

Linda Colley. *The Gun, the Ship and the Pen: Warfare, Constitutions and the Making of the Modern World*. Profile Books, 2021. Pp. 502, £ 25.00. ISBN: 9781846684975.

1. Corsica and the Seven Years' War

Linda Colley's *The Gun, the Ship and the Pen* is a highly informative and enjoyable book. It explores the interconnection between constitution-making and warfare. Compared to Philip Bobbitt's *The Shield of Achilles*,¹ which examines the history of the modern state and military strategy, Colley's book is much more global in its scope. It describes not only the usual suspects such as the United States, the United Kingdom, and France but also Corsica, Haiti, Bolivia, Hawaii, and many other often neglected places. The book mainly focuses on three periods: the Seven Years' War (1756–63); the French Revolution and the Napoleonic Wars (1789–1815); and the long 1860s.

Colley begins her book with the story of Corsica (at 17–25). In his *The Social Contract*, Jean-Jacques Rousseau said: "There is one country left in Europe capable of receiving legislation: it is the island of Corsica."² The "legislation" Rousseau mentions here is not a parliamentary statute in the contemporary sense but a constitution, which, according to him, legendary lawgivers—such as Lycurgus, Moses, and Mahomet—drafted for respective countries and rejuvenated the people there.³

In the eighteenth century, Corsica was renowned for its fight against its oppressor Genoa. In 1755, Pasquale Paoli, the rebel commander of resistance against Genoa, drafted a ten-page constitution (*costituzione*) for the island. In 1764, Mathieu Buttafoco, a French collaborator of Paoli, sent a letter to Rousseau inviting him to write a constitution for Corsica, justifying this invitation by the above passage from *The Social Contract*. Taking this demand seriously, Rousseau wrote *The Draft of a Constitution of Corsica*,⁴ which was published only in 1861.

Colley explains why Paoli was able to win back the independence of Corsica, albeit for a short while (at 24–5). France, which aimed to take Corsica, did not intervene in Paoli's campaign as it was fighting a global conflict. During the Seven Years' War, France had to focus on fighting and monitoring Britain and its allies worldwide, both at sea and on land. This large-scale warfare enabled Paoli and Corsica to write a constitution. In 1769, France conquered the island and Paoli was forced into exile.

2. The French Revolution and the Napoleonic Wars

The unprecedented scale of the sea and land warfare—which Colley terms "hybrid warfare"—the European powers embarked on at the turn of eighteenth and nineteenth

¹ PHILIP BOBBITT, *THE SHIELD OF ACHILLES: WAR, PEACE AND THE COURSE OF HISTORY* (2002).

² JEAN-JACQUES ROUSSEAU, *THE SOCIAL CONTRACT AND OTHER LATER POLITICAL WRITINGS* 78, bk. II, ch. 10 (Victor Gourevitch ed. and trans., Cambridge Univ. Press 1997).

³ *Id.* at 68–72, bk. II, ch. 7.

⁴ Jean-Jacques Rousseau, *Projet de constitution pour la Corse*, in *ŒUVRES POLITIQUES* 366 (Jean Roussel ed., Bordas 1989).

centuries forced them to impose taxes heavily and recruit far more soldiers. This necessitated constitution-writing and instituting a parliament representing the populace as instruments for consolidating the legitimacy of the state. The enormous cost of the Seven Years' War and the American War of Independence brought France to the brink of financial collapse. In 1789, Louis XVI had to convene the States-General, which had been last convened in 1614. We all know its consequences, including several short-lived constitutions, starting with the Constitution of 1791.

In his invasion and conquest of vast areas of Europe, Napoleon utilized constitution-making as a convenient instrument to appropriate tremendous amounts of financial and human resources from countries under his control (at 168–83). In Italy, he established the Cisalpine Republic in 1797 and supervised the drafting of its constitution, many provisions of which were borrowed from France's 1795 Constitution. Active citizenship was conferred only on males, and it was tied to military service. Similar exercises were repeated in Westphalia and the Duchy of Warsaw. Napoleon's resorting to constitutional initiatives was a component of his imperial ambition.

Colley stresses the hybrid character of wars Napoleon waged (at 160–8). While we are usually overwhelmed by his successful military campaigns, his warfare was not confined to Europe but conducted worldwide. Events at sea were crucial in the overall course of his global campaigns, and he was frustrated in Egypt, the Caribbean, and at Trafalgar. His failure at sea forced him to embark on the doomed march across the Russian plain.

