

**THE GUN, THE SHIP, AND THE PEN: WARFARE, CONSTITUTIONS, AND THE MAKING OF THE MODERN WORLD.** By *Linda Colley*. New York: Liveright. 2021. Pp. 1, 424. \$47.00.

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Charles Tilly famously argued that states make war and wars make states.<sup>1</sup> The need to raise taxes and troops in order to wage war, in other words, “created the central organizational structures” of the modern sovereign state as a system of government.<sup>2</sup> Linda Colley’s engrossing new book *The Gun, the Ship, and the Pen*<sup>3</sup> adds a deceptively simple twist to Tilly’s classic formulation. If, Colley argues, beginning in the mid-eighteenth century, states increasingly adopted written constitutions to entrench their forms of government, and if wars make states, then warfare is a central source—indeed, perhaps the single most important source—of written constitutionalism (pp. 4–12, 25). States make war, and wars create constitutions.

The premise is straightforward, but its consequences are profound. Historians and political theorists have typically framed the rise of modern constitutions and the individual rights they enshrine as the product of growing republicanism and Enlightenment faith in reason reining in royal authority in the eighteenth century.<sup>4</sup> Colley suggests instead that modern constitutions are mainly the result of the increasingly frequent, violent, and large-scale war-making pursued by burgeoning states and empires across the eighteenth and nineteenth centuries (pp. 3–8). Faced with their subjects’ resentments at the mounting financial and human costs of war, Colley contends, rulers offered new rights in exchange for their subjects’ sacrifices,

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1. P. 25; CHARLES TILLY, *COERCION, CAPITAL, AND EUROPEAN STATES, AD 990–1992*, at 14, 20–28 (1992).

2. TILLY, *supra* note 1, at 27–28; *see also id.* at 2–3.

3. Shelby M.C. Davis 1958 Professor of History, Princeton University.

4. *See* pp. 4–5; Steven Hahn, *Slave Rebellions and Mutinies Shaped the Age of Revolution*, BOS. REV. (Apr. 23, 2021), <http://bostonreview.net/race/steven-hahn-slave-rebellions-and-mutinies-shaped-age-revolution> [https://perma.cc/KX7N-MTC6]. Classic statements of this approach include J.G.A. POCOCK, *THE MACHIAVELLIAN MOMENT: FLORENTINE POLITICAL THOUGHT AND THE ATLANTIC REPUBLICAN TRADITION* (1975); GORDON S. WOOD, *THE RADICALISM OF THE AMERICAN REVOLUTION* (1992); LYNN HUNT, *INVENTING HUMAN RIGHTS* (2007).

drafting constitutions as “compensatory paper contracts” (pp. 10, 320–21). And at an ideological level, in the war of ideas, rulers wielded written constitutions as tools of “political communication” to propagandize both their own domestic populations and potential allies abroad (pp. 79–92).

Colley marshals an immense array of historical examples to support her claim, moving in roughly chronological order from the 1750s to the aftermath of World War I and examining constitution-making on all six inhabited continents. We visit France, Spain, and Corsica, Haiti and Venezuela, Tunisia and Liberia, Tahiti, India, Japan, and many more. There’s danger, of course, in pursuing such a sprawling global history—what one critic calls the “around-the-world-in-eight-hundred-pages variety.”<sup>5</sup> No historian could possibly get all the details right in every national context, and even the most elegant explanation of a global trend will inevitably fail to account for some particular events. Nevertheless, Colley’s audacious bid for a global perspective offers powerful new insights into the instrumental value of written constitutions, and the sheer boldness of her project should inspire a host of further research.

