

Part II:

**Liberal Trends in Constitutional Reforms
of the Nineteenth Century**

Historical Narratives:

Overview and Case Studies

England, Sweden,

the Netherlands, Japan, Germany,

and the United States

Chapter 9: Setting the Stage: Philosophical, Economic and Political Developments Prior to the Nineteenth Century

A. From Autocracy to Democracy without Revolution

The “king and council” template is an example of a robust architecture for governance. Particular instances of it divide policymaking authority among the king (the executive) and the council (the parliament or legislature) to advance the interests of the government’s original formateur(s). Insofar as a particular assignment of policymaking authority is sufficiently stable that it can be taken as “given” by those holding positions within the government, the “officeholders” know what their authority is and what is required for policy decisions of various kinds to be made and implemented. These political property rights provide the basis for constitutional exchange. Standing authority to participate in or determine particular policy decisions can be traded one for another, for support on critical issues, or for new tax revenues. The bargains reached may be temporary or essentially permanent.

The analytical history demonstrates that technological shifts favoring industrialization and increases in the persuasiveness of liberal arguments can induce rational, more or less self-interested men and women to negotiate constitutional bargains that favor the emergence of parliamentary democracy. The analysis does not imply that the West was somehow destined to democratize, as some have argued (Diamond 1999, Jones 2003). Nor does it suggest that the road to democracy is a one-way street. Rather, the analysis suggests that chance innovations in technology, political theory, and economics, combined with preexisting institutions of divided government, can produce a gradual, peaceful, transition from king-dominated political systems to parliamentary democracy through a series of constitutional reforms.

The remainder of the book attempts to determine whether these hypothetical factors and constitutional bargains can, in fact, account for the emergence of Western democracy. Were there new alignments of economic and political interests in the nineteenth century? Is there evidence of the penetration of liberal political and economic ideas among political elites? Did groups inside and outside government lobby for more open political and economic systems, for equality before the rule of law, and for suffrage reform? Were the shifts in political authority from kings to parliaments,

and expansions of suffrage more or less separate events? Were Western transitions largely peaceful and lawful, rather than consequences of civil war or obvious, credible threats of revolution?

B. Organization of Part II

Part II of the book provides an overview of historical developments in the West (chapters 9–11) and six case studies (chapters 12–18). Chapters 9–11 provide an overview of the changing ideas and interests that motivated reforms, especially those that favored liberal reforms of economic regulations and political institutions. The cases studies focus more attention on the details of constitutional and policy reforms. Three of the cases are natural applications of the models of part I, and three of the cases are less natural applications, which are consistent with those models, but less obviously so. Chapters 12–15 examine the British, Swedish, and Dutch transitions. Chapters 16–18 examine the German, Japanese, and American transitions. In all six cases, peaceful shifts of power between king and council were commonplace. In all six cases, more or less similar economic and ideological pressures triggered similar great transformations of governance and economic life, although transitions to parliamentary democracy were not always complete or stable once completed. Interests and ideas motivated the reforms, but the particular reforms adopted also reflected preexisting political institutions, local issues, and leaders.

The remainder of chapter 9 sets the historical stage for the European transitions of the nineteenth century. It reviews the institutional starting point of the late Middle Ages and briefly chronicles the shift in production technologies that allowed new economies of scale to be realized in private organizations devoted to market activities (what economists refer to as firms), the emergence of liberal political and economic ideas, and their increasing relevance for public policy.

The history prior to the nineteenth century suggests that there was nothing inherent in European monarchical-parliamentary systems, Christianity, or Roman Law that oriented European governance toward parliamentary democracy. Although European society was not entirely static in the Middle Ages, it was remarkably stable, because political, economic, and religious institutions created a largely self-replicating and supported the hierarchical pattern of life and death. Stable societies tend to be dominated by institutional conservatism, for perfectly good reasons, and the reforms adopted normally provide additional support for existing arrangements, rather than undermine them. Such reforms may, for example, reinforce the authority and wealth of the state church or aristocratic and royal households. In some cases, however, policies that initially protect the status quo, may lead to other reforms, as for example when law courts become more

independent, or when authority is shifted to those previously outside government obtain additional resources or support during a time of war or other crises.

In late medieval Europe, reforms often reinforced the dynastic rule of “royal” families, rather than shifting policymaking authority from kings to parliament or to commoners.

C. An Overview of the Medieval Constitution

The roots of many contemporary parliaments extend back to the medieval period and beyond. For example, the present English parliament extends back to the ancient Great Council (Magnum Concilium), which was composed of lay and ecclesiastical magnates. The Great Council met with the English king on affairs of the realm, including taxation. The Magna Carta of 1215 formally established a new very narrowly elected council of 25 barons to monitor and enforce implementation of that compact between the English king, church, and nobility.⁷¹ The English parliament emerged half a century later, following another period of turmoil, during the reign of Edward I. The early English parliaments voted on tax matters, heard petitions from the public, petitioned the king to address various grievances, and occasionally impeached senior government officials (Lyon, 1980: ch. 34).⁷²

Similarly the parliament of Sweden (the Riksdag) evolved from the ancient Scandinavian and German institution of the *ting* (*ting*, *lagting*, or *althing*), which had powers similar to those of the Great Council. *Tings* were deliberative assemblies that met at regular intervals to settle disputes, pass sentences on law breakers, and elect kings. As such, *tings* combined aspects of modern judicial and legislative branches of government. *Tings* existed at both local and regional levels. As Sweden emerged as a state in the fourteenth century, a new Swedish council was established by law in 1319 in exchange for oaths of fealty by the great men of the realm at the time that Magnus Eriksson was elected king. That council had veto power over taxation and some policy decisions. At about the same time, a similar Danish council of state was established with veto power over war and some authority over new taxes (Danstrup 1947: 37).

⁷¹ The council of barons was formally empowered to protect “the peace and liberties we have granted and confirmed to them by this our present Charter.” The rights of the Magna Carta were gradually extended to include lesser landowners, merchants, and eventually the nonpropertied classes (Strayer and Gatzke 1979).

⁷² Tax revolts have occasionally led to significant shifts in policymaking authority. For example, the Magna Carta was obtained from King John as a consequence of a tax rebellion by an organized group of English barons.

The French Estates General also originated around 1300, at which time the king (Philip the Fair) called representatives from the nobility, burgers, and clergy to form a grand council, which was consulted on all major decisions. A smaller group composed of judges and lawyers, the Parlement, was also consulted on a more regular basis. That group remained relatively influential throughout French history. The Estates General played a significant role in medieval France, but had only a minor role in the century of absolutism before the French Revolution (see Bély 1998: 33, 58, 62, and 75). In that century, the various judiciary parliaments served as the main check on the king's authority.

Medieval European and Japanese political institutions were very stable. Although the families who occupied the posts of greatest authority varied somewhat through time, as did the territories ruled by particular families, the basic procedures of policymaking fluctuated within a fairly narrow band. King-dominated forms of the king and council template provided the core institutions of governance for most of Europe for most of the five centuries before the 1800. The various parliaments, national assemblies, and estates general were not "self-calling" during this time and met only when the king wanted their opinion on some matter or (more commonly) authority to collect additional tax revenues. Meetings in times of peace took place at irregular intervals, doubtless because kings found it difficult to obtain new revenues at such times. The number of meetings tended to increase in periods before, during, and shortly after wars, because at those times parliament's permission to collect additional taxes (subsidies) was more likely to be obtained. Such "war subsidies" were normally temporary in nature, which assured that the king had to call parliament back into session during long wars, and as new international and domestic military action seemed necessary or advantageous.

In general, meetings of parliament were called every few years, and after called, parliament normally met for just a few weeks. Parliaments had the right to petition the king to address problems of regional or local concern, and most citizens had the right to petition members of parliament to bring such requests to the Sovereign. Such meetings, thus, provided useful information about problems and grievances throughout the realm (kingdom, principality, barony, city). The festivals associated with such special occasions also provided members of parliament with opportunities to arrange marriages among their children, to coordinate their opposition to particular royal policies, and to negotiate inter-regional trade agreements. Essentially all national (and many regional) policy decisions were made within the executive branch of government by the king and persons to whom he had delegated policymaking authority. This also tended to be true at the local level, where dukes,

counts, and barons determined and enforced regulations concerning peasant life and also settled many legal disputes within their essentially personal, family-based, domains.

In addition to kingdoms, principalities, duchies, baronies, and counties; there were also independent free towns and cities, many of which had purchased their independence from local rulers. Many of these city governments that were, by medieval standards, relatively liberal versions of the king and council template.⁷³ A town's mayor might be elected by the town council. The members of the ruling council might be elected by a relatively large number of voters, usually major property owners in the city. In some cases, larger more representative assemblies were called for discussion public policies. For example, many of the major cities and principalities of what became the Netherlands routinely called representative assemblies of nobles, guilds, church and commercial interests. However, particular families would often informally control the membership of both branches of local government, which were thus often dynastic in practice, although not formally so.⁷⁴

Titles, manorial assets, and personal wealth were assigned to particular families and passed on to their heirs through durable civil laws governing inheritance and marriage. This was also largely true of seats in parliament; where noble families automatically received seats as a birthright, as true in England, France, and Sweden. In cases in which the right to sit in parliament was not directly inherited by members of particular families, their greater access to education, government officials, and wealth allowed noble families to qualify more easily for seats in parliament and for senior positions in the religious and commercial organizations represented there.

Family members who inherited multiple territories often had several parliaments in which to sit and/or to negotiate with. Kings, princes, and barons often spent considerable time on the road consulting with a variety of parliaments to assure their loyalty and press for new subsidies from their subjects. This pattern of rule by a king and parliaments representing wealthy families was the nearly universal medieval constitutional template for Europe. Kings and kingdoms, princes and principalities, barons and baronies were largely determined by heredity and marriage for more than a 1,000 years. Consequently, medieval governance could be said to be rule by "blue bloods" for the benefit of "blue bloods."

⁷³ City governance often included a chief executive (mayor, magistrate, or burgomeister) and a council representing local religious and business interests.

⁷⁴ See, for example, Pirenne (1925), Blockmans (1978), Tilly and Blockmans (1989), Catsstraat (1995).

Although family rivalries and alliances were complex and often far from peaceful, the balance of economic and institutional interests was very stable, because of the importance of landownership as a source of wealth, the church as a source of ideas, and the practical interests of elites in defending the political institutions that helped to cement their privileged place in society. Institutional and intellectual conservatism was completely rational for such men and women.

Indeed, the paucity of the governmental alternatives analyzed by enlightenment scholars shows how narrow the range of governance was in Europe in the late medieval and early modern period. Neither Hobbes, Locke, Montesquieu, Rousseau, Kant, nor von Humboldt took the time to analyze representative or parliament-dominated systems fully, in large part because they had never seen one operate. This intellectual constraint was reinforced by the laws that defined treason and by political and religious censorship in most of Europe at the time that they wrote. Many enlightenment scholars honestly thought that election-based representative systems were impossible, and others evidently pretended to think so, because to suggest otherwise risked the punishments associated with treason and/or royal disfavor.

Those few theorists who believed systems of popular government were possible and brave enough to put their pens to paper (but often not their names) referred to 2,000-year-old examples from classical Greece. For example, in the mid-eighteenth century, Rousseau imagined grand democratic constitutional conventions that would provide the basis for legitimate governance. He referred to ancient Greek and Rome assemblies in an attempt to argue that such assemblies and broad political participation were actually possible:

“The people in assembly, I shall be told, is a mere chimera. It is so today, but two thousand years ago it was not so” (*Social Contract*, 1762, ch. 12).

Constitutional Bargaining within Medieval Governments

The medieval constitution was not entirely static, but king-dominated forms of the template were common at both the national and regional levels. Somewhat unusual times did occur, particularly toward the end of this period, in which parliaments gained significant policymaking authority or kings, conversely, attempted to eliminate parliamentary authority. One example is associated with the English Civil War of the mid-seventeenth century, during which a (rump) parliament elected on the basis of very narrow suffrage was in control of English policymaking for 10 years or so. Another occurred during the middle of the eighteenth century, when the Swedish parliament became dominant for a half century during that country’s “Age of Liberty.” At the other

extreme, kings occasionally disbanded or ceased calling parliaments, as in Denmark and France in the seventeenth century, and to some extent in England in the two decades before and after its civil war in the mid-seventeenth century. The constitutional center of gravity, however, remained a dominant king and a relatively weak parliament for several centuries. Although the balance of power between kings and their parliaments varied a bit through time, it tended to return to the medieval balance.

Much of that balance was described in written documents. In essentially every country and every independent duchy, there were a variety of formal agreements that shifted power from kings to councils (or parliaments) and back again to kings, as well as many informal agreements. For example, in 1414 the English King Henry V proclaimed that all new laws be adopted with the assent of both chambers of the British parliament, a decision that was later affirmed by the British courts. In 1534 the British parliament proposed and the king accepted rules for future accession to the Sovereign. Similarly, formal documents marked periods when parliamentary power was on the rise in Sweden. The first Riksdag Act was adopted in 1617. It required that the king consult the four estates before declaring war or forming alliances. In 1660 a protocol calling for the routine meeting of parliament was adopted, which made parliament a self-calling institution. In 1720–23, constitutional reforms led to a half century of parliamentary domination of policymaking—from 1719–72.

Such patterns of negotiation and reform were also present outside of Europe. For example, Japanese governance used various forms of king and council rule at national and local levels during its medieval (Edo) period. The Tokugawa shogunate period of 1603–1868 also includes a number of peaceful shifts of authority between the shogun and his council. During much of this period, the *shogun* gradually transferred authority to his council and the bureaucracy for day-to-day rule, and regional governments gradually secured increased autonomy (Mason and Caiger 1997: 215–16). The shift in policymaking authority fluctuated somewhat, but tended to be in the direction of council rule and regional autonomy.

Similar fluctuations occurred in late medieval France and Denmark. The Estates General and the State Council became relatively more important when “subsidies” were needed by the Sovereign, and less so during periods in which they were not. In these last two cases, however, the Sovereign was eventually able to circumvent the veto authority of their parliaments, which allowed periods of “absolutism” to occur in the seventeenth century, in which their parliaments (estates) were not called and new less representative councils were created for advisory and administrative purposes.

Medieval history also suggests that shifts of policymaking power from the king to the council, depended on the political environment in which new divisions of policymaking power are worked out. Technological and ideological shocks did not always favor parliament in the medieval period; however, neither parliaments nor executive councils gave up all of their authority during periods favoring the expansion of royal authority (except perhaps once in Denmark).

Few political histories devote significant attention to the ebb and flow of political authority between king and council or king and parliament in the medieval period, although numerous illustrations from medieval England are provided by Field (2002). Examples from other parts of Europe are discussed in Ertman (1997) and Guizot (1861). The long-term stability of the medieval constitution demonstrates that there is nothing latent in constitutional monarchy in itself that tends toward parliamentary democracy. Parliaments and estates-general continued to exist during the “absolutist” periods in France and England, although they were not routinely called into session. Only Denmark formally disbanded its parliament.

Relatively Weak National Governments

The governments of medieval nation-states were decentralized and federal in structure, and local rulers normally had considerable autonomy to regulate conduct within their “own” territories. In the period before the Protestant Reformation, the Catholic Church also exercised considerable political and economic influence and often had its own parallel court system for religious and family matters (Berman 2003). The central governments of these early nation-states were rarely the only source of new laws and law enforcement.

Conflict between the center and periphery were common, as the center attempted to shift authority from the regional governments to the center and the periphery attempted to preserve local authority or expand it. The places where the central government gained power through marriage, constitutional exchange, and military threats gradually became nation-states, such as England, France, Denmark, Portugal, Sweden, and Spain. Those where central governments were not so fortunate remained loose confederations, as in Germany, the Netherlands, and Switzerland.

The long-run stability and durability of medieval constitutions suggest that medieval governance advanced the interests of those represented in government tolerably well; otherwise, reforms would have been adopted. Evidence of their success for privileged families is found throughout contemporary Europe. In nearly every independent polity in this period, the palaces and castles of kings, nobles, and wealthy townsmen from the fifteenth, sixteenth, and seventeenth centuries are so

impressive that they continue to attract tourists from around the world in the twenty-first century. Their scale, attention to detail, and setting demonstrate that wealth was concentrated in relatively narrow elites who could afford to employ very large work forces for their own personal amusement. (Very few houses of ordinary persons remain or are of sufficient interest to attract international tourists, and few of today's wealthy could employ so many craftsmen for their personal amusement.)

The stability of both centralized and decentralized late medieval systems depended on the stability of "blue blood" interests and opportunities, which affected bargaining within government and the marriage arrangements and alliances that determined relationships among governments. Around 1500, many of these "blue blood" interests began to change, as understandings of religious, political, and economic life were revised and as new opportunities for commerce emerged. Luther and Calvin proposed new interpretations of biblical texts and new church rituals. Other new theories and new experiments by men who would later be called scientists and political philosophers challenged long-standing claims about the nature of the physical world and the normative foundations for government. New sea routes to Asia around Africa became feasible. Columbus' great miscalculation of the distance to Asia led to the discovery and European colonization of vast new lands in North and South America.

After 1500, medieval society in Western Europe began to change, but slowly. It was not until the nineteenth century that radically new forms of political and economic life emerged.⁷⁵

D. Disruptions to the Medieval Equilibrium: New Lands and Revenues from Abroad

The discovery of new territories and greater access to distant lands known to exist created a number of new economic and political interests and coalitions.

Foreign territories were of interest to kings and queens for several reasons: First and most important, they potentially provided new sources of royal revenues that could be used to cement and extend their authority. Sales of royal land, monopoly privileges, and tariffs were all customary sources of royal income beyond the veto of parliament. New colonial territory and expanded commerce could also be used to expand royal support within parliament through land grants and appointments to posts in colonial governments.

⁷⁵ See, for example, North and Thomas (1973) for an overview of gradual economic and legal reforms in the late medieval and early modern period. See *Finer (2006)* and *Spruyt (1994)* for overviews of the gradual centralization of policymaking authority during the late Middle Ages and the emergence of the nation-state.

In contrast to many other national policies, support in parliament for colonial investments were thus relatively easy to obtain. No new taxes were required, at least in principle, and a larger territory meant more opportunities for those whose interests were represented in parliament. Territorial expansion might also reduce the need for future royal “subsidies.” Many of the colonial enterprises undertaken in the seventeenth century were sovereign companies, whose stockholders included nobles and other men and women of means who were well-represented in parliament. In addition to these economic and political advantages, amassing an empire might also be regarded as necessary for self-defense. If one nation did not act as the others did, it would be left behind economically, militarily, and culturally.

Others outside government also had interests in colonial activities. Many merchants believed that larger territories would produce new business opportunities and profits. These, in turn, produced new opportunities for the middle class as colonial enterprises needed both craftsmen and ordinary labor. Larger territories increased the scope of national markets, providing new opportunities for a broad range of people throughout the kingdom. Many citizens (and kings) evidently believed that national “status” was associated with the size of national territory. To be part of a “great nation” was widely accepted as better than being part of a “minor nation” and thus territorial expansion was often broadly supported as a national aim in its own right.

Although it soon became clear that very few territories had gold for the taking, efforts to build empires were often popular (especially when successful) and remained so well into the nineteenth century.⁷⁶

However, the territory that could be brought under a national government’s authority at reasonable cost is scarce. Conflict and escalating competition for potential “colonial” resources naturally arose. The empire-building game resembled a prisoner’s dilemma game under mercantilist rules. In most cases, the cost of the fleets and armies necessary to assemble and defend empires increased more rapidly than the revenues generated by the new territories.

⁷⁶ This popularity provides indirect evidence of the ideology. The aims were partially economic and political to be sure, but the arguments favoring such policies were often essentially “nationalistic”; that is, they argued that a “good society” is both strong and prosperous. This allowed more resources to be devoted to establishing trading posts and colonies than economics or military advantage alone could account for. National “status” and “honor” of the nation matter to many within a kingdom, partly for their own sake, and this together with desire for wealth and glory led wealthy nobles and commoners to invest in foreign enterprises and many less wealthy individuals to bet their lives on new opportunities in foreign lands. Evidently, most of these colonial ventures earned only meager financial returns for most investors. Indeed, many companies were rescued from bankruptcy by royal subsidies of various kinds.

This, unexpectedly, tended to increase rather than diminish parliamentary authority; because new taxes were often required, and parliamentary assent was required under the medieval constitution. To avoid making requests for subsidies in the short run, royal land holdings at home and abroad were often sold off to nobles and “freeholders.” This also tended to increase the resources of those represented in parliament relative to the king in the long run, because royal investments abroad often earned below average returns. Public policy also became more complex and elaborate with colonial expansion, which caused the national bureaucracy to increase in size and authority. The technology of sea combat improved rapidly, as did its expense.

Thus, rather than freeing kings from the necessity of going to parliament for revenues, colonial enterprises tended to increase the importance of parliament’s control over tax resources. As the importance of majority support in the parliament increased, the kings were gradually forced to take parliamentary majorities more seriously. For example, they might use scarce royal resources to purchase marginal seats for their supporters or to purchase support from pragmatists. Although election laws were not changed, nor many parliamentary procedures, pivotal members of majorities in parliament became relatively more important.

E. Disruptions to the Medieval Equilibrium: Technological Innovations and the Expansion of Commerce

The same technologies that made war more costly—bigger and faster ships—tended to make long distance shipping relatively cheaper and more reliable. If one could stay clear of pirates and warfare, more goods could be shipped greater distances more quickly with less likelihood of loss. As the territories in which trade could take place expanded, new formerly unrealized (and unrealizable) opportunities for exchange arose internationally and domestically. The demand for better military hardware induced a good deal of experimentation with metals and machining. Improved metallurgy allowed guns and cannons to become more reliable, more accurate, and more powerful.

These improvements were, in turn, taken up in various domestic industries. For example, the same advances in metallurgy and machining that made cannons more reliable and accurate were applied to create the early steam-powered mining pumps of Savery (1698), Newcombe (1712), and Watts (1769). The shift from wood to metal machine parts, the production of steam engines, and their new applications created new economies of scale in production. These caused new organizations and new industries to emerge. The steam engine also increased the feasibility of production away from the riverside cities and estates that had long dominated commerce. As new

more capital-intensive production methods were adopted (ships and water-powered looms, foundries, and machine shops), markets for skilled and unskilled labor increased, and the value of land away from major waterways increased.

New techniques in farming were also introduced in the eighteenth century. More productive crop rotations from Flanders and the Netherlands, improved plows from England, new tilling methods and new seeds, were adopted that increased farm output per unit of land and labor. Together better farming techniques and transportation allowed larger populations and larger cities to be supported by fewer farmers. Complementary industries expanded while others declined, which further shifted the geographic and familial distributions of wealth and produced new alignments of political interests.

For example, the new economies of scale in farming, textiles, mining, and metal working could not always be realized within existing late medieval legal systems. Medieval rules and regulations included a wide variety of internal and external barriers to exchange, which limited the size of the market that an economic organization could serve and thereby the size of those organizations. Many formal and informal rules would have to be changed if the new technologies were to be profitable. More complete transport networks would also be necessary to create broader and more integrated domestic markets.

New rules, new canals, and new highways would all require new legislation by national and regional governments. To the extent that members of parliament or those represented by them expected to profit from the new technologies, these same technologies also changed political interests in parliament, which in Europe gradually induced a good deal of legal reform.

An early and important example of such reforms involved changes in real estate law. Under medieval law, labor was often immobile, and most land holdings were illiquid and difficult to transfer. New rules and procedures gradually allowed “strip” farming to be replaced by what might be called “rectangular” or field farming, the normal pattern for contemporary farming. Compact parcels could be more economically fenced (enclosed) and plowed than the long, thin, strip fields that were common in the medieval period. In the eighteenth and nineteenth centuries, new legal procedures were adopted to facilitate the assembly of unconnected strips of land into more contiguous and compact fields. The new “enclosure” laws also increased the fraction of land that could be transferred among person through private purchases. Before the Industrial Revolution, about 90 percent of families were farmers or employees of farmers, so medieval real estate laws were significant impediments to commercial development.

Other long-standing legal impediments to trade included a variety of town and guild monopolies. Even toward the end of the eighteenth century, Adam Smith in *Wealth of Nations* lamented the poor quality of workmanship within guild-dominated cities, which still had significant monopoly power within many geographical regions of England and Scotland:

The pretense that corporations [guilds] are necessary for the better government of the trade, is without any foundation. The real and effectual discipline which is exercised over a workman, is not that of his corporation, but that of his customers. It is the fear of losing their employment which restrains his frauds and corrects his negligence. An exclusive corporation necessarily weakens the force of this discipline. A particular set of workmen must then be employed, let them behave well or ill.

It is on this account, that in many large incorporated towns no tolerable workmen are to be found, even in some of the most necessary trades. **If you would have your work tolerably executed, it must be done in the suburbs, where the workmen having no exclusive privilege, have nothing but their character to depend upon, and you must then smuggle it into the town** as well as you can. (Smith 1776: ch. 10.)

As it literally gathered steam, the Industrial Revolution created new choices for many more or less ordinary persons. New career possibilities and new urban lifestyles emerged, with the adoption of new methods of production and distribution. Opportunities at new production facilities that were largely outside the home (and farm) could most easily be realized by moving close to those facilities. In this manner, factory production created new communities and caused old ones to expand. These new towns were culturally and economically less homogeneous than medieval villages tended to be, because they were composed of persons from many villages, towns, and cities—and in some cases from many countries.

In this manner, the gradual reorganization of production made possible by technological and legal innovations also tended to change the interests of many ordinary and wealthy persons, to challenge traditional and religious conceptions of a “proper” (traditional) life on Earth, and to challenge the existing medieval system of economic regulation and property. The number of persons occupied directly or indirectly with manufacturing and commerce increased in the eighteenth century, although not enormously so as a fraction of the population, which expanded rapidly along with agricultural output.

Technological innovation and associated profit opportunities thereby changed the interests of many of those already represented in national parliaments, who could bargain with other members and with the king for desired reforms of public policies.

F. Disruptions to the Medieval Equilibrium: New Political and Economic Ideas

The philosophical foundations of governance became a major subject of inquiry at about the same time that foreign lands were discovered. This was not entirely a coincidence, as new colonies required new colonial governments and their very newness meant that they could not be said to be grounded in divine rights or traditional forms and balances of authority. Their newness did not preclude the use of long-standing constitutional structures in the new territories, but colonial institutions could not be taken for granted, as God given, natural, or simple historical facts. Partly for this reason and partly because of political and intellectual changes associated with the late Renaissance and Protestant Reformation, scholars and practitioners developed new theories of the state.

The new theories grounded legitimate governmental authority in natural rights, sovereign duties, implicit constitutional contracts, and in some cases elections and popular sovereignty. Some of the new political ideas were codified in European constitutional documents. For example, in 1581, conflict between the Dutch and their Habsburg governors led to a Dutch war of secession from the Habsburg territories (which had recently shifted its family headquarters to Spain). The Dutch declaration of independence (Act of Abjuration) articulates a theory of the state based on sovereign duties and natural rights, rather than tradition or unconditional deference to a preexisting divine order.

As it is apparent to all that a prince is constituted by God to be ruler of a people, to defend them from oppression and violence as the shepherd his sheep; and **whereas God did not create the people slaves to their prince**, to obey his commands, whether right or wrong, but rather the prince for the sake of the subjects (without which he could be no prince), to govern them according to equity, to love and support them as a father his children or a shepherd his flock, and even at the hazard of life to defend and preserve them. And when he does not behave thus, but, on the contrary, oppresses them, seeking opportunities to infringe their ancient customs and privileges, exacting from them slavish compliance, then he is **no longer a prince, but a tyrant**, and the subjects are to consider him in no other view...

So, having no hope of reconciliation, and finding no other remedy, we have, agreeable to the law of nature in our own defense, and **for maintaining the rights, privileges, and liberties of our countrymen, wives, and children**, and latest posterity from being enslaved by the Spaniards, been constrained to **renounce allegiance to the king of Spain**, and pursue such methods as appear to us most likely **to secure our ancient liberties and privileges**.

