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THE GUN, THE SHIP AND THE PEN

WARFARE, CONSTITUTIONS AND
THE MAKING OF THE MODERN WORLD

LINDA COLLEY

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INTRODUCTION

It was in Istanbul that Kang Youwei witnessed the transformation at work. Sixty years old, a philosopher and a reformer, he had been exiled from his native China on account of his politics, and was persistently on the move. Crossing into the heartland of the Ottoman empire that summer in 1908, he found himself in the midst of turmoil. Rumours had been circulating of a Russian and British takeover of Macedonia, part of Sultan Abdülhamid II's dominions. Viewing this as further proof of the inadequacies of their government, sections of the Ottoman army had rebelled. They wanted a parliament. Even more, they wanted a reinstatement of the empire's first written constitution, which had been implemented in 1876, but then swiftly withdrawn. Kang Youwei arrived in Istanbul on 27 July, the day these army rebels succeeded in getting the constitution formally restored. Pushing his way through the crowds, cut off by language, but not from the excitement, he watched as 'Half-moon flags hung, people drink, hit drums, sung songs together and danced. People were chanting long live, it did not stop day and night, streets, parks and everywhere were the same ... it is astonishing.' Writing later, he set down the essence of the rebel leaders' ultimatum to the sultan: 'They all bent down respectively and told [him] ... "Every country has a constitution, only Turkey first declared and then abolished it, so people are not satisfied. The ideas of soldiers have changed."'”¹

This episode speaks to themes that are central to this book. There is the prominence of military men in this constitutional crisis. There is the fact that it was precipitated by threats and fears

of foreign aggression; and there is the behaviour of Kang Youwei himself. Wanting constitutional change in China, he nonetheless saw it as essential to pay close attention as well to political experiments and ideas in other sectors of the world. 'On the run for sixteen years', proclaimed this man's favourite personal seal: 'circling the globe three times, traversing four continents'.² Like other activists who feature in these pages, though to an extreme degree, Youwei took it for granted that a viable political constitution could not be the introspective creation of a single polity. Learning and borrowing from others was indispensable, a position that by the early twentieth century had become the norm.

But it is his account of the arguments used by these military rebels to face down the Ottoman sultan that is most striking. As Youwei tells it, these men insisted that – even among the empire's common soldiery – 'ideas' had 'changed'. They made a still more arresting assertion: that, by now – in 1908 – 'every country has a constitution'. To an important degree, these claims were substantially correct. Since the mid eighteenth century, new written constitutions had spread at an increasing rate across countries and continents. This had worked to shape and re-forge multiple political and legal systems. It had also altered and disrupted patterns of thought, cultural practices and mass expectations.

Collections of rules of government were nothing new, of course, but went back a long way. Some city states in ancient Greece had enacted them in the seventh century BCE. Codes of written laws emerged in different societies earlier still. Slabs of stone inscribed with the code of Hammurabi, ruler of Mesopotamia in what is now the Middle East, survive from before 1750 BCE. But such ancient texts were generally the work of single authors and potentates. Most were far more concerned to set out rules of conduct for subjects, and fearsome penalties for defying them, than to establish curbs on those in authority or provide for individual rights. Moreover, most early codes and collections were not produced in large numbers or designed for

a wide audience. Even when law codes and charters began to be set down on parchment and paper, and levels of print and literacy expanded in some regions of the world, acute limits on circulation persisted. In 1759, the English jurist William Blackstone would complain of the continuing lack of a ‘full and correct copy’ of King John’s Magna Carta, even though this was a celebrated charter and had emerged five centuries before.³

Yet, as this outburst of impatience on Blackstone’s part suggests, by this stage, the situation was changing. From the 1750s, and in some particularly war-torn countries such as Sweden even before that, widely distributed iconic texts and single document constitutions aimed at constraining governments, and promising a variety of rights, became more numerous and more prominent. Thereafter, such documents proliferated exponentially and in connected waves across multiple frontiers. The quantum surge in the number of constitutions that followed the First World War, and still more the Second World War, lay in the future. Nonetheless, by 1914, devices of this sort were operating in parts of every continent barring Antarctica. In addition, and as emerges from Kang Youwei’s account of the Young Turk revolution in Istanbul, a written constitution had come to be widely regarded as a trademark of a modern state and of the state of being modern. This book investigates these global transformations, and it connects them to shifting patterns of war and violence.

