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Constitutions, Civility and Violence: Europe from the mid-eighteenth century to the present. Oxford: Robert Gerwarth, Oxford; Jose Harris, Oxford; Holger Nehring, Sheffield supported by the British Academy and Oxford University Press's John Fell Fund, 04.05.2007-05.05.2007.

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Constitutions, Civility and Violence: Europe from the mid-eighteenth century to the present

Recent efforts at establishing constitutional orders in Afghanistan and Iraq, as well as discussions about a European constitution, have endowed the topic of constitutional stability with major contemporary significance. Constitutional history has, however, been on the sidelines of research on modern European and British history for several decades and has so far made little contribution to the critical assessment of such ideas and developments in the contemporary world. This workshop, organised by Professor Jose Harris (Oxford), Dr. Robert Gerwarth (Oxford) and Dr Holger Nehring (Sheffield) and generously supported by the British Academy, and Oxford University Press's John Fell Fund, aimed to reinvigorate research on the historical context of constitution-building and constitutional breakdown in different European societies from the French Revolution to the present day.

Contributors to the workshop set out with a critical approach to the view that constitutions can be understood as doctrinal statements, or made to work in practical contexts, without reference to their historical settings. The workshop's focus was not, therefore, on constitutional technicalities per se (though there was necessarily some of that). Instead, contributors were encouraged to look at constitutions as agencies through which to interpret wider political, intellectual, social and cultural movements. They were asked to explore in comparative perspective the practical and theoretical underpinnings of constitutions, their relationship to the presence and absence of 'civil society', and the reasons why some

constitutions have succeeded and survived, while others (including some legally exemplary ones) have ended in chaotic or violent breakdown. The workshop brought together some senior and more junior historians and political scientists from Britain, continental Europe and the USA.

In her opening address, Jose Harris introduced participants to the key questions of the conference and highlighted the manifold overlaps between constitutionalism, political thought, the rule of law and civil society. In particular, she suggested that, from the perspective of intellectual history, British commentators have not, until very recently, regarded state and civil society as separate and distinct entities, but as two sides of the same coin, and she invited the contributors to test this assumption for other European countries. Other leading questions that were raised in her talk were how far constitutions have helped to stabilise disorderly political entities or whether 'orderly' societies have themselves been prerequisites for effective constitutions.

In his paper on 'civility', censorship and the rise of a free press in Europe shortly before and during the French Revolution, Professor Eduardo Tortarolo (Turin) highlighted the paradoxical relationship between censorship and free expression at this time, when censors often saw it as their duty to protect freedom by ensuring that only certain books were available to the broader public. Censors' offices were key sites at which the precise relation-

ship between 'freedom', order and constitutionalism was negotiated and worked out. In his comments, Holger Nehring pointed to the important shift, highlighted in Reinhart Koselleck's work on the *Sattelzeit*, from thinking in terms of order and stability towards 'concepts of movement' ('Bewegungsbegriffe'); a shift that had introduced a rising tension into the relationship between promotion of constitutional order and the social practices related to it.

In his wide-ranging paper, Professor Thomas Froeschl (Vienna) considered the impact of American constitutional ideas on German and Austrian constitutional thought. He highlighted the specific character of the American Constitution not only as a legal document, but also as an almost sacred symbol within American political culture. By contrast, constitutional thinking in the German lands, Froeschl argued, had rarely achieved this level of popular support. He pointed also to the persistence of elements of the 'monarchical' principle in German and Austrian constitutions to the present day, and argued that - despite continuous German-language discussion of the American experiment - it was difficult to pinpoint specific substantive examples of the influence of American constitutionalism on the Germany and Austria. In her comment, Professor Kathleen Burk (London) pointed to the important distinction between constitutions as statements of principles and constitutions as sets of rules. She argued that the American constitution had been historically so adaptable precisely because it had functioned more as a system of overarching principles than as a system of fixed rules.

In his paper, Professor Dietmar Neutatz (Freiburg) discussed the Russian constitutional experiment 1906-1918. He showed how the experiment had drawn upon the (to some degree incompatible) ideas and ambitions of both westernising liberals and anti-modernist slavophiles. Violence remained endemic to social relations on a local level; and the lack of effective governmental power (together with attempts by czarist ministers to curtail the Duma's functions) did not help in endowing the new constitution with legitimacy. Moreover, in some degree it was precisely *because* these developments allowed public and political life to develop on a new level of intensity that the new constitutional order was never able to take hold. This evolutionary development broke down in 1917/8, Neutatz argued, because the Provisional Government made serious mistakes on which the better organised and more efficient Bolsheviks were able to capitalise. In this situation of social turmoil, the dissolution of the Constitutional Assembly

in 1918 was met with almost universal indifference by the Russian population. In his comments, Professor Hartmut Pogge von Strandmann (Oxford) also highlighted the importance of war experiences for the breakdown of the constitutional order.