If the Sovereign fails to live up to his duties, this document argues that the people (“we”) have a natural right to replace the current sovereign with a new one. The Dutch were fortunate in their revolt, and a new republic was founded a few years later, which rapidly became one of the most wealthy and powerful nations of seventeenth-century Europe (Israel 1998).⁷⁷

During the next two centuries, many other proposed charters in Europe espoused similar theories. For example, about a half century later, a group called the “Levelers” proposed a major reform of England’s medieval constitution in their *People’s Agreement* (1647). The *People’s Agreement* proposed a republican constitution for English governance based on popular sovereignty and civic equality, rather than sovereign duties, and their conception of popular sovereignty that is explicitly democratic. It argued:

(3) That the people do [should] of course **choose themselves a parliament** once every two years ... (4) That the power of this and all future representatives of this nation is **inferior only to those who choose them**, and does extend to whosoever is not expressly or implicitly reserved by the represented to themselves. ...**That in all laws made or to be made, every person may be bound alike** and that no tenure, estate, charter, degree, birth, or place to confer any exemption ... That **all laws ought to be equal**, so they must be good and not evidently destructive to the safety and well-being of the people. (Sharp 1998: 94-5)

The *People’s Agreement* also mentions freedom of religious conscience and equality before the law as “reservations” by the people. In other petitions sent to Parliament, writers from the same group attacked monopoly privileges:

The oppressive monopoly of Merchant Adventurers and others do still remain to the great abridgment of the liberties of the people and to the extreme prejudice to all industrious people. (Sharpe 1998: 79)

and lobbied for improved judicial proceedings:

That ye will permit no authority whatsoever to compel any person or persons to answer questions about themselves or nearest relations. (Sharp 1998: 82)

In these respects and several others, the *Agreement* may be regarded as the beginning of English debate on “civic equality,” a concept that would play a central role in liberal political reforms adopted over the course of the next three and a half centuries.⁷⁸

⁷⁷ See chapter 15 for a more extensive discussion of the Dutch revolt and its political institutions.

⁷⁸ Several levellers also raised issues concerning the proper size of the welfare state. A proper welfare state “will provide some powerful means to keep men, women, and children from begging and wickedness, [so] that this nation may no longer be a shame to Christianity therein.” (Sharpe 1998: 83)

Academic Contract Theories of the State

Several scholars subsequently elaborated and deepened the Dutch and Leveler arguments. In the relative safety of Paris, Thomas Hobbes wrote a famous book, the *Leviathan*, which was published in England in 1651. Among many other carefully reasoned arguments, he explained how it could be in the self-interest of all citizens to delegate their power to a sovereign in order to avoid the calamities of life without law and order. Although his logic supported complete irrevocable sovereignty (1959: ch. 14), the argument was based on popular sovereignty:

A COMMONWEALTH is said to be instituted when a multitude of men do agree, and covenant, every one with every one, **that to whatsoever man, or assembly of men, shall be given by the major part the right to present the person of them all, that is to say, to be their representative; every one, as well he that voted for it as he that voted against it, shall authorize all the actions and judgments of that man**, or assembly of men, in the same manner as if they were his own, to the end to live peaceably amongst themselves, and be protected against other men.

From this institution of a Commonwealth are derived all the rights and faculties of him, or them, on whom the sovereign power is conferred by the consent of the people assembled.

Once a commonwealth is created, Hobbes argued that it could not be cast off, nor could the sovereign (whether a single man or representative assembly) be bound by a covenant (ch. 18):

First, because they covenant, it is to be understood they are not obliged by former covenant to anything repugnant hereunto. And consequently they that have already instituted a Commonwealth, being thereby bound by covenant to own the actions and judgments of one, cannot lawfully make a new covenant amongst themselves to be obedient to any other, in anything whatsoever, without his permission.

And therefore, they that are subjects to a monarch cannot without his leave cast off monarchy and return to the confusion of a disunited multitude; nor transfer their person from him that beareth it to another man, other assembly of men: for they are bound, every man to every man.

Although Hobbes' theory of an irrevocable constitutional contract is clearly more conservative than the ones articulated in the Dutch declaration of independence and the Leveler's *People's Contract*, it shares with them the idea that legitimate governmental power exists to advance the interests of those living within the commonwealth of interest. For Hobbes, the provision of law and order was sufficient to satisfy that requirement.

Hobbes' conclusions, were not, of course, universally accepted. Other enlightenment scholars challenged his doctrine of complete sovereignty and his theoretical approach to natural law (Berman

2003: 261–62). John Locke (1689), for example, accepted Hobbes' use of abstraction and also accepts Hobbes' argument that individuals transfer their natural authority to the sovereign as a means of securing life and personal property (in both person and land), because these advance broadly shared interests within every community. However, he notes that the logic of social contracts also implies that some actions of a sovereign cannot be legitimate, because authority to make some kinds of policy decisions would never have been included in a voluntary social contract:

But though men, when they enter into society, give up the equality, liberty, and executive power they had in the state of nature, into the hands of the society, to be so far disposed of by the legislative, as the good of the society shall require; yet it being only with an intention in everyone the better to preserve himself, his liberty, and property (for **no rational creature** can be supposed to change his condition with an intention to be worse) **the power of the society or legislative constituted by them, can never be supposed to extend farther than the common good;** but is obliged to secure every one's property, by providing against those three defects above mentioned that make the state of nature so unsafe and uneasy. (*Second Treatise*, 1689: 310)

Locke, thus, adopts the Dutch perspective on sovereignty, possibly because he spent many years as a refugee in the Netherlands avoiding the sanctions of the British King James II.

Popular sovereignty and social contract–based arguments were further developed in the eighteenth century by Montesquieu, Rousseau, Madison, and Kant, to name but a few of the next generation of political theorists. Similar reasoning was also applied by important legal scholars such as Blackstone (1765).

Such new theories of legitimate rule-making authority gradually undermined existing justifications for the medieval constitution and, in the long run, provided logical foundations for what would become liberal political theory. Theories of government based on divine will and ancient privilege gradually fell from use, at least among scholars. In governments grounded in social compacts, all members of the community should be regarded as a government's formateurs, and the delegation of policymaking authority to a policymaking body should be regarded as simply a means for advancing their common purposes. Legitimate government policy, from this perspective, is for the benefit of the community members, rather than for those holding the offices of government.

New Economic Critiques of Medieval Monopolies

During the same period in which liberal theories of the state emerged, new liberal theories of economic growth emerged. To some extent, the new theories were motivated by increased international trade and changes in the mode of production within the textile industry during the

seventeenth and eighteenth century. Many early liberal theorists analyzed economic and political matters simultaneously.

For example, seventeenth-century Dutch writers noted that prosperity may be impeded as well as advanced through government policies. La Court's (1662) widely read book examined the economic and political interests of Holland, and suggests that centralized political power, in contrast to Hobbes' argument, tends to undermine prosperity (ch. 9):

However, this **excellent and laudable harmony and union in commerce**, fishing, farming, and manufacturing **may be violated**, even to the ruin of all the inhabitants, none excepted but courtiers and soldiers, and that by **one sole mistake in government, which is the electing of one supreme head over all these inhabitants**, or over their armies. For seeing such a single person for the increase of his grandeur, may curb and obstruct Holland's greatness and power...they **would weaken or lessen all such [productive] cities and impoverish the inhabitants**, to make them obedient without control.

Locke's theory of the state is partly based on the economic advantages of secure property rights. He also wrote on usury laws in 1691, analyzing the difficulty of writing laws to regulate loans and the undesirable consequences of many such laws.

In the course of developing his unusually complete theory of governance, Montesquieu (1748) in *The Spirit of the Law* also develops a theory of taxation, noting that government policies can harm, rather than benefit the general interest:

The public revenues are a portion that each subject gives of his property, in order to secure or enjoy the remainder. To fix these revenues in a proper manner, regard should be had both to the necessities of the state and to those of the subject. **The real wants of the people ought never to give way to the imaginary wants of the state.**

Imaginary wants are those which flow from the passions and the weakness of the governors, from the vain conceit of some extraordinary project, from the inordinate desire of glory, and from a certain impotence of mind incapable of withstanding the impulse of fancy. Often have ministers of a restless disposition imagined that the wants of their own mean and ignoble souls were those of the state. (Book 8: ch. 1)

The most complete analysis of the tension between markets and government regulation was undertaken by Adam Smith who published his *Wealth of Nations* in 1776. This book directly challenged medieval ideas on wealth, international trade, and economic policy (mercantilism). Smith noted that specialization and capital accumulation were the main engines of economic growth, rather than a nation's stock of gold, and argued that markets tend to work best when the formation of new business organizations is not blocked by monopoly patents, heavy taxation, inadequate

infrastructure, or corruption. Increased specialization generated by larger markets tended to benefit nearly everyone:

In the foregoing Part of this Chapter I have endeavored to show, even upon the principles of the commercial system, how **unnecessary it is to lay extraordinary restraints** upon the importation of goods from those countries with which the balance of trade is supposed to be disadvantageous.

Nothing, however, can be more absurd than this whole doctrine of the balance of trade, upon which, not only these restraints, but almost all the other regulations of commerce are founded. When two places trade with one another, this doctrine supposes that, if the balance be even, neither of them either loses or gains; but if it leans in any degree to one side, that one of them loses, and the other gains in proportion to its declension from the exact equilibrium. Both suppositions are false. **A trade which is forced by means of bounties and monopolies, may be, and commonly is disadvantageous to the country in whose favor it is meant to be established,** as I shall endeavor to show hereafter. (Book 4: ch. 3)

Smith goes on to argue that a nation's capacity for making goods depends on its human resources, holdings of productive equipment, and land, rather than holdings of gold. The ability to produce desired goods and services from those holdings increases with specialization and round about production (the division of labor). With respect to the latter, Smith develops what might be called a popular sovereignty theory of economic development. He argues that self-interest tends to promote the welfare of all involved in market relations, without need for significant intervention on the part of a sovereign, but as if guided "by an invisible hand."

Although governments can provide useful public services, such as roads and canals, contract enforcement, and national defense, Smith and other economic liberals argued that wealth was for the most part a consequence of the voluntary nature of market transactions. Monopoly privileges and most impediments to trade were completely unnecessary and often counterproductive.

Reasoned Argument, Rather than Revelation

Liberal economic and political theorists used similar types of arguments and reached similar conclusions about the kinds of reforms that should be adopted. For the most part, they relied on reason, abstraction, and examples from the physical world, rather than revelation, authority, or scripture as their main engines of analysis.

Natural right is the dictate of right reason showing the moral turpitude or moral necessity of any act ... and consequently that such an act is either forbidden or commanded by God, the author of nature. ... Now the **Law of Nature is so**

unalterable, that it cannot be changed even by God himself... Thus two and two must make four, nor is it possible to be otherwise... (Grotius 1625, book 1, ch. 1: 21-22).

That right and wrong were susceptible to reasoned argument implied that governance and governmental policies could be analyzed in a similar, reasoned, dispassionate manner.

For the most part, the early liberals regarded men (literally so in most cases) to be equal participants in the political and economic communities in which they participated. Such persons were not necessarily equal in their talents or wealth, but should, nevertheless, be equal before the law and constrained by those laws only insofar as common interests are advanced by them:

But **every man**, when he enters into society, gives, up a part of his natural liberty, as the price of so valuable a purchase ; and, in consideration of receiving the advantages of mutual commerce, obliges himself to conform to those laws, which the community has thought proper to establish.

And this species of legal obedience and conformity is infinitely more desirable, than that wild and savage liberty which is sacrificed to obtain it. For no man, that considers a moment, would wish to retain the absolute and uncontrolled power of doing whatever he pleases; the consequence of which is, that every other man would also have the same power; and then there would be no security to individuals in any of the enjoyments of life. **Political therefore, or civil, liberty, which is that of a member of society, is no other than natural liberty so far restrained by human laws (and no farther) as is necessary and expedient for the general advantage of the public.** (Blackstone 1765, book 1: ch. 1)

The center of gravity in public discussion and in Europe's scholarly literature in the eighteenth century, nonetheless, accepted most of the existing pattern of privilege as essentially reflecting fundamental differences in family, talent, and nature. Conservatism in this sense, for example, was clear in the religion-based theories of Filmer (1680) and Bossuet (1709) and also in the rational-choice analysis of Hobbes (1651).

Moderates in the late eighteenth century, like conservatives, were skeptical of democratic reform, but tended to accept elements of liberal and conservative sides of policy debates. For example, Burke suggests that people are not equal and that it is entirely proper that these differences be taken into account:

The occupation of an hair dresser, or of a working tallow chandler, cannot be a matter of honor to any person—to say nothing of a number of other more servile employments. Such descriptions of **men ought not to suffer oppression from the state; but the state suffers oppression, if such as they**, either individually or collectively, **are permitted to rule.** In this you think you are combating prejudice, but you are at war with nature. (Burke 1790: 139)

On the other hand, Burke also suggests that the right to participate in politics and production could be extended a bit beyond the current elites, whose privileges were based on ancient favors and accomplishments of their ancestors, to include those who had proven their worth in the present:

You do not imagine, that I wish to confine power, authority, and distinction to blood, and names, and titles. No, Sir. There is **no qualification for government, but virtue and wisdom**, actual or presumptive. **Wherever they are actually found**, they have, in whatever state, condition, profession or trade, the passport of Heaven to human place and honor...

Woe to the country which would madly and impiously reject the service of the talents and virtues, civil, military, or religious, that are given to grace and to serve it; and would condemn to obscurity every thing formed to diffuse luster and glory around a state. Woe to that country too, that passing into the opposite extreme, considers a low education, a mean contracted view of things, a sordid mercenary occupation, as a preferable title to command. **Every thing ought to be open; but not indifferently to every man.** (Burke 1790: 140-1)

In the nineteenth century, these ideological trends accelerated along with commerce and industrialization.

In the nineteenth century, the contract-based theories of the state gave way to utilitarian ideas about the good society, under which policies and institutions were not judged by their contractual foundation, but rather by whether they tended to increase or decrease “society’s welfare,” defined as the sum of the happiness (utility) of all persons in a given society. Most contract theories had already reached similar conclusions, so there was less conflict among intellectuals during this transition than might have been expected. Although utilitarian logic is quite different than contractarian analysis, utilitarian arguments were also rational and inclusive, and made use of scientific predictions. Policy A is better than policy B if it will (predictably) make more people better off than worse off.

By explicitly including everyone’s welfare (happiness or utility) into their calculations, utilitarian theory further undermined arguments for special privilege and, thereby, also tended to promote liberal reforms. If the proper aim of public policy is to maximize social utility, everyone’s welfare counts, not just that of privileged families. Indeed, the self-interest of a person that has internalized utilitarian normative theory tends to be more inclusive and altruistic than tends to be the case for persons adhering to most other less inclusive normative theories.

The utilitarian analysis for public policy and constitutional design reached conclusions that were similar to those of contractarian theory, and provided another methodology for extending the rationalism of science and mathematics into policy debates. Both contractarian and utilitarian arguments focused on the secular sphere of political and economic life, and relied on rational

arguments rather than appeals to tradition or religious doctrine to judge the relative merits of policies and institutions .

These normative theories, together with the gradual shift in economic interests, induced an increasingly broad swath of literate society to accept the notion that (i) historical privileges of birth were somewhat excessive and that (ii) broadening economic and political opportunities might improve their own circumstances as well as society's. (Many liberal intellectuals were not eligible for government office or entitled to vote in national elections at the time that they wrote.)

Religious Beliefs Narrow, Rather than Fade

As censorship laws were relaxed during the eighteenth century, such arguments were widely disseminated and read by educated persons throughout Europe and North America. A century or two of philosophical and policy debates among conservatives, moderates, and liberals had sharpened arguments on all sides and tended to make the arguments more rational and less grounded in custom and religion. (U. S. colonial history is a special case here, as there was relatively little censorship during American colonial days and much more freedom to experiment with alternative forms of religion and local government, as noted below in chapter 18.)

The effect of such rational, secular analyses of public policy on religion, however, was not to reduce the extent or intensity of religious faith in the West, which remained high in the United States and in Europe throughout the nineteenth century, even as liberal democracy emerged, rather it tended to reduce the scope of religion. The enlightenment did so in three ways. First, the Scientific and Industrial Revolutions diminished the range of phenomena that educated persons interpreted as miracles. Lightning became electricity, rather than the wrath of God, and more generally, weather became a meteorological (physical) phenomenon, rather than a matter of God's favor or punishment. This implied that prosperity in the countryside was largely determined by physical phenomena (good and bad weather), rather than prayer, God-fearing conduct, or sacrifices (church contributions). Subsequent scientific progress in the nineteenth century in geology, biology, and social science further diminished the extent to which educated persons regarded the world to be static or the product of constant divine intervention. A nontrivial role remained for divine intervention in the new theories, but it was clearly less active and frequent in those theories than had been taken for granted during earlier times.

Second and partly as a consequence of the first, the sacrifices considered necessary to achieve an afterlife declined. This did not make people less intensely religious, but did make them somewhat

more tolerant persons. Their neighbor's sins and beliefs became less important to their own perceived chance of an afterlife. Consequently, "mistaken persons" (both errant fellow travelers and believers of other faiths) were less subject to persecution, as being under the influence of the devil. Moreover, the belief that a complete final answer has been found conflicted with the evidence of the Scientific Revolution and the Industrial Revolution, both of which demonstrated that continual improvement is possible and useful. No contemporary theory is perfect. Perhaps perfecting one's religious beliefs also required a bit of creativity and experimentation.

Third, the scope of religiously neutral activities increased, which was partly caused by economic and scientific developments, but also reinforced them. Less and less of life was devoted to religious matters by most religious persons, and fewer aspects of life were deemed to have sacred origin. Life's routines were not all god given, and, so, change is not always a sin. Even though one's father and grandfather and great grandfather had all been farmers and all lived in the same village, it was possible to choose another career or move to another place without undermining God's divine organization of life on Earth. Many good people, not simply the community's wastrels, sinners, and deviants, left farm villages for towns and cities. This transition was evident in the behavior of many famous persons during the Enlightenment, and also evident in the pattern of migration taking place within Europe and the United State, as new urban centers emerged and great waves of emigration took place.

In the seventeenth and eighteenth centuries, it could also be argued that the expansion of commerce and increased mobility caused religious ideologies to change to accommodate the new economic circumstances and greater competition among religions. Such changes in doctrine also contributed to the expansion of the domain of religiously neutral activities and actions (Weber 1930: 72–76). Career choices, investment alternatives, food choices, clothing choices, reading choices, and so on increased with the Industrial Revolution.

Indeed, for many economic pragmatists, the domain of religion gradually shrank to the point that it became a field of metaphysics, rather than a guide for daily life.

The capitalistic [industrial] system so needs this devotion to the making of money, it is an attitude toward material goods which is so well suited to that system, so intimately bound up with the conditions of survival in the economic struggle for existence, that there can today [in 1904] no longer be any question of a necessary connection of that acquisitive manner of life with any single Weltanschauung. In fact, **it no longer needs the support of any religious forces, and feels the attempts of religion to influence economic life, insofar as they can still be felt at all, to be as much an unjustified interference as its regulation by the State.** (Weber 1930: 72)

In this sense, life in the West gradually became increasingly secular, even as Europe and the United States continued to be populated by very religious people.

Western democracies and laws in support of religious tolerance emerged in very religious societies, although not ones in which religion was all encompassing. The expansion of the religiously neutral domain made it easier (and more routine) for people of faith to interact with persons from other faiths (which in nineteenth-century Europe were mostly slightly different versions of Christianity). It also simplified the organization of new firms, cooperatives, and interest groups.

As the religiously neutral domain expanded, legal supports for religious tolerance also expanded. In the mid-nineteenth century, religious conditions for political office were generally dropped and the rights to worship extended, at the same time that state churches were maintained and privileged through state laws.⁷⁹

Normative Theories and Nineteenth Century Constitutional Reform

In the seventeenth and eighteenth centuries core theories of the role of governance and the role of the national church began shifting slowly. During the same period, notions of “equality before the law” began to replace theories of family and royal privilege among educated people, including many prominent members of parliament. Such ideas were not entirely new, as for example, many had been developed by the Leveler movement in England during the seventeenth century. These liberal conceptions of the good society and good government, however, gradually became more widely accepted by politically active persons and groups throughout Europe during the late eighteenth century and nineteenth centuries.

The new theories had implications for the proper authority of parliament, the proper degree of suffrage, economic regulation, religious tolerance, education reform, and a variety other standing policies. In 1800, these views were minority opinions, especially among members of parliament. The

⁷⁹ Such freedom of conscience existed in the many of the U.S. colonies a century and a half earlier and in the Dutch republic three centuries earlier. In the United States, this principle became part of the national government’s constitution in 1783. See chapter 18 for a discussion of colonial American institutional innovations.

Although the *Union of Utrecht* called for religious tolerance, as did many of the republic’s early political leaders, tolerance was not always supported by provincial and urban governments. Nonetheless, local autonomy implied that a place could nearly always be found in the Netherlands where nonconforming religious practices and intellectual perspectives would not lead to arrest or banishment by local authorities. This was to a considerable extent a consequence of its decentralized political institutions. Chapter 15 provides a more complete discussion of the Dutch Republic.

increased support for liberal reforms, however, was sufficient to motivate a variety of pamphleteers and interest groups to advocate eliminating trade barriers, freeing slaves, expanding public education and expanding suffrage. Many organized interest groups were formed during periods in which such “revolutionary” groups were tolerated, and the success of their persuasive campaigns was evident in the long run. By 1900, there were clear majorities among voters and within parliament that accepted all these formerly radical views as essentially obvious and uncontroversial.

G. Disruptions to the Medieval Equilibrium: New Evidence that Republican Governance Is Feasible

In addition to new political and economic theories, new evidence emerged that representative systems of government with dominant parliaments were feasible and could be successful. An important experiment in political and economic innovation began in the late sixteenth century in the Rhine river’s delta. The provinces north of the Rhine successfully fought a war of secession from the Habsburg empire and created a very decentralized and divided government—the United Republic of the Netherlands—which chapter 15 discusses in more detail. In addition a variety of new very representative governments were formed in the English colonies of North America—which chapter 18 discusses in more detail. In a few cases, new colonial governments were literally formed by social contract. In most cases, the policymaking authority of the elected members of their colonial parliaments was greater than in Europe and elected by usually broad electorates. The success of these relatively liberal forms of government undermined conservative claims that more inclusive political systems were necessarily doomed to chaos and disaster.

The Dutch Republic in the Seventeenth Century

The Dutch republic had a relatively strong federal parliament (the States General) and a relatively weak chief executive (*stadhouder*) by the standards of the late-medieval, early-modern period. The republic’s decision rules caused it to be a very decentralized state, and decentralized governance together with the region’s historic interest in international trade generated competition among localities for the large inflows of new capital and labor. Decentralization thus favored relatively open internal and external trade networks. Decentralization also produced a relatively tolerant society in which religious and political ideas could be expressed that would have been punished severely in other countries.

If not a liberal state in the modern sense, the United Provinces rapidly became a safe haven for nonconformist religious and political ideas. Its tolerance for variations of Protestantism and relatively open markets attracted substantial immigration and produced rapid economic growth. Commerce and population expanded as hard-working innovators, capitalists, craftsmen, and scholars from throughout northern Europe converged on the Netherlands.⁸⁰

Amsterdam became a metropolis, and many other Dutch towns became cities. New universities, newsletters, journals, and printing companies were founded (Dunthorne 2004; Goldie 1997: xii; Schwoerer 1990).

In addition to those seeking economic and religious opportunities, the United Provinces attracted individuals and manuscripts with controversial political and philosophical ideas (Dawson 1954). The French philosopher and mathematician, René Descartes, spent more than 20 years living and writing in the Netherlands. Somewhat later, in 1682, Ashley Cooper, the Earl of Shaftesbury and organizer of the first national political campaigns in England (against the accession of James II), arrived in the Netherlands. Cooper was followed a year later by his young protégé, John Locke. Locke remained in the Netherlands for six years. He completed his first and second treatises during this period, as well as his work on religious tolerance. The influence of Dutch political theory and history is evident in his *Two Treatises*.

In other cases, the controversial persons themselves did not seek refuge in the Netherlands, but their books were anonymously published at Dutch presses, rather than at home. Among well-known enlightenment political philosophers, Montesquieu, Voltaire, and Rousseau all at one time or another found it necessary to publish their work on Dutch presses (Dunthorne 2004). Hobbes, who chose refuge in France, rather than the Netherlands during the English civil war, also found on his return to England that several of his later books could only be published on Dutch presses (Macpherson 1985: 21–22).

From an economic perspective, the success of the Dutch republic partly reflected its fortunate location at the mouth of the Rhine river, a gateway to Southern Germany, northern France, and Western Switzerland. As output and trade expanded inland, more products were imported and

⁸⁰ Many of these immigrants were religiously motivated. Thousands of Protestants and nonconformists from the southern provinces (Belgium) also moved to the Netherlands in the late sixteenth and early seventeenth centuries. Other nonconformists from throughout Europe followed, including thousands of Huguenots from France and several hundred English Puritans. Of course, not all the new immigrants were pleased with life in the Netherlands—half of the pilgrims on the Mayflower’s voyage to New England were English Puritans who found life in Leiden unsatisfactory—but substantial immigration continued for many decades.

exported. However, its more open internal and external markets amplified the advantages of its fortunate location. Other port cities at the ends of other rivers also did well, but not nearly as well as Amsterdam. In this manner, decentralized limited governance allowed a relatively tolerant and prosperous polity to emerge at the mouth of the Rhine river during the early seventeenth century. Indeed, Adam Smith regarded the Netherlands to be the wealthiest place on Earth in the late eighteenth century.

The Dutch success demonstrated that a relatively weak central government and open trade could produce a prosperous economy and relatively tolerant polity. The magnitude and breadth of immigration into the United Provinces demonstrate that Dutch political institutions and their associated tolerance and prosperity were well known throughout Europe. Principles of limited government, tolerance, and natural rights were more than philosophical ideas in the United Provinces. Thoughtful persons began to analyze the sources of its success, which helped to launch the liberal movement in Europe.

Representative Government in the English Colonies of North America

By the middle of the seventeenth century several European colonies had been established along the eastern seaboard of what became the United States of America a century later. Commercial colonies were established in Virginia and North Carolina. A series of religious enclaves were founded in new England by English Puritans. A Dutch commercial colony was established along the Hudson river that later became New York city and New York state. Proprietary colonies were established by William Penn (Pennsylvania) and Lord Baltimore (Maryland).

Although founded for different purposes, the colonies all required new governments, and to be successful those governments had to attract significant immigration. In the case of the commercial and Sovereign ventures, autonomous rule-making bodies were created, because the colonies were too far away to manage directly from the home country, and few formateurs took the risk of living in the colonies themselves. Consequently, they delegated a good deal of authority to men selected to govern their new territories, who moved (often temporarily) to the colonies. In the context of the great wilderness confronting colonists, it must have been somewhat of a surprise that securing cooperation from the colonists, many of whom were investors or employees of the home companies, was not always easy. In the case of the religious colonies, new organizations were created to provide local public goods such as law and order, help assure the purity of their faith, and help manage development and colony defense. Religious and other disagreements among community

residents often induced exit, and subsets of disgruntled town residents would set off to form new villages with new governments.

In most cases, colonial formateurs appointed colonial chief executives who were subsequently augmented by appointed “councils” and by assemblies with elected members. In this manner, parliamentary government emerged in the North American colonies.

One of the first instances—and a striking one—occurred in 1619, when the Virginia company established a bicameral parliament (House of Burgesses) with one chamber appointed by the governor and the other elected by all freeholders. In Virginia’s colonial circumstances, the usual property qualifications generated nearly universal male suffrage, rather than the traditional 5-10% suffrage. The elected chamber had the right to veto all new taxes and new legislation. The new colonial institutions of governance were not (usually) intended to be revolutionary experiments, but rather adapted the familiar English template to new circumstances. It bears noting that the new Virginians were mainstream English men and women, rather than rebels. They belonged, by and large, to the established church and many were from aristocratic families. They were not religious or political radicals. The minor changes—broader suffrage and stronger veto power of new laws—proved to be significant reforms of the conventional king and council template for governance.

Other innovations of the North American colonies included rules supporting religious tolerance and freedom of the press. In the case of New Amsterdam, religious tolerance was simply a normal part of Dutch legal practices. The Dutch colony attracted religious refugees from the New England colonies whose demanding religious practices (often established or supported by elected officials) alienated those who had sought religious freedom in the colonies, rather than religious purity. Religious tolerance was also adopted by Lord Baltimore’s Maryland colony as a method of attracting Protestants evicted from Catholic France and Catholics fleeing Protestant Princes elsewhere in Europe.