Napoleon's invasion of Spain triggered constitution-making in Spain, the result of which was the Cadiz Constitution of 1812, and the independence movement of South American nations (at 183–93). Rebel leaders, such as Simon Bolivar and Francisco de Paul Santander, gathered in London, which was the world center of the printing and shipping industries. They wrote constitutional drafts and had them printed and distributed to legitimize their state-building and attract collaborators and investors.

Britain was an exception to this trend of utilizing constitutional codes, although Britons regularly drafted constitutions for settlers and colonized peoples overseas. Since the Dutch invasion in 1688, known as the Glorious Revolution, the United Kingdom restricted royal prerogatives by enhancing Parliament's power and successfully turned itself into a heavily taxed state, where individual rights were better protected than other European states. Consequently, Britain remained unusually immune to invasion, military defeats, severe civil warfare, and revolution, which explains why other countries tried to imitate British polity (at 244–5) and why Britain is still a country with an unwritten constitution (at 250).

3. The long 1860s

In the Pacific and Africa, there were various efforts at constitution-making before they were dashed by European and American imperial powers in the late nineteenth century. In 1838, Captain Russell Elliot visited Pitcairn Island, where descendants of mutineers from the *HMS Bounty* lived, and drafted for the islanders a written

constitution, which accorded all adult residents, including female islanders, the right to elect their chief. The vast majority of other constitutions drafted before the early twentieth century confined active citizenship to men. This is explained by the then-prevalent view that only men could contribute to armed service.

After surveying the constitution-making and their collapse in Pitcairn, Tahiti, and Hawaii, Colley narrates the American Civil War and its aftermath, and abortive constitution-making endeavors in Africa in the 1860s, when a wave of often interwoven conflicts erupted on every continent (at 329–51). One of the wars waged in the mid-nineteenth century was the Boshin War in Japan, triggered by a coup d'état toppling the Tokugawa Shogunate and instituting the Meiji government.

Colley extensively describes how Japanese politicians resorted to enacting the Meiji Constitution to consolidate the energies of the nation and maintain Japan's independence (at 357–400). The state-building of Japan, whose nucleus was the constitution, and its successful wars against China and Russia, resulted in worldwide repercussions. Non-white people around the globe realized that they could follow suit; by writing their constitutions, they could also build modern states without discarding their traditions.

4. Paper constitutions and their roles

The usual focal points for constitutional scholars are functioning constitutions. A constitutional code is regarded as one of the indicators, albeit a critical one, of how a given state is governed. If there is a wide discrepancy between the dispositions of a constitution and the actual functioning of the government, constitutional scholars pay little attention to the constitutional code. This is a *fake* constitution. If we use the French terms, *constitution matérielle* and *constitution formelle*, they are primarily interested in the former, not the latter. Likewise, when Rousseau says that a warring state attacks the social pact of its enemy state,⁵ he does not talk about a social contract written down as a document but about the core principles of the enemy state's constitution.

In contrast, Colley seems interested in constitutional codes as well as writing and enacting them. Many of the constitutions she describes are short-lived. Some of the longer-lasting constitutions she deals with are fake constitutions, such as that of the Soviet Union. More specifically, her book does not provide a recipe for enacting an excellent paper constitution, which not only broadly fits with the actual functioning of the state but adequately guarantees individual rights and democratic governance. However, she points out in the epilogue that failed paper constitutions still play a role: "In a deeply uncertain, shifting, unequal, and violent world, these kinds of imperfect but sometimes stirring, diversely useful and easily available texts may be the best we can hope for" (at 422). The purpose of constitutions is not restricted to ensuring mass conscription and attracting foreign investment. In an era of highly specialized military activities, the role of ensuring mass conscription has

⁵ *The State of War*, in ROUSSEAU, *supra* note 2, at 162, 176.

significantly diminished; we can doubt how many current financial institutions consider constitutional codes in pondering the countries they should invest in. Even a fake constitution can work as a beacon for people's aspirations in an oppressive regime. Colley reminds us that we should be human beings before being academic scholars.

5. To what extent was Japan's imperial system traditional?

I would like to add one point on Japan. Colley observes that the Meiji Constitution enacted in 1889 had the dual purpose of building a modern state and preserving Japan's tradition—the imperial system (at 388). We may question to what extent the imperial system was traditional.

