
America's Forgotten Constitutions

DEFIANT VISIONS OF
POWER AND COMMUNITY



ROBERT L. TSAI

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Prologue

At the close of the constitutional convention in September 1787, the men who framed the U.S. Constitution returned home believing they had designed the best possible government under trying circumstances. They were not foolish enough to think that all of a young nation's problems could be solved with the stroke of a pen, yet they pronounced themselves "satisfied that any thing nearer to perfection could not have been accomplished." First among the statesmen's objectives was the fusion of "free and independent" states into a federal republic. Unhappy with the inefficient Articles of Confederation, delegates proposed an energetic government capable of solving national problems. Perhaps most daunting, they dreamed of a single "people of America," bound by one fundamental law and a common destiny.¹

There are many outstanding books that assess the contributions of the towering figures involved in the writing process or tell the story of ratification. More plentiful still are projects that weigh the soundness of the Constitution's original design. Instead of revisiting such questions, this study wrestles with the puzzle of ideological domination over time: how America's constitutional culture developed after the founding. Instilling a sense of self-empowerment and a belief in political possibility through the rewriting of legal texts proved essential to the experiment in self-governance. What happened next was that enough individuals took these ideas seriously and put them into

practice. Multiple groups claimed the right to rule, proposing an array of legal visions. Instead of a single legal text standing intact for all time, citizens subsequently found themselves awash in competing constitutions.

Building a national legal order in the world outside the Philadelphia statehouse could never be as simple as envisioning an ideal government on paper. To the contrary, it proved infinitely challenging to bring together communities with different conceptions of the good life and understandings of their own authority. Not everyone accepted the relentless drive to create one people, the claim of national supremacy, or the prospect of sharing political power with individuals of different experiences and beliefs. Many were displeased to have their fortunes dictated by bureaucrats and judges who did not share their values. They feared the “annihilation” of not only existing governments but also distinctive ways of life. When unrest reached a perfect pitch, a group of Americans expressed their displeasure by authoring a new constitution.

If creating one people out of many was an audacious idea from the start, then the Framers’ revolutionary rhetoric created as many fresh problems as it solved. Delegates to the Federal Convention invoked the people’s natural right of sovereignty to justify exceeding their mandate in proposing an entirely new constitution instead of recommending modest changes. Supporters called upon the will of the people once again in defending their choice to ignore established protocols for altering the Articles of Confederation. Americans could break the rules, James Wilson explained, because “the supreme, absolute, and uncontrollable power remains in the people,” with the natural consequence “that the people may change the[ir] constitutions, whenever and however they please.” That argument echoed throughout the ratifying debates and eventually carried the day.²

In establishing the American republic, the Framers unleashed a pair of seductive ideas: popular sovereignty and written constitutionalism. One is treated as a God-given right; the other, a cherished means of ordering society. More than the brute fact of shared territory, these ideas became central to American identity and legal practice. The two principles, yoked together during a time of “great national discussion,” would present a conundrum, proving to be both generative and destabilizing over time. According to their logic, the people have

the right to withhold their consent to be governed. Moreover, if all share equally in that most basic right to rule, then anyone can propose a return to the drafting table. But beyond specifying a protocol for amending the 1787 Constitution, the Framers themselves left unresolved precisely when and how the twin ideas can be activated again to overthrow, transform, or subvert the legal order. Successive generations would have to determine the legitimacy of popular methods and concepts. Through trial and error, the people themselves had to decide how a new constitution could be popularly authorized and when, instead, a democratic experiment transgressed the limits of legality.

After the heady days of ratification had passed, the principles of popular sovereignty and written constitutionalism mutated in the hands of ordinary people. Americans found themselves simultaneously enchanted and repelled by what they had wrought. The prospect of starting over at any time was exhilarating, no matter how bleak one's circumstances. Indeed, the pair of ideas inspired an explosion of democratization throughout the United States and later around the world. Even so, citizens who became invested in the 1787 Constitution increasingly believed that popular sovereignty and written constitutionalism were dangerous ideas that themselves had to be reformed. The possibility that a healthy legal order could be eroded through the tools of its creation seemed positively nefarious. If the authors of new constitutions in each generation represented the imaginative, lawbreaking strain of the political tradition, then defenders of the kind of sovereignty articulated in the federal Constitution represented its order-preserving antithesis, carried out through the enforcement of ordinary law and superior force of arms.

