

Empires of Writing: Britain, America and Constitutions, 1776–1848

LINDA COLLEY

Approximately 50 years ago, R. R. Palmer published his two volume masterwork *The Age of the Democratic Revolution*. Designed as a “comparative constitutional history of Western civilization,” it charted the struggles after 1776 over ideas of popular sovereignty and civil and religious freedoms, and the spreading conviction that, instead of being confined to “any established, privileged, closed, or self-recruiting groups of men,” government might be rendered simple, accountable and broadly based.¹ Understandably, Palmer placed great emphasis on the contagion of new-style constitutions. Between 1776 and 1780, eleven onetime American colonies drafted state constitutions. These went on to inform the provisions of the United States Constitution adopted in 1787, which in turn influenced the four Revolutionary French constitutions of the 1790s, and helped to inspire new constitutions in Haiti, Poland, the Netherlands, Switzerland, and elsewhere. By 1820, according to one calculation, more than sixty new constitutions had been attempted within Continental Europe alone, and this is probably an underestimate. At least

1. R.R. Palmer, *The Age of the Democratic Revolution: A Political History of Europe and America, 1760–1800*, 2 vols. (Princeton: Princeton University Press, 1959–64), I:v, 4.

Linda Colley is Shelby M.C. Davis 1958 Professor of History at Princeton University <lcolley@princeton.edu>. Earlier versions of this article were delivered to audiences at the Institute of the Americas, University of London, the European Institute in Florence, and the University of Virginia’s Legal History Workshop. The author is grateful for the helpful comments made on those occasions; for the close readings of earlier drafts by Dirk Hartog, David Bell, Sara Brooks, Peter Marshall, and the *Law & History* reviewers; and for Samuel Lazerwitz’s assistance with the final manuscript.

a further eighty constitutions were implemented between 1820 and 1850, many of them in Latin America.² The spread of written constitutions proved in time almost unstoppable, and Palmer left his readers in no doubt that this outcome could be traced back to the Revolution of 1789, and still more to the Revolution of 1776. Despite resistance by entrenched elites, and especially from Britain, “the greatest single champion of the European counter-revolution,” a belief was in being by 1800, Palmer argued, that “democracy was a matter of concern to the world as a whole, that it was a thing of the future, [and] that while it was blocked in other countries the United States should be its refuge.”³

Palmer wrote at a time of cold war pro-Western and all-American patriotism, but his pioneering transnationalism, and current scholarly interest in the evolution of democracy, human rights and liberalism have, in recent years, given his work a fresh lease of life. In 2010, David Armitage and Sanjay Subrahmanyam co-edited a fine set of essays reappraising “The age of revolutions” in transcontinental contexts; while in another book, Armitage has credited the American Revolution with provoking “a contagion of sovereignty.” The Revolution’s ideas and pioneering written devices, he suggests, helped to provide for “the gradual emergence of a world—our world—of states from an earlier world dominated by empires.” For Armitage, as for Palmer, 1776 served to give rise to forces that ultimately proved unidirectional. “The origins of our modern world of nation states,” Armitage writes, “can be traced back...to the American Revolution.”⁴ Claims of this sort run some risk of telescoping and over-homogenizing the course of modern global history. For most of the long nineteenth century—and arguably until at least 1945—nation states were less powerful players in the world than different sorts of empires.⁵ By the same token, to interpret the spread of written constitutions after 1776

2. For lists of written constitutions during the age of revolutions, see Henry Bertram Hill, “The Constitutions of Continental Europe: 1789–1813,” *Journal of Modern History* 8 (1936): 82–84; and Zachary Elkins and Tom Ginsberg, *The Endurance of National Constitutions* (Cambridge: Cambridge University Press, 2009), 215–21. Such (differing) estimates convey only a limited idea of the scale of constitutional activism. In Northern Italy alone, thirteen new constitutions were drafted between 1796 and 1810: Isser Woloch, ed. *Revolution and the Meanings of Freedom in the Nineteenth Century* (Stanford: Stanford University Press, 1996), 222.

3. Palmer, *Age of Democratic Revolution*, II:459, 545–6.

4. David Armitage, *The Declaration of Independence: A Global History* (Cambridge, MA: Harvard University Press, 2007), 20, 103, 138; Sanjay Subrahmanyam and David Armitage, eds. *The Age of Revolutions in Global Context, c.1760–1840* (New York: Palgrave Macmillan, 2010).

5. For the persistence and diversity of empire over time, see John Darwin, *After Tamerlane: The Global History of Empire since 1405* (London: Allen Lane, 2007).

overwhelmingly in terms of a relentless progress toward democracy is bound to be highly selective. According to one influential estimate, even in 1950, there were only twenty-two sovereign states in existence that could be viewed as full democracies.⁶ Yet written constitutions had been proliferating across continents by that point for almost 200 years.

There is a need, then, to develop more multistranded, less teleological perspectives on the advent, spread, and meanings of written constitutions, and on the age of revolutions itself. A possible starting point for such a reassessment would be another text, a very different text from Palmer's great work, but one that is connected to some of its themes. This other text sits in a glass case in a famous museum. Print reproductions of it have circulated for more than 200 years. Scholars have debated its interpretation. Millions of visitors have gazed in awe at the original, rightly viewing it as an iconic emblem of its society of origin. As it happens, I am not referring to the original of the American Constitution now on show at the National Archives in Washington, but to the Rosetta Stone on display at the British Museum in London. An ancient inscribed slab, the Rosetta Stone entered the museum's holdings in 1802, approximately 13 years after the ratification of the United States constitution. Like the latter, it was a prize of military and ideological struggle. A British army wrested the slab from the French, who in turn "discovered" and appropriated it during Napoleon's invasion of Egypt in 1799. Throughout the nineteenth century, the Rosetta Stone was displayed at the British Museum, Richard Parkinson writes, so as "to look like a piece of black-and-white printed text laid out on an angled reading desk, as if silently ignoring its existence as an ancient monument and subsuming it into the world of Western printing."⁷

The Rosetta Stone helps to indicate why a wider, more enquiring analysis into the spread and meanings of the new written constitutions is both appropriate and fruitful. The stone's fate and fortunes are a reminder, to begin with, that the proliferation of constitutions after 1776 formed part of a broader, increasingly self-conscious exploitation at this time of language and texts of all kinds. Both new, revolutionary polities and well-established regimes, plus all manner of private agencies and individuals, displayed growing interest in the potential of words, signs, and print to organize, inform, and re-model human beings, and to implement, display, and extend power.⁸ As British-French struggle over the Rosetta Stone

6. See Larry Diamond, "A report card on democracy", www.hoover.org/publications/hoover-digest/article/7310.

7. *The Rosetta Stone* (London: British Museum Press, 2005), 32.

8. The long-distance deployment and circulation of texts by secular and religious authorities in order to spread ideas and influence was scarcely novel. However, increased levels of imperial competition and warfare after 1750, and the growth of towns, literacy, and

illustrates, this more intensive and calculated resort to texts of different kinds was a characteristic of empires, and not just of emerging nation states. Where and how the Rosetta Stone came ultimately to be exhibited should also prompt us to question the degree to which Britain was able and willing to remain aloof from an enhanced culture of public and political writing-ness.

Some notable recent works on the Enlightenment and political modernities have echoed Palmer's characterization of post-1776 Britain as an overwhelmingly reactionary state, suggesting that it displayed "a remarkably dogmatic and intolerant social and political conservatism," and that its rulers defended "virtually all existing institutional, ecclesiastical, and legal forms."⁹ Yet, the transcontinental spread of new written constitutions after the American Revolution, and the significance and wide repercussions of this, cannot be adequately understood without taking into serious consideration the polity that notoriously still lacks a codified constitution, namely Britain. Nor can the proliferation of constitutions after 1776 and their impact be properly understood without examining the vital role in these processes played by matters of empire. Accordingly, this article explores the variety of British responses to the constitutional innovations associated with the American Revolution, and the implications of this for both sides of the Atlantic. It also draws on these British responses to advance wider arguments about the cultural roots of the new constitutionalism, and the persistent connections between the writing and dissemination of constitutions and evolving modes of overland and overseas power and authority.

I

Awareness in Britain of the new written constitutions was precocious and sustained, and from the outset, responses to them were very mixed. In part, this was because Britain possessed its own indigenous traditions of iconic

printing outlets, led to governments and state agents—and some of those resisting them—to deploy texts and print on a greater scale than before, and not just in the West. Thus in 1787, the year of the drafting of the United States Constitution, the Imperial Household Department in Beijing completed its *Comprehensive Treatises of our August Dynasty*, a printed study of languages existing in the Ching Empire. These treatises were designed both for administrative and religious purposes, and to display and celebrate the Ching Emperor's reach and reputation. I owe this information to Mårten Söderblom Saarela.