★

This is not how the advance of written constitutions is usually understood. Because they are often looked at through the lens of particular legal systems, and because of patriotic pieties, constitutions are normally analysed only in regard to individual nations. Insofar as they *have* been viewed as a contagious political genre progressively crossing land and sea boundaries,

this has generally been put down to the impact of revolutions, not war. In particular, the emergence of written constitutions has been credited to the success of the American Revolution after 1776, and to the impact of those other epic revolutions that swiftly followed: the French Revolution of 1789, what evolved into the Haitian Revolution shortly afterwards, and the revolts that erupted in the 1810s in one-time Spanish and Portuguese colonies in Central and South America. Since their onset is so strongly linked to these famous revolutions, the essential motive power of these new constitutions is often viewed in selective ways. Their genesis and growing popularity are seen as co-extensive with the rise of republicanism and the decline of monarchy, and associated with a relentless growth throughout the world of nation states and the inexorable progress of democracy.⁴

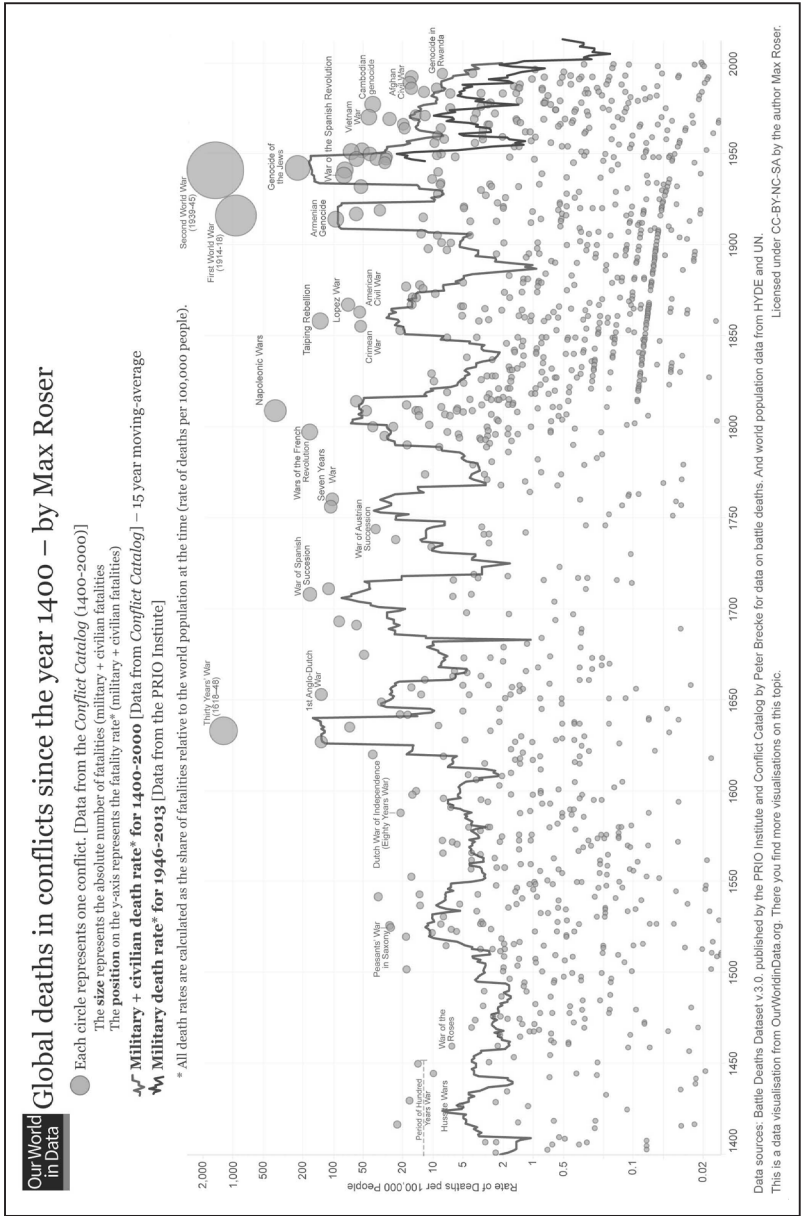
These great Atlantic revolutions and the texts and ideas they generated remain an important part of the interpretation I advance here. But approaching constitutions as being quintessentially to do with certain major revolutions, and with republicanism, nation-building and democracy, is unduly narrowing and misleads. By 1914, written constitutions were already becoming the norm across continents. Yet, outside of the Americas, most states at this time were still monarchies (some of the most liberal still are). Few states anywhere in 1914, including in the Americas, were full democracies (many fail in that respect even today); while the most powerful players across the globe on the eve of the First World War were *not* nation states in fact. They were overland or maritime empires or both.

