

DESPITE THE INDEFINITE article in the title, this ambitious book tries to establish its subject as a major branch of sociology. By way of legitimating this attempt, Chris Thornhill argues (p. 2) that “inquiry into constitutions might be seen as the defining element of early political sociology”. This argument is not valid and does not seem necessary to justify the current interest in the sociological analysis of the rule of law and constitutional democracy. Early sociology developed as an upstart intellectual endeavor in opposition to the well-established discipline of law and was not disposed to appropriate the latter’s categories. Rather, the value of Thornhill’s sociology of constitutions lies in its originality, as do its shortcomings. Long ago, Marx and Weber presented the rise of capitalism and the bureaucratic state as distinctive of Western civilization and yet of universal significance. Numerous more recent attempts to add democracy as the distinctively Western and yet universal have not worked so well, largely because of tendentious takes on democracy. The importance of Thornhill’s feat stems from his ability to harness his impressive historical erudition to the analysis of the development of the constitutional rule of law as yet another Western contribution to world history.

As a pioneering effort, Thornhill’s sociology of constitutions has certain shortcomings, however. Perhaps the most serious of these is theoretical. The analytical framework of this work is derived from a structural-functional theory of modernization. Modern societies – and he uses the term unabashedly and heedless of such notions as multiple modernities – require the differentiation of political power from social power and coercion and its institutional embodiment in the state. This evolutionary process of abstraction of power and its institutionalization in the legal order of the state is at the same time a process of progressive inclusion of the lower social strata and the conversion of the power of private groups into the public power of the state as the embodiment of the legal order. The new and original implication of this evolutionary model is the reconciliation of rights, which are traditionally seen as limitations to government, with the growth of the power of the state and indeed its indispensable instrument. With the rights revolution, culminating in the

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Constitution of the United States of America, according to Thornhill, rights “performed the threefold function of abstraction, differentiation and inclusion” for the new state (p. 193). The reader should be aware that this smooth functional reconciliation of the rights of citizens and the power of the state in the historical evolution of modern societies is in sharp contrast to this reviewer’s suggestions in the pages of this journal twenty years ago that the struggle for political order consists in the harmonization of heterogeneous and potentially conflicting principles of order, such as the two deftly reconciled by Thornhill, in historically contingent compromises embodied in written constitutions.

Thornhill achieves impressive mileage out of the simple functionalist model in his reading of European constitutional history as the evolution of the state in modern society. Like Harold Berman’s *Law and Revolution* (1983) and other works inspired by it, Thornhill pushes back the beginning of modernity to the European Middle Ages. In his view, constitutional evolution commences in the eleventh century, beginning with the Peace of God and especially the reforms of Gregory VII (1075-83) as the onset of the investiture contest. Throughout the twelfth century, the investiture contest resulted in the “growth in the legal order in both the church and the state” (p. 37), while the statutes of the Italian *communi* in the same period meant both the “growing statutory autonomy of the cities” and their “inclusionary constitutional order” (p. 62). The impact of the investiture contest in the Holy Roman Empire lasted into the thirteenth century and beyond, accounting, together with the growth of the emperor’s justice, for “the emergence of Empire as a public order” (p. 68). Meanwhile, England witnessed the growth of the king’s justice and structuring of the common law by 1200, followed by Edward I’s legislation in the last quarter of the thirteenth century, while there was a similar development of King’s justice and organization of the *parlements* in France from 1190 onward. All of the above meant the growing autonomy of the state under public law and of its capacity for “quasi-constitutional inclusion” (p. 61). Nevertheless, this “first modern constitutional order” was a “*dualistic constitution*”, with the abstraction and some centralization of power in the state as *public* order (p. 76), combined with representation of feudal groups, whose constitutionally recognized privileges are by contrast conceived as *private*.