Other colonies gradually adopted similar institutions of governance, partly because it was evident that the Virginia rules produced policies that worked tolerably well and partly because Virginia was successfully attracting new colonists. Virginia subsequently reduced suffrage by redefining “freeholder,” but suffrage remained very broad by the standards of world history. The definition of a freeholder varied somewhat through time and among the colonies. The southern colonies tended to have a somewhat higher property threshold for suffrage than the northern colonies.

The results were widely known in Europe, in part because commercial developers had incentives to make them known (and indeed to exaggerate their success). Liberal governance and religious tolerance was, along with access to virgin land, among the main selling points for life in the colonies. Analysis of the new institutions was also provided in letters written to friends and families from those who did reasonably well and from those who stayed a few years and then returned to Europe. About 10 percent of those who made the trip to the English colonies subsequently returned home to family and friends. Many others died in the early years as farming techniques were adjusted for the new soils and climate. Nonetheless, the colonies grew rapidly and average income was very high, in large part because land was fertile and inexpensive (Brown 1955).

The system of divided government that characterized the Virginia charter protected middle class interests (represented in the House of Burgess) against those of the colony's elites (represented in the appointed council) and crown company interests (represented by the governor), and vice versa. In this manner, the Virginia colonial template assured that new laws could only be adopted if they advanced more or less general interests within the colony. The power of the popularly elected chamber did not end the rule of law or produce great transfers of wealth to the middle class, as often argued by conservatives of this time (and for the next three hundred years). Rather, it attracted wave after wave of new immigrants from Europe.

The success of the Dutch and North American experiments supported a variety of liberal ideas about governments and markets, and undermined a variety of conservative claims about the existing "divine" institutional and legal order in Europe. Evidently, the "divine order" could be improved upon.

H. Restorations: Failures to Produce Stable Alternatives to the Medieval System of Government

However, not all liberal experiments proved to be durable or successful. For example, in the early eighteenth century the unexpected death of a Swedish king provided an opportunity for its parliament to take nearly complete charge of governance for almost 50 years, as noted above. Laws were passed that increased freedom of assembly and speech. Commerce initially expanded, but budgetary problems and inflation produced a political crisis toward the end of that period (Roberts 1986). Partly because of a macroeconomic crisis, a new more assertive king was able to restore most of the sovereign's medieval authority (see chapter 14 for more details).

There were also two cases in which civil wars were fought in Europe and major reforms of governance were temporarily implemented. These revolutions, however, produced only temporary changes in medieval templates for governance, because the new institutions proved to be unstable. In each case, a series of major reforms quickly produced dictatorships. During the English civil war of the mid-seventeenth century, governance passed from republic to Cromwell's dictatorship and back via the "restoration" to the old medieval constitution of England. (When the next two Stuart kings violated the medieval constitution again, intervention by William III and the Dutch army restored it again in 1689.) In 1789 the French Revolution produced a series of major constitutional reforms that led to Napoleon's dictatorship in a period of eight years.

Napoleon's army subsequently conquered much of Europe and ended many long-standing regional governments in Germany and Italy. He also reorganized the national governments of Switzerland and the Netherlands. Napoleon's empire, however, was ended by an alliance of monarchies that restored the medieval template and balance of authority in France and throughout his short-lived empire.

In these three cases, major reforms liberalized governance in the short run, produced dictatorships in the medium run, and restored king-dominated forms of the king and council template in the long run. Major reforms are clearly not easy to design. Indeed, in the two centuries prior to 1800, only the Dutch Revolt and American Revolution could be said to have produced durable liberal reforms of governance. By the late eighteenth century, however, the Dutch republic gradually centralized authority, formally adopted a hereditary executive, and so began to resemble its royal neighbors. Napoleon ended that experiment and the Vienna Congress transformed what remained into a more or less traditional European kingdom. Political liberalization in America after its war of independence, was more stable, but most of it had occurred well before its war was fought (see chapter 18).

I. By 1815 the Stage is Set for Liberal Constitutional Reform in Europe, But Not Obviously So

After Napoleon was defeated, the victors organized a conference in Vienna to address international security and constitutional issues. Between 1814 and 1815, that conference substantially redrew the map of Europe: creating somewhat larger states in Germany, a new larger kingdom of the Netherlands, restoring Swiss independence, and reducing Poland and Venice to dependencies (Nicolson 1946: ch. 11-2).

After the Vienna conference, the king and council template must have seemed as secure as ever. Experiments with republican governance in Europe appeared to be over. Republican governments in the Netherlands had been replaced with a proper constitutional monarchy. The Venetian republic had been merged into the territory of Austria. The Swiss confederation had been restored, but was less stable and remained so for three decades. Moreover, the poor constitutional results of the French revolution, both the terror and the dictatorship, could be used to counter liberal arguments favoring more open politics.

The fear of revolutions similar to the French one did not kings to adopt more liberal government after 1789, as some contemporary revolutionary threat theories of constitutional reform would seem to suggest, but rather induced worried governments to reduce civil liberties. For example, the United Kingdom curtailed the right of habeas corpus, increased censorship, and outlawed seditious meetings in 1817. Similar more restrictive laws were also passed on the European continent during this and other times when revolutionary threats were feared by political elites.

Economic and political liberals were a minority even in academic circles (in most places) during the seventeenth and eighteenth centuries, partly because political censorship was still very common in Europe, but also because there were many scholars who favored the traditional scholastic approach. As a consequence, life was often difficult for liberal scholars. Locke, for example, published his work anonymously. Many famous French writers either lived abroad—as did Descartes, in the Netherlands—or were very careful about how they presented arguments, so as not to run afoul of penalties associated with treason or blasphemy. This is one reason why many famous German and French liberals were “fiction” writers, rather than social scientists or political theorists. Fiction provided liberal authors with a natural defense against treason: “its just a story.”

Rationalism and liberalism remained minority views during the early 19th century, although they were gaining support within educated circles.

Burke was much closer to the mainstream in England in 1800 than Locke or Bentham. Indeed, by the spirit of that time, Burke could be regarded as a moderate liberal, which is why both contemporary liberals and conservatives can find useful quotes in Burke’s writings and speeches. Institutional conservatism is completely rational, until it is demonstrated that other institutions actually work as well or better than existing ones.

With the benefit of hindsight, we know that conservative confidence in 1815 was misplaced. That same hindsight, however, also tends to make the next century of reforms seem more inevitable than it was. Commerce and innovation could have stalled, and the ideas of intellectuals and radical

liberal reformers might have lost public and legislative debates to other more traditional ideas, as they had in the past and did in other places such as China. Governments might have become more king dominated, had colonization proved to be as profitable for Sovereign companies as kings had hoped and wars less costly. The fact that eighteenth-century colonies generated little new revenues for kings while increasing their expenses caused parliament's medieval power of the purse to increase in importance, rather than to decline.

At the beginning of the nineteenth century, none of this was obvious. The constitutional decisions made in Vienna had restored the traditional template and balance of authority throughout Europe. New king and council regimes were created at the same time that others were restored. Similar king-dominated templates would be adopted later in the century by Greece, Germany, Italy, and Japan.

Previous centuries had not provided any strong evidence that European culture had led to liberal governments or rapid economic development. Christianity had been the dominant religion for more than a thousand years. The Protestant reformation had begun nearly three centuries earlier, without producing obviously more liberal societies, except perhaps in the Netherlands. Although it can be argued that Europe had gradually become a relatively wealthy place by the standards of world history, life in Europe was not radically different or more prosperous than in other places with reasonably well-functioning governments.

However, as a consequence of technological and ideological changes that were underway in the late eighteenth century, the post-Napoleon restoration proved unstable, and was gradually overturned by a long series of reforms adopted in the century that followed. The fact that both old and new kingdoms underwent similar reforms suggests that a series of "shocks" were systematically changing the political and economic interests of Europe's political elites during the nineteenth century. These factors favored liberalism and industrialization, and their constitutional consequences were largely consistent with the models of constitutional reform developed in part I of the book.

Chapter 10: Liberalism and Reform in the Transformative Century

A. The Great Transformation

Prior to 1800, life for the typical person in Europe had not materially changed for many centuries. Farming was the main occupation, as it had been for millennia. Social mobility was not impossible, but it was difficult because of legal, cultural, and economic barriers. Opportunities were largely determined by laws and customs that explicitly linked political and economic positions to families. Rule of law existed in most of northern Europe and in Japan, but somewhat different laws and rights existed for royals, nobles, peasants, serfs, and slaves, and also for men and women. A state-supported monopoly church provided religious services and a more or less uniform world view. Water, wind, and muscle were the dominant motive forces of economic production as they had been for centuries.

Significant changes in ideas about the world occurred in the centuries before 1800, as noted in chapter 9, and these had effects on the lives of an important subset of the relatively wealthy who engaged in international affairs, travel, and education. Such changes are part of the case for arguing that the transition in the West actually began well before the nineteenth century (North and Thomas 1973). New knowledge and ideas about the world, together with improvements in European ships produced new opportunities for exploration and trade, which produced new trading networks, as well as advances in philosophy, science, and art. Technological shifts on land were also evident during the late eighteenth century, as better techniques for using water and wind power increased the scale of efficient cloth and lumber mills. Better seeds and plows together with new techniques of crop rotation and plowing were also making existing agricultural land more productive. New highways and canals were being constructed to form somewhat more integrated regional markets.

These “new” technologies of trade, production, and organization, however, were not fundamentally different from those of past centuries. Most of the new technologies were somewhat bigger and better versions of the ones that they replaced, and many of the “new” laws simply codified or restored long-standing informal practices. Animal propulsion along canals and roads remained the principal “engines” of domestic trade and integration. Sails remained the principal “engines” of international trade. Buildings and bridges were constructed of bricks, stone, and wood, as they had been since Roman times. Nor were the organizations that carried out these tasks very different from those in past centuries. They remained largely based on family finance, management,

and relationships—albeit augmented with non-family members, who occasionally held positions of significance. Improved land and transport continued to be the limiting factors of economic production during times of population expansion.

The king and council template had long been in use in Europe, and its late medieval formulation with a dominant king and a relatively weak parliament with veto power over taxes had been the norm for several hundred years. The process through which kings and members of parliament were “selected” was largely based on, and supported by, inheritance and family networks. Although there had been earlier periods in which the office of king had been an elective office, most European kings in 1800 had inherited their positions. Exceptions occurred, but for the most part these were cases in which the previous king had died without (legitimate) children. Inheritance was also the basis for “selecting” the men that held seats in the noble chambers of parliaments (also usually first-born sons). Members of the other chambers of parliament were also often members of distinguished families, who were often related to noble families in fairly direct ways.⁸¹

The changes in economic and political life that occurred in the nineteenth century were far larger and more fundamental than those that had occurred in the seventeenth and eighteenth centuries. Indeed, it is difficult to exaggerate the magnitude of the changes that took place in northern Europe, the United States, and Japan during the nineteenth century. It was a truly transformative century. This chapter and the next provide overviews of public policy and constitutional reforms adopted over the course of what many refer to as modernization. More detailed historical accounts of constitutional reforms are provided in the country case studies of chapters 12–18.

Technological and Ideological Trends and Innovations in the Nineteenth Century

In some cases, the nineteenth-century simply accelerated and amplified changes that had been taking place in past centuries. For example, the money-based economy expanded as “hiring oneself out for wages” became an increasingly common method of securing personal necessities. Formerly

⁸¹ It is clear that this method of solving the succession problem advanced the interests of elite families. It also allowed wealth and power to shift within a single dynasty, lawfully and peacefully. It also minimized unproductive conflict as discussed in chapter 3. During times at which no heir to the throne existed, competition for succession often led to open warfare among elite families and their armies. The principle of “first-born male” succession reduced this unproductive conflict over high offices at the same time that it cemented family wealth and authority.

novel methods of farming and organizing village life became the norm, rather than the exception. Store-bought cloth and clothing gradually replaced homespun and homemade. Urban centers that had been growing slowly for centuries began expanding at an accelerating pace. Ancient cities such as Paris, London, Berlin, and Amsterdam grew larger than they had ever been in the past, as their medieval cores were surrounded by a rapidly expanding ring of nineteenth-century roads, canals, and buildings. Seaports expanded and long-standing highway systems were upgraded. In other cases, completely new methods of production, new occupations, new lifestyles, and new cities emerged from a long series of major and minor innovations.

A series of new technologies, each with significant economies of scale, was introduced during the nineteenth century. New relatively large organizations were founded to take advantage of the new technologies. Specialization among and within firms increased. Completely new occupations emerged, and literacy became an important factor in upward mobility for the middle class. New steam production and rail enterprises emerged. New occupations such as metallurgist, machinist, engineer, steam fitter, and steel driver also emerged.

Formerly expensive and exotic materials such as steel and aluminum became increasingly common building materials for machines, factories, urban buildings, bridges, and warships, as the cost of producing those materials fell. Steel became a major product, rather than an exotic specialty metal after the Bessemer process was worked out in 1858. Similarly, aluminum became a significant material for manufacturing in the late nineteenth century, after Hall worked out a process for smelting aluminum in 1886. The use of petroleum for lighting and heating took off in the late 1850s after Gesner developed a method for producing kerosene in 1846. Mining expanded as new uses for old minerals were discovered and refined. Toward the end of the nineteenth century, other new power sources became available as practical motors using kerosene, gasoline, and electricity were developed. Elevators, bicycles, automobiles, trucks and airplanes emerged as common modes for local transport in the early twentieth century.

Mechanical forms of propulsion supplemented and then largely replaced animal-based transport and manufacturing. Transport became faster, more reliable, and more comfortable within and between countries. The great mechanized systems of cloth and lumber mills were attached to steam engines, rather than water wheels or wind mills, which freed them to move away from favorable places along streams and rivers. Instantaneous communication over long distances became commonplace within and between cities, as telegraphs and telephones were invented and their

networks expanded. Very few steam engines had been in use in the late eighteenth century and no electric ones (Pomeranz 2000: ch. 2; Taylor 1951: ch. 5; Fulbrook 1990: ch. 5).

As rail and communication networks were developed, the points at which lines crossed became convenient places for transshipping and manufacturing. New towns and cities emerged as inland “port” cities. New commercial and industrial centers were also established at places where the new factories and mines were located. New cities emerged in the British midlands, the German Ruhr, and the American Midwest as transport networks improved and as industrialization and economic migration took place. The new forms of transport and new materials made new forms of buildings, bridges, and roads possible, although it took some time for architects and engineers to fully exploit the potential of the new materials and new engines. New scientific fields also emerged as chemistry, biology, geology, economics, political science, and sociology became subjects undertaken by specialists, rather than subfields of natural philosophy and physics. New organizations and new industries emerged to produce equipment for those enterprises and to undertake the large construction projects required for the new more capital-intensive production methods.

Employment in a wide range of supporting industries grew. Most of the new opportunities for employment were in cities. Wages tended to be greater in towns and cities than in the countryside, which induced more and more people to move to towns and cities. The quality of urban life also improved gradually as water systems, central heating, street lights, and electricity became commonplace. Commerce expanded to unprecedented levels. Communication costs fell as printing presses improved and as telegraphs and telephones were invented and widely adopted. Ancient town walls were often demolished and their materials recycled to build new dwellings, shops, and factories as the populations of old towns and cities increased. By the end of the nineteenth century, many of the “ordinary” technologies and materials of transport, manufacturing, and communication were very different from those that had been the norm for many centuries or millennia.

Farming remained an important occupation, but in many cases farming itself had become a “new” industry. Western farmers served larger and more distant markets than in the past, using more capital-intense methods of planting, harvesting, and storage. Refrigerated railcars were introduced in the second half of the nineteenth century, which greatly extended the range of many agricultural markets. The rural populations of Denmark, Germany, the Netherlands, and Great Britain fell from between 75 and 90 percent of the population in 1850 to between 50 and 60 percent in 1900, at the same time that population approximately doubled in size (Cook and Paxton 1978: ch. 10).

B. Liberal Reforms as Prerequisites for Industrialization

This short overview suggests that technological innovations were central to the transformation of life in the nineteenth century. However, the uneven adoption of the new technologies within Europe and around the world suggests that more than new ideas were important. The advantages of new technologies were partly determined by legal and political setting in which they were to be applied. Exploiting new economies of scale required access to relatively large markets. Urbanization required new city boundaries and a somewhat broader array of public services to be provided. Many of the laws governing the use of real estate, internal monopolies, tariffs, and labor laws were controlled by national, rather than regional governments. A broad range of reforms to medieval regulations and laws had to be adopted in order for the new modes of production to be profitable.

Even in England, often regarded to be the most open of the eighteenth century economies, Adam Smith noted that the rules of incorporated towns and trade associations created for the “better government of trade” had restricted competition to the point where:

in many large incorporated towns no tolerable workmen are to be found, even in some of the most necessary trades. **If you would have your work tolerably executed, it must be done in the suburbs,** where the workmen have no exclusive privilege, have nothing but their character to depend upon, and you must then smuggle it into town as well as you can.” (*Wealth of Nations*, p. 151).

The profits associated with new economies of scale created new political support for reducing local restrictions, improved transportation networks, the elimination of tariffs, and local government reform. Many persons inside and outside government in the late eighteenth and early nineteenth centuries also supported reform of political institutions in order to advance normative interests in somewhat more open societies. Other less idealistic persons believed that desired economic policy reforms would be easier to adopt if the allocation and method of choosing members of parliament were changed.

Open support for reform of the national government was often illegal during this period, but as political censorship was reduced, advocates for such reforms organized politically active groups to make the case for economic and political reform inside and outside government. Many of the reforms adopted were liberal in the sense used in this volume. There were a wide range of reforms that promoted civic equality, as for example, political and economic opportunities became less family and wealth dependent.

In what became the West, coalitions of pragmatists and liberal idealists were often sufficient to induce reforms of long-standing political procedures and economic regulations. The first reforms often increased support for further reforms by changing the rewards of economic and political opportunities. This boot-strapping effect occurred partially because many liberal reforms did advance general interests, as often argued. The success of modest reforms weakened the case for institutional conservatism, which encouraged the copying of the new “political best practices” by other communities and countries. Economic reforms allowed new technologies to be applied, which also encouraged further efforts at innovation. Together with the extension of public education, the organizations founded to take advantage of these new technologies produced a new middle class that was largely composed of persons who had benefited from past economic and political liberalization. The new middle class tended to be more widely read, more widely traveled, and more often interested politics and liberal reforms than their parents had been.

Increasing support for reform was also evident within government, because the interests of members of parliament and kings were not entirely institutionally induced. For the idealists in government, useful policy reforms provided convincing evidence that progress and improvements were possible in many areas of life. For many pragmatists, it became increasingly obvious that technological advance and economic growth increased taxable resources and national military power. Many wealthy land owners invested in the new enterprises or were themselves formateurs of new commercial enterprises. Many of the persons who became eligible to serve as government officials or to vote as reforms were adopted also tended to support somewhat more open political and economic systems, because openness had allowed many of them to rise to high office.

The long series of liberal reforms did not occur “spontaneously” or through great revolutionary wars, but through gradual, thoughtful, carefully crafted, intensively debated, formal changes in law that reflected changes in the interests of those with the authority to adopt reforms through legislation.

Laws governing what could be owned and inherited were changed in substantial ways. Land became an asset that could be more freely sold and more widely owned, at the same time that government positions became less tradable and inheritable. Entrance into businesses was made easier by reducing the scope of local monopoly and guild privileges. Economics, politics, and law, became less family based, less hierarchical, and more uniform. Slavery was eliminated. Formal aristocratic privileges gradually disappeared, while middle class and peasant “privileges” expanded. Religious and wealth requirements for high offices gradually disappeared, followed by racial and

sexual restrictions. Large enterprises were made easier to found and finance, as standing procedures for incorporation (often with limited liability) replaced procedures that effectively required separate acts of national legislation.

Major reforms of national governance also occurred. Parliaments gradually became the most powerful branch of government as policymaking authority shifted from kings to their parliaments. Parliaments also became less based on family and more based on electoral competition. The ancient noble chambers of most parliaments were gradually eliminated (or weakened) and replaced with more representative chambers, albeit often ones that included many members from noble families. The breadth of the electorate used to select members of parliament gradually increased to unprecedented levels.

By century's end, a new form of government had emerged that was largely supported by a new consensus about the core features of a good society. That consensus is largely taken for granted in Western politics today, but it took more than a century to emerge and its proponents were not assured of success. In parts of the world where politics and public policies were not liberalized, the new technologies were much less widely employed, and where employed they tended to be used less extensively, as in China and the Ottoman Empire.

In most cases, this does not seem to have been a consequence of natural resources, wealth, or location, but rather of long-standing legal barriers and customs that reduced opportunities to profitably use the new technologies. In regions of the world that did not “modernize,” those favoring continuation of internal trade barriers won the policy debates within government, rather than the liberals.

Liberal Theories and the Direction of Reform in the Nineteenth Century

Political liberalism was grounded in new normative theories that stressed the implicit contract basis of the state, a government's duty to ordinary citizens, and the value of written constitutional documents and representative institutions as methods for encouraging governments to advance broadly shared interests. Economic liberalism was grounded in new economic models of economic development that supported open competitive markets over tightly regulated and monopolistic markets, for largely similar reasons. The origins of these two important strands of liberalism often overlapped and reinforced each other, as noted in chapter 9.

The arguments used by proponents of liberal reform in the nineteenth century also overlapped to a considerable extent. Consider, for example, a few passages from Adam Smith's widely read and

widely translated book, *Wealth of Nations* (1776). Smith's book was often cited by economic liberals in the nineteenth century. Many of his observations and arguments also supported liberal political constitutional reforms. He argued, for example, that:

[Regarding liberties in the English colonies:] In every thing, except their foreign trade, **the liberty of the English colonists to manage their own affairs ... is secured in the same manner, by an assembly of the representatives of the people, who claim the sole right of imposing taxes for the support of the colony government.** The authority of this assembly over-awes the executive power [of their governors], and neither the meanest nor the most obnoxious colonist, as long as he obeys the law, has anything to fear from the resentment, either of the governor or of any other civil or military officer in the province. ... the executive power either has not the means to corrupt them, ... [and, consequently, their representative assemblies] are perhaps in general more influenced by the inclinations of their constituents. (Adam Smith 1776, *the Wealth of Nations*, Bk. IV ch. 7.73)

Regulated companies resemble, in every respect, **the corporations of trades so common in the cities and towns of all the different countries of Europe, and are ... enlarged monopolies** of the same kind. As **no inhabitant of a town can exercise an incorporated trade without first obtaining his freedom in the corporation, so in most cases no subject of the state can lawfully carry on any branch of foreign trade**, for which a regulated company is established, without first becoming a member of that company. **The monopoly is more or less strict according as the terms of admission are more or less difficult;** and according as the directors of the company have more or less authority, or have it more or less in their power to manage in such a manner as to confine the greater part of the trade to themselves and their particular friends. (Adam Smith 1776, *the Wealth of Nations*, Bk. V ch. 1.96)

The legislature, **were it possible that its deliberations could be always directed**, not by the clamorous importunity of partial interests, but **by an extensive view of the general good**, ought upon this very account, perhaps, to be particularly **careful neither to establish any new monopolies of this kind, nor to extend further those which are already established.** Every such regulation introduces some degree of real disorder into the constitution of the state, which it will be difficult afterwards to cure without occasioning another disorder. (Adam Smith 1776, *the Wealth of Nations*, Bk. IV ch. 2.44)

It is clear that Smith's analysis is grounded in the normative theories that had emerged in the previous century or two. These paragraphs, among many others, support the advancement of general interests through public policies and constitutional design, rather than the traditional interests of king, national glory, or state religion. These paragraphs also demonstrate that Smith's liberalism tended to favor more open and representative political systems as well as more open competitive economic markets. Similar arguments and policy positions were very evident throughout the nineteenth century, partly because of Smith and other liberal scholars of that period, but also

because experience with modest liberal reforms showed that they could, in fact, advance broad common interests.

A useful window into the argument and policy agenda of politically active liberals in the early nineteenth century is provided by John Stuart Mill in his description of his father's hopes for political reform:

In politics, [he had] an almost **unbounded confidence in the efficacy of two things: representative government, and complete freedom of discussion.** So complete was my father's reliance on the influence of reason over the minds of mankind, whenever it is allowed to reach them, that he felt as if **all would be gained if the whole population were taught to read, if all sorts of opinions were allowed** to be addressed to them by word and in writing, and **if by means of the suffrage** they could nominate a legislature to give effect to the opinions they adopted. He thought that **when the legislature no longer represented a class interest, it would aim at the general interest,** honestly and with adequate wisdom; since **the people would be sufficiently under the guidance of educated intelligence, to make in general a good choice of persons to represent them,** and having done so, to leave to those whom they had chosen a liberal discretion (J. S. Mill, *Autobiography*, 1873, Ch. 4).

The arguments of such liberal theorists could often be used to build support for reforms favored by pragmatists, at least at the margin, because they made the case that liberal reforms advanced broad interests, not simply those of would-be industrialists or privileged families.

Support is easier to build for reforms that will make “most of you” better off than for ones that simply make “me” better off.

Trends in Liberalism and Reforms in the Nineteenth Century

Trends in economic and political reforms throughout the West were remarkably consistent with liberal political and economic theories during the nineteenth century. This was not because nineteenth century Europe was populated by liberals or because liberals favored a specific program of reforms, but because there were a sufficient number of liberals in government who agreed about the *proper direction* of reform to influence policy reform. Liberals generally favored reforms that increased civic equality by reducing hereditary privileges and deprivations in economic life, in the law, and in politics. Nonetheless, they disagreed about how far reforms should go in that direction. Policy debates among liberals, consequently, were nearly as common and intense as arguments between liberals and conservatives, although liberals nearly always voted for modest expansions of civil liberties and modest reduction in special privileges when they were proposed.

It also bears noting that there was a trend in the mainstream liberal movement during the nineteenth century. Only a few radical liberals, for example, explicitly called for the end of the

medieval order in 1800. Instead, moderate liberals favored modest reforms that opened political and economic life to somewhat more families and to somewhat more individual men and women. They also favored a gradual end to slavery, the expansion of public education, and reduction in censorship. The mainstream liberal political agenda of 1830-80 favored somewhat more detailed written constitutions with a somewhat broader electorate that reached “down” to what today would be called the upper middle class. They also favored reduced tariffs, increased parliamentary control over cabinet ministers, and infrastructure expansion.⁸² Only “radical” liberals such as John Stuart Mill, favored (nearly) universal man and woman’s suffrage or parliamentary dominance during the mid century. At the end of the century, the “moderates” largely accepted these formally radical positions.

Liberal ideas about proper voter qualifications gradually became less grounded in property and tax payments during the century. Mainstream liberals began to favor extending suffrage to middle class professionals, and subsequently to the working class, and finally to nearly all adult men in the early twentieth century, partly because public education had expanded and illiteracy reduced. Shortly before (or after) the World War I, support for women’s suffrage also became mainstream for liberal parties, as the logic of qualified voters was extended to women. In this respect, it could be said that Mill’s radical positions had gradually become mainstream ones (see Chapter 11).⁸³

Nonetheless, it is likely that the breadth of liberal opinion about specific reforms allowed liberalism to have a larger affect on day-to-day policy decisions during the nineteenth century, than liberalism would have had were the entire movement composed of “doctrinaire” or “radical” liberals. Mainstream liberals were willing and able to engage in bargaining with conservatives over public policies and constitutional reforms throughout the nineteenth century. Indeed, “conservative” legislation could often be adopted in parliaments by attracting the support of a few moderate liberals in exchange for a few minor liberal reforms. Such forms of compromise and cooperation would not

⁸² Cabinet officials were often essentially above the law during the early nineteenth century, because they were servants of the king or Queen rather than “ordinary” persons. They were, thus, subject to royal mandates and administrative procedures. Liberals and others in parliament during the mid-nineteenth century often wanted cabinet ministers to be subject to criminal law and to parliamentary sanctions, rather than protected by royal privilege.

⁸³ This liberal-conservative classification scheme is not arbitrary, but reflects the labels that many reformers used for themselves, as well as party labels and platforms that were common in the second half of the nineteenth century. Conservatives opposed reform of the medieval order in the early nineteenth century. They too shifted ground during the late nineteenth century as developed below.

have been possible if liberalism had been a truly revolutionary movement with inflexible radical goals.