Looking at constitutions overwhelmingly through the lens of certain classic revolutions misleads in a further respect. We may like to feel that revolutions are inherently more attractive and constructive phenomena than wars. But the divide between these two expressions of mass human violence – revolution on the one hand, and warfare on the other – is often an unstable one, and this was increasingly so after 1750. The American and

French revolutions, along with their successors in Haiti and South America, were all fuelled and precipitated by passages of transcontinental warfare. They were also further revolutionised as regards ideas, scale and consequences by yet more outbreaks of warfare.⁵ War became itself revolution. Moreover, even before 1776 and the American Declaration of Independence, war and constitutional creativity were becoming more vitally and visibly intertwined. Why was this?

The primary and most persistent cause was a growth in the geographical range, frequency, intensity and demands of warfare and cross-border violence. Detailed information on some regions remains imperfect, but the broad outlines of what happened seem clear. In some parts of the world, there may have been a decrease in the early 1700s in *the total number* of armed conflicts. But, as Max Roser, Peter Brecke and others have meticulously charted, after 1700, *the regularity* with which large-scale wars erupted across the globe markedly increased. This pattern of a greater regularity of really large-scale warfare continued to obtain into the mid twentieth century.⁶

What have been styled ‘umbrella wars’ became more frequent. That is, there was a rise in the incidence of conflicts, such as the Seven Years’ War (c.1756–63), the French Revolutionary and Napoleonic Wars (c.1792–1815), and the First World War (1914–18) which were not only hugely expensive in terms of lives and money, but also expanded across water and land into different regions of the world, incorporating and exacerbating multifarious local struggles in the process, and thereby becoming still more dangerous and disruptive.⁷ The conventional westernised dates of these ‘umbrella wars’ – some of which I give above – are deceptive, because, for many of the protagonists involved, conflict began earlier than is suggested by such canonical dates, or lasted longer, or both. The rising pace and scale of armed conflict from the 1700s also helped to make technologies of war progressively more lethal. As far as maritime warfare was



1. Estimated global death rate on account of warfare since 1400. Note the increased recurrence of high levels of combat casualties after 1700.

concerned, this was already becoming more apparent by the 1650s. After 1800, and still more after 1850, overland warfare, too, became rapidly more mechanised and deadlier in its effects. This combination of more recurrent and elastic large-scale wars, and more lethal methods of warfare, continued into the mid twentieth century, by which time possessing or aiming for a written constitution had become the norm almost everywhere.

The impact of these changing patterns of warfare on constitution-making was at one level a structural one. Choosing to engage in, or being dragged into wars that were now, more habitually than before, extremely large, frequently involved substantial navies as well as land forces, often spread across continents, and – even for minor and reluctant players – could be acutely expensive in terms of lives and cash, put states under severe strains, often repeatedly so. As a result, some political regimes were seriously weakened and destabilised. Others fragmented and erupted into civil warfare and revolution. New regimes emerging from these war-bred crises progressively elected to experiment with written constitutions as a means to reorder government, mark out and lay claim to contested boundaries, and publicise and assert their position at home and on the world's stage.

But even states and regimes which proved more successful at war, and avoided collapse or serious fracture, frequently found themselves needing to reorder domestic government and raise their game. Accordingly, even for more resilient states – and not just in the West – the appeal of issuing a new legal and political instrument on paper tended to increase. Drafting and publishing a written constitution supplied governments with a means to legitimise their systems of government anew. It made available a text by which to rally wider support and justify expanding fiscal and manpower demands. This was a vital part of the allure.

The new, more mass-produced constitutions functioned in effect and in part as bargains on paper. Male inhabitants of a

state might be offered certain rights, including admission to the franchise, as a quid pro quo for accepting higher taxes and/or military conscription. As the great sociologist and jurist Max Weber recognised, this was increasingly what happened. Himself caught up in constitutional debates in his native Germany in the wake of the First World War, Weber would lecture his students on how the need to expand 'military discipline' over the years had inescapably brought about 'the triumph of democracy'. Different societies, he argued, had 'wished and ... [were] compelled to secure the cooperation of the non-aristocratic masses and hence put arms, and along with arms political power, into their hands'.⁸ In return for a willingness to fire a gun or serve on a ship – something that, from the 1700s, became increasingly needful across continents – a man might secure the vote and more; and this deal might be outlined, put into law and publicised by means of a written and printed constitution.

