

Introduction

Constitutional history as a discrete (and, for over half a century, dominant) subfield of the discipline emerged in the second half of the nineteenth century. But as a more broadly conceived approach to the past, it is of course much older. Medieval chroniclers did not, on the whole, concern themselves overmuch with the major milestones of constitutional change that later scholars would take up. It was in the highly charged polemical atmosphere of the seventeenth century, with the rising tide of resistance to Stuart “absolutism,” that scholars of law and history, many of them in leading positions in the law courts and parliament, began developing a comprehensive historical critique of James I’s and Charles I’s policies. These were, according to leading critics like Sir Edward Coke, contrary to a long-established constitutional tradition of limited government and respect for the rights of free-born Englishmen. The professional respect for the historic precedent cited in common law courts was as important as the worship of such milestone documents as Magna Carta.

A growing interest in the Anglo-Saxon period, originally stimulated by Tudor-era scholars and antiquaries, was readily grafted onto this constitutional historical consciousness. For some commentators, Anglo-Saxon freemen came to be seen as the essential progenitors of English liberty, crystallizing a racial element within constitutional history. In all the major constitutional conflicts from the late seventeenth century on, the degree to which Anglo-Saxon village councils were invoked as justification of resistance to tyrannical regimes served as a marker of the movement’s radical nature. Thus the aristocratic Whig revolution makers of 1688 chose, on the whole, to anchor their cause on Magna Carta and later parliamentary restrictions on royal power, rather than on the more egalitarian, if more ancient, practices of village councils.

The latter half of the eighteenth century saw the radical deployment of Anglo-Saxonist arguments on both sides of the Atlantic in the American Revolution. While much of the radical assault hinged on ahistoricist “rights of man” doctrine, it was accompanied by historical references to ancient rights. Thus Thomas Paine, otherwise firmly grounded in a demotic brand of Enlightenment argument against the absurdity and injustice of hereditary privilege, also invoked the Anglo-Saxons by playing the “Norman Yoke” card—the belief that the Normans in 1066 and after had suppressed but not destroyed ancient English liberties. These were seen by Paine and other radicals to be in vibrant ascendance not only in America, but in the growing opposition to royal and aristocratic misrule in Britain. In the French Revolution, English “Jacobins” and radical Whigs again grounded their movement partly in “free-born Englishmen” rhetoric. Of course, champions of established forms and entrenched privilege could also muster constitutional historical arguments, holding up monarchy, aristocracy, and church as long-enduring and essential components of English national identity. This argument, especially when used by Edmund Burke, served not only to polarize constitutional views between radicals and conservatives, but to split asunder the Whig party itself. Burke’s “Appeal from the New Whigs to the Old” sought to anchor Whiggism in the elitist arguments of the leaders of 1688, seeing in their reverence for long-established forms a safe and trustworthy restraint on dangerous change, yet one that allowed some room for reform, albeit in cautious increments.

By the start of the nineteenth century, two substantially different forms of English constitutional history vied for supremacy, a radical Whig view favored by proponents of democracy and a Burkean version with the greatest appeal to those of property and station. At times of intense political excitement, as at the time of the Great Reform Bill of 1832 or during the Chartist era, these arguments became politically charged to an intense degree. In quieter years, a more consensual atmosphere prevailed. The new appreciation of the Middle Ages spawned by Romanticism helped to inculcate further a historically informed constitutionalism into English national identity. Another element of constitutional historical consciousness grew out of the new philological studies, in which German scholars took a leading part. This work traced the antecedents of Anglo-Saxon liberty back to primitive, supposedly freedom-loving Teutonic tribes and beyond them to that ur-people of remote antiquity, the Aryans. While this component may be said to have had a somewhat limited impact on the English public’s sense of national identity, it made considerable inroads among intellectuals and racial theorists. In combination with Darwinism, it offered a “scientific” demonstration of English racial superiority.

The second half of the nineteenth century saw the formulation of the clas-

sic Whig theories of the origins and development of the English constitution. The three writers who dominated this era, William Stubbs, Edward Augustus Freeman, and John Richard Green, are often considered to have constituted the “Whig” school of historiography. In spite of significant differences, they shared a belief in the long-term development of the English constitution and the placing of that development at the center of the English national story. The country’s history was considered to be largely one of incremental progress, punctuated indeed by some dramatic events and even a few setbacks, yet overall moving majestically forward toward greater inclusion and freedom. Throughout their history, the English held fast to a belief in freedom and self-government, the priceless legacy from their Anglo-Saxon forebears. Institutional continuity from the age of Alfred through the Norman Conquest and beyond was a firmly held tenet of the Whig school.

The professionalizing of the discipline in the waning years of the century was not kind to Green and Freeman, whose work was viewed as overly colorful and based too much on chroniclers and other “soft” evidence. In the new, more rigorous practice of academic historians, Stubbs, whose careful collection, publication, and analysis of primary source materials had helped inspire the professionalizing of the discipline, alone survived the transition. His *Constitutional History* and *Select Charters* remained essential reading for students well into the twentieth century. British elites studying history in universities during this period were subjected to a painstakingly analyzed but reassuring national story based on gradual, incremental change, illustrating both the fundamental soundness of the nation’s institutions and the natural English gift for governing. This included a presumed genius for ruling other races, a most useful belief for the many graduates taking up posts in the far-flung Empire.