A few snapshots will give a sense of Colley’s narrative arc. She argues, for instance, that Qing Dynasty legal codification in the 1750s aimed to consolidate the Qianlong Emperor’s military conquests, while Catherine the Great’s proto-constitutional *Nakaz* in 1767 sought to legitimate her military coup d’état in Imperial Russia (pp. 60–61, 70–73). The U.S. Constitution, similarly, emerged in large part from the necessities of national defense, while the Reconstruction Amendments secured the changes won by the Civil War (pp. 114–22, 339). And in the wake of WWI, with its unprecedented human and economic devastation, a multitude of nations, some new and some quite old, composed constitutions to codify novel social and legal systems as they rebuilt from war (pp. 401–08). In all these contexts, Colley contends, the violence of the gun and the warship was always closely accompanied by the power of the politician’s pen, drafting a

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5. Deborah Cohen, *Missing the Dark Satanic Mills*, N.Y. REV. BOOKS, Sept. 27, 2018 (reviewing JOSHUA B. FREEMAN, *BEHEMOTH: A HISTORY OF THE FACTORY AND THE MAKING OF THE MODERN WORLD* (2018)), <https://www.nybooks.com/articles/2018/09/27/factory-missing-dark-satanic-mills/> [<https://perma.cc/DZ9F-GNDM>]. Other examples include SVEN BECKERT, *EMPIRE OF COTTON: A GLOBAL HISTORY* (2014); ANDREW F. SMITH, *SUGAR: A GLOBAL HISTORY* (2015).

new constitutional order—and with it, a new political community, a new people—into being (pp. 11–12).

The print public sphere was crucial for this process. Rising literacy rates and expanding networks of print circulation enabled ruling elites to disseminate written constitutions to large audiences at home and abroad, building support for their political projects.<sup>6</sup> At the same time, transnational print circulation allowed would-be constitution writers to find inspiration in—and copy from—existing texts (pp. 135–36). Already by 1814, for example, the drafters of Norway’s Constitution, working rapidly under the threat of a looming Swedish invasion, borrowed promiscuously from the U.S. Constitution; multiple U.S. state constitutions; the French revolutionary constitutions of 1791, 1793, and 1795; the Dutch Constitution of 1798; the Swedish Constitution of 1809; and the Spanish Constitution of 1812 (pp. 136–39). A similar process of borrowing, translation, and adaptation unfolded around the world from the eighteenth through the twentieth centuries (pp. 133–36). Print thus permitted written constitutions to serve as a “political technology” for building states and waging war (p. 9), and it simultaneously helped to disperse that new technology across the globe (p. 136).

Indeed, although Colley uses an epidemiological metaphor for the rapid spread of written constitutions, calling them “contagious” (p. 3), the closer analogy is to an arms race: Like the development of radio technologies during the world wars,<sup>7</sup> Colley’s narrative suggests that written constitutionalism evolved out of modern conflict and radiated across the planet as states adopted the tools they needed to compete. By emphasizing this decidedly instrumental value of written constitutionalism as a legal and political practice, Colley lets us see written constitutions as technologies for enhancing military power and militarizing society, every bit as much as they are mechanisms for creating and restraining a government and protecting

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6. Pp. 12, 115–26; *see also* BENEDICT ANDERSON, *IMAGINED COMMUNITIES: REFLECTIONS ON THE ORIGIN AND SPREAD OF NATIONALISM* 36–46 (rev. ed. 2006) (describing the role of print technology in forging national identity).

7. *See* Charlotte Dubenskij, *World War One: How Radio Crackled into Life in Conflict*, BBC (June 18, 2014), <https://www.bbc.com/news/uk-wales-27894944> [<https://perma.cc/84NS-VYMK>]. *See generally* ROBERT BUDERI, *THE INVENTION THAT CHANGED THE WORLD: HOW A SMALL GROUP OF RADAR PIONEERS WON THE SECOND WORLD WAR AND LAUNCHED A TECHNOLOGICAL REVOLUTION* 15–16, 56–64 (1996) (on technological development, specifically the radio wave technology of radar).

its citizens' autonomy.<sup>8</sup> And that is a very different way to understand the nature and purpose of written constitutions than the near-religious veneration that's often directed at the U.S. Constitution.<sup>9</sup>

It's also a different way to understand written constitutionalism than most discourse in the U.S. legal academy. On the one hand, constitutional history and constitutional theory tend to focus on the U.S. Constitution in particular,<sup>10</sup> with perhaps a glance at Founding-era state constitutions<sup>11</sup> or seventeenth- and eighteenth-century French and British political philosophy<sup>12</sup> thrown in for good measure. As one commentator writes, "constitutional historians have been . . . parochial" in their approach.<sup>13</sup> On the other hand, the rich bodies of comparative constitutional scholarship<sup>14</sup> and comparative human rights law,<sup>15</sup> although they mostly avoid any such parochialism, tend to focus on relatively recent legal issues,<sup>16</sup> offering, for example, synchronic comparisons between free speech or privacy doctrine in the contemporary United States and European Union.<sup>17</sup> Colley's book offers the