9. Jonathan Israel, *A Revolution of the Mind: Radical Enlightenment and the Intellectual Origins of Modern Democracy* (Princeton: Princeton University Press, 2010), 236.

constitutional texts. After the Restoration of the monarchy in 1660, successive London governments worked hard to engineer public forgetfulness of the innovations of the Civil War and republican eras: the Agreements of the People of 1647–49, the Instrument of Government of 1653, and the subsequent codified constitution, the 1657 Humble Petition and Advice. But there remained less contested and widely known and discussed examples of how dramatic political change in Britain had sometimes been effected by momentous constitutional texts. There was the Bill of Rights (in Scotland, the Claim of Right) of 1689, formulated by the Westminster and Edinburgh Parliaments the year after the “Glorious” Revolution. There was also the Treaty of Union of 1707, the preamble of which proclaimed it as being “for ever after,” and which amalgamated England and Wales on the one hand, and Scotland on the other into a single, parliamentary state.¹⁰

It is sometimes assumed that written constitutions appeared immediately and self-evidently alien in Britain because of the grip there of notions of parliamentary sovereignty. However, although assertions of Westminster’s sovereignty certainly became more developed and more strident during the eighteenth century, there was still no consensus in 1776, even at elite level, about how far such claims were, or were not, compatible with external limitations on executive power. In part, precisely because no *single* text was in existence that supposedly encompassed the British Constitution, interpretations and understandings of the latter always remained fluid and contested. “Who hath the right, and the means, to resist the supreme, legislative power,” wrote the onetime Tory minister Henry St. John, Viscount Bolingbroke, in the 1730s: “I answer the whole nation hath the right, and a people, who deserve to enjoy liberty, will find the means.” Radicals and reformers such as John Wilkes, James Burgh, and Richard Price advanced similar claims and questions in the 1770s and 1780s, as did many much later political and legal commentators.¹¹

10. George S. Pryde, ed. *The Treaty of Union of Scotland and England 1707* (London: Thomas Nelson and Sons, 1950), 83. It has been suggested that this treaty’s guarantee of the persistence of Scots law in tandem with English common law is one reason why a united British polity failed to generate a single codified constitution.

11. Henry St. John, Viscount Bolingbroke, *A Dissertation Upon Parties; In Several Letters to Caleb D’Anvers* (London: H. Haines, 1735), 210; and Harry T. Dickinson, “The Eighteenth-Century Debate on the Sovereignty of Parliament,” *Transactions of the Royal Historical Society* 26 (1976): 189–210. As late as 1912, a leading Oxford jurist, William R. Anson, felt able to claim that “even thirty years ago educated men were slow to admit, that Parliament . . . has constitutionally a right to make any new law it pleases, to repeal any law, or to change or abolish any law”: *Rights of Citizenship: A Survey of Safeguards for the People* (London: Frederick Warne & Co, 1912), 88.

Even William Blackstone, whose *Commentaries on the Laws of England* (1765–69) was widely interpreted in the new United States as an unambiguous celebration of Parliament’s “transcendent and uncontrollable” power, occasionally appeared to send out mixed messages.¹² In one of Blackstone’s earlier publications, *The Great Charter* (1759), a scholarly investigation into the Magna Carta of 1215, and a neglected work, the great jurist repeatedly gloats over the appearance, and especially the dimensions, of the parchment versions of the charter he has been able to uncover in the archives. At times, Blackstone also seems to endorse a right to resistance. One of the texts he has discovered linked to Magna Carta, he remarks in this book, gives “liberty to the king’s subjects to rise against and distrein him to the utmost of their power, notwithstanding the allegiance which they owed him, in case he should transgress the conditions therein agreed on.”¹³ At the end of the introduction to the first edition of *The Great Charter*, the publisher inserted a cartouche displaying a pastoral Britain resting fertile and safe beneath a celestially placed copy of Magna Carta and its script. Images of Parliament and the Crown are nowhere to be seen. There is only an overarching constitutional text.

Blackstone’s *Great Charter* was part of a wider revival in Britain of interest in Magna Carta. This renewed cult, which appealed both to conventional patriots and to those wanting new rights and curbs on the executive, was strengthened by the American Revolution, but was already in evidence before it.¹⁴ From the 1750s, for example, it became more common for British politicians and other politically engaged individuals to be portrayed or caricatured holding, or standing adjacent to, a copy of Magna Carta.¹⁵ This mode of portraiture helped, I suspect, to encourage the fashion whereby post-Revolutionary American politicians and patriots sometimes chose to be painted in close proximity to copies of the Declaration of Independence, or the federal Constitution or particular

12. The degree to which Blackstone’s Olympian style and posthumous reputation have sometimes covered over ambiguities and tensions in his arguments and ideas is carefully analyzed in David Lieberman, *The Province of Legislation Determined: Legal Theory in Eighteenth-Century Britain* (Cambridge: Cambridge University Press, 1989), especially 31–67.

13. *The Great Charter and Charter of the Forests, with Other Authentic Instruments* (Oxford: Clarendon Press, 1759), lix. James Madison famously advanced the charge that Westminster’s power was “uncontrollable,” in Federalist No. 53 in 1788.

14. A radical interpretation of the Magna Carta as a barrier against undue power “either by Prince or state endeavoured” had persisted since the civil wars of the 1640s: Anne Pallister, *Magna Carta: the Heritage of Liberty* (Oxford: Oxford University Press, 1971), 15.

15. For an example, see Michael Kammen, *A Machine That Would Go of Itself: The Constitution in American Culture* (New Brunswick: Transaction Publishers, 2008 [1986]), 91.

state constitutions; that is, posing next to *their* patriotic scriptures, just as some of their British counterparts opted to associate themselves visually with their own most sacred political text.¹⁶

As this piece of aesthetic borrowing suggests, the notion that 1776 swiftly and automatically gave rise, in Bernard Bailyn's words, to "two contrasting concepts of constitutionalism that have remained characteristic of England [sic] and America ever since," exaggerates the completeness and the clarity of the constitutional divide effected by the American Revolution.¹⁷ Both in the new United States, and in Britain and Ireland, trans-Atlantic crossings and harmonies persisted in constitutional terms as in much else. Thus the dominant reaction among literate Britons to the appearance of the federal Constitution in 1787–89 seems not to have been that it represented a sharp departure from their own political norms, but rather that it was a recognizably derivative exercise. "The Americans are desirous to preserve a republican government," was one English newspaper's immediate verdict, "yet in some measure similar to our own."¹⁸ "Americans," the leading opposition Whig Charles James Fox told the Commons in 1791, "...had preserved as much as they possibly could of the old form of their governments. . . monarchy, aristocracy, and democracy blended, though under a different name." "In forming a Constitution for herself," agreed the Irish Protestant authors of *Belfast Politics: Thoughts on the British Constitution* (1794), the United States "...retained several of the finest branches of the British, lopping off with a careful hand what she deemed excrescences that had formed round the parent stem."¹⁹

Such interpretations of the federal Constitution were clearly selective, and in part they were exercises in wishful thinking by Britons who still felt aggrieved at the loss of large parts of their continental American empire. Especially in the

16. See, for example, Charles Willson Peale's 1790 portrait of Timothy Matlack with a copy of the constitution of Pennsylvania, on display at the Museum of Fine Arts, Boston. John Singleton Copley had already drawn on this pictorial convention before the Revolution, portraying Samuel Adams in 1772 pointedly gesturing toward a copy of the charter of Massachusetts.

17. Bernard Bailyn, *The Ideological Origins of the American Revolution* (Cambridge, MA: Belknap Press, 1992 [1967]), 67.

18. Quoted in Leon Fraser, *English Opinion of the American Constitution and Government, 1783–1798* (New York: n.p., 1915), 57.

19. William Bruce and Henry Joy, in *Belfast Politics: Thoughts on the British Constitution*, ed. John Bew (Dublin: University College Dublin Press, 2005), 52; for Fox, see *The Parliamentary Register; or History of the Proceedings and Debates of the House of Common*, 29 (1791), 391. The view that the United States Constitution was heavily indebted to their own laws and political conventions remained common among nineteenth century British commentators: see Frank Prochaska, *Eminent Victorians on American Democracy* (Oxford: Oxford University Press, 2012).

immediate aftermath of 1787–89, British commentators were often more willing to stress how the tripartite divide between United States President, Senate, and House of Representatives mirrored their own system of monarchy, Lords, and Commons, than they were to discuss the radicalism attendant on a (partially) ratified legal text being set permanently above the executive.

Nonetheless, and as Daniel Hulsebosch argues, there was an important degree to which the American “founders” in 1787 did look deliberately and self-consciously backwards, and across the Atlantic, and not just innovatively forward. As he writes, “Although crown officials and parliamentary legislation were gone, the legacies of British rule—its legal institutions, practices, and languages—remained as the raw material for the American constitutions.”²⁰ This partial survival of British domestic and colonial forms in the law and some of the political structures and language of the new United States influenced more than its own evolution. It helped to ensure that responses in Britain to the new constitutional instruments *as innovations* remained various and in some degree flexible. The fact that Britons were able to recognize—or believed they could recognize—elements of their own political and legal systems within the post-Revolutionary American order helped to make written constitutions appear, to some of them at least, more congenial and less startling. These devices were not, it seemed, inherently alien and subversive. They were not just and not always a paper “other” characteristic of enemy states. It is suggestive that nowhere in his *Reflections on the Revolution in France* (1790), for all its stinging denunciation of French constitution-mongers, does Edmund Burke attack or even refer to the United States Constitution.