In many respects, the evolution of constitutional history in the United States in the second half of the nineteenth century mirrored that in Britain: the reverence for ancient, especially Anglo-Saxon antecedents, the rapid advance of professionalization, the emphasis on close analyses of primary sources, the reassuring sense of the gradual unfolding of sound governmental and legal structures. Initially, the labors of early academic leaders like Herbert Baxter Adams of Johns Hopkins University served to bolster the Teutonic “germ” theory of Anglo-American institutions. However, the new generation of seminar-trained historians largely repudiated this view as fanciful, focusing instead on the post-conquest period, for which there was an abundance of extant sources. As in Britain, constitutional history came to be concerned largely with post-1066 England, and the Anglo-Saxon era was relegated to the status of a promising but chaotic preamble to the main event.

The changes in academic approaches and methodology in the United States

did not merely affect views of English constitutional history. Applied to American history itself, they wrought dramatic changes in the national story and ushered in several decades of intense debate. Most importantly, the new constitutional history challenged the conventional heroic narrative of the American Revolution. Secondly, it called for a sharp revision in the dominant view of the history of Anglo-American relations. The pre-Revolutionary period, looked at through the dispassionate lens of constitutional studies, dissolved into a series of administrative problems and attendant transatlantic misunderstandings, resulting in an unfortunate rupture of the English-speaking world. This repudiation of a deeply rooted heroic narrative challenged the very essence of American national identity. A related view held by many American historians at the turn of the twentieth century—that the United States and Britain were temporarily estranged cousins who needed to mend relations and cooperate in world affairs—had immediate relevance to pressing issues of empire.

On both sides of the Atlantic, growing world commitments and fresh international dangers called for corresponding changes in historical national identity. The earlier Anglo-Saxon version of English constitutional history stressing individual liberty, localism, and small central government had suited early to mid-nineteenth century conditions. As Britain and the United States moved into a period of overseas expansion, the form of historical identity shifted forward in time to the vigorous, expansionist Normans. Constitutional history's emphasis on the post-1066 period had to do with something more than the availability of a large documentary base. It also provided satisfying antecedents in the form of the Normans, whose wide-ranging military successes throughout Europe were matched by their supposed genius for creating powerful organs of central government. Expanded government was also viewed, by Progressives in the United States and New Liberals in Britain, as necessary for addressing growing social problems. A suitably enlarged administrative state could be seen to have antecedents in Norman and Angevin England, yet the majesty and antiquity of the English constitution and Common Law served as an effective barrier against socialism's threat to the regime of private property and capitalism. In short, a "Normanized" version of constitutional history provided a highly usable past for both nations' elites.

The dominant role of this conservative version of constitutional history also served to facilitate Anglo-American rapprochement. With the American Revolution no longer either a fundamental watershed or an embittering memory, the way was paved for the coming together of the two English-speaking powers as they confronted other imperial contenders like Germany and Japan. A number of the leading scholars in the field were themselves strong advocates

of a close alliance, and a few even argued for an enlarged imperial federation that would include the United States. Their efforts assisted in the emergence of a close relationship by the outbreak of the Great War and in bringing America into the conflict at Britain's side. Transatlantic educational opportunities, academic visits and friendships, and new international institutions helped cement this "special relationship" (as it came eventually to be called), secured firmly in shared beliefs about English and American constitutional history. In America after the war, this Anglophilic version of constitutional history not only was entrenched in a number of universities, but had also begun to penetrate high school textbooks. The ensuing "culture war" over what those espousing traditional patriotic views called "treason texts" was a bitter, politically charged conflict.

The cultural struggle in the United States in the interwar period did not occur in Britain for the simple reason that the radical Whig view had never entrenched itself as the dominant national story. This did not mean that that constitutional history went unchallenged. As in America, the period after World War I witnessed the rise of new approaches and methodologies, principally those associated with social history. The new social historians, many of them driven by a progressive or radical (in some cases, Marxist) agenda, saw in constitutional history a powerful intellectual prop of capitalism and the imperial order. The ensuing struggle within history departments was sometimes as bitter, at least in America, as the more public dispute over treason texts. By the 1930s, the citadel had been breached, and constitutional historians found themselves on the defensive, though it would not be till after World War II that the enormous increase in nonelite higher education led to the marginalization of the Great Tradition.

Such, in brief compass, is a chronological overview of what is to follow. Ensuing chapters are organized on a largely topical basis, around themes such as race, professionalization, empire, gender, law, politics, and diplomacy. A central subtopic is the impact of constitutional history on the Anglo-American connection, both diplomatically and culturally. Throughout the book, the focus is on the various contested national identities that emerged in Britain and America during the period 1870–1960, the role played by constitutional historians in fostering them, and the impact on broader cultural patterns.