Dr. Robert Saunders (Oxford) took the case of Britain, widely viewed at the time as one of the prototypes of constitutional order in nineteenth-century Europe. His paper focused less on constitutional thinking per se, and more on a broad analytical survey of popular politics from the 1832 Great Reform Act to the beginning of the First World War. He drew attention to a central paradox of British politics during this time- period: namely, that as arrangements for popular participation in the political process in Britain became broader, faith in the constitutional order appeared to wane (a point that casts some doubt on the oft-repeated assumption of the present day that 'democracy' necessarily generates constitutional stability, legitimacy, and law-abiding habits). In his comments, Professor Sir Brian Harrison (Oxford) wondered about the reasons for continued constitutional stability in Britain *after* World War I, if it was the case that legitimacy had indeed been declining before 1914. He also pointed to the importance of engaging with the political science literature on problems of political legitimacy and asked for a more detailed discussion of intellectual thinking about the British constitution.

Dr. Stuart Jones (Manchester) analysed 'Transient constitutions within a stable political culture and society' by looking at France, which, apart from Britain was the second main prototype for European constitutional thinking in the nineteenth and early twentieth centuries. It was in France that modern European constitutionalism of a 'manufactured' as opposed to 'evolutionary' kind was invented during the revolutionary period. Yet, by contrast with Britain, nineteenth- and early twentieth-century France became a byword for political instability. In a wide-ranging survey, Jones questioned whether the tension between constitutional experiments and underlying social structures had been as great as some historians believed; social pressures had on occasion caused violence against the constitutional order, but had also helped to contain it. In her comments, Dr Anne Simonin (CNRS Paris) highlighted the role of the *Code Civil* as a quasi-constitution and focus for cohesion in French national life; she argued that it was precisely because of the stability of the Civil Code that French constitutions were able to withstand constant pressures arising from political and social instability.

In her paper on constitutionalism in the Ottoman Empire and its successor states, Dr. Louise Fawcett (Oxford) distanced herself from those analysts of constitutionalism in the Middle East who try to explain constitutional failure in the region as a result *either* of Islamic culture *or* of exposure to the negative influence of Western norms and practices. Instead, she illustrated the richness of constitutional history in the region now referred to as the Middle East. In her chronologically and thematically wide-ranging paper, she identified three constitutional 'moments': The first was in the late-Ottoman period which saw significant, though short-lived attempts at constitutional reform in the Ottoman Empire itself and its semi-autonomous provinces of Tunisia and Egypt. The second was the post-Ottoman period in which the seeds of 'modern' Turkish constitutionalism were sown alongside efforts to promote constitutional government in Egypt, and in the British and French mandates of Iraq, Syria, Lebanon, Jordan and Palestine. The third was the post-independence period in which most states - with a few notable exceptions - experimented briefly with different types of constitutional government, only to replace them with authoritarian regimes, whether monarchies or republics. Dr Fawcett also sketched out the current constitutional arrangements and prospects in the region. In his comment, Professor Robert Evans (Oxford) pointed to the peculiar experience of the European successor states that emerged in the final phase of the Ottoman empire's dissolution; and there was some discussion of how far a specifically 'European' identity (as opposed to lesser ethnic, religious and 'national' identities) had played any part in the development of constitutionalist thought in the region.

In his paper on the aspirations (and apparent failure) of the movement for a European constitution, Dr. Jan-Werner Müller (Princeton) offered an overview of the recent debates about trans-national constitutionalism in Europe. He suggested an essentially Tocquevillian explanation of the initial failure of the constitutional treaty that had been agreed by European leaders in 2004. In his comment, Dr. Martin Conway (Oxford) raised questions about the historical and intellectual origins of the debates about a European constitution and emphasised the 1980s as a watershed for these debates, a time period in which the post-war order was being challenged by changing political structures in many European countries, by the growth of anit-Soviet dissidence movements in Eastern Europe, and, ultimately, by the collapse of the Iron Curtain.

The final round table discussion, chaired by Dr. Robert Gerwarth (Oxford) and Dr. Holger Nehring (Sheffield), focussed on the workshop's general theme of writing a 'new constitutional history' that aims to link up the study of constitutions much more closely with wider elements of political, social, and cultural history and to engage with the ambivalent relationship between civility and violence. As suggested by Joanna Innes, a useful way of approaching the subject matter from this angle is to conceptualise constitutions as 'treaties' which generally emerge from periods of fragmentedand conflicting socio-cultural identities and violent upheaval. And, as Jose Harris pointed out, the institutional channelling of 'force' and its 'legitimation' have been central to the politico-legal thought of leading European public intellectuals such as Hobbes, Grotius, Bentham, Austin, Weber, Kelsen and others, over many centuries. It therefore seemed unrealistic to think about constitutions, whether as historical entities or as systems that have bearing on the present day, in isolation from those wider factors.

The proceedings of the workshop will be published as a special issue of the *Journal of Modern European History (Zeitschrift fur moderne europÄische Geschichte/ Revue d'histoire europ©enne)* in the spring of 2008. (Articles in either English or German, with synopses in English, German and French.).

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