Weber's brutal analysis supplies some of the answers. It explains why – especially after 1850 – polities in parts of Asia and Africa, as well as in Euro-America, were issuing constitutions that simultaneously made military service compulsory and enfranchised all, or sectors of, their adult male populations – but *only* men. Because this was a further outcome of the intimate connections between accelerating levels of warfare on the one hand, and the proliferation of constitutions on the other. Women's perceived incapacity for 'military discipline' helped to ensure that, at the outbreak of the First World War, the vast majority of these texts still explicitly excluded them from active citizenship.

There is another major respect in which mounting levels of violence influenced the spread and the quality of constitutions. As levels and scales of conflict accelerated from the 1700s, so, too, did rates of imperial competition and conquest. Every continent – including Europe itself – was exposed to heightened levels and threats of imperial invasion. Written constitutions have traditionally been examined in relation to the rise of nationalism

and nation-making: and that is part of the story. Yet empire also played an essential role in their design and proliferation, unavoidably so. Of the twelve most populous political jurisdictions existing in the world by 1913, eleven were *not* nation states. They were empires: Britain, China, Russia, France, Germany, the Netherlands, the Habsburg monarchy, the Ottoman empire, Japan, Italy, and the United States, the last of these with its overland continental empire combined by now with control over the Philippines in South East Asia.⁹

All of these empires – not excluding Britain – experimented with written constitutions, and, in the process and for their own interests, contributed to their spread and diversity. Different empires used these pieces of official, mass-produced paper to legitimise their rule, and to regulate territories seized by their armies and settlers. Some empires deployed new constitutions so as to disadvantage and discriminate against peoples who were in the way of their territorial expansion, especially those who were not white. On occasions, too, imperial actors issued new constitutions to try out political and social projects in subordinate territories they might have been unwilling to risk in their metropolitan core. Empires on the defensive, meanwhile (like many nation states under pressure), were increasingly drawn in the nineteenth century and beyond to adopt a new constitution as a means of reinventing themselves, and in the hope – as Kang Youwei witnessed in the Ottoman capital in 1908 – of keeping their subjects and lands together and intact in a hostile world.

Yet there was always more involved than this. By their very nature, written constitutions are protean and volatile pieces of political technology. They hold out the enticing promise that the words and clauses contained within them will bring into being a new, improved reality. New constitutions offer, or can appear to offer, the prospect of benign and exciting transformations. Consequently, there was far more to their widening circulation and attraction after 1750 than the top-down responses

of hard-pressed politicians, states and ambitious empires. Other forces and lobbies were also powerfully attracted to the genre and progressively drawn into its making: and, yet again, changing patterns of war and violence were instrumental in this regard.

At one level, the same burdens, disruptions and dangers caused by expanding levels of conflict and aggression, which caused political elites progressively to turn their minds to new constitutions, could also agitate and sometimes activate those below – the ruled, the subaltern. Recurrent warfare drained away money while demanding more. It cost the lives of rising numbers of soldiers, sailors and civilians, often undermined livelihoods, and repeatedly disrupted trade and the normal workings of communities. All of this could foster more critical scrutiny and discussions of structures of power and authority, and spark anger and resentment. This, in turn, could – and did – prompt demands *from below* for enhanced rights embedded in new or renovated constitutions.

By the same token, the burgeoning scale of mainly Western imperial expansion caused some outside the West who were at risk and exposed to its force to experiment with their own defensive and distinctive constitutions. This trend was already becoming evident in some regions of the world by the 1810s, and it did not necessarily involve a close emulation of Western political and legal ideas and nostrums. Rather, as we shall see, adopting and adapting paper constitutions enabled some polities and Indigenous peoples outside the West, but pressured by rising Western power, to make adjustments and hopefully strengthen their systems of governments and defences. It gave them a chance to proclaim on paper and publicise that they were viable and modern, and therefore not fit targets for imperial takeover. It also provided an opportunity for advancing different and distinguishing interpretations of what was involved in being a state and a people, and what was involved in being modern.