First, the imperial system as a constitutional regime was nothing other than the monarchical principle imported directly from German states. Before the enactment of the Meiji Constitution, the emperor was not regarded as a sovereign of the state or the commander of military forces.⁶

Second, in the context of national sentiment and history, the reverence for the emperor as a descendant of the sun god was not a tradition established in Japan. Yukichi Fukuzawa, a preeminent thinker in this era and the founder of Keiō University, said the following in 1875, seven years after the Meiji Restoration:

Scholars of ancient imperial history argue that the emperor should be highly respected because of people's attachment to our tradition. . . . However, for several hundred years people had nothing to do with the emperor. They only knew him by remote fables. Although the Meiji Restoration is alleged to restore the ancient regime of governance, we can detect no intimate sentiment between people and the emperor. . . . If examining the issue straightforwardly, we cannot but conclude that people embrace more profound attachment to their old feudal lords than to the emperor, as they were ruled by warrior feudal lords since the end of the twelfth century.⁷

The reverence for the emperor was not an entrenched tradition but a new invention. When and why was this reverence created? Its origin can be traced to the Iwakura Embassy Colley refers to (at 372–4), which visited American and European countries from 1871 to 1873. Hirobumi Itō, the main drafter of the Meiji Constitution, was also a member.

What most perplexed the embassy's members was that political elites in the West seemed to sincerely revere Christianity, which they viewed as an utterly ridiculous system of beliefs.⁸ They thought that the Bible was full of wild fairy tales. The conclusion they arrived at was that political elites in the West did not have faith in Christianity but pretended to do so to instill morality in ordinary people; Christianity was an instrument for sustaining a stable social life of human beings, many of whom

⁶ YASUO HASEBE, *TOWARDS A NORMAL CONSTITUTIONAL STATE: IN VIEW OF THE TRAJECTORY OF JAPANESE CONSTITUTIONALISM* 106–7, 160–2 (2021).

⁷ YUKICHI FUKUZAWA, *BUNMEIRON NO GAIRYAKU [AN OUTLINE OF A THEORY OF CIVILIZATION]* 268–9 (Hiroaki Matsuzawa ed., 1995) (translation by author).

⁸ See HIROSHI WATANABE, MEIJI KAKUMEI, SEI, *BUNMEI [THE MEIJI REVOLUTION, GENDER AND CIVILIZATION]* 437–82 (2021).

were not very moral or intelligent.⁹ Leaders of Meiji Japan realized that they had to find a substitute for Christianity, given that there was no chance that many Japanese would become Christians. What they found was the emperor.

In 1888, at the first session of the Privy Council deliberating the draft of the Meiji Constitution, its chairman Hirobumi Itô delivered the following speech:

In Europe constitutional politics originated more than a thousand years ago. We should notice that not only have the people there been accustomed to it but they have sincerely embraced a religion which integrates their thinking and constitutes the axis of constitutional politics. However, the power of religions in Japan is quite feeble. . . . The only candidate that can be its axis is the imperial house. Therefore, in writing this draft, we regarded respectfully the emperor's prerogatives and took meticulous care not to restrict them too strictly.¹⁰

As Fukuzawa points out, people at the beginning of the Meiji era did not revere the emperor. They were trained to do so through public education. Furthermore, political elites, including Itô, did not seriously respect the emperor. They merely wore a mask of reverence. When Crown Prince Yoshihito, the later Emperor Taishô, got married in 1900, Itô made the following remark: "It is unfortunate to be born as a crown prince. As soon as being born, he is chained with ceremonial rules; upon growing-up, he has to dance in tune with music his entourage play."¹¹ In saying this, he imitated the working of a marionette.¹² The genuine reason why Itô took care not to impose strict restrictions on the imperial prerogatives was to leave room for political elites to maneuver them.

However, this substitute for Christianity entailed a risk: the emperor had the dual role of being the object of reverence and the supreme state organ with a broad range of prerogatives. When people began to take the newly invented tradition too seriously, they tended to project their own image onto the emperor and worship it. When policies of political elites deviate from people's desires, people may rebel against the government in the name of the emperor; political leaders themselves might be embroiled in uncontrollable energies of mythical reverence for the emperor, leading to political (and military) disasters.

Rousseau points out that religion serves as an instrument of politics at the origins of nations.¹³ Itô understood that a lawgiver should utilize religion (or its substitute) to control popular sentiment. However, a lawgiver's cynical strategy sometimes backfires, and this may occur in any country.

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⁹ Watanabe points out that such a Machiavellian idea can be traced back to Ogyû Sorai (1666–1728), an eminent Confucian scholar in the Tokugawa era (*id.* at 444–6).

¹⁰ SÛMITSUIN KAIGI GJIROKU [THE MINUTES OF THE PRIVY COUNCIL] 156–7 (1984), quoted in *id.* at 437–8 (translation by author).

¹¹ BÄLZ'S DIARY, vol. I 204 (Ryûtarô Suganuma trans., Iwanami Shoten 1979), quoted in *id.* at 473.

¹² *Id.*

¹³ ROUSSEAU, *supra* note 2, at 72, bk. II, ch. 7.