To fully appreciate the cultural contest that characterizes the legal process in action, one must investigate the struggles of dissidents who wrote and defended their own constitutions. It requires analysis of the ideas and belief systems of groups that disagreed vehemently with the emerging national constitutional order but whose members, in their own way, remained committed to the rule of law. Many of their experiences have been neglected by academics interested in recounting the triumph of mainstream constitutionalism. But to gain an accurate sense of the tradition, it is crucial to develop a feel for the ideological periphery—or more precisely, the points of friction between conventional ideas about the American Constitution and insurgent theories

of law. These points of contact, redundancy, or contradiction reveal a wealth of information about the nation's legal belief system. The primary task, then, is to chart the development of these popular legal theories and the relationships among them—whether antagonistic or complementary. These conflicts offer evidence that democratic constitutionalism ultimately entails an intellectual and spiritual struggle over ideas, values, and worldviews. Despite the common expectation that a written text can end such battles, in fact a constitution can do little more than shape how conflict unfolds.

The entire process of creating and sustaining a constitution is ideological and social in nature. To be successful, a constitution must shift allegiances, realign sources of authority, and cultivate new identities, mind-sets, and habits consistent with good citizenship. Evidence of such transformations is not found in law books alone. Differing points of view can be heard within institutions carrying the imprimatur of the 1787 Constitution, but far more antagonistic legal perspectives typically are nourished elsewhere. The sources of law can lie far beyond the control and supervision of the authorities, fostered in alternative constitutions and legal materials, popular writings, underground organizations, and the Internet. Creating an oppositional legal culture requires not only the reframing of older ideas and historical experiences but also the development of coherent and responsive theories of law, power, and community. Cogent theories of law, in turn, depend upon brave and resourceful thinkers willing to challenge legal orthodoxy.

Throughout history, a host of colorful characters—squatters and native peoples, slaveholders and abolitionists, black nationalists and white supremacists, socialists and world federalists—have felt left out of the larger project to build a single nation. Recreating life on the margins of society, popular legal theorists within these communities railed against the defects of the legal order. Convinced they would be better off under their own designs, they proposed state governments, breakaway republics, and miniature or worldwide republics not confined by physical boundaries. As resourceful Americans dreamed of the good life, they developed novel theories of community and power through a process of adaptive design, legal writing, and social resistance.

Their constitutions are forgotten in two senses. First, we have left them behind because their proponents lost crucial battles in their own

time. Some ran away; others were driven underground, defeated on the battlefield, jailed, or executed. Those who did not meet a violent fate watched the implosion of their legal visions or lost the public relations war. We tend to discount the possibility that these Americans had compelling ideas, because in their own era they made a bid to rule but ultimately failed. Second, their legal theories have been for the most part rejected and suppressed by mainstream constitutionalism as perilous or wrongheaded. These rule-of-law communities have either been crushed or absorbed. In fact, the survival of the 1787 Constitution—wounded, repaired, reread, but never altogether abandoned—has diminished political possibility along the way. Its remarkable endurance has induced forgetfulness of much that has passed: failed democratic experiments, the ingenuity of alternative designs, certain tactics of direct action—even the inner workings of the ideological aspects of constitutionalism itself.

Despite our collective amnesia about these episodes, the constitutions are worth remembering, analyzed and situated within the American political tradition. Doing so tells us something about the substantive ideas, but even more it reveals the recurring forms that constitutional struggle can take. The usual approach is to study the history of American constitutional law as the creation of a single coherent tradition. From this vantage point, the law is a system of well-settled rules to be applied authoritatively, and thus it is sensible to study only a tiny set of documents. The losers in legal conflicts are relegated to the dustbin of history, their ideas presumed to be defeated for all time. But this is a mistake; defining what is suitable for study based strictly upon major legal achievements glorifies insiders at the expense of outsiders, ignores ideological rifts, and privileges technical authority over living practice. The awkward truth is that the American legal tradition is an untidy phenomenon and constitutional defeats are rarely permanent. Insurgent ideas of law can easily be nurtured in underground settings, only to reemerge in more favorable climates. By studying the U.S. Constitution's ascendance through the eyes of the discontented, it becomes possible to observe the American constitutional tradition at war with itself.³