Thornhill begins his analysis of the early modern Europe in the fifteenth century with the persistence of the dualistic constitution as “the consolidation of central legal and political institutions relied on a growing body of representative structures”, such as Foresquieu’s mixed royal and political constitution in England and the growth of the

*Ständestaat* in the Holy Roman Empire. It ends with the emergence of a constitutional right-based state following the Glorious Revolution of 1688: “The right-based transformation, in England, of the dualistic constitution of later feudal society into a more monistic or internal order of state was perhaps the decisive step in the construction of a distinctively modern state” (p. 156)

Thornhill thus offers us an erudite and impressive Whig interpretation of European constitutional history in which the evolution of the constitutional order of modern societies is completed with the fusion of sovereignty and rights in the new state in the American revolution, and with the creation of the Supreme Court that put its constitution under the protection of the courts (pp. 193-200). According to this interpretation, integrated and centralized states with rights-based constitutions that successfully abstract political power while being inclusionary were first established in England and the United States of America, while the European absolutist states exemplified “constitutional crisis and failed state formation” due to the persistence of dualistic elements (pp. 168-181). With the Great Revolution of 1789 and Napoleon, France caught up with America and “rights played a decisive role in the formal consolidation of political power” (p. 182).

Constitutional developments in medieval, early modern and revolutionary eras form the bulk of the book (nearly two-thirds of its pages) and its most original contribution. A coda on the state- and nation-building in the second half of the nineteenth century, the inter-War constitutional crisis and its successful resolution in the extension of the inclusionary principle with the post-1945 in three waves of democratic transitions in the rest of Europe all together occupy the rest of its pages, with merely some sixteen pages devoted to the third wave of transition in the 1990s. The structure of the book reflects its unapologetic Eurocentrism and, to a student of comparative constitutionalism such as the reviewer, its astonishing neglect of constitutional rule of law in the non-Western world. In vain would one look for any reference to important works on the constitutional history of India, South Africa or the Middle East. Transnational developments, the constitutional impact of the EU, the so-called new constitutionalism and judicialization of politics are similarly neglected, with their effects mentioned only incidentally in the accounts of individual nation-states such as Germany since 1945 and Poland and Russia in the 1990s.

Thornhill’s Whig interpretation is also conceptually flawed. Once he moves beyond the American (and French) revolutions and their aftermaths, his analytical scheme is patched *ad hoc*, and new terms not

defined by his functionalist model, such as “domestic statehood” and “weakly integrated statehood” (pp. 258-260), “density of statehood” and “the *material* constitution of the state” (pp. 280-284) or “*compensatory statehood*” (p. 309; all italics in the original) begin to appear. This is symptomatic of a more serious shortcoming: there is no evidence that constitutional design plays the causal role plausibly attributed to it in the earlier periods. The generic pattern of abstraction of power and inclusion fails to capture, or greatly underdetermines, the dynamics of the constitutional politics of the late-modernizers. But as Thornhill continues to see their divergences from his Anglo-Saxon ideal type of right-based constitutions in terms of his dualistic model, the fit becomes increasingly forced and misleading. The strong impression that one Whig size fits all modern societies fades rather quickly.

The counter-intuitive character of Thornhill’s conception of strong and weak states, which led him to present the absolutist states in France and Prussia in the eighteenth century as weaker than those of England and the United States, becomes more evident when the German and Russian empires of the nineteenth century, not to mention Mussolini’s Italy and Hitler’s Germany, are characterized as weak states. Likewise, his characterization of the corporatism of the inter-War fascist regimes and of the clientelism and neo-patrimonialism of the Communist regimes as “reprivatization” of power on the basis of the distinction between public and private power in the dualistic model is not particularly illuminating. Nor is it helpful to describe the goal of the post-1945 German and Italian constitutions as a “response to the corrosion of statehood and the depletion of political power” (p. 329), rather than the more prosaic prevention of return of fascism and promotion of democracy.

These shortcomings notwithstanding, Thornhill should be congratulated for using his immense historical learning and sharp analytical insight in developing a path-breaking sociology of constitutions. Those who wish to amplify the analysis of the constitutional developments comparatively and to introduce greater historical nuance to the understanding of Western constitutionalism beyond its classical age can follow in his path.

SAÏD AMIR ARJOMAND