There is a further respect in which cults of written constitutionalism continued to link the two sides of the Atlantic after 1776, rather than straightforwardly sundering them, and it is illustrated by some of the arguments and language used by Thomas Paine. Paine brilliantly attacked the corruption, rigidities, and stark inequities of his country of birth, but he was also shaped by that country, unavoidably so, as he spent more than half of his life there, and was already 37 years old when he left Britain for the first time. As Eric Foner observes, “It is not unreasonable to assume that many of his [Paine’s] ideas were fixed by the time he arrived in America.”²¹ Just how much this was the case emerged in Paine’s first seminal work *Common Sense*, published in Philadelphia in January 1776, 13

20. Daniel Hulsebosch, *Constituting Empire: New York and the Transformation of Constitutionalism in the Atlantic World, 1664–1830* (Chapel Hill: University of North Carolina Press, 2005), 4.

21. Eric Foner, *Tom Paine and Revolutionary America* (Oxford: Oxford University Press, 2004 [1976]), 3.

months after his arrival there. Famously, *Common Sense* appealed to American colonists to break with Britain, to pursue independence and a republic, and to draft a constitution. Or, more precisely, Paine urged Americans to draft a “charter of government,” suggesting: “The conferring members being met, let their business be to frame a CONTINENTAL CHARTER, or Charter of the United Colonies; (answering to what is called the Magna Charta of England).” In order for a free people to begin the world over again, what was needed, Paine insisted, was a charter “to be formed first,” by which he meant “a bond of solemn obligation, which the whole enters into.”²² The word “constitution” was too often “bandied about but rarely defined,” he wrote later. The meaning of the word, Paine thought, at least at this stage of his career, was simple. A constitution was a “written charter” setting out how a government was organized and the people’s rights. Such a document, together with a union of the states, would serve as America’s “Magna Carta – our anchor in the world of empires.”²³

Like his devotion to Magna Carta, Paine’s early language of charters, out of which his advocacy of written constitutionalism was to evolve, was a byproduct of his country of origin. As in most of Western Europe, charters had proliferated in Britain and Ireland since the Middle Ages, gradually coming to embrace an extraordinary range of issues, emotions, expressions of power, and guarantees of rights. Many English, Scottish, Welsh, and Irish cities, boroughs, market towns, and trading companies possessed royal charters, and these written documents to do with civic and corporate identity, rights, and privileges were regarded with pride, surrounded by myths, and put on display on ceremonial occasions.²⁴ Since the late sixteenth century, most of England’s overseas colonies had also been granted founding charters. Between 1606, the date of the first Virginia charter, and 1681, London approved twenty-eight major charters and grants in regard to English and Scottish settlements on mainland North America, all of these texts serving to map “both territory and the institutional and cultural forms in which

22. Thomas Paine, *Common Sense: Addressed to the Inhabitants of America* (Philadelphia: R. Bell, 1776), 31–32, 41–42.

23. Foner, *Tom Paine*, 191; Eric Slauter, *The State as a Work of Art: The Cultural Origins of the Constitution* (Chicago: University of Chicago Press, 2009), 39. By the 1790s, Paine, like many American revolutionaries, had become more eager to represent charters as quintessentially ancien regime grants from above, and, therefore, as texts that were utterly distinct from the new constitutions.

24. See Marie Therese Flanagan and Judith A Green, eds. *Charters and Charter Scholarship in Britain and Ireland* (Basingstoke: Palgrave Macmillan, 2005); and for the sometimes creative politics of charters in the seventeenth century, see Paul Halliday, *Dismembering the Body Politic: Partisan Politics in England’s Towns, 1650–1730* (Cambridge: Cambridge University Press, 2003).

authority would be applied to (and within) that territory.”²⁵ Colonial Americans were well aware of their heritage of charters, and this proved vital to their receptivity to Paine’s language and arguments in *Common Sense*, and to their embrace after 1776 of written constitutionalism.

After independence, there was a natural tendency for many Americans to stress their political divergence from Britain and their own exceptionality; how, in James Madison’s words, the new republic had created a form of government “without a example ancient or modern.”²⁶ The American republic’s pristine new constitutions, it was now suggested, were substantially unlike the fusty, top-down, and discarded colonial charters once signed off on by London, and important differences did exist. Nonetheless, there remained overlaps in how these two kinds of texts—charters on the one hand and constitutions on the other—functioned, and in how they were perceived. Edmund Burke acknowledged this point in a House of Commons speech in 1783. In this, he characterized Britain’s own multiplicity of charters not simply as ancient documents recording grants by the Crown to passive inferiors, but in some cases as hard-won securities for “the rights of men”:

...The natural rights of mankind, are, indeed, sacred things. . . . If these natural rights are further affirmed and declared by express covenants, if they are clearly defined and secured against chicane, against power, and authority, by written instruments and positive engagements, they are in a still better condition. . . . Indeed, this formal recognition, by the sovereign power, of an original right in the subject, can never be subverted, but by rooting up the holding radical principles of government, and even of society itself. The charters which we call by distinction great, are public instruments of this nature. . . . The things secured by these instruments may, without any deceitful ambiguity, be very fitly called the chartered rights of men.²⁷

After 1776, these partial overlaps between charters and constitutions in terms of language, functions, and perceptions proved significant on both sides of the Atlantic. For many Americans, the fact that they already possessed experience of colonial charters issued by or approved in London, as well as folk memories of Magna Carta and other iconic texts restricting

25. Christopher Tomlins, *Freedom Bound: Law, Labor, and Civic Identity in Colonizing English America* (Cambridge: Cambridge University Press, 2010), 157–58.

26. James Madison, *Notes of Debates in the Federal Convention of 1787 Reported by James Madison, with an introduction by Adrienne Koch* (New York: Norton, 1987),

3. On both sides of the Atlantic, there has, however, also been a notable concern at intervals to stress the similarities between American and British constitutionalism; see Ian Bruce Mylchreest, “The Anglo-American Dialogue on Constitutionalism, 1860–1920” (PhD diss., Cornell University, 1988).

27. As cited in *Parliamentary History of England from the Earliest Period*, (London: T.C. Hansard, 1806), vol. 23, 1315.

power, supplied useful and reassuring starting blocks from which to move on to their own state constitutions (which were initially styled *charters*) and ultimately to a federal constitution. On the other side of the Atlantic, long familiarity with domestic and overseas charters and iconic texts of liberty also had repercussions. Like much else, this indigenous tradition of paper and parchment helped to ensure that British responses to the new constitutional politics proved various and complex, and sometimes dynamic.

II

Partial British responsiveness to the post-1776 spread of written constitutions was also aided by what was involved in this development: not just outlines of political and judicial provisions and rights designed for particular locations, but also a succession of texts that were easily replicated and very quickly transmitted across maritime and land borders by way of print and manuscript copies.

Made up of words; capable of being excerpted in newspapers, handbills, placards, magazines, posters and letters; potentially translatable into any written language; and usually light in weight and therefore moveable over very long distances, the new constitutions were from the outset superbly well adapted to a world where transport opportunities were expanding, and different kinds of printed and written material were becoming more widely available, which was a crucial reason why these instruments were able to multiply so persistently. Walter Benjamin's insight holds good here. As the mechanical reproduction of words became easier and more widespread, some of those exposed to them as readers were encouraged and enabled to become writers in their turn.²⁸ As information about, and extracts from, written constitutions increasingly crossed land boundaries and oceans, so new ideas, strategies, and vocabularies were made available to others who were in search of political and social change, *and, critically, also to those seeking new techniques whereby to facilitate rule and territorial reach.*

The widespread and elaborate print networks existing by 1776 in England and parts of Scotland, Ireland, and Wales, virtually guaranteed that there would be a rapid communication here of the content of the new constitutions. It is likely that some Britons learned about the details of the new texts faster than some Americans. Before the Post Office Act passed by Congress in 1792 began to bridge distances between states

28. Walter Benjamin, *The Work of Art in the Age of Mechanical Reproduction*, trans. J.A. Underwood (London: Penguin Books, 2008), 1–50.