There are many ways to make sense of a political tradition—one could just as easily study electoral politics, social movements, or litigation. Constitution-writing experiences are valuable because they provide windows into raging ideological battles engaged by ordinary

citizens. Though discontent can surely find other outlets, Americans who dared to resist the tide of history by drafting a constitution rendered some of the most coherent and vibrant theories of sovereignty around. Unlike the typical political movement or party, whose vision might be rendered bland by an appeal to the lowest common denominator or a failure of nerve, proponents of new constitutions presented a holistic diagnosis of the American condition. These dreamers came up with comprehensive plans for a more hopeful future. And wanting desperately to be taken seriously, the people labored to integrate their critiques, experiences, and proposals with the nation's founding narrative, even as they drew sharp differences with a legal regime in place. While successful politics of all sorts must make such appeals, the founders in this volume distinguished themselves through ideological intensity, the integrity of their constitutional vision, and the intricacy of the institutions designed. Each legal experiment is explored on its own terms as a collective intellectual exercise in order to preserve what is unique about a group's behavior while emphasizing the commonalities and departures among experiences.⁴

If Americans wrote so many constitutions, why take a closer look at these eight texts? The constitutions selected for this volume appeared at historically important moments: westward expansion, industrialization and urbanization, America's reckoning with slavery, the forced integration of Indian tribes, the end of the Second World War, the ascendance of civil and human rights. Because these proved to be catalyzing experiences during America's transition from a fledgling republic to a liberal democratic nation, they generated an enormous amount of discord over fundamental values. As snapshots of ideological ferment, the constitutions that emerged from these periods expose major fault lines in our political belief system. The documents present opportunities to excavate ideas and proposals that have been defeated but remain with us, nurtured in underground settings and pockets of discontent. A number of the constitutions—such as the Icarian Constitution of 1850, the Sequoyah Constitution, or the World Constitution of 1947—allow us to contemplate moments of legal transformation often ignored by leading scholars. Significant attention has been paid to the Founding, Reconstruction, and New Deal at the expense of other generative periods, including a burst of nineteenth-century utopianism, the peak of Progressivism, and the

impact of wars on a global scale. The additional episodes explored herein suggest that our constitutional past is best understood not as an explosive founding moment followed by general stability but rather as an ongoing, tumultuous social process punctuated by a succession of ideologically significant events. Other constitutions, like those of Malcolm X's followers or Aryan separatists from the Pacific Northwest, allow a different entry point into already identified moments of legal creativity, such as the black civil rights movement of the 1960s and the conservative countermobilization that took place in the aftermath of civil rights successes. In these stories, one encounters not only the breadth of societal disagreement over theories about the U.S. Constitution but also the intensity of popular defiance.

These crises yield insights about when and how disagreement boils over into concerted action. Each constitution exemplifies defiance of the substantive values of the emerging legal order, permitting investigation of the many points of friction rather than harmony. A constitution-writing event worthy of study must be motivated by the kind of outrage that would prompt vigorous reevaluation of ideas about community and power. That way, the collection of texts sheds light upon the historical development of popular sovereignty as a living practice. For this reason, though Americans wrote countless constitutions for local governments, territories, and civic organizations, most ordinary civic constitutions have been excluded from the discussion. In the main, such texts are used for private ordering and civic participation without composing an alternative theory of peoplehood or repudiating the basic precepts of the national legal order. There are always exceptions, of course, and where routine legal forms were used in transformational ways, such instances merit extended treatment.

The eight constitutions also represent legal instruments at different stages of usage and assimilation. Some, like the Icarian Constitution, were embraced by the people and fully implemented. More numerous were constitutions rejected by officials or put into practice incompletely by followers. Compiling a cross section of constitutions at different stages of legitimacy makes it possible to reach some tentative conclusions about the variety of functions that alternative legal texts might serve in a community. Doing so helps us to understand why dissidents might turn to written constitutionalism even when the odds of long-term success are infinitesimal.

Finally, the episodes illustrate a range of popular tactics in defense of a legal vision. Many subscribe to the ideal of peaceful, orderly legal change embodied in the 1787 Constitution. Yet there are always historical figures who insist upon the right to employ extralegal tactics in the defense of higher law. Revolutionaries from Robert Barnwell Rhett, a slave owner, to Imari Abubakari Obadele, a descendant of slaves, claimed that some level of force was necessary for routine resistance to unconstitutional acts as well as for order-smashing projects. In the name of the people, advocates might nullify unjust laws, organize citizen defense leagues, or forcibly liberate individuals and property. When all else failed, their theories of popular sovereignty might justify more extreme steps, such as secession or warfare.