8. Cf. Aziz Rana, *Constitutionalism and the Foundations of the Security State*, 103 CALIF. L. REV. 335, 352–53 (2015) (describing how pro-war activists in the United States during WWI "advocated for both devotion to the [Constitution] and heightened militarization of collective life" and explaining "the deep interconnections" between those two causes).

9. See, e.g., *id.* (describing "the modern origins of constitutional veneration" and "popular constitutional reverence"); SANFORD LEVINSON, *CONSTITUTIONAL FAITH* (1988); ERIC J. SEGALL, *ORIGINALISM AS FAITH* (2018). On the rise of widespread public veneration for the Bill of Rights in particular during World War II, see GERARD N. MAGLIOCCA, *THE HEART OF THE CONSTITUTION: HOW THE BILL OF RIGHTS BECAME THE BILL OF RIGHTS* 1–8, 100–14 (2018).

10. See, e.g., BRUCE ACKERMAN, *1 WE THE PEOPLE: FOUNDATIONS* (1993); AKHIL REED AMAR, *AMERICA'S CONSTITUTION: A BIOGRAPHY* (2005); LAWRENCE LESSIG, *FIDELITY AND CONSTRAINT: HOW THE SUPREME COURT HAS READ THE AMERICAN CONSTITUTION* (2019). Some of these titles speak volumes by themselves: calling it "the American Constitution" instead of "the U.S. Constitution," they implicitly erase the dozens of other written constitutions established by sovereign states throughout the Americas in the last three centuries.

11. E.g., AKHIL REED AMAR, *THE BILL OF RIGHTS* 28–29 & n.\* (1998); AMAR, *supra* note 10, at 166–70.

12. E.g., BERNARD BAILYN, *THE IDEOLOGICAL ORIGINS OF THE AMERICAN REVOLUTION* 22–54 (1967).

13. M.C. Mirow, *The Age of Constitutions in the Americas*, 32 LAW & HIST. REV. 229, 229 (2014).

14. E.g., Mark Tushnet, *The Possibilities of Comparative Constitutional Law*, 108 YALE L.J. 1225, 1228–29, 1269–71 (1999).

15. E.g., Christopher McCrudden, *Judicial Comparativism and Human Rights*, in *COMPARATIVE LAW: A HANDBOOK* 371 (Esin Örüçü & David Nelken eds., 2007).

16. E.g., *id.* at 380–87.

17. E.g., Kirsty Hughes & Neil M. Richards, *The Atlantic Divide on Privacy and Free Speech*, in *COMPARATIVE DEFAMATION AND PRIVACY LAW* 164 (Andrew T. Kenyon ed., 2016). Cf. Tushnet, *supra* note 14, at 1228 ("My claim is, in the end, rather modest: U.S. courts can sometimes gain in-

best of both methods, embracing a simultaneously global and long-term perspective to retheorize the technology of written constitutionalism from the ground up.

With Colley's big-picture narrative on the books, though, what should follow next is, somewhat paradoxically, further inquiry by historians and legal theorists teasing out more detailed patterns and specific trajectories of constitutional transmission. How, for example, did different models of social and economic rights travel across borders in the twentieth century? What does adopting a long-term, global frame reveal about marginalized groups' struggles to expand constitutional rights? What can Colley's approach illuminate about how existing constitutions have been reinterpreted over time, even without formal changes to their texts?