and settlements—and for some time after—many Americans remained, in Trish Loughran’s words, “beyond the reach of any printed matter that was not produced by their own local printer or privately sent to them through personal connections.”²⁹ By contrast, Britain’s geographical compactness; multiplicity of newspapers, magazines, and roads, and fast expanding urban sector and postal networks, made broad access to political information here far easier. Only 5 weeks after the first printed version of the proposed federal Constitution was released to (limited numbers of) the American public on September 17, 1787, extracts from it were circulating in the London press.³⁰ Debretts of Piccadilly published a complete, bound version of the United States draft constitution in November 1787, which sold for a shilling and went through several editions. This same publishing house also stocked learned analyses such as the *Commentaries on the Constitution of the United States of America* (1792) by James Wilson, associate justice of the Supreme Court, and Thomas M’Kean, another leading lawyer and a former delegate to the Continental Congress. As far as the American state constitutions were concerned, copies of these were already circulating in Britain before the end of the War of Independence. Historians have made much of the impact of these texts in France, but their distribution in Britain, where no translation was needed, was swifter and wider. Five collected editions of the United States state constitutions appear to have been published in France between 1776 and 1786; in England and Scotland, at least six bound editions appeared in 1782 and 1783 alone.³¹

Britons were also able to acquire information about American constitutional initiatives in less direct ways. As has been extensively documented, some of the ideas and strategies involved in the American Revolution and its aftermath subsequently fed into revolutions elsewhere, conspicuously in France, Haiti, and the Hispanic and Lusitanian worlds.³² The resulting new constitutions emerging in *these* countries and regions were also widely reprinted and discussed in Britain. In 1820, the

29. Trish Loughran, *The Republic in Print: Print Culture in the Age of US Nation-building* (New York: Columbia University Press, 2009), 21.

30. Fraser, *English Opinion of the American Constitution*, 55.

31. Palmer, *Age of Democratic Revolution*, I:263; in Britain, the texts of the state constitutions were extracted in *The Constitutions of the Several Independent States of America* (London: J. Stockdale, 1782), and in Anthony Stokes, *A View of the Constitution of the British Colonies...at the Time the Civil War broke out on the Continent of America* (London: B. White, 1783). Both pamphlets appeared in several editions.

32. For a recent survey, see George Athan Billias, *American Constitutionalism Heard Round the World, 1776–1989: A Global Perspective* (New York: New York University Press, 2009).

London-based radical and atheist Richard Carlile, son of a shoemaker, devoted six successive issues of his cheap paper *The Republican* to a line-by-line analysis of the recently reintroduced Spanish constitution, drawing attention to its generous franchise provisions and its rejection of a hereditary upper house. Carlile took it for granted that, by giving printed publicity to other countries' written constitutions, he was advancing the possibility of such innovations both in his own country and far beyond: "We shall see the Asiatic states demanding the representative system in a few years—aye, and the African too."³³ As late as 1836, Carlile was involved in celebrations in London of the anniversary of Spain's 1812 constitution, which had drawn on American and French revolutionary ideas, and on some British constitutional practices. This 1836 London event was described as attracting the "poorest of the working classes," and one of Carlile's associates seized the opportunity to read aloud from a penny pamphlet on the "OUTLINE OF A NEW CONSTITUTION, such as should be submitted to the British nation."³⁴

Throughout the age of revolutions (c.1770–1840s) ideas about written constitutions also circulated in Britain by word of mouth and personal and epistolary exchanges. The tens of thousands of British army and navy personnel who served in continental Europe and the Americas during this period, for example, were sometimes in a position to acquire information about the contents and politics of new written constitutions, and some military men are known to have undertaken translations of these texts, which were then published in Britain.³⁵ During this period, as after, London also attracted sizeable numbers of political refugees, many of them advocates of advanced constitutional change. "London was peopled with exiles of every kind and every country," wrote an Italian dissident of the capital in 1823: "Constitutionalists who would have but one chamber, constitutionalists who wished for two; constitutionalists after the French model, after the Spanish, the American...London was

33. *The Republican* (London, 1820) IV:229–30; for Carlile's analysis of the Spanish constitution, see *ibid.*, III:11, 46, 88, 119, 164, 188.

34. *Times* (London), August 16, 1836.

35. Thus Daniel Robinson, a onetime Royal Navy officer who fought with the Spanish army, published his opinions and a translation of the Cadiz constitution in London in 1813, *The Political Constitution of the Spanish Monarch proclaimed in Cadiz 19th of March 1812*, dedicating it to a fellow British volunteer in Spain, Sir John Downe. For men of this sort and their mixed politics, see Graciela Iglesias Rogers, *British Liberators in the Age of Napoleon: Volunteering under the Spanish Flag in the Peninsular War* (London: Bloomsbury, 2013).

the Elysium (a satirist would say, the Botany Bay) of illustrious men and would-be heroes.”³⁶

As this comment suggests, those making London a city of exiles came from many backgrounds, but immediately before and after the Battle of Waterloo, a disproportionate number were Hispanic. Many liberals who left Spain after Ferdinand VII returned to Madrid in 1814 sought refuge in London, while more than seventy South American “independence era leaders of the first rank,” plus many lesser figures, lived in the capital at some point between 1808 and 1830. There was the great precursor of Spanish American independence, Francisco de Miranda, who spent most of the first decade of the nineteenth century in London, and who referred to his house in Grafton Street there as “the fixed point for the independence and liberties of the Colombian continent.” There was Bernardo O’Higgins, the Chilean independence leader, who was part Irish and had been educated in England. There was Lucas Alamán, a future Mexican minister and a leading reformer and conservative theorist, and José de San Martín, who later paid tribute to the title of the seventeenth century English revolutionary, Oliver Cromwell, by declaring himself “Protector” of Peru. There was also the “Grand Liberator” himself, Simón Bolívar, who first visited Britain in 1810, and who liked to cite it as his prime foreign constitutional influence.³⁷

The question of how far exposure to Britain shaped the politics of these and other Latin American activists has been widely canvassed. It is clear that most of these men took ideas and strategies from various trans-Atlantic sources, but it is also clear that Palmer’s contention that 1776 “dethroned England, and set up America, as a model for those seeking a better world” was much too sweeping.³⁸ Especially in the 1820s and 1830s, the need to restore stability to newly independent states in South America made many of its resident and exiled political actors eager to

36. Quoted in Frederick Rosen, *Bentham, Byron, and Greece: Constitutionalism, Nationalism, and Early Liberal Political Thought* (Oxford: Clarendon Press, 1992), 124.

37. Karen Racine, “‘This England and this Now’: British Cultural and Intellectual Influence in the Spanish American Independence Era,” *Hispanic-American Historical Review* 90 (2010): 423–54; and see her “Imagining Independence: London’s Spanish-American community, 1790–1829” (PhD diss., Tulane University, 1996).

38. Palmer, *Age of Democratic Revolution*, I:282. In February 1819, Bolívar urged the Second National Congress of Venezuela to study—without servilely imitating—the British constitution: “a monarchy in system, in which is acknowledged the sovereignty of the People, the division and equilibrium of power, civil freedom, liberty of conscience, and of the press, and every thing that is sublime in politics. A greater degree of liberty cannot be enjoyed in any kind of republic. . . I recommend that constitution as the best model to those who aspire to the enjoyments of the rights of man.” *South American Independence! The Speech of His Excellency Gen. Bolívar* (London: G. Young, 1819), 20.

scrutinize British forms of government, still viewed—flatteringly enough—as an exemplary compound of liberty and order. This was true of the writers of the Chilean constitution of 1833. Abandoning earlier federal projects borrowed from the United States, they drafted a new constitution providing for a strong executive, a lower house “with the power to approve the Budget, taxation and the armed forces on an annual basis, after the English pattern,” and an upper house representing the propertied classes.³⁹ This Chilean constitution lasted, unaltered, for more than 60 years.

How far the presence in London of constitutional reformers from overseas, plus extensive coverage of new constitutions in the British and Irish press and private correspondence, and the import and translation of foreign constitutional texts, influenced political ideas and habits within the United Kingdom itself has been much less explored. The tendency there as in other countries for political history to be reconstructed overwhelmingly within national frameworks has militated against such enquiries. So, above all, has the notion that Britain remained straightforwardly wedded from the mid-seventeenth century onwards to an unwritten constitution; this despite the fact that the phrase “unwritten constitution” only became firmly embedded in British political self-description from 1870 or thereabouts.⁴⁰ Historians working in Britain are rarely trained to think or to pose questions about written constitutions as political and cultural instruments and influences; while commentators outside that country (especially perhaps Americans) tend not to associate written constitutions with Britain and the British at all. Yet evidence of the post-1776 surge of constitutions impacting on radicals and reformers in Britain and Ireland—and on other political actors there—is abundant.

John Cartwright, usually known as Major Cartwright, an Englishman who was involved in radical organizing and publishing from before the American Revolution to his death in 1824, has generally been discussed only in regard to an insular tradition of parliamentary reform agitation. However, from early on, he identified and adopted what remains one of the strongest arguments for a political constitution being set down in a single, recognized text: namely, that doing so has the potential of making the workings of a state better and more widely known: “A constitution of which not the most learned man can know where to find all its parts, and of which not the most capacious understanding can embrace the whole, what

39. Simon Collier, *Ideas and Politics of Chilean Independence 1808–1833* (Cambridge: Cambridge University Press, 1967), 345–46.