A few caveats are in order. Not every dissident group wrote a constitution; some chose to express their unhappiness through other means. This study focuses only on transformative constitutions of the discontented. It does not try to systematically test the oft-made claim that Americans have a unique propensity to write constitutions. We would need a larger sample before it could be demonstrated, empirically, that Americans are comparatively more likely to write constitutions than the citizens of other countries. The modest goal here is to trace the contour of legal ideas and the social process by which fundamental law takes hold rather than to predict the probability of choices and outcomes. Americans have authored a variety of constitutions to resist cultural and political developments. The central lines of inquiry consist of why people wrote alternative legal texts in the face of enormous odds, how their theories diverged from the ascendant interpretation of the U.S. Constitution, and what functions these texts served for dissident communities. This is not a quantitative study of all available American constitutions but rather a case study of representative models of American constitutionalism. The chapters reveal the divergent forms of popular sovereignty as ordinary people actually practiced them and the inherent challenges faced by those theories.

Even as they present alternative readings of law, the constitutions in this volume shed light on the ideological triumph of the American Constitution. Taken together, they illustrate the broader intergenerational dynamic by which dissident legal ideas and their constituencies are created, sustained, and either integrated or marginalized. This is part and parcel of the larger process by which the U.S. Constitution

has become supreme in fact: through political consolidation, the cultural policing of a national community, and extension of the rule of law as a compelling belief system. If the Constitution has prevailed as an ideal, it has been through increasingly complex strategies to match the outbursts of the discontented.

Instead of evolving as a unified tradition, popular sovereignty fragmented into competing theories of self-rule. Over time, these varying accounts of popular sovereignty acquired distinctive and recurring form. They became models, exemplars of American constitutionalism. For analytical purposes, I have divided these theories of law and politics into the *conventional*, *pioneer*, *tribal*, *ethical*, *cultural*, and *global*. Though not perfect, the categories capture the wealth of trends, origins, sources, motivations, tactics, institutions, and accounts of community reflected in post-Founding constitutions. This analytical framework underscores differences in what people believed, in the best of worlds, a constitution should accomplish. The approach better reveals how the yoked ideas of sovereignty and constitutionalism changed over time not only in the courts or in the political system, but also among the population as a whole. It allows us to observe not only ideological diversity but, more importantly, fundamental disagreements over the very aims of written constitutionalism.

The forms of popular sovereignty should be considered exemplars, prototypical models of politics and belonging. Constitutions can contain elements from different types, though it should be possible to speak of a constitution epitomizing one or another form of power. As American legal practice matured, written constitutions increasingly displayed hybrid theories of sovereignty and community.

Examining legal culture through the lens of post-Founding constitutional conflicts over popular sovereignty underscores the citizenry's disagreements over not only the good life but also who is entitled to wield power and how authority should be structured. Despite the Constitution's claim to have created a single people, Americans remained deeply divided over who actually constituted "we the people." The question had enormous implications, because the answer not only distinguished insiders from outsiders but also identified who had the rightful authority to rule. A people's basis for solidarity also mattered, for it influenced the kind of organizations one might wish to live under and justified how far the rule of law might be taken to perfect a

society. Should a people be united by inclusive yet abstract political ideals, a strong moral code, or some other, more visceral, tie of affinity?

A growing conviction that the revolutionary mood should dissipate once the new legal order had been endowed with the people's sovereignty led many Americans to demand the orderly consolidation of territories, economies, and governments. The task then became one of entrenching the institutions, legal arrangements, and concepts sketched in the U.S. Constitution. According to this consensus-based vision of conventional sovereignty, one people had to be bound by broadly inclusive political beliefs, while tolerating a multiplicity of institutions and subnational communities. On this domesticated view of political power, the will of the people had to be channeled through orderly and predictable pathways once the Constitution was adopted. Short of a true revolution, there was little room for disobedience. Other forms of power soon emerged, as successive generations of Americans tested the durability of the emerging legal order. When founders wrote new constitutions, their theories of self-governance often clashed with expressions of conventional sovereignty contemplated by the federal system.