In particular, there is more to say about transnational collaborations between grassroots social and political movements and their impact on constitutional change (though I might be biased, since my work explores such collaborations). As Colley herself notes, "the ever-expanding print archive of constitutional texts and commentaries" since the eighteenth century has "lent itself to study and exploitation by dissident and opposition groupings, not least those confronting imperial invasions from without" (pp. 139). But although Colley traces some compelling sagas of constitutional dissent, such as James Africanus Beale Horton's fascinating constitutional experiments in West Africa in the 1860s (pp. 341–56), her book mainly, if quite understandably, emphasizes elite actors. So there is plenty of room left for legal, political, and social historians to more fully map out how dissidents have built what literary critics would call counterpublic spheres—countercultural networks of print circulation—and used those networks to advance new ideas about social justice.<sup>18</sup> Alongside all the official constitution writers, that is, it's also important to foreground the activists—the constitutional inventors and dissenters—who contested the existing order of things and imagined that it might be otherwise.

Movements for racial justice, sex equality, and labor power have been especially internationalist in their efforts to expand constitutional rights and widen the scope of people who can invoke those rights. In the early 1800s,

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sights into the appropriate interpretation of the U.S. Constitution by a cautious and careful analysis of constitutional experience elsewhere.”)

18. See MICHAEL WARNER, *PUBLICS AND COUNTERPUBLICS* 65–124 (2005).

for example, British antislavery activists leveraged the pressures of the Napoleonic Wars to help abolish the slave trade,<sup>19</sup> and the U.S. antislavery movement then looked to British practices to develop the concept of military emancipation, culminating in the Emancipation Proclamation.<sup>20</sup> During WWI, similarly, antiwar feminists formed the Women's International League for Peace and Freedom, demanding both a negotiated peace and votes for women, and the wartime campaigns of such feminist human rights advocates advanced the cause of women's suffrage in multiple countries.<sup>21</sup> And in the mid-twentieth century, the U.S. civil rights movement drew on the global anticolonial struggle as a model to demand changes in constitutional law to overturn Jim Crow and secure economic justice, even as Cold War tensions simultaneously enabled and limited the growth of civil and socio-economic rights.<sup>22</sup>

The constitutional countercultures that were created by such dissenters consistently remade the world. They generated new constitutions and constitutional provisions. They convinced courts to reinterpret long-standing texts, in often radical ways. And they shifted prevailing public narratives about the boundaries of the polity and the meaning of basic constitutional rights. Wars make states, and states make constitutions, but it's the grass-roots activists who change those constitutions over time.

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19. ADAM HOCHSCHILD, *BURY THE CHAINS: PROPHETS AND REBELS IN THE FIGHT TO FREE AN EMPIRE'S SLAVES* 7–8, 299–308 (2006).

20. JAMES OAKES, *FREEDOM NATIONAL: THE DESTRUCTION OF SLAVERY IN THE UNITED STATES, 1861–1865*, at 34–41, 301–17 (2013).

21. See CARRIE A. FOSTER, *THE WOMEN AND THE WARRIORS: THE U.S. SECTION OF THE WOMEN'S INTERNATIONAL LEAGUE FOR PEACE AND FREEDOM, 1915–1946*, at 1–15 (1995); JOYCE BLACKWELL, *NO PEACE WITHOUT FREEDOM: RACE AND THE WOMEN'S INTERNATIONAL LEAGUE FOR PEACE AND FREEDOM 1915-1975*, at 1–33 (2004); KATHERINE M. MARINO, *FEMINISM FOR THE AMERICAS: THE MAKING OF AN INTERNATIONAL HUMAN RIGHTS MOVEMENT* 3–6 (2019); Katherine M. Marino, *The International History of the US Suffrage Movement*, NAT'L PARK SERV. (Oct. 10, 2019), <https://www.nps.gov/articles/the-internationalist-history-of-the-us-suffrage-movement.htm> [https://perma.cc/LL76-T73X].

22. See H. Timothy Lovelace, Jr., *King Making: Brown v. Board and the Rise of a Racial Savior*, 57 AM. J. LEGAL HIST. 393, 403–05, 418–19 (2017); CAROL ANDERSON, *EYES OFF THE PRIZE: THE UNITED NATIONS AND THE AFRICAN AMERICAN STRUGGLE FOR HUMAN RIGHTS, 1944-1955*, at 1–6 (2003); MARY L. DUDZIAK, *COLD WAR CIVIL RIGHTS: RACE AND THE IMAGE OF AMERICAN DEMOCRACY* 11–14 (2000).