40. Some admittedly crude indicators of this can be found by searching Google Books Ngram viewer. This suggests the rarity of the phrase “unwritten constitution” in works published in Britain before 1860, and its widening (though still uneven) use thereafter.

ordinary man shall pretend to scan! Here then, is as wide a field for interpretation, and as complete a labyrinth for bewildering men's senses, as the most subtle adversary of freedom can wish for."⁴¹ As he viewed political participation and knowledge as the birthright of all adult males (although only males), Britain's "ever-varying chameleon constitution," as he styled it, was anathema to Cartwright. Politics should be accessible "to every eye," he insisted, "rendered...visible and tangible, by having been committed to print."⁴² Proposals for a new, codified British constitution should be drafted, printed, circulated, and submitted to a 3 year national discussion, he argued. Once agreed upon and adopted, Cartwright wanted the provisions of this new constitution to be inscribed in gold letters on the interiors of the Westminster Parliament, just as the Ten Commandments were displayed inside churches to serve as guides and rebukes to worshippers. Copies of the constitution should also be mass produced and circulated so as to become "a piece of sacred furniture" in every household.⁴³

As some of these schemes suggest, Cartwright borrowed freely both from the new United States and from revolutionary France. He also had extensive dealings with Hispanic activists, frequently forging connections with such men when they were in London, and employing Hispanic exiles as conduits to reach audiences in Spain and South America. After the *Dos de Mayo* uprising in Madrid in 1808, Cartwright began writing to Spanish politicians and friends urging them to seize on the crisis to re-model their state. Areas of Spain breaking free of French control, he urged, should re-unite with Portugal and form "the Commonwealth of the Iberian States." Thought should then be given to a new constitution setting out the "grand essentials of free government": a bicameral legislature, and an elected regent who should be more than 30 years of age, and serve for only 5 years, provisions that were clearly adapted from the United States Constitution. "The whole secret," Cartwright wrote to a Spanish liberal some years later, "consists in the laws being *made* and *administered* by the PEOPLE."⁴⁴ There were other Cartwright constitutional initiatives, including a "Provisional Constitution" for Greece sent to its newly established Congress in 1822, and a "Constitutional Instrument" for Mexico the following year, which was

41. John Cartwright, *An Appeal on the Subject of the English Constitution* (London: J. Johnson, 1797), 15.

42. *Ibid.*, 35; John Cartwright, *A Letter to the Duke of Newcastle* (London: J. S. Jordan, 1792), 101.

43. Frances D. Cartwright, ed. *The Life and Correspondence of Major Cartwright*, 2 vols., (London: Henry Colburn, 1826) II:389.

44. *Ibid.*, I:361; II:67. For connections between Cartwright and other British radicals and Hispanic exiles, see Juan Luis Simal, *Emigrados: España y el exilio internacional, 1814–1834* (Madrid: Centro de Estudios Políticos y Constitucionales, 2012).

discussed by that country's committee of constitutions. The more Cartwright aged, the more ingenious his constitutional projects became. He advised Greek independence fighters to reproduce lines from the constitution that he designed for them on their copper coinage, "thus rendering money a circulating medium of constitutional knowledge, as well as of traffic."⁴⁵ Like coins, the stuff of government and politics was to be rendered mundane and ubiquitous, converted into something that might be easily handled every day by everyone.

Cartwright's brand of internationalism helps to account for his close working relationship with Jeremy Bentham, another, far better known London-based writer of constitutions. At different stages of his career, Bentham sketched out a constitution for France, a new legal code for the United States, and a constitutional code for Poland. He produced a commentary on a new Portuguese constitution, a revision of Spain's legal code, a draft of a constitutional code for Greece, and a constitution for Tripoli, the first serious attempt by a Western political and legal theorist to explore how the new politics might be applied to an Islamic society. Above all, Bentham devoted attention to Latin America, a continent to which he twice considered emigrating. During the 1820s, he set out constitutional proposals for Buenos Aires, Guatemala, and Venezuela, and designed a mammoth constitution for Colombia containing 191 articles.⁴⁶

These schemes, of which at least a few had some practical impact, are relatively well known,⁴⁷ but Bentham's evident confidence that politically concerned individuals from one country could and should seek to influence the constitutional reordering of other, foreign countries merits more searching scrutiny and analysis.

Although sometimes critical of the European empires and increasingly negative about Britain's own unreformed politics and systems of law, Bentham seems instinctively to have accepted—as John Cartwright also tended to do—that Anglo-Saxons on both sides of the Atlantic might well possess a superior capacity for rule and good governance.⁴⁸ This emerges in Bentham's dealings with Aaron Burr, onetime vice president

45. *Ibid.*, II:390.

46. For a recent survey of the range of Bentham's interventions and interests, see David Armitage, "Globalizing Jeremy Bentham," *History of Political Thought* 32 (2011): 63–82.

47. See, for example, T. L. McKennan, "Jeremy Bentham and the Columbian Liberators," *The Americas* 34 (1978): 460–75; and L. J. Hume, "Preparations for Civil War in Tripoli in the 1820s: Ali Karamanli, Hassuna D'Ghies and Jeremy Bentham," *Journal of African history* 21 (1980): 311–22.

48. That this was also Cartwright's view emerges strongly in his last known work, which appears to survive only in Spanish: *Diálogo político entre un italiano, un español, un francés, un alemán, y un inglés* (London: Taylor, 1825). In this imaginary dialogue between European constitutional reformers, the French spokesman is made to describe England (pp.7–8) as "in politics like another Holy Land...from which, with time, the art of government must be

of the United States, who (with some irony) made him a present of Alexander Hamilton's *Federalist Papers*. Burr also involved Bentham in his schemes to make himself emperor of Mexico. Burr "told me I should be the legislator," Bentham recorded complacently, "and he would send a ship of war for me. . . He said, the Mexicans would all follow like a flock of sheep."⁴⁹ This belief that men with "English-bred minds," as Bentham put it, might be better equipped to invent and implement systems of rule, also informed his own proposals in 1822 for a proto-Panama type canal. Bentham envisaged this project as being funded by British investors and constructed on land ceded by what was then Mexico to "the Anglo-American United States." The United States government was "an institution which has long been in the habit of taking an infant state to nurse," he reasoned: "Witness Indiana, Illinois, Alabama, Missouri: and how excellent. . . a dry nurse the [US] President has always been." By contrast, the Hispanic and indigenous inhabitants of Central America, Bentham thought, were "not as yet of sufficient age to go alone."⁵⁰ Such notions of an innate Anglo-American capacity to reorganize other peoples for their own good—because of a joint United States and United Kingdom commitment to liberty and constitutional effectiveness—would have a long history.

III

As these projects of Jeremy Bentham illustrate, enthusiasm for employing new written constitutions as engines of improvement and enhanced rights could easily become entangled with the ambition to deploy these instruments in order to manage, shape, and even invade others.⁵¹ One of the earliest discussions of this tendency occurs in Jean-Jacques Rousseau's

diffused to other nations," and to remark how the United States Constitution "is a stream from that sacred fountain." I owe this translation to Elena Schneider.

49. Miriam Williford, *Jeremy Bentham on Spanish America: An Account of his Letters and Proposals to the New World* (Baton Rouge: Louisiana State University Press, 1980), 4; for Burr's Mexican schemes, see David O. Stewart, *American Emperor* (New York: Simon & Schuster, 2011).

50. "Junctiana Proposal: Proposals for the Junction of the Two Seas – the Atlantic and the Pacific, by Means of a Joint-Stock company," in *The Works of Jeremy Bentham*, 11 vols., ed. John Bowring (Edinburgh: William Tait, 1843) II:558–68.