In 1832, settlers announced the formation of the independent Republic of Indian Stream in a contested area in the Northeast. Their constitution proved to be a stark instance of a broader phenomenon. Pioneer sovereignty was a disruptive form of self-organization practiced by migrants to acquire territory, extend the nation's borders, and supplant existing modes of governance. Settlers engaged in land grabbing or illegal squatting to displace occupants of the land and to discredit or reduce the scope of indigenous, non-European forms of tribal sovereignty. Their political theory, which held that true authority springs from productive use of the land, was nowhere found in the U.S. Constitution, but it dovetailed with understandings of law and power on the ground. Pioneer constitutions privileged male suffrage but otherwise tended to be welcoming at their inception, with the goals of legitimating the problematic acquisition of land, exploitation of natural resources, and disruption of boundaries. For many brave souls who transplanted the model of governance in new lands, the promise of one nation called for rewriting the terms of civic membership in ever-more inclusive terms. Pioneer sovereignty had its own

difficulties, however, for it offered a vision of law that could be harnessed for nation building and economic development but also could undermine conventional sovereignty's preference for order, integrity, and gradualism.

While the denizens of Indian Stream modeled their republic after the plural city-states that had begun to dot the landscape, other settlers preferred a more perfectionist cast to their basic law and more demanding standards for citizenship. Icarians from France relocated to nineteenth-century America at a high point of communitarian experimentation. Disciples of Charles Fourier and Robert Owen could be counted among scores of "backwoods utopias" sprouting up in the New World. What distinguished Etienne Cabet's followers from so many other socialist groups was the Icarians' heavy reliance on constitutional law. Created by workers, their "community of goods" blended civic republicanism with socialism. Even more intriguing, the constitution secured the blessing of the people of Illinois, showing how a dissident legal order might survive within a dominant order that increasingly prized individualism and capitalism.

The Icarian experiment primarily represented a fascinating instance of ethical sovereignty: the conviction that a people's legal authority derives from a shared moral code. The point was not to acquire land at a breakneck pace but rather to mold ideal citizens from among those who occupied the land. Such a moral basis for a constitution could be derived from a particular religious text or a cross section of ethical traditions. The Icarians also ingeniously made use of civic constitutions for ideologically subversive ends. Ordinary citizens turned to civic constitutions to order their affairs and create organizations. Most of the time, they sprang from conventional sources of law that left the legal order unchallenged. On rare occasions, as the Icarians' creative use of agricultural constitutions attests, such texts could be used for transformative ends.

Americans who turned to ethical sovereignty after the Founding often did so out of dissatisfaction with mainstream constitutionalism, which lurched toward ideas of individual autonomy and antiauthoritarianism, and away from more demanding and exclusionary theories of community. But a central dilemma plagues all forms of ethical sovereignty: how far should a taste for reformation be indulged? Cabet would not be the last founder who treated ideological purity and moral

regeneration as the ultimate ends of constitutionalism. His people's struggles with issues of sex equality, cultural change, and the orderly transfer of power from one generation to the next highlight the tensions between the aspirations of group solidarity and popular deliberation. The demise of Icaria offers insights into the limits of ethical sovereignty as well as the difficulties of pursuing transformation within the conventional legal order.

As the debate over slavery intensified and friction became commonplace among a diversifying population, ethical sovereignty became one solution to how America could be held together. Treating a constitution as a moral instrument just might bind the nation's wounds and bring spiritual renewal. Like the Icarians' basic law, John Brown's 1858 Provisional Constitution and Ordinances for the People of the United States codified a moral imperative to promote equality and dignity. Infusing the original American Constitution with Christian values, Brown wrote for a transitional community of abolitionists and freedom fighters that hoped one day to supplant a constitutional system corrupted through dependency on slave labor. In his vision of America reborn, the authentic people were national in character, committed against exclusionary limits on fellowship based on race or condition of previous servitude. More than anything, John Brown's trial and execution demonstrated the tenacity of conventional sovereignty as an ideal and the use of the courts as vehicles for ideological conquest.

The Constitution for the Confederate States of America, unveiled three years after John Brown's attempt at moral revival, provided a very different kind of answer to the questions of solidarity and power. Its framers took popular sovereignty in another direction by conceiving of a people grounded in regional and racial differences. As the slave population increased and the country's demographics changed through immigration, some Americans favored criteria for political membership that tracked cultural attributes such as sex, race, religion, or language. Whatever their contours, such expressions of cultural sovereignty are rooted in a community understood to preexist the state. Here, too, cultural theories of power involved a rejection of conventional sovereignty. Influenced by ideas of liberal egalitarianism, the law increasingly envisioned citizenship in "neutral" political terms. Racial sovereignty rejected the wisdom of agnostic notions of

membership. Through the Confederate Constitution, “a slaveholding people” laid claim to a theory of white sovereignty reaching back to the nation’s founding. Their unprecedented vision of a large-scale republic joined by racial and economic interests would become a model for later generations of Americans who wished to dissent from a growing national commitment to egalitarianism. Its defeat marked a turning point in the development of conventional sovereignty, which successfully defended the idea of one people and laid down new principles promoting national citizenship and civic equality.