A Long Series of “Minor” Liberal Reforms

The remainder of this chapter provides a more detailed overview of significant reforms supported by liberals during the nineteenth century, many of which proved to be so durable that they are taken for granted more than a century after they were adopted. The main purpose of this chapter is to demonstrate that liberalism affected many areas of public policy and that liberal reforms tended to be gradual, and broadly sustained during the nineteenth and early twentieth century. Examples of reforms include reductions in censorship penalties, increases in support for public education, reductions in minor tariffs, subtle shifts in corporate and tort laws, and slight changes in electoral laws. Other reforms were more radical, as with the elimination of slavery and major tariffs, significant changes in property and suffrage law, and formal constitutional amendments. However, even major reforms normally revised, rather than replaced, long-standing policies, laws, and procedures for adopting public policies. Many other examples could have been discussed, but the ones included are sufficient to show that broad liberal trends in policy reforms were evident during the late eighteenth, nineteenth, and early twentieth centuries throughout most of what came to be called “the West.”

It is liberal constitutional reforms that are of greatest interest for the purposes of this book, but it is important to understand that liberalism was not exclusively a constitutional movement, although it had significant effects on the procedures of governance. The other reforms show that liberals were politically active and became increasingly influential during the course of the nineteenth century. Liberal political and economic systems emerged from a long series of reforms, rather than from one or two great quantum leaps.

C. The End of Medieval Property Rights: Enclosure and Free Trade

Medieval Ownership and Strip Farms

Prior to 1750, most land in Europe was owned, but “ownership” involved quite different bundles of rights than it did in 1850. Noble families owned their estates in the sense that they managed them without external interventions, but they could not sell them without the king’s permission. Within most estates, peasant farmers similarly “owned” their land in the sense that they farmed and controlled access to particular fields. Their fields, like those of their lords, were

normally passed on to their children. These owners could use the field largely as they saw fit, block others from using them, but could not easily sell or transfer their claim to the fields that they controlled.

The relationship between church-controlled lands, farmers, and peasants was similar to that of lords, farmers, and peasants. Families farming church fields had durable if informal property claims, and inheritance was an important source of their wealth and opportunity. Freeholders also existed, although they normally controlled less land than the royal family, nobles, and churches. Nonetheless, such freeholders were a large fraction of the non-noble elite and the middle class. Freeholder ownership was less encumbered and, so, more closely resembled today's property arrangements. These land holdings, nonetheless, were also not often sold to non-family members, because land was the most reliable store of wealth and income in the medieval period.

Many posts within local and national governments were owned in a similar manner. Such posts were inheritable and essentially family property. Many persons held many titles as a consequence of marriage and inheritance. In some cases, family titles and positions could be sold, but only the least important ones. Top posts in state churches could not be routinely passed onto children, but they were often passed on to other family members. In the medieval and late medieval periods, major land, titles, and positions were largely birthrights, rather than liquid assets. Servants and farmhands were often employed to help with household chores and field work, but they were largely paid in kind (room and board) rather than cash for their services.

The rural landscape also physically differed from that which we are familiar with today. Medieval farmland was normally divided into hundreds of narrow strips of land, rather than into large more or less rectangular farm fields that typify the contemporary countryside. Peasant land holdings consisted of particular strips of land that were interspersed among the similar strips of fellow farmers. Strip farmers often lived together in farm villages and would walk out to their individual strips together. These narrow strip fields could not be fenced off at a reasonable cost because of their long perimeters, and a good deal of private farmland consequently consisted of "unenclosed" open fields. Much of the farmland that was held by independent farmers was also in the form of strip farms.⁸⁴

⁸⁴ Macfarlane (1978: 83-91) provides evidence that land titles were in principle transferable in England and much of Europe in the period before enclosure, but he acknowledges that land titles were for the most part inherited under rules of primogeniture. Land was rarely, for example, included in wills and there were restrictions on transfers of land within manors. The so-called customary estates are those of interest for enclosure movements.

In addition to strip farms, other “wasteland” was often held in common and could be used by all persons living on the manor, farm, or village, including farmhands and servants without fields of their own. Access to communal pastures and access to communal woodland and gardens was normally tied to ownership of particular pieces of land and to employment on farms within the community. Such access rationing systems helped avoid the “tragedy of the commons” by limiting use of communal property.

Strip farmers on manors had obligations to the “owner” of the manor (often a minor noble, who occupied the manor’s grand house). Manorial obligations could be regarded either as a form of property tax or rent, although manorial obligations were normally in kind, rather than cash. Farming decisions were often made collectively at village meetings of various kinds, both on manor estates and among independent (but interwoven) strip farmers in the countryside.

The strip-field, three-class (peasant, farmer, and aristocrat), farming system had existed for centuries in much of Europe. The strip-field system of property rights was neither communal property nor private property according to contemporary definitions (Demsetz 1967), but addressed both commons and long-term resource management problems by creating residual claimant-owners.⁸⁵ This long-standing system of land management and usufruct underwent major reforms in eighteenth- and nineteenth-century Europe in what can be considered the first of the major liberal economic reforms.

Enclosure as Liberal Civil Law Reform

Proponents of “enclosure” called for the consolidation of strip farms into contiguous fields to be independently owned by their “freeholders.” The advocates of enclosure in most cases were economic and political entrepreneurs who combined narrow economic interests with ideological ones. Enclosure entrepreneurs were paid to devise acceptable enclosure plans and to obtain permission to change the property systems, normally one village or manor at a time (Allen 1982; Blum 1981). They argued that land output could be increased by rationalizing the fields and that enclosure would increase the liberty of landholders by eliminating manorial duties.

⁸⁵ Similar systems remain evident today in several non-industrialized countries, where property claims are still often based on informal traditions and historic use, and many farm fields are strips of land, rather than large contiguous rectangular fields. See, for example, Benneh (1973) or Ostrom (1991, 2005). See North Wallis and Weingast (2009: 77-87, 107-9) for a discussion of medieval land practices, title reform, and concentration of ownership in England.

The first enclosures required specific legislation be adopted by national parliaments, this cumbersome process of reform was later revised to facilitate enclosure.

Enclosure plans had four direct effects. First, the plans “rationalized” the medieval farming system by collecting the strip fields and communal lands into a few more or less rectangular fields that could be somewhat more efficiently farmed with the new plows and field rotation. This geometry also made fencing and hedge rows more practical, which indirectly provided the English name for this property reform movement. (The perimeters of the new squarer fields were much shorter than the original strip fields.) Second, the new fields were to be managed independently by individual farmers, rather than through collective village decisions of one kind or another. This often caused medieval villages to disintegrate as farmers moved out of villages to their fields and barns.⁸⁶ Third, the land was generally freed from familial restrictions on transfers of property, which allowed property to be shifted more easily among family members and from family to family, increasing the liquidity of this form of wealth. Fourth, most jointly-used communal property (often wastelands, but also common wood lots, gardens, and pasture lands) was divided up and assigned to individual farmers, although small communal plots often remained after most land was “enclosed.”

All these changes tended to increase economic efficiency and independence by reducing transaction costs and allowing economies of scale to be realized. The new property rights made land holdings a more liquid asset, which allowed persons who were more effective at farming to expand their land holdings more easily and allowed less skilled farmers to more easily sell off their holdings and relocate to towns and cities. After enclosure (privatization), agricultural experiments could also be undertaken one at a time by individual farmers, without the consent of their village, which somewhat increased the rate at which better equipment and field rotations could be discovered. The new field system also reduced the cost of policing boundaries between neighbors by reducing the length and number of property boundaries. Increased agricultural efficiency, however, was evidently less than often claimed by proponents of enclosure (Clark 1998; Pomeranz 2000: ch. 2). Villages composed of farmers have strong incentives to maximize total farm output.

The new field system of farming tended to increase economic risks somewhat, because the new freeholders controlled a narrower distribution of soil types, sun exposure, and drainage. Enclosure also reduced the extent of informal village and family-based social insurance (Richardson 2005). Privatizing village holdings, especially the common “waste areas,” also tended to reduced the implicit

⁸⁶ A few villages chose to aggregate their strips into more or less triangular blocks with a common point at the village boundary in order to preserve their farm villages. Such enclosures created a star-like pattern of land holdings. See, for example, Allested or Nørre Højrup in Denmark.

wealth of non-owners (renters and servants) and small landowners, who previously had had more or less equal access to common grazing, gardening, and forest areas. These losses to servants and small land owners were, perhaps surprisingly, offset in the short run by an increased demand for labor to build enclosures and new roads, and also to help improve and farm the newly enclosed areas (Allen 1982, Blum 1981).

The main economic advantage of “privatization” was evidently reduced transaction costs, rather than increased farm output.⁸⁷ The greater liquidity of land allowed entrepreneurial farmers to use their lands as capital for financing farm expansion and other commercial ventures. Land also gradually shifted from less efficient to more efficient farmers. About 20 percent of English land was enclosed by parliamentary acts between 1760 and 1820 (Blum 1981). Similar enclosures and enclosure movements took place during the same period in Denmark, Sweden, Germany, and France (Pomeranz 2000: ch. 2; Blum 1981). Much of the remainder was held as royal land, grants to families (nobles), and by churches, which could not easily be transferred permanently to others.⁸⁸

The Political Procedures and Consequences of Enclosure

The enclosure acts themselves required political decisions and had political consequences. The enclosures required legislation to revise existing civil and customary law at the village level, as both use and transfer rights were redefined at the same time that land holdings were aggregated and communal properties divided up among property holders. New property rights were established essentially one village at a time by passing private bills in parliament (for a relatively high fee).⁸⁹ At the local level, sufficient support of landowners had to be assembled, which required bargaining over the reassignment of rights to strips of land (and other claims). These negotiations determined

⁸⁷ The extent of the agricultural advantages of enclosure is much debated within the economic history literature. Most studies, however, show that only relatively small agricultural productivity gains can be attributed to enclosure (Clark 1998).

The enclosures of this period evidently hold a special fascination for economic historians, in part because they shed light on the privatization campaigns of the late twentieth century.

⁸⁸ Noble titles and lands reverted to the king (or queen) when an aristocratic family died out. The king would subsequently grant the land and title to prominent supporters, often in exchange for loans and other services, or sell it to freeholders to meet royal expenses.

⁸⁹ Among the costs of enclosure were solicitor and parliamentary fees, commissioner and surveyor fees, and the cost of fencing, roads, and drainage. The General Enclosure Act of 1801 somewhat reduced solicitor, parliamentary, and commissioner fees; this act established standing guidelines for enclosure procedures (Blum 1981).

the size and location of the new parcels and also affected the nature of local governance (Blum 1981).

Although cases existed in which smaller landholders pressed for reform, it was normally the large landholders that paid the legal fees associated with enclosure bills. Small farmers often opposed enclosure, because of uncertainties associated with the process of consolidation (Blum 1981).

The first procedures for enclosure required unanimous agreement among the landowners and the passage of national legislation. Under these procedures, essentially all property owners had to anticipate gains from the enclosure plans, or parliament would not adopt the required legislation. Parliaments gradually reduced local support for enclosure plans, by reducing the veto power of small stakeholders. In England and other countries, land-weighted supermajority voting gradually replaced unanimous agreement among property holders. In the late eighteenth century, if persons owning three-quarters of the land at issue wanted enclosure, parliament normally passed the desired bill; if not, the desired bill was rejected or tabled. In 1801 the required assent in England was reduced to majority rule. A commission would be appointed to undertake the consolidation, which reduced the transaction costs of enclosure, but vested a good deal of authority in the commissioners. Parliament adopted about 4,000 separate enclosure bills between 1760 and 1840.

Changing the formal procedures for enclosures to be accepted by parliament required assembling national coalitions in favor of the new procedures. Those opposed to enclosure legislation argued that there were no (net) economic advantages from enclosure and/or that the political risks associated with non-unanimity were too high. The opponents clearly lost the political debate, except in France, albeit slowly.

General enclosure acts were adopted in England in 1801 and 1845 to streamline and regulate the process of enclosure. Similar reforms to streamline enclosure procedures were adopted in other countries at about the same time. For example, enclosure reforms were adopted in Denmark (1769, 1781), Sweden (1749, 1757, 1783, 1803, and 1807), Prussia (1751, 1811, and 1821), Saxony (1834 and 1843), Hanover (1842 and 1856), Baden (1856), and France (1791, 1865, and 1919). Many of the new rules used land-weighted voting among local landowners to determine whether an enclosure petition was acceptable or not.⁹⁰ This created opportunities for significant redistribution among

⁹⁰ See Helmfrid (1961) for a thorough overview of Swedish land reform and some remarks on Danish consolidation. In some cases, enclosures were augmented by royal shifts of land from nobles to commoners. See Grantham (1980) for a table of reform legislation and decision rules and for an extended discussion of French rules for enclosure, which required unanimous consent well into the nineteenth century.

landholders and other stakeholders at the same time that it created a precedent for wealth-weighted voting on important local matters.

The timing and nature of enclosure legislation reflected a variety of factors, but the relative bargaining power of the groups represented in parliaments and in royal councils was clearly an important determinant (Grantham 1980, Blum 1981, Pomeranz 2000: ch. 2).⁹¹ By the mid-nineteenth century, persuasion and economic circumstances had produced a gradual shift of local property law that greatly extended national and regional markets for land throughout most of northern Europe. The number of “free holders” initially increased, which together with new farming techniques, produced the familiar, more or less rectangular geography of small- and medium-size farm fields that remains typical in contemporary northern Europe.

Enclosure affected the distribution of political authority, as well as the geography and economics of rural Europe. The political relationships among a number of groups were affected: (i) the interests of relatively wealthy commoners (whose land rights were revised), (ii) nobles (privileged families whose lands were not normally subject to royal taxation and who often exercised significant quasi-governmental control of “communal” lands), and (iii) the central government (which stood to profit from increased taxes and fees associated with enclosure). Village governments and local aristocrats lost policymaking authority, and the central government and individual farmers gained.⁹²

Free Trade Movements of the Nineteenth Century

During the early-nineteenth century, another broad more or less liberal movement emerged that supported the elimination of other internal and external trade barriers. As true of the aims of the enclosure movement, these reforms required political decisions to overturn long-standing regulations. In contrast the enclosure movement, for which reforms could be adopted one village or city at a time, reducing international barriers to trade could only be adopted at the national level. The

⁹¹ In England, the 40 shilling franchise also created a political incentive for broader ownership of land (Chase 1991).

⁹² Surveys of French farmers indicated that they recognized the value of consolidating their land holdings, but also showed they opposed the creation of mechanisms for accomplishing this change against the will of individual landowners. It was not until 1919 that majority rule replaced unanimous agreement in French enclosure proceedings (Grantham 1980). A single landowner could enclose his own land, essentially without consulting his or her tenants. However, enclosures by large French landowners were evidently not very common. Voluntary enclosures continued to be the norm in France, even after the 1865 procedures were adopted. Private property (and customary law) was, in this sense, better protected in France than elsewhere in northern Europe.

liberalization of international trade, however, could be adopted one product or industry at a time, which helps explain the variation in tariffs and timing of trade liberalization among products. Support was sufficiently broad that large national organizations in support of more open trade emerged throughout northern Europe during the early nineteenth century. Examples include the anti-corn law group in England, the Handelsvertragsverein and Kongress Deutscher Volkswirte in Germany, which undertook broad lobbying campaigns (Welby, Rea, and Murray-MacDonald, 1908, Kindleberger 1975).

The proponents of free trade included merchant and industrial groups that expected to benefit from reduced tariff and non-tariff barriers such as exclusive import or export privileges and liberals opposed to special privileges (rents) generated for those protected. Contributions to the Anti-Corn Law League (which lobbied against agricultural tariffs in England) reflected employment in exporting industries that were likely to prosper from free trade in general and from reduced agricultural protection (Schonhardt-Bailey 1991). The required support for reform, however, was generally broader than the groups in which economic advantages were concentrated.

To assemble a broader coalition, the free trade groups used both ideological and economic interest arguments in persuasive campaigns. Economic arguments in favor of free trade were augmented by mentioning advantages that liberals favored on (ideological) principle, such as broadening economic opportunities (Kindleberger 1975, Schonhardt-Bailey 1991, 2006).

In 1838 a corn law league was founded, Richard Cobden and John Bright being its leading spirits. The league made an educational campaign lasting through several years, which ended in convincing the bulk of the Englishmen of the impolicy of protection. The Corn Laws were repealed in 1846, and by 1852 the protective duties were all gone. (Judson 1894: 231).

Mass politics had clearly arrived in the United Kingdom, in spite of the fact that suffrage for the House of Commons was still very narrow by twentieth-century standards.

On a broader scale, the league based its national network on an organizational strategy that joined the voter registration campaign with the league propaganda scheme. As league agents distributed propaganda tracts to every elector in 24 county divisions and 187 boroughs, these agents submitted to the league headquarters consistent and complete reports on the electorate in their districts. (Schonhardt-Bailey 1991: 47)

Schonhardt-Bailey argues that the eventual success of the Anti-Corn Law League reflected ideological arguments in Parliament and changes in the voting behavior of members of parliament, who increasingly saw themselves as representatives of their specific regional interests, rather than

independent agents for themselves or England. Pivotal members of Parliament had evidently internalized some of the popular sovereignty arguments of liberal political theory:

Repeal appears to have gained passage as these MPs switched from voting more as trustees to voting more as delegates. (Schonhardt-Bailey 2003: 581)

Average British tariffs rates declined from 1820 through 1900 (Nye 1991).

The persuasive campaigns in England were unusually broad, indeed national in scope, and their “propaganda” pamphlets combined a variety of arguments to persuade educated persons to favor the end of agricultural subsidies, including ideological campaigns.⁹³ Not every country witnessed open large-scale campaigns similar to those of the Anti-Corn Law League, but similar economic and ideological arguments were made in the parliaments and councils of essentially all Western countries.

The success of the economic liberals throughout Western Europe is evident in the tariff reforms of the late eighteenth and early nineteenth centuries. For example, Denmark adopted a comprehensive free trade act in 1797 (Danstrup 1947: 5). The Netherlands lowered tariffs to an average of 10 percent in 1822 (Kossmann 1978: 35). Internal restrictions on trade were eliminated within Prussia through an internal customs union in 1818, which eliminated a variety of internal tariffs and taxes (Fulbrook 1990: 114–15). A similar customs union for the German Confederation (the *Deutscher Zollverein*) was established in 1834, partially as a consequence of internal lobbying by economic liberals, although the new revenue-sharing mechanisms associated with external tariffs also generated substantial support among regional sovereigns. (Confederal tariff revenues were not subject to the oversight of the regional parliaments [Dumke 1978].) Swiss liberals negotiated a new federal constitution in 1848, which eliminated internal barriers to trade among cantons.

Indeed, tariffs on the continent were often reduced to levels below those of the United Kingdom. For example, trade-weighted French tariffs fell from about 20 percent in 1820 to about 5 percent in 1870 and remained well below average British tariff rates during most of the nineteenth century (Nye 1991). Between 1820 and 1860, U. S. tariffs fell from an average of 45 percent to an average of about 20 percent (James 1981).

The influence of the various nineteenth-century free-trade movements can easily be exaggerated. Although many liberals stressed the advantages of broad open markets, pragmatists

⁹³ It is possible this shift in perspective was a consequence of the petitions of the Chartist constitutional-reform movement, which was active during the same period and is discussed below. Pickering (2001) notes that “Gladstone recorded that “[Chartist] discussions very greatly increased the influence of popular feeling on the deliberations of the House,” although Gladstone did not entirely approve of that influence (p. 388).

preferred broad open markets only in cases in which they were likely to be personally advantageous and preferred protectionist tariffs and other restrictions in other trade areas (Kindleberger 1975, Schonhardt-Bailey 1998, Nye 1991). The point here is not that liberal ideology—specifically that of *laissez-faire* economists—won the day, but rather that loose coalitions of liberals and economic interest groups emerged and pressed for broad internal and external trade reforms—and that these coalitions were sufficiently well represented in government to influence economic policy at the national level. Indeed, an *international customs union* for northern Europe was proposed in 1813 by the Prussian Chancellor K. A. von Hardenberg (Scott 1950).

The free trade movements of the nineteenth century were notable for their size, intensity, and success during the early and mid-nineteenth century. Tariff rates drifted downward on average during much of the nineteenth century in most of the countries of interest for the purposes of this book, but with many reversals, particularly near the end of the nineteenth century.

Intranational barriers were also dismantled during this period and have nearly been forgotten by contemporary economic historians. Town monopolies were gradually opened to competition. The economic privileges of aristocrats and guild members were gradually diminished and then formally eliminated.⁹⁴ The ebb and flow of tariff debate and tariffs for the past two centuries demonstrates that liberals did not win the trade liberalization debate as decisively for external trade as it did for restraints on internal trade.

D. Civic Equality

Similarly, some political issues were permanently settled during the nineteenth century, whereas others remain on the agenda today. In many areas of civil law, long-standing, family-based handicaps and privileges were reduced. Such reforms often required significant lobbying campaigns in which liberal ideas played leading roles in public and governmental discussions. For the most part, these civic equality was increased gradually during the transformative century, although some reforms were clearly more important than others.

⁹⁴ This asymmetry probably reflects the fact that foreigners do not vote in national elections. Resurrecting internal barriers to trade tends to affect other domestic parties in fairly obvious ways. The adversely affected groups armed with liberal arguments can, thus, normally organize to counter local pressures for protection in national and regional parliaments. This tends to increase the political stability of domestic liberalization. The effects of one nation's restrictions on another nation's prosperity are not directly represented in parliamentary debates, because foreign losers do not vote in member elections (although they may sponsor lobbying groups).

Among the most striking of the early reforms of civic entitlements were the laws that ended slavery in the West, an institution that had endured for thousands of years. Other examples include the expansion of public education, and formal religious tolerance, as rights to worship were extended to more religious groups and religious requirements for high office were gradually eliminated. In many of these areas of public policy, it seems clear that shifts in norms, rather than changes in economic interests, were the principal motivations for reform.

Slavery and its Abolition in the Nineteenth Century

Although all stable societies tend to be governed by laws that are routinely and consistently applied, the laws often distinguish among families in a manner that produces and protects significant differences in wealth and status. In medieval societies, some families had far greater authority and protection than average. Others have far less than average. The clearest example of law-based anti-privileges were the laws with respect to slavery and serfdom, although there were many others in most countries.

These laws assured that the lives of some families were entirely subject to the direction of others, and that members of such families had few if any exit options. That such laws had long existed is equally clear. Slaves are mentioned in the Code of Hammurabi, written in Mesopotamia 4,000 years ago. Slavery was discussed by Greek philosophers during their golden era. Many of the great monuments of Greek and Roman times were products of slave labor. Slavery was used in European colonial enterprises during the seventeenth and eighteenth centuries. Slavery was a highly profitable method of producing sugar, cotton, tobacco, and coffee in the tropical and semitropical colonies of the Western hemisphere (Engerman 1986). The slave trade was a significant source of profits for British, Portuguese, French, and Dutch traders.⁹⁵ Serfdom was more common than slavery in late medieval Europe, and serfs had more legal protections than slaves, but serfs were also bound to particular manors by law and normally could not own real estate (Kahan 1973).⁹⁶

Normative debates on slavery and serfdom are nearly as old as slavery and serfdom themselves. For example, in about 330 B. C. E. Aristotle argued that some persons should not be slaves, because it was against their nature. He also argued that slaves should have some prospect of liberation. (Both

⁹⁵ Lovejoy's (1982: 483) estimates of the Atlantic slave trade suggest that the British shipped 2.5 million slaves, the Portuguese 1.8 million, the French 1.1 million, and the Dutch approximately 350 thousand between 1701 and 1800.

⁹⁶ Such laws, however, were routinely violated when labor was scarce, at which time serfs might move among manors (North and Thomas 1971). A serf that successfully escaped his or her manor could become free if he or she reached a free town.

positions would have been relatively liberal ones for most of the next 2,000 years.) On the pro-slavery side of the debate, appeals to history, necessity, and precedent were used. Such inequality was part of the “natural” or “God-given” order of things, after all.

The idea that some families or persons were destined to be slaves tended to be taken for granted.

He is sometimes slave who **should be** master; and sometimes master who **should be** slave. [Latin: *Fit in dominatu servitus, in servitute dominatus.*] (M. T. Cicero, *Oratio Pro Rege Deiotaro (XI)* 46 BC.)

European debate over slavery intensified during the eighteenth and nineteenth centuries, in part, because of philosophical and theological innovations associated with the rise of liberalism and the enlightenment. It also intensified because several European countries had become more involved in slavery and the slave trade through their merchant fleets and colonial enterprises. As a consequence, a variety of normative arguments for and against slavery were developed during the sixteenth, seventeenth, and eighteenth centuries (Turner 1929).

The debate about the abolishment of slavery was not the one-sided affair in the eighteenth and nineteenth centuries that it would be today. Slave owners had clear economic interests at stake and were predisposed to defend slavery (and serfdom), partly as an economic necessity, but also an essential part of the “natural” order of human society. Those opposed to slavery developed economic and ideological critiques of the economics efficiency and morality of slavery. For example, Adam Smith (1776) argued that free labor always tended to be more efficient than slave labor.

From the experience of all ages and nations, I believe, that the work done by free men comes cheaper in the end than the work performed by slaves. Whatever work he does, beyond what is sufficient to purchase his own maintenance, can be squeezed out of him by violence only, and not by any interest of his own.

The economic strand of the arguments against slavery was responsible for economics being labeled the “dismal science” by conservatives defending the institutions of slavery and slave ownership (Levy 2001).⁹⁷ Other economic pragmatists were predisposed to argue against slavery on economic and nationalistic grounds, because their products competed with those of slave enterprises.

The civic equality and social contract strands of liberal political theories were also used to oppose slavery. Locke’s contention that there are some contracts that no “person” would ever voluntarily agree to also applies to slavery. For example, the Pennsylvania Society for the Abolition

⁹⁷ It can be argued that the label stuck, however, because of Malthus’ gloomy prediction about prospects for long term increases in average income.

of Slavery, with the support of Benjamin Franklin, argued that administration of the new national constitution should be color blind:

These blessing [of liberty] ought rightfully to be administered, without distinction of color to all descriptions of people ... that **equal liberty was originally the position, and is still the birthright of all men** influenced by the strong ties of humanity .. (Excerpt from the February 2, 1790 PSAS petition, Unites States Senate, Center for Legislative Archives.)

This line of argument also produced debates about the proper definition of “persons.” Were African or West Indian slaves really persons? Did they have souls? Could they make sensible, rational choices?

Ideological and economic abolitionists solicited horror stories from travelers and others who had seen the dark side of slavery: the abuse, the mortality rates, and the effects of the trade on the traders themselves. Those defending the status quo produced reports of the benefits conferred by slavery on the slaves themselves and on the quality and extent of their nation’s merchant fleet (Heffernan 1973).

The song and the dance, says Mr. Norris, are promoted [on slave ships]. It had been more fair, perhaps, if he had explained that word promoted. The truth is, that for the sake of exercise, these miserable wretches, loaded with chains, oppressed with disease and wretchedness, are forced to dance by the terror of the lash, and sometimes by the actual use of it. “I,” says one of the other evidences, “was employed to dance the men, while another person danced the women.” (W. Wilberforce speech in Parliament, 1789, *Hansard* 29: cols 45-48.)

An antislavery tract by Clarkson (1786) helped energize the abolitionist movement in England (Drescher 1990), which was subsequently formally organized and effectively led by William Wilberforce. The Abolitionist Society’s abstract of evidence presented to the English parliament in 1791 focused nearly entirely on moral issues associated with slavery, although parliamentary debates considered both moral and economic issues (Drescher 1990). Few members of the groups involved in the public debates on slavery in Europe or the northern part of the United States owned slaves or directly competed with imports produced by slaves. Consequently, the main issues tended to be metaphysical and ideological ones for most proponents of abolishing slavery. Within parliaments and royal councils, however, ideological, military, and economic national interests were also debated and gradually resolved in favor of legal “personhood” for slaves.

The abolitionists and their moderate allies gradually won the policy debate on slavery and on participation in the slave trade throughout Europe and in the northern United States during the late eighteenth and first half of the nineteenth centuries. For example, in 1772 slavery was declared illegal

in England via a court decision. Slavery was abolished by the Vermont state legislature in 1777, by Scotland in 1778, and by the state of Massachusetts in 1783. In 1815 the participants of the Vienna Congress expressed their opposition to slavery. An international meeting of abolitionist groups was organized in London in 1840.