51. For some interesting discussions of how, more broadly, the age of revolutions "generated controversial new forms of politics, at once democratic and imperial. . . anticolonial and centralizing," see Suzanne Desan, Lynn Hunt, and William Max Nelson, eds. *The French Revolution in Global Perspective* (Ithaca: Cornell University Press, 2013).

treatise *The Social Contract* (1762), which went through forty-four editions in France alone between 1789 and 1799, while also influencing constitutional thought elsewhere, including the United States.⁵² Famously, the *Social Contract* begins with the ringing assurance that “Man is born free.” “The people subject to the laws,” Rousseau insisted, “ought to be their author.” Political liberty was not a mere absence of constraints, but involved a measure of self-government: “obedience to the law one has prescribed to oneself.” Simultaneously, however, Rousseau remained deeply uncertain over how a “blind multitude, which...rarely knows what is good for it” could possibly “carry out an undertaking as great, as difficult as a system of legislation?” His solution was to summon up the Lawgiver, a legislator with a capital “L.” Such a figure, Rousseau argued, would be able to soar “beyond the reach of vulgar men,” while his “sublime reason” would equip and entitle him to shape the lives and behavior of others. The Lawgiver, wrote Rousseau, was “the mechanic who invents the machine.”⁵³ A similarly dirigiste view of the role of the legislator arguably emerges in Rousseau’s draft constitution for Corsica, completed after the *Social Contract* and 10 years before the American Revolution. In this, Rousseau insisted that it was not simply a case of fitting a new government to a nation. There was a need also “to shape the nation to fit the government,” to make people “love the way of life we want to give them.”⁵⁴

That written constitutions might cater to dirigiste ambitions in this fashion formed, from Edmund Burke’s *Reflections* onwards, part of conservative critiques of the new constitutionalism. One of Burke’s shrewdest observations in that pamphlet was that the “constitution-mongers” of 1789 were guilty of treating “France exactly like a country of conquest.” By imposing new, contrived paper systems of government, the revolutionaries were ruthlessly destroying “all vestiges of the ancient country, in religion, in polity, in laws, and in manners,” so as to remold France’s inhabitants in accordance with their own ideas.⁵⁵ This mode of conservative polemic against the darker side of Enlightenment political activism and interference persisted into the nineteenth century, and was aided by the fact that many of the regimes most closely associated with the new

52. Carla Hesse, “Reading *in extremis*: Revolutionaries respond to Rousseau,” in Charles Walton, ed. *Into Print: Limits and Legacies of the Enlightenment: Essays in Honor of Robert Darnton* (University Park, PA: Pennsylvania State University Press, 2011) 145–57.

53. Victor Gourevitch, ed. *The Social Contract and Other Later Political Writings* (Cambridge: Cambridge University Press, 1997), xxii–iii, 41–69.

54. See Jean-Jacques Rousseau, Constitutional Project for Corsica (last updated 2011) <http://www.constitution.org/jjr/corsica.htm>

55. Edmund Burke, *Reflections on the Revolution in France, and on the Proceedings in Certain Societies in London Relative to that Event* (Dublin: W. Watson, etc., 1790), 266.

constitutionalism were also markedly expansionist. Written constitutions are still commonly viewed as intrinsically linked to the evolution of nation states and the advance of democracy and self-government. However, especially before 1848, it was more the rule than the exception for major written constitutions to be connected in some way with imperial projects.

As Stuart Woolf and others have shown, written constitutions were “an integral part of Napoleon’s perception of how to lay foundations” for effective control in his European empire, given that he could only deploy his armies in full strength in any one of France’s various satellite states for short periods of time. Sometimes, as in the kingdom of Westphalia in 1807, Napoleon used a written constitution to create a new client state; but, as with the constitution for the duchy of Warsaw, which he personally drafted that same year, Napoleon also resorted to these devices to remodel existing territories in accordance with his strategic and ideological objectives.⁵⁶ Then again, the famous Cadiz constitution of 1812 was at once a radical and widely influential document, and intended by those drafting it as an instrument to keep the Spanish Atlantic empire intact. In John Elliott’s words, “in legislating for America as well as for Spain the [Cadiz] constitution was in effect a charter for empire.” Brazil’s constitution of 1824, which survived longer than any other in Latin America, was initiated by Emperor Pedro I, who also—as Gabriel Paquette has recently analyzed—reversed customary trans-Atlantic power flows by imposing a written constitution on Portugal.⁵⁷

As for the new United States, many factors helped to drive American expansionism after independence, not least the British inheritance, but the construction of republican overland empire in America was undoubtedly facilitated by the drafting, availability, and exploitation of new constitutions. As Max Edling and others have demonstrated, the federal Constitution served in some respects to strengthen the authority and reach of the central government.⁵⁸ One of the Founders’ initiatives, for example, was to ensure that treaties approved in Washington became the “law of the land,” binding on “judges in every state.” It was partly by means of adroit, centrally devised, and centrally implemented treaties,

56. See Stuart Woolf, *Napoleon’s Integration of Europe* (London: Routledge, 1991), 127 and passim; and Michael Broers, Peter Hicks, and Augustin Guimera, eds. *The Napoleonic Empire and the New European Political Culture* (New York: Palgrave Macmillan, 2012).

57. Gabriel Paquette, “The Brazilian Origins of the 1826 Portuguese Constitution,” *European History Quarterly* 41 (2011): 444–71; I am grateful to Professor Sir John Elliott for a copy of his unpublished essay “‘Spaniards of Both Hemispheres’: A Constitution for an Empire.”

58. Max Edling, *A Revolution in Favor of Government: Origins of the U.S. Constitution and the Making of the American State* (Oxford: Oxford University Press, 2003).

with Native Americans and with the old European empires, that the United States was able to triple in size between 1783 and 1850. Moreover, and as Michael Mann analyzes in his chilling *The Dark Side of Democracy*, “the Jeffersonian vision of we, the people” proved at once egalitarian and democratic in some of its tendencies, but simultaneously often “ethnically exclusive. . .the more the settler democracy, the more the ethnic exclusivity.”⁵⁹ Although some of the Founders had wanted to preserve Native American groupings and their lands as foreign and autonomous enclaves, this vision increasingly gave way before the drive for “white settler communities built on independent proprietorship and shared political decision making.”⁶⁰ Growing numbers of white settlers moving westwards and southwards through the American continent were able to draft their own state constitutions, which interlocked with the federal Constitution, and which usually excluded Native Americans and blacks as well as women from active citizenship. By so allowing, the government in Washington put in place a powerfully effective set of mechanisms whereby the new American republic became able to consolidate and represent itself as a continent-wide *nation*, while simultaneously practicing a mode of overland empire that was based in part on slave labor.

To acknowledge this, and the many other examples before 1848 (and long after) of the interplay between the design and deployment of written constitutions and different modes of imperial rule and aggression, is in no way to deny the revolutionary potential of these devices, or their signal contribution in many regions and at many times to widening political and legal rights, knowledge, and participation.⁶¹ However, it is to suggest that accounts of the evolution and spread of written constitutions have been overly triumphalist and teleological, and also too narrow. By their very nature, written constitutions were (and are) ambivalent documents. Almost invariably, they are composed by restricted elites. By setting out structures and limits of government in words on paper, they potentially widen access to rights and to the mysteries of politics, but may also conceivably discriminate against the illiterate

59. Michael Mann, *The Dark Side of Democracy: Explaining Ethnic Cleansing* (Cambridge: Cambridge University Press, 2005), 107; and Paul Frymer, “Building an American Empire: Territorial Expansion in the Antebellum Era,” *UC Irvine Law Review*, 1 (2011): 913–54.

60. Aziz Rana, *The Two Faces of American Freedom* (Cambridge, MA: Harvard University Press, 2010), 94 and *passim*.

61. It is also the case that even authoritarian and imperially driven written constitutions could still work to advance certain freedoms, and/or might contain language and provisions that individuals on the receiving end could turn to their own advantage and use. See, for example, Ewald Grothe, “Model or Myth? The Constitution of Westphalia of 1807 and Early German Constitutionalism,” *German Studies Review*, 28 (2005)1: 1–19.

and the semiliterate. Unless promptly available in multiple translations, written constitutions can disadvantage a polity's minority linguistic groupings. And, crucially, along with setting out and ensuring rights for individuals deemed worthy of citizenship, texts of this sort have frequently also served to formalize the marginalization or exclusion of men and women not considered fit for citizenship. It was no accident that the introduction of new, written constitutions was often accompanied (as in the United States) by the implementation of a census designed at once to count the inhabitants of a given territorial space, while also sorting and cataloguing them into set, preconceived categories. Yet although an immense amount of work has been devoted in recent decades to exploring how print and different sorts of texts have been employed as tools of power, surveillance, and order, this more searching and skeptical scholarship has thus far had limited impact on the study of written constitutions.⁶²

This is doubly strange given how many early exponents of written constitutions also displayed a broader interest in language and the uses of the printed word. James Madison, as is well known, was fascinated throughout his career by the problem of language. The marquis de Condorcet, who helped draft the Girondin constitution of 1793, also wrote on the connections between language and human progress. The Connecticut lexicographer, Noah Webster, compiled not only grammars, spelling books, and the first serious American dictionary, but also an influential pamphlet on the federal Constitution. Granville Sharp, the English abolitionist who drafted the first constitution of the "Province of Freedom," Sierra Leone, published books on the alphabet and advice to foreigners on pronouncing the English language, and Andres Bello, another Hispanic exile in London, and the writer of Chile's civil code and possibly of sections of its 1833 constitution, authored a "Short essay on the Origin and Progress of the Art of Writing" and produced the first Spanish-American grammar.

The development and spread of written constitutions after 1776, therefore, needs situating in more diverse textual and cultural contexts. It can profitably be examined, for example, alongside the contemporaneous surge of missionary activity on both sides of the Atlantic, with its accompanying wider production and distribution of Bibles and other printed religious texts.⁶³ As Tom Paine seems to have recognized, the new written

62. This is despite the fact that, as Pierre Bordieu remarked, "The political field is... the site *par excellence* in which agents seek to form and transform their visions of the world and thereby the world itself: it is the site *par excellence* in which words are actions." John B. Thompson, trans. *Language and Symbolic Power* (Cambridge: Cambridge University Press, 1991), 27.