As European settlers learned firsthand, theirs was not the only form of popular sovereignty in North America. Indian tribes, which had long governed their own affairs before contact with Europeans, continued to assert their claims to territory and protect their people against hostile policies. Tribal sovereignty, initially confronted by colonial authorities through diplomacy and war, ultimately became viewed as a form of politics to be destroyed, subordinated, or absorbed. Along the way, native theories of political power became blended with European ideas of liberty and virtuous self-rule. The story of the 1905 Sequoyah Constitution begins as Indian nations, already forcibly relocated to the Midwest and their population decimated, find themselves on the brink of legal extinction. It shows how, in a final act of desperation, the Five Tribes of Indian Territory proposed the State of Sequoyah. Along the way, Indian leaders converted their theories of tribal rule into a familiar republican one in which social groups, acting through political parties, determine the people’s agenda within a conventional state. In exchange for formal power, however, native people had to adapt ancient theories of self-rule and assume a hybrid civic identity.

During the twentieth century, a heterogeneous polity was not simply tolerated but instead emerged as a cause for celebration—even a key feature of constitutional design. With the rise of pluralism, an irresistible momentum developed for international organizations, world citizenship, universal law. At the close of the Second World War, academics led by University of Chicago president Robert Maynard Hutchins drafted a constitution for the postwar order that went beyond the Charter for the United Nations. Global sovereignty of the sort exemplified in their 1947 World Constitution resembled conventional sovereignty in modern democratic nations through its

endorsement of pluralism, equality, and minority rights. But world federalists' concept of power attacked the very foundations of national sovereignty, in which the people's right to rule is premised upon territorial control and shared identity. Instead, in their hands, the principles of self-rule and written constitutionalism had to be stretched to their logical ends so as to create a world community bound by mutual respect and governed through supranational institutions. Achieving one constitution for all of humanity would not only be the ultimate end of the Enlightenment project but also show off the American political tradition at its finest.

Accounts of cultural sovereignty did not disappear with conventional sovereignty's adoption of the principles of egalitarianism and pluralism. Instead, such strains of law and politics went underground. At the same time, they acquired a global dimension as proponents reached for international and foreign sources of law. With the rise of human rights discourse and the spread of decolonization, Americans welcomed sympathetic peoples beyond the nation's borders to join forces with them to preserve their ethnic or racial identity. Universalistic theories of peoplehood challenged the national, territorial notions of community endorsed by mainstream constitutionalism. Two postwar constitutions predicated on modern theories of racial sovereignty exemplify these changes. In 1968 the followers of Malcolm X demanded that the Deep South states be handed over to black Americans as reparations for slavery so they could establish the independent Republic of New Afrika. Their constitution blended African and non-African ideas and institutions. Nearly forty years later, Aryans planned for a whites-only nation in the Pacific Northwest by drawing on models of white governance from around the world. If adopted, their instrument would overturn *Brown v. Board of Education* and *Roe v. Wade*, cornerstones of the modern liberal order.

As a testament to how entrenched the U.S. legal order had become, would-be founders in both instances had to expend considerable time and resources helping the people to recover their "racial consciousness," lost through generations of education, oppression, and disappointment. Although each offered strikingly different plans for governance, they could agree on one fact now denied by defenders of conventional sovereignty: the constitution of their fathers originally authorized white power. For black nationalists, America's legal trans-

formations did not go far enough to repudiate the past, even after the ratification of the Fourteenth Amendment and passage of civil rights laws. Conversely, these same achievements, which had become integral to the formation of the liberal order, convinced racially conscious whites that they had irrevocably lost control over their own destinies. In each situation, a constitution helped a marginalized people to recover their forgotten history and served as a beacon to despised minorities worldwide.