An act of Parliament in 1807 ended British participation in the slave trade, and slaves were emancipated throughout the empire by another act in 1833. Denmark's government abolished remaining mobility restraints on peasants in 1788 and began phasing out slavery in 1792. Denmark ended its participation in the slave trade in 1803 and banned slavery in its colonial territories in 1847. The Dutch ended its participation in the slave trade in 1814 and emancipated slaves in its colonies in 1863. The Swedish government abolished slavery in 1843. The French banned participation in the slave trade in 1818, and emancipated slaves throughout its empire in 1848. The United States banned the slave trade in 1808 and slavery in the southern states (after the Civil War) in 1865 via the thirteenth amendment to its constitution.

In many cases, slave owners were compensated for the cost of slaves freed or the burden of emancipation was reduced by freeing only the children of existing slaves. For example, Pennsylvania adopted laws in 1779 that gradually phased out slavery by ending the hereditary basis for slavery (freeing the children of slaves). Abolition in the southern United States, however, was essentially imposed by the northern states after the Civil War (see chapter 18). In Europe, however, ordinary politics produced new laws that gradually overturned centuries of established precedence without revolutionary threats to Europe itself and only modest ones within their colonies.⁹⁸

Public Education Reform and Expansion

Public education has a long history in Europe that was often linked to religious organizations and controversies in the period after the Roman empire collapsed. Priests at important cathedrals and monasteries founded many of the earliest public schools in Christian Europe. Assemblies of church officials also occasionally recommended greater support for public education. For example, in 529 the Catholic Council of Vaison recommended the establishment of village schools. In 800, a synod at Mayence required its priests to provide free schooling for local village and town children:

Let them receive and teach these with the utmost charity that they might themselves shine as the stars forever. Let them receive no remuneration from their students unless what the parents through charity may voluntary offer. (as cited in Barnard 1854: 18)

⁹⁸ Similar reforms gradually ended most legal aspects of serfdom throughout much of Northern Europe during the same period. The final reforms often occurred in the nineteenth century.

The Catholic Church itself promised public education at its cathedrals in proclamations in 1179 and 1215. Martin Luther, who wrote on pedagogical theory as well as theology, recommended the establishment of schools in many of his communications with government officials.

Partly as a consequence of such highly regarded advice and partly as a consequence of shifts in political authority, many late medieval duchies and towns provided free education for local children. For example, public education systems were established in Saxony in 1560 and Hesse in 1565. Royal ordinances that established grammar schools in Denmark, Sweden, and England were adopted during the same period, in part to substitute for Catholic schools that were closed after success of the Protestant Reformation in Northern Europe.⁹⁹ Charitable schools in many large towns and cities were endowed by persons of wealth. Compulsory education was introduced as early as the seventeenth century by some local governments (Bernard 1854).

The result of several centuries of public education in Europe was an education system that emphasized religious training and exhibited substantial variation from town to town in the quality and extent of the education provided. Elementary schools remained for the most part religious enterprises. Most universities were also heavily influenced by religious practices and theories, although their curriculums had gradually increased their coverage of nonreligious subjects and methodology. For example, at Oxford University, monastic religious vows applied to the faculty, who could not marry and had to attend daily religious services through the first half of the nineteenth century (Morris 1978: 206).

In the late nineteenth and early nineteenth century, this almost completely decentralized, religiously oriented education system began to change. New public education associations were established in England and in much of the rest of northern Europe. For example, a “society for the public good” was organized in Groningen in 1784 to press for public education and other reforms. Similar societies of teachers and “friends of education” were organized throughout the Netherlands and Belgium during the next three decades. Other educational lobbying groups were founded in France, Sweden, and Denmark (Bernard 1854). These organizations pressed for broader access, increased support, and more coverage of secular subjects in public education.

Such educational reform groups were not initially national in scope or membership, although in the long run they affected national as well as regional educational systems. In Bernard’s words,

⁹⁹ The Protestant (Lutheran) duchies and countries closed most formal Catholic organizations, including their schools, after the treaty of Augsburg in 1555.

[At the beginning of the nineteenth century] “a new era in popular education ... commenced by the formation of voluntary associations **to extend the blessings of knowledge, human and divine, to the great mass of the people**” (Bernard 1854: 725).

In countries that had such groups, parliaments adopted (and their kings accepted) a long series of public education reforms that gradually broadened access to education, increased public funding, and reduced the religious focus of public school curricula. Early nineteenth-century education reforms are noted by many historians and include: the Dutch reform of 1806, French reforms of 1808 and 1833, the Prussian reform of 1809, the Danish reform of 1814, the Swedish reform of 1825, and the English reform of 1847. These were, of course, part of a long series of educational reforms that continued throughout the century and into the next.

For the most part, the new educational laws were liberal reforms that broadened access to education by (i) increasing public funding at local levels (often through unfunded mandates from the central government), (ii) increasing funding and quality control for schools that trained elementary school teachers (often called “normal schools”), and (iii) increasing inspections of individual schools (which were often very small) to assure more uniform curricula and teaching quality.

As in the case of tariff reform, it is easy to exaggerate the importance of liberal ideology, as opposed to liberal arguments, within the various educational reform movements. Firm owners, whether liberal or not, expected public education to reduce their training and labor costs and often supported public education for economic, rather than ideological or altruistic, reasons. Liberal ideas and arguments were also used by nationalists that favored education reform as a method of “nation building” that would reduce regional and ethnic differences and increase identification with the central government. (The Prussian reforms are sometimes interpreted in this way.)

The reforms also played a role in future reforms, insofar as many teachers were liberals, and much of the secular curricula stressed reasoning and observation. The students became more independent readers and thinkers than they would have been, and many earned higher incomes because of the increased demand for literate and numerate employees. The policy debates themselves often used arguments and quotes from liberal scholars who advocated education reform and greater government support of education. For example, in Germany the educational theories of Locke, Rousseau, and Pestalozzi were often mentioned in reform pamphlets and editorials in support of education reform. In England, the educational positions of Smith, Bentham, and Malthus (who favored universal education) were often mentioned (Bernard 1854, Rorty 1998).

The secularization of education advocated by many liberal and radical reform groups was a major area of contention between liberals and conservatives in most countries during most of the nineteenth century. Indeed, educational reform issues sometimes played a significant role in constitutional bargaining, as in the Belgian secession from the Netherlands in 1830, and the constitutional reforms adopted by the Netherlands in the mid-nineteenth and early twentieth centuries. Increased tax support for education in general, however, was somewhat less controversial and public education budgets expanded throughout most of the nineteenth century.

Reorganizing various aspects of public education at national and regional levels did not instantly produce uniform universal education or equal opportunity, but it did gradually level the playing field for successive generations of children and adults by reducing the extent to which family determined education and thereby economic and political opportunities.

Laws Extending Religious Tolerance and Opportunity

Other efforts to promote civic equality during the nineteenth century addressed various formal privileges associated with religious affiliation. Religious tolerance had increased prior to 1800, in the sense that heretics were no longer routinely burned at the stake or banished from towns and kingdoms. Nonetheless, most states in Europe had official state religions, and the leaders of their established churches often were entitled to seats in parliament and in the cabinet. For example, the Anglican church was entitled to appoint their own members of parliament in England (the lords spiritual). The Lutheran church of Sweden had its own chamber of the parliament with veto powers similar to those of the three other chambers. Indeed, all the estate-based parliaments included a separate chamber for church officials.

Most European countries had also religious qualification for their highest offices in government. Kings, queens, members of parliament and high government officials all had to belong to and affirm the doctrines of their national church. The king of England could only be Anglican. The king of Sweden could only be a Lutheran. (Religious qualifications for accession to the throne remain in many contemporary constitutional monarchies.) Most European central government provided direct tax support for particular religious organizations (state churches). The Lutheran church was privileged in Denmark, Sweden, and Prussia; the Anglican in England, and the Catholic

in France, Ireland, and Belgium.¹⁰⁰ Most of the American colonies had established churches or restricted worship to a subset of Protestant practices during the first half of the eighteenth century.

In many cases, unapproved religious organizations were prevented from holding service. Catholics, for example, could not hold public services in most Protestant countries, and organized Protestant churches were illegal in most Catholic countries at the beginning of the nineteenth century. Such restrictions were broadly supported by most worshippers in their respective countries for good doctrinaire reasons. They knew the unique truth.

The excluded religious groups, naturally, opposed their existing legal disadvantages for religious and economic reasons. As restrictions on interest-group activity diminished and religious tolerance increased, national groups favoring reductions in existing theological privileges began to lobby for reform of their respective “intolerant” religious laws.

Religious groups were often already organized to provide religious services, and so did not require the formation of new organizations to overcome team production and free-riding problems. Their minority status, however, implied that persuasive campaigns based entirely on narrow self-interest (i.e. my church is the only true religion and therefore should be allowed to hold service) were unlikely to produce new legislation by members of parliament holding essentially opposite views.

To be successful, a persuasive campaign had to appeal to the religious majority in the country of interest. More or less universal liberal arguments favoring religious toleration had been developed in the sixteenth and seventeenth centuries (Laursen and Nederman 1997), and these arguments were used by the pro-tolerance movements of the late eighteenth and nineteenth centuries. Among the most influential arguments against state churches and intolerance, were those developed by John Locke in 1689 shortly before his return to England:

[In the first place] whatever profession we make, to whatever outward worship we conform, if we are not fully satisfied in our own mind that the one is true and the other well pleasing unto God, such profession and such practice, far from being any furtherance, are indeed great obstacles to our salvation. For in this manner, instead of expiating other sins by the exercise of religion, I say, in offering thus unto God Almighty such a worship as we esteem to be displeasing unto Him, we add unto the number of our other sins those also of hypocrisy and contempt of His Divine Majesty.

¹⁰⁰ Subsequent debates on established churches gave rise to a favorite spelling word in English and American grammar schools: *antidisestablishmentarianism*, the position, for example, of persons who favored the continuation of established state churches (that is, they were opposed to those favoring *disestablishment*).

In the second place, **the care of souls cannot belong to the civil magistrate, because his power consists only in outward force; but true and saving religion consists in the inward persuasion of the mind**, without which nothing can be acceptable to God. And such is the nature of the understanding, that it cannot be compelled to the belief of anything by outward force. Confiscation of estate, imprisonment, torments, nothing of that nature can have any such efficacy as to make men change the inward judgment that they have framed of things. (J. Locke, 1689, *A Letter Concerning Tolerance*, originally published in Latin while he was in political exile in the Netherlands.)

In the first half of the nineteenth century, liberal arguments for religious tolerance were helped by the increased acceptance of other liberal arguments favoring more open political and economic systems and equality before the law. The hypothesis that ethical behavior could only be sustained under a single uniform religious doctrine was also increasingly challenged by experiences in a few places that had successfully experimented with religious tolerance. The Dutch Republic and several English colonies in North America were noteworthy in this respect. Protestant concerns about “Catholic conspiracies” also gradually diminished.

The stability and durability of “intolerant” laws over several centuries suggest that liberalization in the religious sphere of public policy is not easily accomplished, even by well-organized groups with intense interests in reform. Indeed, the result of many decades of religious warfare between Catholics and Lutherans in late medieval Europe was not increased tolerance, but a patchwork of intolerant Lutheran and Catholic duchies. Without the rise of liberalism in the first half of the nineteenth century, it is very unlikely that nonconforming religious groups would have been able to induce reforms of intolerant laws. It was only those already represented in parliament who could actually press for the desired reforms.

As a consequence of persuasive campaigns in favor of religious tolerance and for specific changes in religious qualifications, legal rights to organize churches were gradually extended to nonconforming Christians, Jews, and a few other religious groups. And, religion-based legal barriers to participation in economic and political life were also gradually eliminated.

In 1828 the Test Act was repealed, which allowed Catholics in England to run for parliament and be appointed to high offices. Jews received similar rights 30 years later.¹⁰¹ In 1835 Jews were

¹⁰¹ In addition to the test act, access to seats in parliament were controlled by the oath of office after 1534, which was very gradually expanded in the eighteenth and nineteenth centuries to allow Protestants, Christians, theists, and finally atheists to take the oath in good conscience. For example, after 1858, a Jew could sit in Commons or Lords, but only if a special bill was adopted

Continued on next page...

given full rights of citizenship in Denmark and the right to work in the bureaucracy in 1848. The new Dutch constitution of 1848 guaranteed religious liberty for Catholics, which allowed the church to organize in their usual manner for the first time in two and a half centuries.¹⁰² In 1849 religious freedom in Denmark was established (Danstrup 1947: 103). Freedom of religion was also proclaimed (again) in the second French republic in 1848, and it was adopted by the Swedish government in 1860.

These reforms were significant shifts away from long-standing medieval doctrines and practices. Most such reforms proved to be quasi-constitutional in nature—durable changes in public policy—that would be taken as “given” for many decades at a time. It bears noting that religion remained central to the beliefs of most persons in those societies and for most persons in parliament in the mid-nineteenth century. Support for greater civic equality in this important area of life did not require a radical weakening of religious beliefs on the part of those favoring and adopting it.

E. An Overview of Constitutional Reforms and Suffrage in the Nineteenth Century

At the same time that liberal economic and civil law reforms were being debated and gradually adopted, a variety of liberal constitutional reforms were also being proposed, debated, and gradually adopted. The remainder of this chapter provides an overview of trends in constitutional reform that gradually produced Western democracy in the nineteenth and early twentieth centuries. More fine-grained historical narratives and analyses are provided by the next 8 chapters.

Many countries in Europe began the nineteenth century with their medieval form of government largely intact. For example, England began the nineteenth century with its five-century old bicameral parliament, in which one chamber was based on noble birthrights and the other was elected on the basis of narrow suffrage (often with geographically disproportionate representation). Government officials were normally selected from the House of Lords, rather than the House of

to exempt them from the Christian portion of the oath of office. This allowed Baron de Rothschild to sit in Commons in 1858. In 1860 the oath of office was modified so that such special bills were no longer necessary. In 1888 the oath was modified so that atheists, such as Bradlaugh, could affirm their commitment to the English constitution without also confirming their acceptance of a supreme divine being (Walker and Wood 2000).

¹⁰² The new Dutch constitution extended religious liberties to Catholics, which was followed by the creation of five new bishoprics by the Catholic Church in 1853. In this case, the leading liberals were more tolerant than their voters. The Dutch extension of religious freedom *to organizations* produced a Protestant backlash and a governmental crisis. Although liberals were pivotal members of the government that adopted the new constitution, those supporting freedom to organize religious affairs were not (yet) a majority of the electorate in the Netherlands.

Commons. Sweden began the century with its two-century old, four-chamber parliament with separate chambers representing nobles, clergy, townspeople, and farmers; the latter two chambers were elected on the basis of narrow suffrage. Its most powerful officials also tended to be chosen from the noble chamber. Other countries continued with their unwritten (informal) constitutions in place, as could be said of Prussia and Denmark.¹⁰³ In much of continental Europe, the constitutional clock in Europe had been reset by the Congress of Vienna, which promoted constitutional monarchy as the proper form of European governance.

Many of Europe's written constitutions in 1820, nonetheless, were relatively new and included modest departures from previous practices. The most recent Swedish instrument of governance, for example, had been adopted in 1809 and its rules for succession in 1810. A relatively liberal Norwegian constitution was adopted in 1814. The Congress of Vienna caused new written constitutions to be developed for the new kingdom of the Netherlands and for the restored monarchy of France after the defeat of Napoleon. The new parliaments of the Netherlands and France adopted the British architecture. They were bicameral with an elite appointed first chamber and a narrowly elected second chamber. The Congress of Vienna also encouraged the duchies and kingdoms of the new German Confederation to adopt formal written constitutions (Nicolson 1946).

Many European sovereigns, perhaps surprisingly, had more, rather than less, authority in 1820 than they had had a few decades earlier, as in France, the Netherlands, and Sweden. (Indeed, the Netherlands had never before had a king). This could also be said of the monarchs of Italy, Germany, and Japan when their new national constitutions were adopted in the second half of the nineteenth century. George III of Great Britain spent much of his long term of office reclaiming authorities delegated to past cabinets and parliaments by his predecessors.

Although many constitutions were relatively new and many others were quite old, in each case there were long series of proposals for constitutional reforms during the nineteenth and early twentieth centuries. Many of the constitutional proposals attempted to advance liberal political and economic ends. Liberal proposals often called for more complete written constitutions that would "force" royal cabinets to rule according to the law by, for example, allowing cabinet officials to be subject to criminal law or to be discharged by parliament for failure to execute existing legislation. Others called for increased parliamentary authority over budgets and public policy. Others called for

¹⁰³ These countries had constitutional and quasi-constitutional laws that, in principle, bound their sovereigns, but no single written document that could be referred to as their "constitution."

modest or great expansions of suffrage and for salaries for members of parliament. Still others called for equal protection of the law, judicial independence, the end to censorship, and the secret ballot.

Most such proposals were rejected when they were first proposed, as is true of most proposed amendments in contemporary democracies (Rasch and Congleton 2006). However, enough liberal amendments were adopted during the course of the century between 1825 and 1925 that the Western constitutions of 1925 were clearly very different from those of 1825. They had created Western democracy, more or less as we know it today.

Negotiations rather than Revolutions

For the most part, serious proposals for constitutional reforms were developed by senior cabinet ministers and by members of parliament and their staffs, although there are also instances in which external interest groups made detailed constitutional proposals. Notable among the latter were the English Chartist petitions of the 1840s and the Frankfurt proposal for a new German constitution in 1849.¹⁰⁴

The occasional large-scale public demonstrations in support of constitutional reforms were not usually associated with specific proposals and, so, only indirectly affected the constitutional reforms adopted during the century. The particular reforms adopted depended on the interests—economic, political, and ideological—of the king, members of parliament, and other officials in the top levels of government. It was only such persons who were directly involved in negotiations and only such persons who could formally adopt constitutional reforms. Large-scale demonstrations, however, could affect the interests and relative bargaining power of high officeholders, even in cases in which no genuine revolutionary threats existed.

Support for the Chartist and Frankfurt proposals, for example, strengthened the hand of liberals in parliament by demonstrating that liberal constitutional reforms were supported by a broad cross-section of persons in those two countries. This somewhat increased the persuasiveness of the case for reform, particularly among neutrals and opponents who accepted, at least in the abstract, the Hobbesian or Kantian justifications for central government authority. Insofar as normal commerce was disrupted by such demonstrations, affected pragmatists might also favor modest reforms as a method of reducing future losses. To increase support among such pragmatists, the risk of future demonstrations, or even revolution, might be stressed in parliamentary debates.

¹⁰⁴ The Frankfurt parliament at which the proposals had been worked out was authorized by the government of the German Confederation, although it followed on the heels of widespread popular demonstration for constitutional reform in 1848 (Koch 1984).

It bears noting, however, that perceived internal and external military threats were normally responded to with increased censorship and *reduced* civil liberties, rather than liberal constitutional reform. For example, the French government increased censorship and curtailed rights of assembly for three decades after the monarchy was restored. Similarly, in response to more or less peaceful (but not entirely lawful) mass demonstrations, the British suspended habeas corpus in 1817 and adopted the so-called Six Acts in 1819 in order to restrict political meetings by proponents of constitutional reform. The Acts also increased censorship and allowed trials to take place without juries.¹⁰⁵ Danish censorship in the early part of the nineteenth century was so strong that a college professor was imprisoned for life in 1821 for simply “demanding” democracy. Proposals for constitutional reform (in print) were severely punished within the German Confederation for most of the nineteenth century, although not proposals for economic reform.¹⁰⁶

Such steps were not taken in response to obvious well-organized threats of civil war, e. g. the existence of revolutionary armies, but rather to suppress annoying dissent and reduce opportunities for organizing large public demonstrations in support of particular reforms.¹⁰⁷ The rhetoric of speeches given at the demonstrations often challenged the status quo, the authority of government officials, the justness of existing laws, and occasionally used the term “revolution.” Most of the various popular “uprisings” were peaceful mass demonstrations that posed no serious military threat to the rulers. Such demonstrations, however, did undermine claims by those in power that they governed for the good of their country and with the broad support of their citizens.¹⁰⁸

The reforms proposed by such demonstrators were often significant, but could not be truly revolutionary if they hoped for success. For example, the proposal for the Frankfurt constitution

¹⁰⁵ The acts (i) forbade training persons to use arms, (ii) authorized the seizing of arms, (iii) expedited trials, (iv) forbade assemblies greater than 50 persons for deliberations of public grievances, limited attendance at town meetings to freeholders, and essentially ruled out smaller meetings to raise funds for politically active interest groups, (v) forbade the distribution of many kinds of “seditious” pamphlets and allowed courts to confiscate them, and (iv) extended censorship to small pamphlets containing political news or commentary. A good summary of the acts is available from Halévy (1987: 66-70). Condensed versions of the acts are available in Aspinall, Smith, and Douglas (1996:335-41).

¹⁰⁶ See Fletcher 1980; Bély 2001: 89–91; Lee 1994: 22–3; and Jacobsen 2000: 93.

¹⁰⁷ For example, the Six Acts were partly a response to excited mass meetings of liberals favoring repeal of the corn laws and constitutional reform, such as those that had occurred in Lancaster in 1818 (Halévy 1987: 59-60).

¹⁰⁸ Many such meetings were also illegal and could be said to be “revolutionary” in the sense that those at the mass meetings ignored laws governing such meetings and political speeches. Of greater practical concern to most European kings was the possibility that their armies would disobey orders or shift their loyalty from king to parliament or to the reformers.

called for a new, *stronger* central government with a hereditary king (kaiser) and a federal parliamentary government. It was rejected by leaders of the two largest and most powerful states in the federation, Prussia and Austria. And when told to disperse, most members and supporters of the Frankfurt assembly peacefully returned to their homes. The remaining militant minority was severely punished for disobeying repeated orders to disperse (often by death). In Great Britain, the proposed constitutional reforms of the second Chartist petition (with more than three million signatures) were similar to those proposed by the Levelers two centuries earlier: universal male suffrage, annual elections, and payment of members of parliament. The Chartists also objected to corruption, high taxes, and payments to the established church.

Both the Frankfurt and Chartist proposals were formally proposed to government authorities, considered by them, and rejected. After failing to secure reforms, the Chartist movement peacefully disintegrated, as most members departed for other politically active groups.

Understanding the centrality of petitioning in the Chartist experience highlights the fact that, with few exceptions, the **ideological horizons of the Chartists were constitutional**, and in this sense its decline owed less to extension of the suffrage than to the gradual fracture of the ‘master narrative’ of England’s libertarian Constitution after 1867 (Pickering 2001: 387).

Such groups proposed lawful changes: reforms rather than revolution. Moreover, reforms proposed by the Chartist and Frankfurt groups were moderate relative to the cumulative effect of reforms that were adopted in the decades that followed.

Liberalism and Trends Constitutional Reform

A series of reform-oriented coalitions of liberals and pragmatic economic and religious interest groups allowed a series of modest constitutional reforms to be adopted throughout most of what became the West. These coalitions reflected similar alignments of economic and ideological interests and applied similar liberal ideas to justify the reforms adopted. These pragmatist-liberal coalitions were successful in large part because of parliament’s power of the purse, which had been reinforced by gradual reductions in the king’s (or queen’s) ability to influence parliament and the increasing cost of government services. It was no longer possible to finance government entirely from traditional royal sources of revenue.

The increased importance of ongoing tax bills to finance government meant that stable coalitions of elected politicians with similar policy agendas could affect public policies by linking other issues to new (often temporary) tax increases. This by itself tended to shift policymaking

authority from kings to parliament and created numerous opportunities for political bargaining along a number of policy and constitutional dimensions. During the first half of the nineteenth century, majority coalitions often had to include a few liberals to pass legislation. During the second half of the nineteenth century liberal parties became increasingly successful in elections and so were often majority parties in their own right. Constitutional gains to trade between kings and parliaments, consequently, exhibited a liberal trend throughout the nineteenth century.

The increased importance of parliamentary majorities also helped to encourage party discipline. Party-line voting within parliament greatly increased the bargaining power of parliaments relative to kings on budgetary matters by making it more difficult for kings to ignore parliamentary leaders. Voters would naturally tend to be more supportive of representatives who could “bring home the bacon” or adopt broad reforms that advanced their interests. And, in many cases, “all or nothing” offers from a durable majority coalition could often obtain more from the sovereign on a variety of issues, including constitutional ones, than less aggressive bargaining tactics. These more disciplined political parties also helped coordinate election campaigns, and thereby also framed a good deal of the policy debates of that period.

As party discipline increased, party leaders became increasingly important for kings and queens, who in previous centuries had dealt with parliaments that they could substantially control through patronage and appeals to historic loyalties. In previous centuries, supportive coalition leaders might, for example, be invited to sit in the cabinet, granted a senior post in the bureaucracy, or be elevated to or further in the nobility. The emergence of party government (cabinets occupied by leaders of political parties) reflected was a significant change in the relative policymaking authority of kings and parliaments, although it was not codified in constitutional documents.

It bears noting that many of the interests advanced through intra-governmental bargaining were *institutionally determined*, but in a manner that allowed shifts in economic and ideological interests to affect policy. For example, nobles had reasons to oppose the king on issues that affected their own autonomy and ability to organize. Centralization tends to reduce noble autonomy, status, and income. Kings, in turn, had interests in curtailing the authority of nobles insofar as it tended to enhance their own authority.

Elected officeholders have institutionally induced reasons to take account of the economic and ideological interests of their pivotal supporters. Electoral competition had obvious effects on “conservative” parties, which became increasingly liberal in the second half of the nineteenth century, taking positions that would have been regarded as liberal or radical in the first half. By

century's end, both conservatives and liberals were far less deferential to the king and to past traditions than they had been in 1800. By 1920, elections to parliament and the members selected were more important than Kings and the nobility, rather than far less so as they had been in 1800.

Suffrage expansion was both a cause and effect of bargaining within parliaments and between parliaments and the sovereign.

Suffrage Reform Movement(s)

A significant part of the expansion of suffrage during the nineteenth century occurred as a result of economic growth, which caused more and more persons to satisfy the tax payment qualifications for suffrage rights. Suffrage also increased because of relatively minor changes in the qualifications for suffrage, and in some cases as seats were reapportioned.

Wealth and property were broadly considered to be evidence that a voter could cast an independent and informed vote during the first half of the nineteenth century, but how much wealth was required for independence and the extent to which other qualifications might substitute for wealth were much debated among reformers. Many liberals argued, for example, that more and more persons had sufficient education and incomes to exercise competent and independent votes, as with lawyers, managers, merchants, and college professors. If qualifications could not be changed, they argued that representation should reflect current, rather than historic geographic distributions, of persons and wealth. Suffrage reforms thus often adjusted the geographic basis of representation as much or more so than the qualification for suffrage.

Pragmatic interests often supported such electoral reforms, because the new districts would shift representation in a manner that favored the new communities that emerged with industrialization and because political parties hoped to build support from newly empowered voters. Liberals, for example, tended to benefit from middle-class electorates and increase political competition. Many in the middle class realized that that they had benefited from opening up political and economic life, and often favored a bit more openness. Electoral reform movements were thus partly idealistic enterprises that sought to expand suffrage to qualified persons and partly pragmatic enterprises that favored shifts of policymaking authority to persons more likely to support particular policy reforms.

With both projects in mind, a variety of organizations were founded to conduct persuasive campaigns in favor of suffrage reform. Together, persuasive campaigns and partisan interests accelerated suffrage expansion. Similar campaigns and arguments were later used to support the

qualification of women for suffrage. Women's suffrage was widely adopted in the period just before and after World War I., often about a decade after working-class men were deemed suitably qualified for suffrage.

It bears noting that suffrage organizations were common throughout Europe in the nineteenth century, although the size of the movements and the timing of reforms varied among countries. For example, national organizations favoring the expansion of male (and subsequently women's) suffrage were founded in Great Britain, in the Netherlands, Sweden, Belgium, Denmark, and in many of the kingdoms and duchies of the German Federation. Similar movements arose in Italy and Japan during the late nineteenth century. In addition to organizations devoted to suffrage issues, other organizations of liberals often supported suffrage expansion although their main focus was on trade liberalization, public education, religious tolerance, labor law, and so forth. The labor movement and labor and social democratic parties formed at the end of the century also favored suffrage reform, in part because expanding suffrage was anticipated to advance their main policy agendas (the reform of labor law and increased social insurance).