63. See, for example, the arguments of Lemuel D. Nelme in 1772 in support of the power of language and the need for an aggressive propagation of English as a "national way to spread the gospel, by the medium of the BRITISH LANGUAGE, among nations who are

constitutionalism can also usefully be looked at in relation to the marked proliferation after the mid-eighteenth century of new grammar books and dictionaries: texts designed at once to inform and educate men and women, and to regulate and set bounds to their behavior and modes of expression.⁶⁴ In Samuel Johnson's printed proposal in London in 1747 for his new dictionary, for instance, he compared himself to the "soldiers of Caesar," expressing the hope that although he might "not complete the conquest I shall at least discover the coast, civilize part of the inhabitants, and make it easy for some other adventurer to proceed farther, to reduce them wholly to subjection, and settle them under laws."⁶⁵

As some philosophers of language acknowledged at the time, evident in such manifestos was a heightened alertness to the potential of language for managing and altering human beings. Advocates and exponents of the new constitutionalism often displayed a similar enthusiasm for deploying language as a strategy for rule and transformation. It was desirable, remarked one American Rousseauian and educationalist who was also a future member of the Philadelphia Convention of 1787, "to convert men into republican machines."⁶⁶

IV

The degree to which written constitutions possessed multiple roots and multiple applications, and could serve to assist power and territorial reach, was a crucial reason why British reactions to these devices, even at elite level, proved mixed. Official British responses to *French* constitution making after 1789 were overwhelmingly negative,⁶⁷ but, as we have seen, British responses to the new constitutions in the United States were, from the outset, more positive. Moreover, the virulence of what

now enveloped in darkness": *An Essay Towards an Investigation of the Origin and Elements of Language and Letters* (London: T. Spilsbury, 1772), 134.

64. In his *Rights of Man* (1791–92), Paine described America's new constitutions as being to "liberty what a grammar is to language: they define its parts of speech, and practically construct them into systems": quoted in Charles Mc C. Mathias Jr., "Ordered Liberty: The Original Intent of the Constitution," *Maryland Law Review* 47 (1987): 178.

65. Quoted in Janet Sorenson, *The Grammar of Empire in Eighteenth-Century British Writing* (Cambridge: Cambridge University Press, 2000), 89.

66. Benjamin Rush, quoted in Kammen, *A Machine that Would Go of Itself*, 398.

67. One aspect of this was the growing use, especially among British conservatives, of the phrase "paper constitution" to re-describe and diminish some written constitutions. The phrase seems to have emerged in the early 1780s, but only to have become widespread in Britain after the outbreak of the French Revolution.

Palmer styled Britain's counterrevolution, and its warfare against revolutionary America and revolutionary France, should not obscure the many ways in which British state agents both chose and were obliged to adapt to the onset and spread of a wider, more writing-based politics.

Thus in 1803, the House of Commons began allocating seats to journalists so that, for the first time, verbatim accounts of its debates could be published in the newspaper press and in William Cobbett's *Parliamentary Debates*.⁶⁸ The emergence of new constitutions abroad also served to develop further the already reviving cult in Britain of Magna Carta. The number of parliamentary allusions by peers and members of Parliament to Magna Carta recorded between the Declaration of Independence in 1776 and 1800 is twenty times higher than the total number of such references recorded at Westminster between 1761 and 1775. At both elite and non-elite levels, there was an increased tendency to represent Magna Carta as a kind of pioneering written constitution, "our constitution", as one British member of Parliament described it in 1808.⁶⁹ At one level, this reimagining of Magna Carta served to buttress conservative arguments that Britain itself had no need of a new "paper constitution," as it already possessed the first ever such exemplary text. When the Cadiz constitution was drafted in 1812, the British envoy to Spain rationalized his support for this quite radical (and, as we have seen, imperial) document by remarking smoothly that his countrymen would feel able to "acknowledge with applause this Magna Carta...of all good Spaniards."⁷⁰ However, as this same comment suggests, increasing celebration and awareness of Britain's own ancient constitutional texts could also make it easier for some of its officials partially to accept and advance the new written constitutions.

The degree to which even sections of Britain's political elite had partially internalized the new vogue for constitutional writing-ness emerges in the parliamentary debates leading up to the passage of the Reform Act of 1832, which reshaped the representative system in England, Wales, Scotland, and, to a lesser degree, in Ireland. In advance of this, both opponents and supporters repeatedly referred to the Reform Bill as "a new constitution." "He should suppose the Reform Bill a...sheet of white paper," accused one opponent, "on which the Government thought

68. Perhaps indicatively, this happened the year after the United States Senate voted to admit "stenographers and note-takers" to its debates; Mildred L. Amer, *The Congressional Record: Content, History and Issues*, (Washington, DC: Library of Congress, 1993).

69. *Hansard Parliamentary Debates*, 1st ser., vol. 10 (1812), 990.

70. Charles W. Crawley, "French and English Influences in the Cortes of Cadiz, 1810-1814," *Cambridge Historical Journal* 6 (1939): 193.

proper to place a new Constitution.” However, what was striking about these kinds of critiques leveled at the Reform Bill was that their negative impact proved limited. “Persons were somewhat startled, when the words ‘new constitution’ first met their ears,” noticed another member of Parliament in 1831, “but now the expression was received and used without hesitation.”⁷¹ It was only later in the nineteenth century—from the 1870s or thereabouts—that British commentators became more unvaryingly and explicitly insistent on the quintessential non-writing-ness of their own constitution.

Partial British official accommodation of the new written constitutionalism was also promoted by considerations of global prestige and reputation. A desire to ensure continuing international respect and notice for their own political system meant that, far from straightforwardly othering the new constitutionalism, Britain’s governing elite sought instead selectively to appropriate, endorse, and influence it. At one level, this involved expressing approval of it, and sometimes actively assisting foreign constitutional projects that were perceived or could be represented as embodying aspects of Britain’s own system of government. Thus, after Bolivar drafted a constitution in 1826 for the South American republic bearing his name, the immediate reaction of the local British consul in Lima was one of national self-congratulation. The new Bolivian constitution, he assured George Canning, Britain’s foreign secretary, was “founded apparently on the basis of the British constitution,” allowing “useful liberty,” but “obviating any mischievous excess of popular power.”⁷² In much the same way, the *statuto* of Piedmont-Sardinia, one of the few 1848 written constitutions to endure, was widely celebrated in Britain, even by conservatives, on the grounds that it incorporated “political institutions most nearly resembling our own.”⁷³

Increasingly, the new constitutionalism was viewed as posing challenges to which it was necessary that Britain’s political classes should respond in some manner. One means of responding was for British state actors themselves to attempt writing constitutions for others, but in their own style. Efforts at doing this began very early, and should be viewed as developing out of the long tradition of colonial charter-writing as well as a response to new Revolutionary challenges. In 1780, the British cabinet (and George III) approved a charter for “New Ireland,” a projected loyalist settlement in Maine. Drafted by Lord George Germain, secretary of state for

71. *Hansard Parliamentary Debates*, 3rd ser., vol. 7 (1831), 411; vol. 9 (1831), 490–91.

72. John Lynch, *Simon Bolivar: A Life* (London: Yale University Press, 2007), 202–3.

73. Hugh Seymour Tremenheere, *The Constitution of the United States Compared to our Own* (London: John Murray, 1854), x.

America, and the American loyalist William Knox, this document was designed to parry the ideas of the revolutionaries, and to serve as a blueprint for a new constitution for British America in the event of imperial victory.⁷⁴ British and British-supported actors also tried their hands at drafting constitutions during the French Revolutionary and Napoleonic Wars, especially in the Mediterranean region, in Corsica, Sicily, and the Ionian Islands.⁷⁵ Even the Act of Union with Ireland of 1800–1801, as some political commentators at the time recognized, partook in some respects of the new written constitutionalism, and its imperial potential. British constitution writing for colonial spaces, and at times for other areas of overseas influence, only increased in volume and range after 1815, and continued to grow exponentially until the 1970s.⁷⁶

This is a massive and diverse theme to which it is impossible to do justice here, but three general points should be noted. First, the quality and quantity of British imperial constitutional imagining and writing after 1776 underlines the fact that references to a “contagion of constitutions” from the age of revolutions onwards can give a deceptive impression of uniform political transformation. In the age of revolutions, as after, there were wide variations in the content, political intent, and consequences of written constitutions, and in how these instruments were understood. Reading the British-drafted constitution for New Ireland in 1780 in tandem, for example, with the Massachusetts state constitution of the same year, offers a sharp insight into the ideological gulf between some of George III’s ministers and some American revolutionaries. That said, British constitution writing for colonial spaces was itself always a multifarious phenomenon. Neither in this period nor later were all of the written constitutions generated by or approved in London conservative or straightforwardly authoritarian texts. The short-lived British-sponsored Corsican constitution of 1794 provided for the island’s enfranchised males to ratify the acceptance of George III as its monarch, and for something close to manhood suffrage. By the same token, the barely studied constitution