Through it all, the ascendance of the U.S. Constitution depended on partisans waging ideological war against threatening or inconvenient experiments in popular governance. To stabilize the fledgling republic imagined by the Framers and then transform it into a large-scale liberal order, competing forms of popular sovereignty had to be defeated, managed, or discredited. While pioneer sovereignty could be harnessed for the ends of economic development, it could also morph into a serious threat to the integrity of established governments. Experiments in pioneer rule had to be curtailed and turned into conventional states, counties, or cities. Tribal governments had to be somehow integrated into the larger order if they could not be vanquished. Socialism and other competing ideologies might be accommodated where popular pressure proved to be intense and prolonged but must otherwise be thwarted when they threatened core principles of liberty and capitalism. Racial and regional theories of self-rule deemed incompatible with the emerging pluralistic order faced marginalization. Global accounts of law threatened the nationalistic nature—and to some, the social foundations—of conventional sovereignty.

Thus, the reverence most Americans have for their Constitution has a less savory underside. Having survived well over two hundred years and counting, Americans' charter has far outlasted the typical national constitution, with an average life span of nineteen years. The extension of higher law across the continent has rested in no small part upon ideological conquest of the public imagination. All in the name of good order, defenders of conventional sovereignty have suppressed unorthodox ideas of self-rule.⁵

Whether stillborn or short-lived, each of the eight constitutions served a community struggling to define itself, attract adherents, and make authoritative law. To an impressive degree, dissenters treated their constitutions in lawlike terms even when their legitimacy was in

doubt. The consensus view among experts is that a constitution serves multiple functions at once. By contrast, the interwoven stories support a “divisibility” thesis—namely, that among incompletely authorized constitutions, functions can be divided in actual practice. A constitution might serve one or more functions, but not others, at different stages of its life cycle. Iconoclasts used even imperfect constitutions for one or more of the following purposes: social protest, institution building, moral discipline, public deliberation, recruitment, resource management, legitimization of extralegal tactics, and cleansing of controversial ideologies.⁶

A desire to satisfy any of these goals in the short term could suffice to stimulate a dissident group to author a new constitution. Conversely, the long odds of some functions ever being satisfied might not stop a group from initiating the writing process. Ultimately, a constitution may be more successful in fulfilling certain functions but less successful at fulfilling others.

Social protest sits at the top of the list of valued constitutional functions. Every constitution entails a public act of defiance, inseparable from the grievances that spawned its creation. The expressive dimension of written constitutionalism alone could be tantalizing enough for desperate parties to imagine a new “people” bound by palpable despair or outrage. Not only is discontent central to written constitutionalism, its functions are carried out through the rhetoric of defiance. Inspired by Locke’s formulation of sovereignty as an exercise in collective self-defense, the men of 1787 themselves characterized the stakes of constitutionalism as “nothing less than the existence of the Union” and “the fate of an empire.”⁷

Successive groups of Americans adapted this survivalist rhetoric to the crises of their day. In the chapters that follow, citizens elaborated their social critique in writing. Institutional goals were often the most evident but also the hardest to accomplish by dissidents. Even where bureaucracies were not put into practice or a constitution’s legitimacy remained uncertain, the text of a constitution could still be valuable to the internal relations of a community. Especially with constitutions written before a group gained control of territory or the recognition of other sovereigns, the coordinating functions of a constitution assumed great importance. Because a constitution defines a *demos*, an evocative articulation of “the people” could help draw recruits away

from the dominant regime, establish new bonds, and secure crucial resources for legal transformation. A written instrument might be invoked to organize, educate, or discipline a group in the absence of formal institutions or a mature system of laws.

Deliberative reasons also motivated marginalized groups to write. Even when institutions could not be implemented right away, a constitution might prove useful in engaging fellow Americans over the meaning of the good life. Because the hallmark of a mature citizenry is the capacity to rule itself, a constitution emerged as the ultimate proof of sovereignty. Having a constitution of their own might improve the standing of people who felt marginalized or dispossessed. For groups with more extreme ideas or tactics, a constitution helped sanitize controversial ethical or political commitments or rationalize extralegal methods.

Whatever a group's complicated reasons for writing a constitution, its members labored within a legal tradition that is enthralling and dynamic, but also darker and more tumultuous than commonly admitted. Wresting legal authority from the king and church ushered in a world in which anyone could stake a claim to rule. Diffusing the locus of sovereignty set off a ferocious competition among those who dared to speak for the people, even as it promised to reward vision and initiative. Tocqueville once marveled, "In no country of the world does the law hold so absolute a language as in America; and in no country is the right of applying it vested in so many hands." Saints, demagogues, humanists, and authoritarians have all adapted the country's founding principles to remake the world. Their struggles lay bare the consequences of Americans' fateful decision to rule themselves through the written word.