The persuasive campaigns in favor of suffrage reform and partisan interests allowed suffrage to be gradually expanded through a series of small changes in wealth (or tax) and residency qualifications. These reforms often spanned a good deal of the nineteenth century. For example, the British suffrage rules were significantly altered in 1832, 1867, 1884, 1918, and 1928 and less dramatically expanded several other times. Dutch suffrage laws were altered in 1848, 1887, 1896, 1917, and 1919. Swedish laws were reformed in 1866, 1907, 1920, 1945, and 1971. French suffrage was extended in 1830, doubled in 1831, and expanded gradually by about 50 percent during the next decade and a half.¹⁰⁹

¹⁰⁹ In France, universal male suffrage had been adopted during their first republic, in 1792; however wealth-qualified suffrage had been restored along with the French monarchy after Napoleon was defeated. Under the restored French monarchy, suffrage was reformed a number of times, although in an illiberal direction at first. After 1830, suffrage was expanded several times through ordinary revisions of suffrage law and by changing the manner in which the existing qualifications could be satisfied. Wealth and tax revisions were dropped in 1848 after the Monarch abdicated, although a variety of residency and similar qualifications made suffrage less than truly universal (Seymour and Frary 1918: Ch. 17–18).

Major extensions of male suffrage also occurred in Prussia in 1848, and subsequently in the new German empire later in the century, where universal male suffrage was adopted well before parliamentary authority challenged that of the monarch (see chapter 16). (France is the only country in northern Europe where civil wars or threatened civil wars clearly played a significant role in the course of constitutional reform, as with its great expansion in suffrage in 1848.)

In most cases, the ability to vote in national elections was gradually extended to successively poorer and younger male cohorts up through about 1910. After 1920 similar qualifications were extended to women, usually in a single major suffrage reform. Excluded persons on poor relief or who had once been bankrupt were gradually added to the electorate in the period between World War I and II in England, Sweden, the Netherlands, Belgium, and Japan.

Complex Constitutional Bargains

Negotiation was rarely straight forward and the constitutional bargains that produced universal male suffrage often required significant reforms of other election procedures, as elaborated in chapter 11. For example, the use of new methods for using votes to select representatives was often part of suffrage negotiations. In the late nineteenth century, these often include proposals for wealth or education weighted voting. In the last stages of negotiation before World War I, conservatives often insisted on the adoption of proportional representation, in exchange for their support of changes in the qualifications for participation.

Conservative party leaders feared that the post-reform elections would eliminate their parties, as liberals and social democrats shared credit for the last reforms. PR electoral systems protected parties that expected only minority support in single-member districts under extended suffrage (at first, chiefly the conservative parties) and also reduced opportunities for gerrymandering designed to minimize the number of seats won by the parties supported by blue-collar voters (chiefly the social democrats and labor parties). Proportional representation, consequently, was often adopted in the early twentieth century as part of constitutional bargains reached on adult male suffrage, as in Sweden, Denmark, the Netherlands, Belgium, and Germany (the Weimar Republic).

F. Liberal Politics and Ideology in 1900

During the first half of the nineteenth century, politics could be divided into conservative and liberal factions with roughly opposite positions on the importance of religious homogeneity, trade protection, privileged families, and family-based political institutions. Liberals disagreed about how far reform should go, but they all favored greater civic equality: somewhat more open political and economic systems, somewhat greater equality before the law, and somewhat broader access to public education. By the end of the century, the entire political spectrum could be said to be liberal, apart from small groups at the extremes. Representative government, equality before the law, more or less open markets, and government support for education had become widely accepted.

That is not to say that voters and their representatives had all become liberal ideologues. Voters did not have to become liberal ideologues to support liberal reforms of economic regulations, civil law, and policymaking procedures. It was sufficient that they and their elected officeholders became a bit more receptive to liberal arguments, a bit less opposed to reducing some restrictions on economic and political life, a bit more supportive of parliamentary authority, and a bit less opposed to extending the franchise to qualified, but previously excluded, voters. Such pragmatic “liberal” members of parliament, often supported by industrialists and wealthy landowners, were often pivotal members of majority coalitions in the middle of the nineteenth century.

In 1800, liberal members of parliaments were a small minority that occasionally played pivotal roles in majority coalitions. Earlier reforms that had broadened opportunities in the bureaucracy, military, and politics helped produce a somewhat more liberal world view in government and within the majority coalitions of national parliaments. The persons in high office were somewhat less often in those positions because of ancient family privileges, and were somewhat more often there because they were professionally qualified for high office and had “risen” to their positions by demonstrating that competence. Senior advisors within the bureaucracy, as educated men and women, were also increasingly exposed to and influenced by liberal economic and political theories. The formally liberal political parties that emerged in the second half of the nineteenth century were formed after many significant liberal reforms had already been adopted.

Early liberal alliances and political parties were regarded to be the “left wing” of politics during most of the nineteenth century. Towards the end of the century, liberal political parties were often majority parties in the elected chamber of government and exercised considerable control over public policy. Their freedom of action, however, was constrained by electoral competition with conservatives, who incorporated more and more of the liberal policy agenda into their party platforms. In the early twentieth century, their main rivals were on the left, particularly after most supporters of social democratic parties became eligible to vote. By 1925, the liberal parties had become the moderate parties of the new political spectrum with conservatives on their right and social democrats on their left.

Nineteenth century liberals were never a single doctrinaire group, They were constantly splitting into new parties and merging into new unions during the most of the nineteenth century. Such splits occurred among left, middle, and right liberals, as a consequence of disagreements over the proper extent of economic regulation, the proper extent of economic safety nets, over the proper role of the state in education, and over the relative merits of single-member districts and proportional

representation. Those on the right formed new (more liberal) conservative parties and sometimes aligned with older conservative parties. Left liberals favored greater economic regulation, greater social insurance, and the use of proportional representation in national elections. They often formed new “radical” organizations, often in alliance with members of the labor movement. These left-liberals, in many cases, subsequently became the moderate leaders of the new social democratic parties.¹¹⁰

Although romanticized views of the past and future often played roles in campaign rhetoric, none of the mainstream parties of 1900 proposed ending elections, shrinking suffrage, returning to manorial life, or doing away with industry and commercialization. Such positions were left to relatively small groups of arch-conservatives and idealistic communal socialists.

The issues and reform agenda of the liberal political parties in 1900 were, however, quite different from the modest ones of 1800. Liberalism grew increasingly “radical” during the nineteenth century in the sense that liberals lobbied for increasingly greater departures from the privilege- and family-based society of previous centuries. Mill’s positions on civic equality, suffrage, and the proper scope of government were radical positions mid century, but were mainstream liberal positions at century’s end. This drift to the “left” was also evident by their main political opponents, the conservatives, who grew increasingly liberal during the nineteenth century. The conservative defenders of the privileged aristocracy, king, and state church gradually died out to be replaced by conservative that mingled nationalism and nostalgia with support for previously adopted liberal economic and political reforms.

By century’s end, liberals were no longer a small minority interested in reducing aristocratic and religious privilege. Indeed, it could be said that the spectrum of liberal thought now defined the politics in Northern Europe and North America. The mainstream parties of Europe in 1900 were all constitutionally liberal in the sense that they favored equality before the law and representative government based on broad suffrage. They also accepted or supported private enterprise, public education, and modest social insurance and economic regulation. Nonetheless, the rhetoric of the mainstream political parties often made their remaining policy disagreements sound like issues that threatened civilization itself.

¹¹⁰ See Luebbert (1991: chs. 3, 4) for a careful historical analysis of the process through which the liberal movement splintered throughout Europe during the late nineteenth century and for a good discussion of liberal–Social Democrat coordination on elections and constitutional issues during the late nineteenth and early twentieth centuries. Gould (1999) analyzes the constitutional and policy effects of liberal parties and liberal ideas in France, Switzerland, and Belgium.

This was partly because of electoral competition with fringe groups and partly because relatively extreme rhetoric tends to capture disproportionate attention from newspapers and newspaper readers. For example, Social Democrats often gave speeches and included platform planks favoring radical changes in the distribution of property and in the nature of ownership. Similarly, the mainstream conservative parties on the right often argued for a return to (limited) hierarchy based on new aristocratic interpretations of social Darwinism and romantic views of “national” experience in the past. However, when the conservatives won elections, few liberal laws were repealed. When the “socialists” won national elections in 1920s and 1930s, they similarly adopted only modest reforms. They expanded social insurance programs (previously adopted by liberal and conservative governments) and revised labor law, rather than nationalizing the means of production or engaging in wholesale wealth redistribution, as some of their speeches might have implied. They were left liberals, rather than revolutionary reformers. When conservatives won national elections, they tended to reduce taxation and weaken labor union protections, rather than eliminating regulation, disenfranchising the working class, outlawing deviant churches, or attempting to recreate medieval life. They were , right liberals, rather than medieval idealists in practice.

Disagreements remained on a number of important policy issues, of course, or there would not have been three major parties or a need for coalitions. Only groups on the far left and far right, however, pressed for fundamental reforms of the liberal economic and political system. The groups on the far left normally left the mainstream social democratic and labor parties to form their own more radical organizations and parties in the early twentieth century, as with the communist parties of Sweden, Denmark, Germany, and Italy. The groups on the far right similarly abandoned moderate conservatives parties to form new more radical parties in the early twentieth century, such as Mussolini’s fascists in Italy, Hitler’s National Socialist Party in Germany, and similar parties elsewhere.¹¹¹

The emergence of the new consensus about the institutions of a good society is another indication of the great transformation that took place in the nineteenth century. The good society of 1900 favored individual merit rather than family heritage, open discussion of ideas rather than censorship, policymaking by elected representatives rather than historic elites, and supported technological advance over tradition. Mechanistic interpretations of nature, as in astronomy, chemistry, and physics, became increasingly central parts of the world views of even very religious

¹¹¹ In contrasts to the conservative and social democratic parties, when these more extreme right- and left-wing groups came to power, they did engage in fundamental reforms of the liberal democratic political and economic systems that had emerged during the nineteenth century.

persons, and ancient institutions and traditional patterns of life less so. The typical universe of the average person had become larger and more secular, in part because public education and literacy was more widespread, in part because long distance communication and transportation had become far less expensive and more reliable, and in part because of scientific advances during the nineteenth century. The mainstream parties and their supporters had considerable “faith” that technological innovation and progress would continue in all areas of life.

Both the new Western world view and the new Western political system proved to be quite robust. This was largely a consequence of the piecemeal, substantially empirical, manner through which both had emerged, rather than some great quantum leap in the theory or practice of governance. The institutions of liberal parliamentary democracies were refinements of ancient templates that had already stood the test of time, and they had emerged slowly enough that a supporting political norms had emerged along with them.

The improvements of the nineteenth century had been adopted gradually over the course of a century, with considerable experimentation and experience. Public policies in the West did not become more erratic or radically more redistributive than before, as predicted by many conservatives. Economic progress continued although it was occasionally interrupted by business cycles and policy errors. Political liberalization also continued, albeit at a slower pace, as remaining civic inequalities were challenged and gradually eliminated. Few twentieth-century critics of nineteenth-century developments argued for reestablishing the old manor and guild system or for restoring ancient aristocratic privileges, although many seemed to have fond “memories” of those ancient societies.

Chapter 11: Fine-Grained Constitutional Bargaining

The shift from king-dominated versions of the king and council template to liberal constitutional democracy involved two major changes: (i) increased policymaking authority for parliament and (ii) the selection of members of parliament by broad electorates. It is important to understand that those changes were multidimensional and the product of fine-grained constitutional negotiations and reforms. At some points in time, minor parts of liberal reform agendas were accepted in lieu of major reforms. In other cases, “secondary” details were used as devices to reduce the impact of what would otherwise have been major liberal reforms. In all cases, bargaining over the details made constitutional reforms possible that would otherwise not have been adopted.

At every step in the transition to Western democracy, a variety of procedural details had to be addressed, and many of these were revisited and renegotiated from time to time during the nineteenth century. In most cases, it was well understood that secondary reforms would affect the future course of public policy, and so debate and analysis were often extensive, and the bargains struck were subtle and multidimensional.

The bargaining and cumulative effect of secondary reforms was broadly similar throughout the West. Parliament’s veto power over new taxes, together with changes in technology and the rise of liberalism, gradually produced governments that were directed by elected leaders of political parties. In parliamentary systems, these leaders often held posts in what had formerly been royal executive councils, and which gradually became ministries or cabinets. The most important executive officials gradually became prime minister and chancellors, rather than kings and queens. The number of chambers in parliament and/or basis for holding offices in them were adjusted. Suffrage was generally expanded, but new qualifications for suffrage and elected office were sometimes introduced, while others were reduced. Voting, itself, was transformed as voice votes and physical divisions of voters were replaced with counts of secret ballots. Weighted electoral systems tended to be replaced by systems based on the principle of “one person, one vote.”

At the end of these negotiations, kings and queens normally remained part of the architecture for governance. Most were formally sovereign and retained significant formal authority, included the authority to veto new laws and appointment top officials. In most cases, new laws continued to be issued by the king or queen (or in their name). However, these formal powers were often circumscribed by new liberal norms for governance under which the elected chambers would have dominant authority over public policy. As a consequence, control over domestic areas of policy had largely shifted to the elected chambers of parliament.

Military and international affairs would follow in the next decade or two in cases in which they were not already controlled by parliament.

These late nineteenth-century bargaining equilibria between the king and parliament often remained unwritten well into the twentieth century, at which point the sovereign's de facto authority was occasionally codified in new instruments of government, as in Sweden in 1975 and the Netherlands in 1983.

Although the cumulative results were remarkably similar, the specific terms of trade varied with the interests represented in parliament and with the idiosyncrasies and innovations of the leaders directly engaged in the negotiations. For example, long-standing first-past-the-post electoral systems were often, but not always, replaced with systems based on proportional representation in the early twentieth century. The extent to which reforms were codified in formal constitutional documents or adopted through legislation and informal changes in decisionmaking procedures also varied, even in cases in which reforms were broadly similar.

A. Partisan and Mass Politics

National party organizations were rarely mentioned in constitutional documents prior to 1900, although they played increasingly important roles in policy decisions during the nineteenth century. The new roles played by the leaders of such political organizations were among the most important quasi-constitutional reforms of the nineteenth and early twentieth centuries.

Loose affiliations of politicians and their supporters have existed as long as nations have had parliaments, because assembling majorities from groups with similar interests is normally easier than doing so from unaffiliated members. Fewer persons have to be directly consulted and fewer discordant interests taken into account. The leaders of such groups (factions) were useful for kings (and queens) and were often able to obtain royal favors for their members in exchange for support on matters of interest to the sovereign. Such fiscal and legislative bargains favored members of such groups over independents, which provided a reason to join such groups and for group members to defer to their leader(s) at the margin. In the medieval period, such groups were normally based on regional issues and family trees. After the Reformation, theological and ideological differences also played significant roles

Kings (and queens) had nearly always required majorities in parliaments (or tax councils) to obtain new taxes (supplements) from parliament, but during the eighteenth and nineteenth centuries, parliamentary finance became more and more critical for the routine operations of government. Even peacetime expenses could no longer be paid out of the sovereign's standing income sources. Tax requests were made more often, but without the sense of the "emergency" that was common in

earlier periods. As a consequence, sovereigns required reliable parliamentary majorities to finance government. This increased the importance of factions and faction leaders in parliament and also provided stronger incentives for members of parliament to join the stable coalitions that gradually became known as political parties.

Membership in such standing coalitions also became increasingly important for obtaining seats in parliament. As suffrage expanded, political parties began to include large numbers of persons who were not officeholders or especially influential in their town or regional governments. Campaigns for the votes of even less politically engaged persons induced parties to become more ideological and issue oriented. Proposed reforms (and continuities) had to be communicated to large numbers of persons in a relatively short period through pamphlets and speeches, and there were economies of scale associated with persuasive campaigns in the new settings in which large numbers of voters needed to be induced to vote for candidates.

More restrictive rules regarding the direct purchase of votes and the gradual introduction of secret ballots in the second half of the eighteenth century further increased the importance of organized persuasive campaigns. The new election laws made voter decisions less subject to local economic and cultural sanctions, which reduced the number of ways in which political parties could influence electoral outcomes. As a consequence, many of the old loose political affiliations were transformed into “political machines,” that is to say, formal organizations with standing institutions for making policy decisions, sanctioning their members, and organizing persuasive campaigns for elected offices.

Such national political organizations rarely emerged whole cloth. National parties normally formed as local and regional political clubs joined forces for national campaigns. As a result, many early national parties had decentralized decisionmaking procedures. Indeed, they could be said to be coalitions of regional factions, rather than parties. The stronger party organizations of the late nineteenth century often emerged from these older loose coalitions (court and country parties), as with the English Whigs and Tories and Sweden’s Farmer’s party. In some cases, new more hierarchical organizations were founded to replace older associations of politicians and their supporters. For example, in the Netherlands, the (conservative) Anti-Revolutionary Party was formed in 1878, the Liberal Union in 1885, a social democratic party in 1888, and a Catholic party in 1895. In Sweden, a social democratic party was formed in 1889, a liberal party in 1900, and a conservative party in 1904.

The new political organizations had their own internal policymaking institutions (which were often based on the king and council template) and methods for sanctioning members. The leadership (governments) of these new more disciplined organizations could negotiate in parliament and with the king more effectively than possible by the leaders of the older loose confederations, because they were more likely to be able to “deliver” the votes of their members. Nonetheless, the first national parties were not always self-sustaining, and in many cases, considerable exit and entry took place among parties and party members. The new parties succeeded by attracting members away from older organizations. (In a few cases, international meetings were also held with the aim of forming international political parties, although these tended to remain loose affiliations in the period of interest.)

The leaderships of successful national party organizations (the persons occupying offices in their party’s governing bodies) played increasingly important roles in negotiations within parliament and between parliaments and kings in all Western countries during the nineteenth century. As a consequence, party affiliation and party leadership posts become increasingly important determinants of membership in the executive cabinet and bureaucracy.

B. Liberalism and the Distribution and Basis of Authority within Parliament

Prior to 1800, most European parliaments were multicameral and organized on the basis of class and occupation. Each chamber normally had some veto power and some ability to propose changes in law to the king, but it was usually the noble chamber that had the most influence over taxation and public policy. The sovereign was often officially a member of the noble chamber, as a person with noble title(s), and often attended their meetings. Nobles (and clergy) often occupied the most influential positions in the royal cabinet, councils, and bureaucracy.

The influence of the nobility also extended to the other chambers of parliament. Many high officials of the state church were from noble families, partly because of their greater access to education, and partly because of family influence within the local church hierarchy and sovereign, who chose or nominated persons to the highest religious posts. The nobility also normally had significant influence within the directly elected chamber(s) of parliament. In many cases, only relatively wealthy persons were allowed to sit in the elected chamber(s) of parliament. Membership in parliament was not a full-time job, and members were not paid a salary for holding their office. Consequently, those elected to parliament were often close relatives of persons already represented in noble chambers or in their employ.

Some of the most important constitutional reforms of the nineteenth century involve shifts in the relative authority of nobles and commoner chambers of parliament. Many of these reforms were informal, as new procedural customs emerged. For example, the British House of Lords routinely deferred to the House of Commons on budgetary matters during the second half of the nineteenth century, although it (formally) retained the power to intervene with vetoes and amendments, and had done so in the previous centuries. Others were formal amendments of constitutional and/or parliamentary charters. Among the most striking were cases in which a noble chamber was replaced with a new “first” chamber with electoral rather than familial foundations.

Bargaining over the Distribution of Parliamentary Authority

Many shifts in policymaking authority among (and within) the chambers of parliament were informal ones, not codified in constitutional documents. They reflected short-term policy bargains within and among the chambers and between the king and parliament. Some parliamentary rights and procedures were obtained for all members of parliament; as for example, freedom of speech (within parliament) and free passage to meetings of parliament were often granted to members of parliament. Others favored one chamber over another. For example, the late medieval English House of Commons often gained a bit of new authority from the sovereign on religious issues when the sovereign’s interests could be advanced by doing so (Field 2002: ch. 2). Prior to 1800, however, shifts in the relative authority of the chambers were often temporary and/or small.

The noble chambers remained the most influential of the chambers of national parliaments in most times and places until the nineteenth century. In the nineteenth century, new trends in politics gradually shifted policymaking authority away from noble chambers and toward the elected chamber(s).

Informal changes in the relative influence of the chambers of parliament reflected changes in the importance of temporary tax legislation, elections, and political parties. Royal influence over the noble chamber was not very much affected by those factors, but electoral and bureaucratic reforms often reduced royal influence within the elected chamber. For example, majorities became more difficult to organize in elected chambers as traditional deference to the sovereign diminished, as political parties became more disciplined, and as royal powers of appointment diminished. Such changes often reduced the sovereign’s influence within the elected chamber relative to the noble chamber, in which royal powers of elevation could still be used to reward supporters and to add new supportive members when necessary.

The greater independence of the elected chamber(s) required the king (or queen) to pay a higher (or at least different) price for support in those chambers. Moreover, more day-to-day negotiations with leaders in those chambers were necessary, because party politics and national elections would often change the persons with whom they had to negotiate.

The outcomes of the negotiations with the elected chamber had effects on the relative authority of the hereditary and elected chambers. The sovereign might, for example, accept advice from leaders of the elected chamber regarding appointments to the cabinet and bureaucracy, or with respect to elevations to and within the upper chambers, in exchange for support on policy or tax issues. Such fiscal bargains allowed elected chambers to gradually become the main source of cabinet officials and also to obtain some influence over the composition of the hereditary chamber. Indeed, the threat of adding new members to the noble chamber was often sufficient to change votes in that chamber. (See chapter 13.)

Liberal ideological trends tended to support such shifts in authority by undermining the usual arguments for deference to nobles, who were often sophisticated, well-educated, well-traveled, men and women. If government is or should be grounded in social compacts, or officeholders have the duty to advance the broadly shared interests of all persons in a nation state, commonwealth, or empire, relatively greater deference to elected chambers is implied. Elected chambers are better able to assess common interests, because their officeholders are selected by all the people who are qualified to cast votes, rather than by those with fortunate family trees, birth orders, and marriages.

It bears noting that the noble chambers nearly always included a few liberal idealists (and pragmatists using liberal arguments) who favored significant economic and political reform and greater deference to the elected chamber. Kings, partly for that reason, also occasionally used liberal arguments and backed liberal constitutional reforms. Kings and queens also had pragmatic interests in reforms that weakened their noble chambers, because noble chambers had been the main check on royal authority in past centuries.

Formal Reforms of Parliamentary Architecture

Parliamentary architecture tends to be very stable, although both the architecture of parliament and the qualifications for office are clearly characteristics that can be bargained over. Varying the number of chambers, number of seats, and qualifications for seats in those chambers allows one to include or exclude particular interests from formal representation and to give the interests represented more or less influence over particular policy decisions. In the early days of parliaments,

such bargains were fairly common. For example, chambers representing the interests of relatively wealthy commoners were often added to ones representing nobles and high clergy in the thirteenth and fourteenth centuries. However, such bargains were rarely struck in following centuries. Both bicameral and estate systems of representation, once adopted, continued with only minor changes into the early nineteenth century in much of Europe.¹¹²

That constitutional negotiations in the nineteenth and twentieth centuries produced several formal reforms of parliamentary architecture is evidence that new interests were affecting constitutional negotiations.

Several new bicameral parliaments were created in formerly authoritarian states and republics. For example, the post-Napoleon constitutional monarchies of France (1815) and the Netherlands (1815) consisted of a king and a new bicameral parliament with veto power over taxes and legislation and a limited right to remove cabinet ministers.¹¹³ Denmark established regional assemblies that were elected by relatively broad wealth-based suffrage and subsequently vested those assemblies with veto power over regional taxation in 1841. This was followed in 1849 by establishment of a national bicameral parliament, in which the popular chamber was elected on a similar basis (Danstrup 1947: 94–103). Prussia adopted a new written constitution in 1850 with a bicameral parliament, largely in response to internal lobbying by Prussian elites and liberals, but partly in response to large middle-class demonstrations calling for a written constitution and a representative parliament. A few long-standing 3 and 4 chamber estate-based systems were also transformed into bicameral systems. In cases in which the new bicameral systems were based on the English model with a noble chamber, they were often transformed into ones resembling that of the United States, in which an indirectly elected (federal) chamber representing regional governments replaced the noble chamber.

Many of these reforms were consistent with liberal political theory, insofar as political liberals wanted to place governance on an electoral and constitutional basis. However, it does not seem

¹¹² In the British case, the House of Lords included both nobles and clergy (the lords temporal and lords spiritual). The House of Commons included wealthy farmers and townsmen. The estate system included separate chambers for nobles, clergy, and commoners. Sweden had separate rural and urban chambers for its commoners.

¹¹³ The constitutional charter of 1814 replaced the previous multi-cameral estate system with a bicameral one. In most respects, the charter established a fairly typical medieval constitution. Universal male suffrage was replaced with a narrow wealth-based (indirect) suffrage for a new Chamber of Deputies. The charter was proclaimed by Louis XVIII a year before Napoleon I was defeated at Waterloo in 1815. A good summary of the 1814 constitution is provided by Seymour and Frary (1918: 328–33). An English translation is available at: www.napoleon-series.org/research/government/legislation/c_charter.html. In 1830, some agenda control over legislation was obtained by the French parliament.

likely that there were ever a sufficient number of liberals in parliament to adopt the reforms for strictly ideological reasons. Reforming the architecture of parliament required support by majorities in the old noble chambers, as well as majorities in the other chambers and the support of the sovereign. This support was not easy to assemble, as evident by the stability of the parliamentary architecture in past centuries.

The bargaining required to obtain the necessary breadth of support in the noble chamber was evident in all the reforms adopted. For example, most nobles (including pro-reform nobles) could agree that they would prefer to retain offices for themselves. So, it is not surprising that the new first-chamber reforms normally included wealth criteria for electorates and those eligible for seats in the new chambers. The latter assured that a majority of the officeholders in the post-reform first chambers would be nobles or members of noble families. Qualifications for seats in the second chambers of reformed parliaments also normally included much higher wealth and/or tax-payment thresholds than required for voters. In a few cases, as in Prussia, wealth or tax payments also determined the distribution of seats in the directly elected chamber of parliament.

Such “secondary” details assured that relatively wealthy persons, not all of whom were nobles, would continue to exercise disproportionate influence over public policy. In a few cases, the new “first” chambers included persons who were appointed by the king or queen. This allowed sovereigns to retain some control over the new chamber (at the margin) and also assured that “loyal” nobles would retain their seats in the reformed parliaments.

The constitutional bargains often included liberal parliamentary architectures and foundations, together with many conservative structural details that reduced the effects of the new architecture. The details had been carefully worked out to obtain the necessary majorities in the various chambers of parliament and assent from the sovereign.

In spite of efforts to preserve the preexisting balance of authority, the new parliaments had new institutionally induced interests. The nobles who remained in office were now either directly elected by voters or indirectly elected by regional government officials, who were themselves elected to office (for the most part). Family and occupation were no long sufficient conditions for office. As suffrage expanded and elections became more competitive, their interest in holding seats in parliament induced both noble and commoner members of parliament to pay more and more attention to their electorates and less and less attention to their family interests.

Liberal trends in the reforms of elite chambers of parliament continued into the twentieth century. In the period before War World I, Sweden eliminated the weighted voting system used to

select its elite regional chamber, which reduced aristocratic representation in that chamber. In 1913, an amendment of the U.S. constitution replaced its appointed Senate (by state legislatures) with a Senate directly elected by state voters. In 1915 the United Kingdom revised its intra-parliamentary rules so that vetoes of its noble chamber (Lords) could be overruled by the directly elected chamber (Commons). After World War II, France, Belgium, and the Netherlands also reduced the veto authority of their first chambers. Denmark (1953) and Sweden (1970) eliminated their indirectly elected regional chambers through constitutional reforms that created unicameral parliaments. In 1999, the British House of Lords became a largely appointed chamber, although a number of seats were reserved for nobles, who could elect 92 of their members to represent them in that chamber.