The rising circulation of written constitutions after 1750 should not then be understood only as a simple case of liberal and nationalist ideas and methods spreading inexorably outwards from the Atlantic world. To adapt Sebastian Conrad's interpretation of the Enlightenment (which is also part of this story), this other transformation – the global spread of constitutions – was rather 'the work of many different actors'. More often than not, these actors were people 'influenced by geopolitics and the uneven distribution of power'. Their ideas and actions were also often 'fed by high hopes and utopian promises'. But writers and advocates of constitutions were almost always influenced as well and at some level 'by threat and [by] violence'.¹⁰

It follows that paying close attention to the provisions and wording of different constitutions drafted across time and in multiple places is vital, because it is only by doing so that we can uncover, identify and unpick the many and various visions and ideas that were involved. Consequently, this book draws heavily throughout on the texts of multifarious constitutions that were written originally in many different languages, and that derive from locations in six continents. I have also been concerned to look at the ideas, personalities and actions of some of the writers and activists involved, those men (and, before 1914, it mainly though not invariably *was* men) who, as well as being often preoccupied with violence, the gun and the ship, also made studied use of the pen.

Since constitution-making was so interwoven with war and violence, these writers and thinkers are not necessarily those whom you might expect. Monarchs, politicians, lawyers and political theorists figure regularly in this book, to be sure. But so, too, do military, naval and imperial officers, along with one-time slaves, bankers, clergymen, medical doctors, intellectuals, journalists, and cultural figures of all kinds. Since my intention is to track and analyse changing attitudes and strategies over time

and geographical space, I look not just at official and successful makers of constitutions, but also at some of the many private actors who attempted documents of this sort, out of anxiety, in the hope of advancing particular political, intellectual and social agendas, or because they were simply addicted to writing and to the written word.

I stress this point because constitutions are often compartmentalised: treated as a category that is separate and distinct from other modes of literature and creativity. Yet many of the constitution-drafters, thinkers and advocates who figure in this book were engaged as well in other literary and cultural activities, from Catherine the Great of Russia, through Rammohan Roy of Calcutta, to Andrés Bello of Venezuela and Chile, to Itō Hirobumi in Japan, to Pomare II of Tahiti and Africanus Horton from Sierra Leone. Kang Youwei himself, with whom we began, was fascinated by and adept at the art of calligraphy, as well as being a student and would-be writer of constitutions.¹¹

It was not a coincidence moreover that this same post-1750 period, which saw the critical advance in the invention and take-up of written constitutions under heightened pressures of war and imperial violence, also witnessed an accelerating spread in large parts of the world in levels of literacy, an explosion in print and its transmission, a massive increase in the number and locations of newspapers, the invention of myriad new written languages, a greater frequency in the issue of translations, and – too – the rising popularity of the novel. A constitution, after all, like a novel, invents and tells the story of a place and a people. These documents were – and are – always more than themselves, and more too than a matter of law and politics. They stand in need of reappraisal and rediscovery, and of being read across boundaries.

No single book – and certainly no single author – can hope to address the extraordinary range of constitutional creativity, debates and outcomes that occurred across maritime and land frontiers from the eighteenth century to the First World War, and that continues to shape boundaries, politics and patterns of ideas today. There are many different histories of these developments that can and should be written. My own strategy has been to focus on a series of important themes and signal crises that impinge on, and that emerged from, the repeated inter-meshing of new constitutions and varieties of warfare and violence. Each of the following chapters, which are organised in rough chronological order, is built around one of these major themes and flash-points. Each begins with an evocation of a specific location and a particular episode of constitution-writing. Each chapter then moves on to explore the wider ramifications of the theme in question in other parts of the world.

One final point. I came to this subject as an outsider. Along with New Zealand and Israel, the United Kingdom, my place of birth, is one of very few states left in the world still without a codified constitution. Moving in the late twentieth century to live and work in the United States, a country which has made a cult of its own written constitutions, was therefore an arresting experience in political terms, as in other respects. It was also a call to curiosity. Because of where I came from, these documents seemed profoundly exotic. I was detached, but I also wanted to understand them better. I wondered why they were not treated more ambitiously and variously by historians and in global contexts. This book grew out of these early curiosities and questions.

In the course of writing it, I have become not so much a convert to these kinds of constitutions as a candid friend. They are the frail, paper creations of fallible human beings. Wherever they exist, they only function well to the degree that politicians, the law courts and the populations concerned are able and

willing to put sustained effort into thinking about them, revising them when necessary, and making them work. These are also emphatically not innocent devices, and never have been. From the outset, as will become apparent, written constitutions have been as much to do with enabling varieties of power as they have been with restricting power.

But I have come to believe nonetheless that they can serve multiple, useful purposes. I also believe that while the manner in which constitutions evolved and spread still continues to influence ideas and politics across the globe, *some* of the forces that once helped these instruments to function and to command attention and attachment are now weakening and coming under rising pressures. But that is a matter for the end of this book. For now, in order to begin, we need to go back to the 1700s, and to the world of the Mediterranean.