74. For the text of the New Ireland constitution, see Horst Dippel, ed. *Constitutions of the World from the Late 18th Century to the Middle of the 19th Century* Section 2, Part V, 9–12. <<http://www.modern-constitutions.de/>>

75. Carlo Ricotti, “Il costituzionalismo britannico nel Mediterraneo (1794–1818),” *Clio* 27 (1991): 365–451.

76. The vital raw material for this is Frederick Madden, David Fieldhouse, and John Darwin, eds. *Select Documents on the Constitutional History of the British Empire and Commonwealth* (New York: Greenwood Press, 8 vols, 1985–2000). The Whig member of Parliament and dramatist Richard Brinsley Sheridan and some other Irish and British political actors pointedly accused London of imitating, by the Act of Union of 1800–1801, French revolutionary zeal to impose new written constitutions on satellite states.

that Stanford Raffles drafted for Singapore in 1823 certainly confirmed his own near absolute power, but also abolished slavery and seems to have extended legal rights to all of the colony's ethnic and religious groupings.⁷⁷

Second, examining Britain and the United States *together* in regard to constitutional development after 1776, instead of always assuming that these polities thereafter followed distinct and separate pathways, helps in both cases to correct against undue exceptionalism. As far as the United States is concerned, national exceptionalism has sometimes worked to limit investigation into, and acknowledgement of, the multiple, not always liberating uses of written constitutions in American and American-claimed territories. It has also led to exaggerated estimates of the degree to which American constitutionalism *on its own* transformed political practices and ideas after 1776 elsewhere in the world. In Britain, exceptionalism has also distorted understanding in regard to constitutional history as in much else. A substantially late Victorian-invented tradition of Britain's eternal, unaltered, and invariably distinctive unwritten constitution has obscured the degree to which this state and empire was obliged to adjust to and take part in post-1776 political writing-ness and new ideas. The onset of a new written constitutionalism forced changes upon subsequent British political conduct, argument, and ideas, although never to the degree that radicals such as John Cartwright and Jeremy Bentham would have liked. In addition, post-1776 constitutionalism altered and influenced British behavior in regard to other parts of the world.

Politicians and officials in Britain quickly recognized that variants of the new constitutionalism might profitably be applied to imperial spaces, and, as we have seen, they were hardly unique in that respect. As Jeremy Adelman has observed, "the age of revolutions saw empires seeking to reconstitute the elements, and at times foundations of sovereignty, with new depositories of legitimacy for public powers assembled with old ones."⁷⁸ This is the final point that applies far more broadly than just to Britain. The "contagion of constitutions" after 1776 cannot be viewed as simply jump-starting a relentless advance toward democracy and national self-government. Almost from the outset, the dirigiste nature of the new written constitutionalism also worked to aid imperial projects of different kinds and governmental power plays. In the case of Britain, advocating, sponsoring, and writing constitutions for others—of the "right" sort—increasingly became a persistent aspect of imperial policy, and a strategy

77. I will be developing these points and arguments in a future book provisionally entitled *WordPower: Writing Constitutions and Making Empires*.

78. Jeremy Adelman, "An Age of Imperial Revolutions," *American Historical Review* 113 (2008): 337.

that was also often deployed in continental Europe and in other areas of influence outside the empire. If European stability was to be restored, urged the British ambassador to Vienna in the wake of the Napoleonic Wars, “there is no longer any permanent safety except in constitutional systems.” “The word ‘Constitution,’” this same diplomat argued in the early 1820s, was “. . . the only word that can show a way out of the present difficulties,” and by this he meant not only new systems, but new texts.⁷⁹ It was an eloquent testament to how much politics and political language had shifted during the age of revolutions, and to how much Britain was caught fast and complicit in these changes.

V

I will end with an episode in British constitution writing that brings together many of the points I have been seeking to advance. As Miles Taylor has shown, the idea that Britain remained immune to the multiple revolutions that occurred in 1848 is only partially correct. “After 1848,” Taylor writes, “constitutional change was hurried through in virtually all British dependencies and colonies. By the mid-1850s most colonial constitutions bore little resemblance to what had existed before 1848.”⁸⁰ In regard to the settlement colonies, Australia, New Zealand, Canada, and the Cape, British and Irish emigrants and colonial reformers had started agitating for new constitutions well before 1848. They did so in part under the influence of Alexis De Tocqueville’s *Democracy in America*. An English translation of the first volume of this work was published in London in 1835, and did much to increase awareness of the scale and vivacity of American “municipal” democracy. Growing British interest in devising constitutional texts for the settlement colonies was also fostered however by imperial developments within the United States. Over the course of the 1840s, United States expansion reached the Pacific. This influenced British thinking in at least two respects. First, British and Irish settlers and emigrants increasingly drew unfavorable contrasts between their own limited rights of self-government, and the state constitutions made available to white settlers surging into the American West. Second, the scale of America’s overland empire by the 1840s, and its

79. Quoted in Günther Heydemann, *Konstitution gegen Revolution: die britische Deutschland- und italienpolitik 1815–1848* (Gottingen: Vandenhoeck & Ruprecht, 1995), 66, 81.

80. Miles Taylor, “The 1848 Revolutions and the British Empire,” *Past and Present* 166 (2000): 152.

leaders' success in threading this continent-wide construct together by way of a network of written constitutions, encouraged colonial reformers and politicians to argue that Britain's settlement empire also needed new paper constitutions if it was to cohere and endure, and if its populations were to be kept loyal.⁸¹

As this again illustrates, Britain was ineluctably caught up in post-1776 trends of new constitution making. In part, this was because of its own political, intellectual, and legal history, because of persistent trans-Atlantic commonalities, and because Britons were caught fast in webs of transnational and transcontinental printed information, correspondence, and debate. But it was also because the new written constitutions, *as instruments*, proved able to cater to varieties of imperial and external influence and power. However, there were always risks involved in using constitutions to advance empire and overseas influence. If only because of their association with mass revolutions—a connection further publicized by the events of 1848—written constitutions were volatile instruments. When, in the late 1840s and early 1850s, London dispatched new constitutional acts to the Australian colonies, this initiative provoked a storm. Groups of white settler activists successfully agitated for greater degrees of democracy and local autonomy than ministers and officials in London had initially envisaged or wanted.⁸²

One of the leading Australian activists involved in this campaign was John Dunmore Lang, a Scottish-born Presbyterian minister who possessed Chartist connections and helped to found the radical New South Wales Constitutional Association in 1850. Lang exemplifies the breadth and intricacy of the Atlantic world in the extended age of revolutions. His mother had been much influenced by listening to a sermon in Scotland by John Witherspoon, one of the signatories of the American Declaration of Independence. Lang himself travelled extensively in the United States and Europe, and both regions shaped his political ideas. One of his schemes was to set up a colony on a Pacific island and settle it with

81. The use of written constitutions to control and indoctrinate fast-moving and expanding pioneer populations was widely canvassed by mid-nineteenth century American and British writers. In 1848, for example, Frederick Grimké, a former Ohio Supreme Court judge, remarked how "the introduction of the most enlightened institutions and laws into the western states, at the earliest possible stage, keeps the minds of men in one track, and trains the whole population to the same habits and manners as prevail among the oldest members of the confederacy. It is the most striking instance I am aware of, of the immense control which the political institutions may be made to have upon the social organization." *Considerations Upon the Nature and Tendency of Free Institutions* (Cincinnati: H. W. Derby & Co., 1848), 486.

82. For a recent survey, see Peter Cochrane, *Colonial Ambition: Foundations of Australian Democracy* (Carlton, Victoria: Melbourne University Press, 2006).

German political refugees from the 1848 revolutions. Like many other politically involved individuals during the long nineteenth century, Lang also devoted time to drafting his own amateur constitutions. Australia, he proposed in some of these private constitutional projects, needed to become an independent, democratic, federally organized republic, just like the United States. Such proposals have made Lang something of a cult figure among present-day Australian republicans, but there were other aspects of his politics that are less acknowledged now. Once equipped with a new written republican constitution, Lang believed that Australia should boldly set about annexing Fiji, the New Hebrides, and New Guinea, while its own white inhabitants should embark on “a grand mission of civilization for the elevation of all the inferior races.” For Australia, as for the United States, independence from Britain and the introduction of a written constitution were not to entail an end to expansionist ambitions; rather the reverse. As Lang wrote wistfully in one of his draft constitutions, the city of Sydney would surely emerge in time as “the permanent Head-quarters of the future Australian empire.”⁸³

83. John Dunmore Lang, *Freedom and Independence for the Golden Lands of Australia* (Sydney: n.p., 1857), 339, 349. A searching biography that will situate Lang and his fellow Australian activists in transnational contexts is badly needed.