The pragmatic interests of first and second chambers (and their supporters) in obtaining greater authority over public policy remained more or less constant during this period, insofar as more authority is better than less authority. This suggests that the trend in parliamentary reforms was the product of ideological trends favoring civic equality, which had gradually reduced the legitimate scope of authority that “should be” exercised by unelected members of parliament.

C. Parliamentary Reform, Partisanship, and the Authority of the Sovereign

Together the emergence of more disciplined political parties and changes in parliamentary architecture also affected the balance of authority between kings and their parliaments. Shifts from estate-based systems to bicameral systems reduced the transactions costs of intra-chamber bargaining by reducing the number of chambers. Changing the basis of representation from class and occupation to elections produced policy interests that were somewhat more aligned across the chambers. The members of both chambers had to please a majority of voters, directly or indirectly. Such changes enhanced parliamentary bargaining power by increasing the likelihood that parliament-wide positions on reforms would emerge, which reduced the likelihood of the indecisive parliaments (unstable coalitions) discussed in chapter 6.

The shift toward elected members also made long-term bargains between the sovereign and leading members of parliament more difficult to consummate, because leadership policy positions were increasingly determined by electoral competition and party politics. Consequently, parliamentary leadership changed with election results. This tended to increase the influence of the elected chamber in the context of the nineteenth century, because it implied that elected chambers would have to be routinely consulted. This effect also increased the influence of those entitled to cast votes in elections. Leaders of factions within elected chambers of parliament could not defer to

the sovereign more than to their party and voters without undermining their influence and support.¹¹⁴

The policy and constitutional effects of parliamentary reforms often took many years to emerge, partly, because reformed parliaments did not gain much, if any, additional control over public policy, and partly because a majority of the members of the pre-reform parliaments normally returned to office in the post-reform parliaments. The latter allowed many informal practices and alliances to continue in post-reform parliaments. The status quo was further protected through restrictive amendment procedures and by explicit royal authority to appoint the executive cabinet. Such liberal, but substantially authority-preserving, reforms were also evident in the new constitutions adopted after the unification of Italy in 1861, Germany in 1871, and in Japan's first written constitution in 1889. Such reforms could be said to be liberal in architecture, but conservative in their effects on policymaking procedures.

Nonetheless, the reforms affected the balance of authority within parliament and between kings (and queens) and parliaments in the long run. The minorities that had opposed parliamentary reform normally lost their positions in parliament as a consequence of the reforms, and these were often members of parliament who tended to support traditional and royal policies. The post-reform parliaments also tended to have more closely aligned interests because of their electoral basis and the emergence of more disciplined political parties. The post-reform parliaments were consequently somewhat more liberal and more assertive than the pre-reform parliaments that they replaced. These shifts, together with long-standing parliament's power of the purse, increased the "price" that parliament could charge the king for support of policies of royal interest.

The resulting terms of trade gradually shifted more and more policymaking authority from kings to "their" parliaments. By 1925 elected chambers of parliament dominated public policy formation, and noble chambers had vanished throughout northern Europe—except in England, where the influence of the House of Lords over public policy had been reduced to a shadow of its former self.

¹¹⁴ This is not to say that deference to the king or queen is never rewarded. Gaining preferable treatment from the sovereign through loyal statements and actions can enhance a leader's influence within his or her party and support from voters. A (pragmatic) dual loyalty of this sort often proved very useful to party leaders in the nineteenth century.

D. Choosing among Electoral Systems and Qualifications for Suffrage

To create an electoral basis for parliament, it is clear that decisions have to be made about who will vote, how votes will be counted and used to select representatives, and how often elections will be held. Elections are not simply about counting votes. Both the scope of the franchise and proper electoral procedures seemed fairly obvious before 1800 and also after 1925, but they were not nearly as obvious during the nineteenth century. Members of parliament could be directly or indirectly selected by narrow or broad electorates. Men and/or women could be elected from geographic districts, economic classes, religious groups, political parties, and so forth. There could be one person elected from each electoral district or several. Elections could be held periodically or whenever it seemed useful for the king and/or parliamentary majority.

Medieval electorates usually consisted of the wealthiest 5 to 10 percent of the men in the kingdom, duchy, or city of interest. One or two persons would be elected from each urban or rural district. The persons nominated for national elective offices were normally selected by (and on the payrolls of) relatively wealthy families in the towns or counties, who were often also local government officials. Elections were held infrequently, because the sovereign called for new elections only as necessary, often just before an “emergency” meeting of parliament. Votes were normally “cast” by simply walking to one side or another at the place where elections were held (divisions) or through voice votes.¹¹⁵ Because most electoral outcomes were essentially predetermined, voter turnout was normally very low. Many candidates for parliament ran unopposed.

Local sponsors had interests that were affected by national policies. They were legally permitted to influence how voters cast their votes in the relatively few cases in which more than one candidate ran for office. They might simply pay voters to turn out and vote for their nominee or threaten those who voted against their candidates with economic sanctions of one kind or another. They might also invite those who voted for their nominee to special celebrations (parties) before and after votes were cast. Public voting, small electorates, and low turnouts made it relatively easy to know who voted for which candidate. The representatives elected would attempt to obtain various favors from the king (grants, monopoly privileges, high offices, and elevations) and/or to oppose the efforts of others to obtain such favors.

¹¹⁵ Votes on issues are still called “divisions” in England, because of this physical, locational, method of casting votes. Such divisions are still occasionally used today, as in the English parliament and in party caucuses in the United States.

During the nineteenth century, these long-standing electoral procedures were debated and adjusted at their margins many times. The debates included analysis of alternative electoral systems and alternative bases for determining who is qualified to vote.

Should persons be allowed to vote in many districts or just one? Should one or more than one person be elected from each district? Should the right to vote be attached to land, community, residence, competence, or be available to essentially all adult citizens? Should all persons have the same number of votes, or should some persons have more votes than others? Should voting be done in public or in secret?

In general, liberal reformers (and parliamentary decisions) favored the expansion of suffrage, increased electoral competition, nomination by political parties, secret ballots, and standardized election periods. In the early twentieth century, liberal reformers favored one-adult-man one-vote systems, and subsequently one-adult one-vote systems. Although we largely take most of their decisions for granted today, contemporary voting systems were not the only ones possible, and a number of other electoral procedures were temporarily adopted in the nineteenth century.

Debates Regarding the Proper Qualifications for Suffrage

A useful window into the mid-nineteenth century election law debates is provided by the widely read and translated John Stuart Mill. His writing and speeches summarize and critique a variety of possible electoral reforms at the same time that they explain his “radical” views about the proper qualifications for suffrage and best methods for electing members of parliament.¹¹⁶ Consider, for example, Mill’s (1859, 1861) discussion of the merits of introducing new educational qualifications for suffrage and for further reducing the wealth and income requirements for suffrage.

If there ever was a political principle at once liberal and conservative, it is that of an **educational qualification**. None are so illiberal, none so bigoted in their hostility to improvement, **none so superstitiously attached to the stupidest and worst of old forms** and usages, **as the uneducated**. ... (J. S. Mill, 1859, “Thoughts on Parliamentary Reform,” *Essays on Politics and Society Part 2*, Toronto: University of Toronto Press, p. 16.)

It is also important [however] that the assembly which votes the taxes, either general or local, should be **elected exclusively by those who pay something** towards the taxes imposed. **Those who pay no taxes, disposing by their votes of other people’s**

¹¹⁶ Mill was born in London in 1806. He edited the *Westminster Review* in the 1830s and was well known for his contributions to utilitarian philosophy, economics, and liberal political philosophy. He worked for the British East India Company until 1858. Mill was also briefly elected to the House of Commons (1865–68). The terms liberal and radical are used by Mill, himself, in describing the policy and philosophical perspectives of the *Westminster Review*.

money, have every motive to be lavish, and none to economize. ... I regard it as required by first principles, that the receipt of parish relief should be a peremptory disqualification for the franchise. He who cannot by his labor suffice for his own support, has no claim to the privilege of helping himself to the money of others. **By becoming dependent on the remaining members of the community for actual subsistence, he abdicates his claim to equal rights with them in other respects.** (J. S. Mill, 1861, "Considerations on Representative Government," *Essays on Politics and Society Part 2*, Toronto: University of Toronto Press, p. 129.)

Both these arguments would sound somewhat "conservative" 50 years later, but it should be kept in mind that British qualifications for suffrage in 1861 prevented middle- and working- class men from participating in national elections (see chapter 13). A shift from the existing tax and property requirements to a welfare or relief exclusion, even if combined with a modest educational requirement, implied a major expansion of suffrage at the time that Mill was writing.

As evident in Mill's arguments, debates on suffrage expansion focused on a person's ability to cast an independent, thoughtful, vote. Many of the arguments were ideological in nature, although empirical arguments were also used. For example, those favoring suffrage expansion often noted increases in public education and in the training and independence of skilled managers, technicians, educators, and artisans.

The outcomes of the nineteenth-century suffrage debates generally favored civic equality. Wealth qualifications for suffrage and seats in parliament, however, continued to exist in most places throughout the nineteenth century and into the next. Other qualifications, such as education and literacy, were also debated and occasionally introduced. Each expansion of suffrage was argued to satisfy broadly shared norms about who was truly qualified to vote. Further expansion was always rejected (if, temporarily) because the remaining voters were thought to be too dependent on others or too poorly informed to cast a meaningful vote.

Many of the arguments used by opponents to suffrage expansion in the nineteenth century were very similar in spirit to those that contemporary voters would use to oppose extending suffrage to ten-year old children. The opponents of suffrage expansion feared that large-scale redistribution of wealth and a general decline in the quality of national policies would be caused by allowing unqualified persons to vote. (It bears noting that age, sanity, and residency are still used as criteria for determining eligibility to vote.)

Alternative Procedures for Electing Representatives

Once it is determined who should vote, elections can be organized in a number of ways. For example, members of parliament may be selected on a geographic or occupational basis, elected one at a time from small local districts or in groups from large regional election districts. The election rules can be uniform throughout the polity or vary by district. The districts can be *more or less* permanent in size (as tends to be true of federal districts: states, provinces, länder, and so on) or may be periodically adjusted in response to changing political demands or population shifts (as in U. S. Congressional districts). District “size” can be measured by area, population, or a combination of the two. Laws may constrain districts to be more or less equal size, to include more or less equal numbers of voters, to vote on the same day(s) or not.

Many of the electoral reforms in the nineteenth century were as important for their effects on the distribution of representatives among regions and the manner in which votes were used to select representative(s), as for their effect on the number of persons entitled to cast votes.

Liberals tended to favor geographic districts that elected approximately the same number of representatives per voter. Conservatives tended to defend the existing very unequally sized districts representing different numbers of voters, largely for pragmatic reasons (many were elected from such districts), but also because such districts tended to increase the range of interests represented in parliament.¹¹⁷

Late nineteenth century liberals disagreed about the number of MPs that should be elected from each district. Most liberals favored single-member districts, because this allowed representatives to be more easily rewarded or punished for performance (and because liberals often won such elections). A significant minority of liberals, however, preferred multiple-member districts with elections designed to increase the extent to which voter interests were represented.

Their objections to single-member districts were based on early public choice analyses of electoral systems. The critics of single member districts noted that half the voters in single-member districts can select members of parliaments and that policy decisions in parliament required the support of just half of the members elected. Consequently, parliaments based on single-member districts allow legislation favored by as few as $\frac{1}{4}$ of the voters to be adopted ($\frac{1}{2}$ of $\frac{1}{2}$).

¹¹⁷ Prior to 1832, for example, 50 members of the British parliament were elected from districts with fewer than 50 voters. These included several talented, but not broadly popular, members of parliament.

Again, quotes from Mill can be used to demonstrate the breadth of debate over electoral procedures for multiple-member districts in the mid-to-late nineteenth century:

Assuming, then, that each constituency elects three representatives, **two modes have been proposed**, in either of which a minority, amounting to a third of the constituency, may, by acting in concert, and determining to aim at no more, return one of the members. One plan is that **each elector should only be allowed to vote for two, or even for one, although three are to be elected. The other leaves to the elector his three votes, but allows him to give all of them to one candidate.** (J. S. Mill, 1859, “Thoughts on Parliamentary Reform,” *Essays on Politics and Society Part 2*, Toronto: University of Toronto Press, p. 18.)

The object being that the suffrages of those who are in a minority locally, should tell **in proportion to their number** on the composition of the Parliament; since this is *all* that is required, **why** should it be imperative that their votes should be received only for some one who is *a local candidate*? **Why might they not give their suffrage to any one who is a candidate anywhere, their number of votes being added to those which he may obtain elsewhere?** Suppose that a comparison between the number of members of the House and of registered electors in the kingdom, gives a quotient of 2000 as the number of electors per member, on an average of the whole country (which, according to Mr. **Hare’s calculation**, would be not far from the fact, if the existing electoral body were augmented by 200,000): **why should not any candidate, who can obtain 2000 suffrages [votes] in the whole kingdom, be returned to Parliament?** (J. S. Mill, 1859, “Thoughts on Parliamentary Reform,” *Essays on Politics and Society Part 2*, Toronto: University of Toronto Press, p. 40–41.)

Voters may vote for several representatives simultaneously, may be able to cast only a single vote per representative office or district, or may be free to distribute multiple votes among the candidates and districts throughout the country. Representatives may be selected through winner-take-all contests (plurality rule) or be selected *more or less* proportionately to the votes received from political parties (proportional representation systems). These proportions can be calculated from small or large regional (or national) election districts.

Debates about the relative merits of single-member districts and multiple member districts were fairly intense among liberals in the late nineteenth and early twentieth centuries, with mainstream liberals tending to prefer single-member districts and radical (left) liberals, like Mill, preferring multiple member districts.

The Fancy Franchise: Weighted Voting

In addition to determining who should vote, the size and location of electoral districts, and the number of persons that should be selected in each electoral district, there was also a good deal of discussion of the merits of weighted-voting systems, what their opponents in England termed “the

fancy franchise.” There were precedents for using such systems, as property-weighted voting systems had been used during the enclosure movement and share-weighted voting was widely used by stock companies. Less explicit weighted voting systems were also common, as with the extra representation given to university graduates of Cambridge and Oxford in the English parliament, and the ability of landlords to cast votes in every district in which they were significant taxpayers.

Given the qualification debates, it is not too surprising that many mid-century liberals favored weighted voting as a method of giving additional influence to “more qualified” voters in elections and public policy decisions. Other supporters and opponents of suffrage expansion favored weighted voting as a method of reducing the policy shifts that would be produced by adding new voters to the electorate. Again quotes from Mill serve to illustrate the scope of debate and the types of arguments used.

The only thing which can justify reckoning one person’s opinion as equivalent **to more than one, is individual mental superiority**; and what is wanted is some approximate means of ascertaining that. ...Subject to some such condition, **two or more votes might be allowed to every person who exercises any of these superior functions. The liberal professions**, when really and not nominally practiced, imply, of course, a still higher degree of instruction; and wherever a sufficient examination, or any serious conditions of education, are required before entering on a profession, its members **could be admitted at once to a plurality of votes.** (J. S. Mill, 1859, “Considerations on Representative Government,” *Essays on Politics and Society Part 2*, Toronto: University of Toronto Press, p. 131–32.)

Most proposals for a fancy franchise were defeated, although in a few cases, compromises between opponents and supporters of suffrage expansion temporarily produced weighted-voting systems, as in Sweden and Belgium.

Such explicitly weighted electoral systems were normally adopted as part of a larger constitutional bargain. In 1866 Sweden adopted an indirect, wealth-weighted voting system for its first chamber (and wealth qualifications for all members of parliament), as part of a constitutional bargain that replaced its old four chamber system with a bicameral system grounded in elections (chapter 14). In 1893, Belgium adopted a weighted voting system as a method of securing sufficient support for a major expansion of male suffrage. It allowed one vote for all men, two votes for each educated man, and three votes for each educated man of means. The Belgian system was used for a decade at the end of the nineteenth century. In both cases, the weighted voting systems were used to increase support for a package of constitutional reforms to levels required by their formal amendment procedures.

In the end, however, arguments for civic equality prevailed, and *one man—one vote* systems for casting and counting votes were adopted throughout the West. The timing of these reforms varied, as did the final step to the one adult-one vote principle, but the principle of civic equality clearly influenced the parliamentary debates and negotiations that produced the final reforms.

Gender-Neutral Suffrage Law

The last major stage of suffrage reform in most places concerned the competence of women as voters. Women's suffrage was not an entirely new idea, as women had occasionally had the same rights of suffrage as men, as in Sweden (for unmarried women) and temporarily in the state of New Jersey in the late eighteenth century (see chapter 18).

Public and parliamentary debate about the appropriate qualifications for women usually followed behind those regarding men's suffrage; although in most cases, the arguments were very similar. The focus tended to be upon the independence and competence of women, and on the extent to which their interests were already represented in parliament by the votes of others (in this case by the votes cast by their husbands). Again Mill serves as a useful window into the issues addressed and arguments used.

In all cases where a woman is *sui juris*, occupying a house or tenement, or possessed of a freehold, or is otherwise in a position which, in the case of a male, would amount to a qualification, there is no sound reason for excluding her from the parliamentary franchise. The exclusion is probably a remnant of the feudal law, and is not in harmony with the other civil institutions of the country. (J. S. Mill, 1859, "Thoughts on Parliamentary Reform," *Essays on Politics and Society Part 2*, Toronto: University of Toronto Press, pg. 49.)

In the preceding argument for universal, but graduated suffrage, I have taken no account of difference of sex. **I consider it to be as entirely irrelevant to political rights, as difference in height, or in the color of the hair. All human beings have the same interest in good government; the welfare of all is alike affected by it, and they have equal need of a voice in it to secure their share of its benefits.** (J. S. Mill, 1859, "Considerations on Representative Government," *Essays on Politics and Society Part 2*, Toronto: University of Toronto Press, p. 135.)

In the middle of the nineteenth century, such arguments produced little support among male voters. In the period just before and just after World War I, however, such arguments found majority support among male voters, and suffrage laws were changed to eliminate gender as a qualification for suffrage.

Woman's suffrage was the largest single expansion of suffrage that took place in the reforms that produced universal suffrage. And, of course, it took place without a credible military threat on the part of women or their male supporters in parliament.

E. Partisan Interests in Proportional Representation

Voting system reforms were often crucial parts of the constitutional bargains that produced essentially universal adult suffrage. Support for PR systems had existed for at least half a century among a subset of liberal idealists and political pragmatists, as evident in Mill's analysis above. Support for PR systems among party leaders, especially conservatives, began to increase towards the end of the nineteenth century. Electoral campaigns had become more impersonal, ideological, and partisan as electorates expanded. This caused parliaments to be increasingly organized along ideological and party lines, rather than based on elite family interests or distance from the capital.

Conservative leaders (and conservative voters) feared that universal male suffrage would cause their parties to disappear in electoral systems based on single-member districts and plurality rule.

Duverger's Theorem and the Conservative Interest in PR Systems

The number of political parties that can be sustained in a polity is directly affected by the choice of electoral system. First-past-the-post democracies tend to have just two dominant political parties. One explanation for this is Duverger's theorem (1954), which implies that a center-right and center-left party can effectively block third parties from winning elections under plurality voting rules. Duverger suggests that parties will adopt such blocking positions, because political parties have an interest in limiting competition. Consequently, "two" is the natural number of parties in first-past-the-post (plurality) electoral systems. (Two, however, can become three or four in plurality systems if regional differences are sufficient to prevent true national parties from emerging, as might be said of the United States during the period of the so-called Dixicrats or of contemporary France and Canada.)

The analogous entry-blocking configuration of a PR system allows many more *national* parties to coexist in equilibrium. The maximum stable number of parties in PR systems is determined by the participation threshold according to Duverger's logic. If n is the threshold for a party to receive seats in parliament, an alignment of party platforms in which each party receives just a bit less than twice the minimum ($2n$) will be stable, because no new party can enter and receive sufficient votes to qualify for parliament. If, for example, the participation threshold guarantees any party with 4

percent of the vote a seat in parliament, 13 different political parties could be sustained in a party-platform alignment that blocked the successful entry of additional parties.¹¹⁸

The relatively large number of parties that could be supported under PR systems was well understood in the nineteenth century, as evident in Mill's early analysis of PR and multiple-member districts. Members of parties that expected to place third or fourth in national elections had clear practical reasons to favor PR over plurality (first-past-the-post) systems.

In addition to increasing the number of parties, PR systems also tend to increase the influence of party leaders. Within PR systems, voters cast their votes for political parties, rather than candidates. The party leadership determines the persons who will be on their party lists and in what order, which allows party leaders to determine many of the persons holding seats in parliament and also allows them to discipline elected officials who fail to vote the party line. They can do so by simply moving "disloyal" representatives further down the party list. This is not to say that party leaders in first-past-the-post systems are without influence, but the party lists give party leaders additional tools in PR systems not available under first-past-the-post systems.¹¹⁹

As a consequence of such partisan interests, the properties of PR systems played a central role in many of the constitutional bargains worked out in the early twentieth century.

¹¹⁸ Duverger's theorem applies to plurality rule elections. If two parties locate somewhat to the right and left of the median voter, the assumptions of spatial voting models imply that no new party can enter and win an election. (Two parties positioned exactly at the median voter's position would not be a blocking alignment, because an entry somewhat to the left or right of the median could secure a larger vote than either of the two parties.) This is one explanation for the number and position of major political parties in the United States.

The counterpart to Duverger's theorem in PR systems occurs when a sufficient number of equally sized parties position themselves so that no new party can enter and secure sufficient votes to participate in government. For example, 13 equally sized parties would each receive about 7 percent of the votes under PR. Any new party that attempted to locate between two adjacent parties would receive at most one-fourth of the votes of two adjacent parties, 3.5 percent, which is insufficient for representation if the participation threshold is 4 percent, as it is currently in Sweden.

See Mueller (2003: 271-2) for a discussion of Duverger's theorem. Duverger's theorem evidently does not apply to all plurality systems, especially in countries with distinct regional differences in the pattern of voter preferences and party strength. Mueller (1996: ch. 10) notes that plurality vote systems do not always yield parliaments with two parties.

¹¹⁹ Some PR systems allow voters to vote for candidates as well as parties, but generally, order on party lists remains a defining characteristic of proportional rule. Sweden has recently adopted a limited form of preference voting. The revised election laws allow each voter to indicate a special preference for a single candidate by writing in his or her name on the ballot. The Swiss electoral system also allows voters to affect the order of candidates on party lists.

In most cases, perhaps surprisingly, it was conservative that caused PR systems to replace systems based on plurality elections and single-member districts. At the time that universal male suffrage was seriously considered in northern Europe, it was widely believed that liberals and social democrats would dominate political decisionmaking after universal male suffrage was adopted. Conservatives feared that they would become permanent minority parties and would therefore be eliminated from national politics in electoral systems based on single-member districts. As a consequence, conservatives often insisted on proportional representation systems in exchange for accepting nearly universal, adult male suffrage.

Mainstream liberals split over PR with most preferring single-member districts. Left liberals continued to support PR for more or less idealistic reasons, albeit reinforced by pragmatic interest in obtaining conservative support for suffrage expansion. As a consequence PR systems were often adopted by coalitions of left liberals and conservatives at the same time that universal adult male suffrage and other reforms were adopted in the periods just before and after World War I.

F. Procedures for Amendment and Constitutional Review Strengthened

Formal procedures for amendment and review are included in most constitutional documents, and these amendment procedures tend to be among the most durable parts of a constitution. Partly for this reason, the age of a constitution is often measured by the period in which its rules of amendment are followed, rather than by the period in which particular political procedures and constraints have been in place. By this measure, the Constitution of the United States is generally regarded to be more than two centuries old, although it has been amended 27 times, most recently in 1992.¹²⁰

The bargaining that preceded most constitutional reforms in Europe during the nineteenth century suggests that formal amendment procedures played a significant role in the bargains struck. To obtain the necessary breadth of support, constitutional reforms had to advance and protect a variety of interests in parliament at the same time. Most formal amendment procedures in early nineteenth-century Europe required majorities in each chamber of parliament and approval by the king.

Amendment procedures, although remarkably stable, were also occasionally modified during the nineteenth century. This was most often accomplished at the same time that other reforms were

¹²⁰ See chapter 18 for an analysis of eighteenth, nineteenth, and early twentieth century amendments.

adopted. In some cases, amending the amendment process was an indirect consequence of other reforms. For example, Sweden's shift from a four-chamber parliament to a two-chamber parliament, implied that only two chambers need approve subsequent reforms, rather than four. Other reforms made explicit changes to preexisting amendment procedures. Several mid-century constitutions included relatively demanding requirements for amendments, such as supermajorities within parliamentary chambers or popular referenda or a series of approvals by parliament, as in Denmark, Prussia, the Netherlands, and Switzerland. These somewhat more demanding amendment procedures tend to support the rule of law insofar as constitutional stability is increased and/or minority protections are enhanced. Such reforms also tended to reduce the king's ability to renege on his past constitutional agreements by increasing the breadth of support required for amendments.

Judicial Independence, Constitutional Reform, and Constitutional Review

Amendment procedures tend to identify constitutional bargains that are largely self-enforcing, insofar as amendment procedures require broad consensus within government, but no constitution is entirely self-enforcing.

As a consequence, courts and court-like proceedings have often played a significant role in constitutional negotiations, reform, and enforcement. During the medieval period, judicial matters were themselves often subjects of constitutional bargains, as nobles and kings often found that written agreements combined with judicial independence helped to make specific agreements about procedures and constraints more stable and less arbitrary. National courts also constrained the ability of local government officials to arbitrarily change the law, by consistently interpreting and enforcing the national laws that delegated authority to local officials.

The independence and authority of the judiciary (and juries) emerged gradually through a long series of quasi-constitutional bargains analogous to those described above for kings and their tax councils (Finer 1997, Berman 2003).

Contractarians and many other liberals regard constitutions to be contracts that formally delegate authority from the people to their governments. Consequently, they often argue that the national courts should enforce those contracts in much the same manner that they enforces others. Constitutional bargains, however, are different from ordinary contracts in that no outside agency can be powerful enough to enforce the terms of the contract, without being powerful enough to supersede the contract. A court and police force that is strong enough to enforce bargains between parliament and the king would be strong enough to create its own rules. Such courts would tend to

become the true government of a country, as might be said of the Sharia courts in some Islamic countries.

During the eighteenth and nineteenth centuries, authority to appoint judges and senior government lawyers gradually shifted from kings to parliaments along with other policymaking authority. This indirectly increased institutional support for the “rule of law” over the “rule of man,” because laws were also increasingly determined by the formal procedures of parliament, even in countries in which new laws remained *formally* royal mandates informed by parliament’s advice. Constitutional laws, however, remained for the most part beyond the jurisdiction of national court systems, although the judiciary had long played significant roles in day-to-day governance and constitutional interpretation in several countries (Montesquieu 1748/1914; Berman 2003; Field 2002).

There were also broad changes in jurisdiction that made more of the national government actions subject to judicial review. For example, in the middle of the nineteenth century, the royal immunity of cabinet ministers was often reduced or eliminated. Cabinet ministers were made criminally liable for violating ordinary criminal laws and often for their failures to implement legislation adopted by parliament and accepted by the king or queen. New standing committees in parliament were created to review administrative decisions for constitutionality. The constitutional committees were often given authority to overturn executive (administrative) decisions deemed unconstitutional. In a few cases, supreme courts were created to review executive (administrative) decisions for constitutionality, although not usually parliamentary decisions.

These somewhat stronger procedures for constitutional review reduced the extent to which a written constitution can be informally amended (or ignored) by the executive branch and tended to further stabilize constitutional procedures and constraints. Constitutional review also promoted what might be called a constitutional state of mind, by reminding legislators and sovereigns that they too were constrained by “the law.”

In this manner, governance became more tightly constrained by written constitutional documents and formal constitutional amendments during the nineteenth and early twentieth centuries. Governments had always been rule bound, but in the West they became more formally so

than they had been in previous centuries, at the same time that they became more democratic and grounded in popular sovereignty.¹²¹

G. Tentative Conclusion: Constitutional Bargaining Produced Western Democracy

Overall, the liberal reforms of nineteenth-century Europe are consistent with the constitutional bargaining models developed in part I. Constitutional bargaining was fine-grained, multidimensional, and continuous as predicted. Most reforms were adopted using preexisting amendment or legislative procedures. The bargains exploited the broad menu of constitutional possibilities that exist within the king and council template. Most constitutional bargains produced modest reforms of existing procedures in a few policy or procedural areas at a time, rather than entirely new constitutions. The bargains were carefully crafted and intentional, rather than spontaneous expressions of the “general will” or hasty attempts to deal with a specific crisis. In cases in which relatively large reforms were adopted, there were broad linkages among several constitutional issues that were bargained over simultaneously. Free trade reduced royal revenues, so negotiations to reduce tariffs and increase suffrage were partly conditional on agreements about new revenue sources (often from income taxes). Universal suffrage was expected to undermine some political parties more than others and so the last stages of male suffrage extension were often linked to weighted voting systems or proportional representation.

