of a pan-national constitution or constitutional ‘treaty’. This shift of emphasis has been urged by some in order to endow the Union with greater popular ‘legitimacy’, by others to improve its working efficiency, and by a yet further group with a view to consolidating its position as an embryonic ‘world power’. The article suggests that much of the momentum behind the move towards a formal constitution has emanated from the European Court, fuelled by its successes in curbing certain aspects of member-state sovereignty, and reinforced by the widespread permeation of a new style of legal philosophy (stemming from Kant and Kelsen) that portrays ‘law’ as in itself intrinsically ‘sovereign’, quite independently of the enforcing powers of any state or states.

Six short articles on such large, complex and turbulent themes inevitably give rise to far more questions than can adequately be answered or even addressed in
the space available. Much more could have been included on many other seminal and contentious historical experiments – for example, on Switzerland and Ireland, on the many and varied territories of the former British Empire, or on the 1936 constitution of Soviet Russia. Nevertheless, attention may briefly be drawn to a number of issues that seemed to recur across the board in many different countries and cultures. One recurrent problem is the pitfall of constitutional nominalism. There were many historic examples of formal constitutions that signally failed to prevent what were seen even at the time as profoundly unconstitutional practices; and likewise there were many historic settings that can be identified retrospectively as having sown the seeds of a constitution in embryo, even where the very language of constitutionalism or of any parallel conception was wholly unknown (England’s Magna Carta of 1215 being perhaps the prime example). This historical point seems to have some intellectual bearing, if not necessarily a political one, on disputes about what does or does not constitute «a constitution», down to the present day.

A second recurring theme, signalled in the overall title of the issue, was the relation of constitutions to the management of violence on the one hand and to a popular culture of law-respecting «civility» on the other. The very fact that constitutions were only rarely the direct product of national consensus, and far more often stemmed from formal or informal «treaties» between contesting and even «warring» groups, underlined the fact that they were most successful where they were most effective in channelling and monopolising the use of force within the wider society. This is not to suggest that a culture of respect for «law» as an abstract principle was of no importance; but it does suggest that where such a culture was inadequately supported by machinery of law-enforcement (as was the case in late-Tsarist Russia or the Weimar Republic), constitutionalism was precarious. And, similarly, where state-policing was rigorous but a culture of respect for law was weak (or lacking, as in the later Ottoman Empire under the «young Turks») then constitutional breakdown was similarly likely.

A third key point is that, as in many other areas of political history, the supporting ideologies of constitutionalism varied widely in different periods and contexts. «Liberal» constitutionalism, for example, which in the early twenty-first century is predominantly internationalist in its frame of reference, in the later nineteenth century was often particularist and nationalist. In the mid-1880s the great British constitutional lawyer, A.V. Dicey, enraged advanced liberals by suggesting that Irish nationalism should be met, not by the granting of separate governing, legal and representative institutions peculiar to Ireland, but by rendering the existing British constitution more comprehensive, culturally neutral, even-handed and inclusive. At the time Dicey’s position was widely denounced as reactionary and obscurantist; yet his views have come to represent a powerful strand in advanced liberal constitutional thought of the present day.
A further point, not fully brought out in these essays, but worth emphasising here, is the sheer unpredictability of constitutionalism at many points in its history. William Gladstone, defending his Irish Home Rule bill in 1886 against pessimists like Dicey, likened his proposals for a separate parliament in Ireland to the constitutional arrangements prevailing in the great multinational empire of Austria-Hungary, and in the joint kingdom of Sweden and Norway. «No reasonable person», Gladstone suggested, could doubt the «solidity» and «safety» of these arrangements, by comparison with the unstable autocratic kingships of past times. Thirty-three years later (when both the dual monarchies cited by Gladstone had vanished into history), the newly-designed, post-imperial constitutions of Germany and Austria were in turn widely acclaimed by academics, lawyers and intellectuals throughout Europe and North America. They were seen as embodying the most advanced and enlightened legal, philosophical and political-science thought of the day, and as worthy of close investigation and emulation by constitutional experts in other more traditional states. Yet both models were to be short-lived and to end ignominiously in violence and terror.

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Constitutions, Civilité et violence –Introduction

Pendant la deuxième moitié du siècle, l'intérêt historique pour les constitutions (autrefois vues comme l'origine de la nation dans de nombreux pays) fut relativement éclipsé par d'autres sujets apparemment plus dynamiques, comme la politique des classes et groupes d'intérêt ou encore les transformations socio-économiques et culturelles. En 2008, les débats sur les constitutions, tant en Europe qu’ailleurs, semblent à nouveau revêtir d’une importance particulière pour la compréhension des temps présents et futurs. Toutefois, les expériences constitutionnelles du passé et les circonstances historiques dans lesquelles elles ont pu réussir ou échouer font peu partie du débat actuel. Les articles dans ce recueil se concentrent non pas sur les détails techniques ou légaux des anciennes constitutions, mais sur la manière dans laquelle leur élaboration interagit, à un moment historique donné, avec les processus sociaux, culturels et politiques des différents pays. Un accent particulier est mis à la dimension transnationale des idées constitutionnelles (incluant l’influence des États-Unis), à l’efficacité des constitutions exemplaires et à l’attention qu’elles portent à la «société civile». Ces sujets sont traités dans le cadre de la culture politique allemande, autrichienne, russe, française et britannique ainsi que dans un article comparatif sur les territoires de l’Empire ottoman (qui s’étalait de l’Europe à l’Afrique du Nord en passant par le Proche-Orient). Ce recueil se termine par un aperçu des différents mouvements intellectuels qui ont encouragé l’idée d’une constitution pour l’Europe depuis la fin de la Première Guerre mondiale à nos jours.

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