The constitutional bargains were constrained by formal amendment processes and constitutional conservatism. As a consequence, the basic template for governance was retained and many of the formal procedures for adopting and revising public policies remained similar to those from previous centuries. Most European governments in 1910 still consisted of kings and parliaments. Parliaments still deliberated and made recommendations to their sovereign concerning public policies, as they had since medieval times. In most places, laws were still royal proclamations as they had been for many centuries. Nonetheless, a series of modest reforms adopted between 1800 and 1900 had produced major changes in governance. The influence of privileged families was reduced, electoral competition for seats in parliament increased, and policymaking authority shifted

¹²¹ Congleton (1997, 2003) suggests that equality before the law and rule-based governance are especially important for democracies, because it helps them avoid cycling problems. Shepsle and Weingast (1981) suggest that this also tends to be true for parliaments themselves, which provides an explanation for the existence of many of parliament’s formal internal procedural rules. The latter were, however, for the most part enforced by parliamentarians, rather than the courts.

to parliaments during the course of the nineteenth century. By the early twentieth century, kings had become duty bound to accept the “advice” of parliament.

Public policies in Europe, consequently, became better aligned with the interests of the typical adult members of their societies than they had been in the past. In this sense parliaments could be said to have been perfected, or at least improved, as institutions for selecting public policies by the reforms of the nineteenth century.

Liberalism and Technological Change as Catalysts for Constitutional Reform

In Europe, the catalysts for constitutional reforms were evidently technological and ideological. A series of technological innovation produced new cost-effective, capital-intensive, modes of production with economies of scale. However, these new modes of production could not be profitable without changes in economic regulation. And, in some cases, economic reforms were impossible without political reforms. The economic theories of liberals provided rationales for dismantling the internal and external trade barriers that prevented new economies of scale from being profitable. Liberal political theories also provided norms and an agenda for constitutional reforms that were well-aligned with the economic interests of those wishing to profit from the new technologies and the new markets associated with them. Political liberals argued that public policies and constitutions should reflect the interests of all citizens, not simply those of privileged families. Governance should be grounded in written laws, rather than the whims of rulers.

Consequently, liberal trends in reform were evident in a wide variety of policy areas in Europe during the nineteenth century, including constitutional ones. Civic equality increased as slaves and serfs were freed, censorship reduced, public education expanded, and privileged control over markets and politics largely eliminated. Regulatory and tariff reforms reduced internal and external trade barriers, which allowed new economies of scale in production and organization to be exploited. Authority shifted from the elite class-based chambers of government to the more directly elected ones at the same time that economic and political life were opened to broader and broader subsets of the adult population. The basis of government shifted from privileged families and tradition to popular sovereignty and mass elections.

There were several “boot-strapping” processes at work. As barriers to entry in markets were reduced, new larger economic enterprises emerged, which in turn produced a new middle class of small business men, managers, technicians, and artisans. Liberalism gained support among the new upper and middle class, because it provided the basis for understanding life in new, less traditional,

more commercial, and more urban societies. A new (or at least extended) economic elite also emerged based on innovation, mass production, and commerce, rather than land holdings and family monopolies. By reducing ideological and economic support for representation based on class, occupation, and family wealth, liberalism also tended to support the political aspirations (power and status) of these upwardly bound persons and families. Education reforms also produced more literate societies that were more familiar with liberal ideas and proposals for reform. Liberal ideas were not products of the nineteenth century, but changes in economic and political conditions increased their relevance, appeal, and support.

Economic and political liberalization were interdependent phenomena in Western Europe and Japan. Essentially no Western countries industrialized without also liberalizing their political systems, and essentially no countries liberalized their political systems that did not also industrialize, although the relative pace of economic and political reforms differed among countries. Although not products of consensus, both liberal policy reforms and constitutional amendments were for the most part peacefully and lawfully adopted.

The success of liberal economic reforms demonstrated that progress was possible. More open markets increased average and median income by encouraging technological innovation and other value-increasing forms of competition. Liberal constitutional reforms could advance broadly shared interests. Shifts in the basis of authority from elites to ordinary citizens did not weaken national policies or produce major redistribution. Equality before the law did not undermine incentives for excellence.

Constitutional Bargaining Is Evident, But Additional Evidence Is Needed

Chapters 9–11 provide a good deal of evidence that the general pattern of reform in western Europe is consistent with the bargaining theory of reform developed in chapters 2–8. Bargaining within parliament and between kings and parliament is clearly evident throughout European history. The constitutional bargains consummated were multidimensional, fine-grained, and for the most part adopted through lawful, deliberate standing procedures. There is also evidence that the interests of those sitting at the table changed during the nineteenth century. There were many more reforms than mass demonstrations or credible threats of revolution. The individual constitutional reforms were not forced, but reflected bargaining and amendment procedures. The reforms adopted included elements that clearly advanced the interests of most persons entitled to participate in the amendment process.

It is, however, one thing to argue that the broad sweep of political and economic history is consistent with a particular theory and another to argue that the details in nearly every case are consistent with that theory. As economic and political historians know, the details often undermine, rather than support, the broad brush.

To determine whether that is true or not of the present theory, the next seven chapters examine the constitutional histories of six governments in greater detail. The six case studies can be divided into three “easy” cases, in which the analytical history applies nearly perfectly, and three “hard” cases, in which constitutional bargaining, industrialization, and liberalism are present, but in which the results or timing differ from that implied by the analytical history.

The three easy cases are England (chapters 12 and 13), Sweden (chapter 14), and the Netherlands (chapter 15). All of these countries began the nineteenth century with strong sovereigns, all had a series of modest constitutional reforms adopted peacefully, and all became parliamentary democracies by 1925. All of these countries continue to have royal families, who formally head their national governments, and all three continue to use political institutions that were substantially worked out in the late nineteenth and early twentieth centuries. Norway, Belgium, and Denmark could also have been analyzed as relatively easy cases.

The three difficult cases are Japan (chapter 16), Germany (chapter 17), and the United States (chapter 18). These provide useful challenges and support for the theory. Japan is an Asian, rather than European country that adopted a constitutional monarchy rather late (in 1889). Its constitutional reforms were nonetheless influenced by industrialization and liberal ideology. Japan was briefly a liberal democracy in 1925, in the sense that its cabinets were appointed from majority parties in parliament, whose members were elected by universal male suffrage. Japanese governance, however, reverted to royal rule in the next decade, largely as a consequence of electoral pressures and constitutional negotiation. Germany did not complete its transition to parliamentary democracy, although it nearly did so as World War I ended. The government of the Weimar Republic formed after the war was substantially grounded on the parliamentary negotiations that took place during the last years of the second empire.

The United States has not had a king since 1776, although its present constitutional template resembles that of a constitutional monarchy, insofar as the president can be regarded as an elected “king.” Its lack of a hereditary sovereign, however, is not evidence that its transition to democracy was completely unique or revolutionary. The U.S. transition to democracy began at least a century before the United States emerged as an independent country. The reforms adopted by its colonial

precursors were consistent with the constitutional bargaining model developed in part I and surprisingly similar to the European experience in the nineteenth century. Moreover, in spite of its early start, the United States completed its transition to (formal) universal adult suffrage at about the same time as northern Europe with the ratification of its twentieth amendment in 1920.

Although constitutional negotiations in these six countries were undertaken independently and the individual reforms were drafted by different groups of senior government officials at different times and places, the broad outlines of their constitutional debates, negotiations, and reforms were very similar. Technological advance, increased support for liberal ideas, and fine-grained constitutional bargaining with respect to budgets, parliamentary authority, and suffrage reform are evident in each case.

Chapter 12: An Overview of British Constitutional History: the English King and the Medieval Parliament

Chapters 12 and 13 focus on the constitutional history of the United Kingdom. This extended narrative is undertaken for several reasons. English history demonstrates the robustness of governments based on the king and council template, and the emergence of opportunities for constitutional bargaining. England emerged as a nation-state relatively early, which makes its particular institutional developments relatively free from the effects of regional entanglements, although not entirely so. This allows a long and relatively detailed account of its constitutional history to be told without accounting for nation building itself. Although times were often troubled and occasional civil wars occurred, the English king and council template for governance has remained in place for essentially 800 years.¹²² The English case is also the one that is likely most familiar to readers although few will have much detailed knowledge of its constitutional developments.

This is partly because England has never had a formal constitution or grounding law and partly because historians tend not to focus much attention on constitutional developments. The written constitution of England consists of dozens of acts of parliament that define and redefine the basic architecture of the government: how the persons who come to hold power are chosen and the constraints under which they may lawfully operate. There is a large literature in the United Kingdom on the subject of constitutional law, although it is little studied outside that country or even acknowledged by scholars from countries with more unified constitutions. English constitutional law

¹²² England is the medieval name for the kingdom from which the United Kingdom emerged. Its formal name has changed several times to reflect changes in its territory.

The country's name was changed to the (United) Kingdom of Great Britain under the Act of Union of 1707, which ended Scottish independence and added members representing Scotland to the English parliament. (Scotland had previously had its own parliament, but the same men and women had been kings and queens of England and Scotland since 1602.)

The name was changed to the United Kingdom of Great Britain and Ireland after the Act of Union of 1801, which ended (temporarily) Irish independence and added Irish representatives to the British parliament. (Ireland had previously had its own parliament, although England and Ireland had shared the same sovereign since 1542.) *Britannia* was the Roman name for England (and Wales) during the four centuries in which England was part of the Roman Empire.

The formal name of the country is presently the United Kingdom of Great Britain and Northern Ireland (since 1927), which reflects the secession of the Republic of Ireland in 1922.

is augmented by an elaborate body of unwritten procedures, norms, and conventions that fills the spaces left by its constitutional legislation.¹²³

The core standing procedures through which English (and subsequently British, and United Kingdom) public policies are chosen have been remarkably stable through time, although they are a bit ambiguous at the margin, as is often the case in other countries as well. For example, the sovereign (arguably) continues formally to have the power to call and dismiss parliament, appoint ministers, and veto legislation, but informally the sovereign has deferred to the House of Commons on such matters for more than a century. The last formal veto of an act of parliament occurred in the early eighteenth century, although informal royal vetoes continued into the nineteenth century.

What is unusual about the English constitution is not that it is a blend of formal laws and informal practices, but rather that none of its written documents characterize formal procedures of amendment.¹²⁴ The same procedures used to refine narrow relatively unimportant rules and regulations are also used to adopt constitutional reforms. However, the lack of formal distinctions between constitutional and ordinary law has not noticeably sped up the process of reform, because constitutional conservatism is evident throughout English history (as is the use of hyperbole).

England's constitutional core remained extraordinarily stable for long periods of time. Its medieval constitution remained substantially in place for 400 years, except for two decades in the seventeenth century, with only minor reforms and counter reforms. In the nineteenth century this stability ended and parliamentary dominance was cemented into place. Its modern constitution emerged gradually between 1828 and 1928 and has been very stable since then. Table 13.1 at the end of chapter 13 lists four dozen significant reforms of the procedures of British governance spread unevenly in the course of eight centuries.

Episodes of reforms of the written parts of the constitution are concentrated for the most part in five periods: (a) in the mid-fourteenth century, during which parliament took its medieval

¹²³ It could be argued that Cromwell's *Instrument of Government* (IG) was a formal written constitution. Cromwell adopted it by 1653, but it never really described the fundamental procedures and constraints of English governance. Cromwell clearly had more power in practice than described by the IG, for example, when he rejected more than a fourth of the first parliament elected under its rules. Moreover, the IG was substantially revised in 1657, and governance under the amended "constitution" disintegrated shortly after Cromwell's death in 1658 (Morgan 2001: 375–77; Field 2002: 122–25).

¹²⁴ The terms "English" and "British" are used nearly interchangeably in chapters 12 and 13 because of the continuity of English forms and procedures. (It bears noting, however, that governance in the kingdoms of Scotland and Ireland were also based on the medieval forms of the king and council template.)

bicameral form: a House of Commons representing county and town governments and a House of Lords representing nobles and senior church administrators, each with veto power on taxes and legislation, (b) in the early sixteenth century, when a new national church was established and it and the church courts were brought under the control of the Sovereign via acts of Parliament, (c) between 1688 and 1702, when new parliamentary authority over budgets and taxation was obtained and routine meetings of parliament emerged, (d) between 1825 and 1835, when the medieval electoral practices for selecting members of the House of Commons and local governments were radically reformed, partly at the behest of organized reform groups outside Parliament, (e) from 1910 to 1928, when universal suffrage was adopted and the House of Lords lost its absolute veto power.

The unwritten constitution also underwent substantial reform during the late eighteenth and early nineteenth century as royal deference to Parliament increased, the use of the royal veto declined, the House of Lords increasingly deferred to the House of Commons on money bills and cabinet governance emerged. The suffrage reforms of 1430, 1867, and 1884 were also significant changes in the manner in which governments were formed and disciplined. Recent membership in the European Union and modifications of the House of Lords also affect the core procedures and constraints of contemporary English governance. However, the essential architecture of its government (bicameral parliament with a royal executive), and its main procedures for selecting members of parliament, sovereigns, and public policies have been stable for centuries at a time.¹²⁵

Overall, the evolution of the English constitution provides a nearly perfect illustration of the manner in which new opportunities for constitutional bargaining arise and how reforms can take place without major effects on core procedures or constitutional architecture. Instead of a cumbersome amendment process, the stability of the English constitution is a consequence of the political interests and institutional conservatism of members of parliament, who tend to be well served by the rules that bring them to positions of authority. Informal bargaining equilibria between parliament and the crown and other informal norms of governance are essentially sacrosanct.

For example, after 1911, the written constitution could be modified at any time by a simple majority of the House of Commons, but no significant structural changes were adopted until 1998, when parliaments were reestablished in Scotland, Wales, and Northern Island, and in 1999 when the

¹²⁵ Perhaps the most striking example of this occurs in the seventeenth century, during which the medieval English constitution was stretched to the breaking point and then rebounded to its old medieval form. The great “reforms” of 1660 (the Restoration) and 1689 (the Glorious Revolution) can best be understood as reversions to the long-standing medieval constitution.

hereditary basis of membership the House of Lords was substantially reduced, although not eliminated.¹²⁶ Although there is no formal distinction between constitutional reform and ordinary legislation, it is well recognized by members of parliament and voters that some changes in law are more important than others.

A. The Medieval Parliaments of Catholic England: 1200–1500

In the thirteenth century, a number of agreements were negotiated between the barons and the English king; the most famous of which was the Magna Carta signed at Runnymede in 1215. As often the case in English constitutional history, the immediate problem underlying constitutional reform was tax revenue. In exchange for an agreement by the barons to pay more taxes in the present, in 1215 King John negotiated and accepted in writing a variety of terms, including the right of a jury trial by one's peers and the right of a council of barons to reject future increases in taxation. The medieval baronial council characterized in the Magna Carta and its veto power over new taxes established the legal foundation of the medieval parliament.

The agreement was not entirely self-enforcing and the authority of the baronial council had to be reaffirmed several times. These reaffirmations occasionally required civil war between the barons and the king, as in the mid-thirteenth century.

The council of barons became an essentially permanent part of English governance after “the provision” was adopted in Oxford in 1258, which also extended its authority somewhat, by allowing it to appoint a few government officials.¹²⁷ During a subsequent military confrontation of the

¹²⁶ The new parliaments are essentially regional assemblies. Scottish, Welsh, and Irish members continue to sit in a single national parliament. The rules for membership in the House of Lords have been revised several times in the past half century. Lifetime memberships in this chamber (nonhereditary peers) were created in 1958. The number of hereditary peers eligible for voting in the House of Lords was reduced to 92 in 1999.

The possibility of eliminating the House of Lords all together has recently been seriously debated, and various alternatives to hereditary membership voted on in Commons (McLean, Spirling, and Russell 2003). Of course, debate about the proper role of the House of Lords has a long history. Indeed this chamber was eliminated for about a decade, along with the Sovereign, during the English civil war (1649–60).

¹²⁷ The council of barons included senior church officials and nobles with very large land holdings. Even before the Magna Carta, the Constitutions of Clarendon had accorded baronial status to the Catholic Church's archbishop and bishops in 1164.

Essentially, the Constitutions of Clarendon described procedures for establishing jurisdiction on
Continued on next page...

baronial council and the king, representatives of counties and towns were invited to participate in baronial meetings and the name “parliament” came into use.

Simon de Montfort (the Earl of Leicester) invited four knights from each county to join the barons in a parliament in 1264. Two representatives from the major towns (boroughs) were invited to the second Montfort parliament in 1265, which became the basis for the House of Commons. King Henry III eventually won the civil war against the Montfort and his barons, although the king was held as Montfort’s prisoner for a short period. Broad support for Montfort’s broader assembly, however, caused it to become standard English practice after 1295 (Field 2002: 48, Ransome 1883: 64-71).

As a consequence of a series of bargains between the crown and the barons, the authority of baronial councils on tax matters continued, and Parliaments continued to be called by Henry III’s son Edward I.¹²⁸ Inviting prominent commoners to meetings of the baronial councils, “knights of the shire and burgesses,” also became routine. These parliaments voted on new tax proposals, heard petitions from the public, petitioned the king to address various grievances, and occasionally impeached senior government officials (Lyon 1980: ch. 34). Although town and county leaders (burgesses and knights) were not always called to meetings of the nobles, after 1295 they were routinely called to the meetings that considered tax increases. Edward I called 46 parliaments in 35 years.

The familiar bicameral architecture of the English parliament emerged in the fourteenth century. After 1341, nobles and church leaders began meeting separately from the town and county representatives. The barons of the upper chamber normally met with the king directly and consequently had the power to initiate legislation of various kinds as well as to negotiate with the king on his requests for new taxes (subsidies). The lower chamber was the inferior body at this point and was not routinely consulted about new legislation, although it was routinely consulted on tax matters (Field 2002: 50–54, Lyon 1980: 52–53).

legal matters and for appeal. According to Clarendon, the top appeal from both the ecclesiastical and the king’s courts (which both considered criminal matters, murder, and the like) were to end with the king, rather than with the pope in Rome. (Appeals to Rome, however, were restored in relatively short order, although revised again four centuries later under Henry VIII.)

¹²⁸ Richardson (1928) provides convincing evidence that the term “parliament” and some of parliament’s duties were imported from France. The precursors to the English parliament are, however, far older than the use of this term. Previous national assemblies include the Witan and Witenagemot, imported from Germany after the Romans left, and the Grand Council (Magnum Concilium) from the twelve century (Ransome 1883: 6-9, 52-54).

The authority of the baronial council and parliament over taxation was essentially self-enforcing, because taxes assessments were fairly general and so affected essentially all nobles. The barons had common interests and these, together with their combined military force in the middle ages, made it difficult for the king to reduce the baronial council's veto over taxation. On other policy issues and less important constitutional issues, however, the alignment of baronial interests was less complete and their powers were more limited. For example, members of parliament never had complete freedom of speech within parliament during the medieval period, although it was often asked for and temporarily granted by the crown. The right of free speech inside parliament was not absolute during this period, and kings (and queens) often punished outspoken "radical" members of the House of Commons. They often did so with the support of other factions in the Commons.

During the early fifteenth century, the House of Commons petitioned the king for a more uniform (and less corrupt) method of choosing local representatives. Three long-standing election statutes were subsequently adopted in 1413, 1429, and 1445 (Stephanson and Marham 1938: 276–77). The 1413 law required that all county and borough representatives be residents of the communities that they represent. The 1429 law characterized suffrage rules for electing county representatives to the House of Commons. County suffrage was based on "a freeholding to the value of 40 shillings by the year at least above all charges." This enfranchised about 5 percent of the male population of the time, which tended to increase slowly through time with inflation and economic growth.¹²⁹ The 1445 law required that town representatives have a similar status (sufficient wealth to be a knight), and specified that two representatives should be selected from each borough. Representation was not uniform throughout the kingdom, however, because no effort was made to construct boroughs of equal size.

These laws, which established procedures and qualifications for the House of Commons, are of particular interest, because they remained essentially unchanged for 400 years. They are also noteworthy, because national suffrage and representation was relatively broad by the standards of the fifteenth century. However, there was no effort to make the electoral districts equal in size or to

¹²⁹ The very gradual doubling of male suffrage in the next 400 years is a testimony to the power of Malthus' model of population dynamic before the Industrial Revolution.

In century before the Great Reform, the county electorates, under the 40 shilling rule for parliamentary elections, still entitled just 5 percent of the population (Fields 2002: 62, 141, and 167). This suggests that the distribution of wealth remained as concentrated at the start of Industrial Revolution as it had been 400 years earlier, although it had shifted somewhat among elite families.

use otherwise similar election rules. Members were elected from electorates of very different sizes, often with quite different nomination procedures and election rules (Stephanson and Marham 1938: 276-77; Lyon 1980: 542-43; Field 2002: 62). Members of parliament, were normally wealthy individuals or in the employ of such persons, because they were not paid a salary for serving in parliament until 1911.

For the most part, the late medieval English parliament was a consultative body on matters other than taxation, a broad sounding board for royal policies and a source of information about regional problems. Parliaments met when called by the king and were dismissed when the king thought they had met long enough or when the king accepted the parliamentary petitions for redress (whichever came first). Parliamentary sessions were normally relatively short meetings lasting two or three weeks. The longest session in the fourteenth century was the Good Parliament of 1376, which lasted for 10 weeks. English kings had the power to overrule parliament on essentially all matters of law except new taxes.

The House of Lords continued to be the most influential chamber until well into the eighteenth century, although Henry V granted the House of Commons veto power on legislation as well as taxation in 1414, at a time when war with France was pending and obtaining new taxes was of great importance (Lyon 1980: 605; Field 2002: 65; Morgan 2001: 228).

The influence of the early parliaments varied considerably. During times of peace, it was more difficult to persuade parliament to provide new “subsidies” for the king’s enterprises, because other sources of royal income were usually sufficient to fund central government services and the executive branch (king’s court, etc.). Consequently, fewer parliaments were called and fewer parliamentary petitions were submitted during times of peace than during times of war. Indeed, parliaments were often completely ignored between wars.

Kings and queens also had their own advisory and executive councils (great councils and privy councils) that were chosen from the nobility, church, and elite commoners. During times of peace, they could use the standing royal income sources to avoid unpleasant discussions with the parliament over parliamentary status and authority. During times of war, however, the kings needed additional “subsidies” and would routinely call parliaments to request additional tax revenues. These temporary taxes were not freely given even in times of crisis.

Parliament could often influence policies on trade, religion, and economic policy in exchange for temporary increases in royal tax revenues. At occasional peaks of power, parliaments might also be delegated significant oversight responsibility. There were also cases in which parliaments were

instrumental in replacing an errant king and/or in confirming a successor when the sovereign died without legitimate children. At such times, kings would often accept parliamentary conditions for accession. For example, in 1310 the Parliament appointed a committee of 20 bishops and lords to oversee the kingdom's finances. In 1399 the English Parliament sentenced former King Richard II to lifetime imprisonment in the Tower of London, in large part for violating the medieval constitution. The throne was declared vacant and Henry IV installed in his place.¹³⁰

The extent to which the sovereign accepted parliamentary privileges and petitions depended on the immediacy of the king or queen's need for baronial contributions and community taxes. Such peaks of parliamentary authority were rare and usually short lived. The House of Lords remained the most influential chamber well into the eighteenth century, although Henry V granted the House of Commons veto power on legislation as well as taxation in 1414, at a time when war with France was pending and obtaining new taxes was of great importance (Lyon 1980: 605; Field 2002: 65; Morgan 2001: 228).

During the Catholic period, the kings (and their executive cabinets) were the primary center of policymaking authority within the governments of England.¹³¹ Medieval parliaments were normally of tertiary importance. They were not self-calling. Neither the House of Lords nor the House of Commons had its own permanent meeting place until 1512 and 1549 respectively. Before that time, space for meetings was made available by the king, usually in his palace at Westminster (the site of the present Parliament).¹³² Indeed the term "House of Lords" was not used to describe the noble chamber until 1544 (Field 2002: 69). The second most powerful organization in England in this period was usually the Catholic Church, rather than parliament.

The Church controlled very large land holdings, had its own court system, and was directly represented at court and within the parliament. The "lords spiritual" (bishops, abbots and priors)

¹³⁰ This was not a peaceful change of office, but was engineered by a group of barons lead by Henry while Richard II was away in Ireland. Nonetheless, the calling of a parliament to accept Richard's resignation, sentence him to life imprisonment, and to approve the accession of Henry IV revealed that parliament had become a source of legitimacy and approval by English elites (Morgan 2001: 220-22, Ransome 1883: 85-86).

¹³¹ Executive councils analogous to cabinets had long been used by kings for advice and for administrative and judicial purposes under such names as the Curia Regis and the privy council.

¹³² It was also not until the sixteenth century that the respective chambers began keeping careful records of their meetings. Parliamentary records begin in 1510 for the House of Lords and 1542 for the Commons, respectively (Fields 2002: 69).

often formed a majority of the House of Lords during this period, and senior church officials were often among the king's most important ministers.¹³³ The church hierarchy could use the power of the pulpit to mobilize public opinion throughout England and could also negotiate for new privileges and discreetly protect those that it had behind closed doors at court. For hundreds of years, the Catholic Church was the only large organization within England that was substantially beyond the control of the king(s) of England, although that was soon to change.

Although parliaments had nontrivial influence of taxes and legislation in this period, the sovereign could usually influence how votes would be cast in both chambers. English sovereigns controlled appointments to a several hundred relatively well-paid positions of authority throughout the kingdom that could be used to increase parliamentary support in various ways. Kings could also influence elections to the House of Commons by appealing to national interests and by rewarding local elites who controlled seats in Commons. Kings could determine the membership and rank in the House of Lords through elevation. During the fifteenth and sixteenth centuries, about a fourth of noble families were replaced each generation. Between patronage and occasional threats, an ambitious king could usually “manufacture” a compliant parliament.¹³⁴

B. Parliament and the Protestant Reformation: 1500–1625

The next two centuries were turbulent times, intellectually, socially, and politically, as the Catholic universe underwent major revisions. With the discovery of the New World, the physical world that Europeans had “known” for centuries had to be revised substantially. The new

¹³³ By the end of the fourteenth century, the House of Lords had become largely hereditary and consisted of the “Lords Temporal,” composed of the top five ranks of the nobility (Duke, Marquess, Earl, Viscount, and Baron) and the “Lords Spiritual” from the top three ranks of the church (Bishop, Abbot, and Prior). See the “History of the House of Lords,” <http://www.parliament.the-stationery-office.co.uk/pa/ld199798/ldb/ldb/ldhist.htm>.

¹³⁴ In most cases, replacement was necessary because a family lacked legitimate heirs; in others, replacement was a consequences of punishments that stripped families of privilege. Clearly both, but especially the latter, gave a king considerable power over the House of Lords. The total number of nobles was fairly stable during this period, ranging between 55 and 57 (Field 2002: 67).

Kings would also occasionally threaten and/or pack the House of Commons. For example, in 1398, Richard II once surrounded the meeting place of parliament with archers, with bows drawn and ready to shoot. The power to incorporate new towns and counties was used by Henry VI to add 53 persons (of the 277) to the 1447 House of Commons.

continents of North and South America, as well as the new southern sea routes to the East, became new domains of European economic and political conflict for the next three or four centuries.¹³⁵ Revolutions of the spiritual and intellectual worlds also occurred at about the same time. The movable type printing press developed by Gutenberg in the previous century brought the thoughts of Aristotle, Luther (1507), and Calvin (1534) to all who could read, and their interpreters brought their ideas to all who would listen.¹³⁶ No longer were intellectuals focused narrowly on refining infallible church doctrine.¹³⁷

The Protestant Reformation produced intense theological debates, new church organizations, and new political alignments throughout Europe, eventually separating northern Europe from southern Europe. By middle of the sixteenth century, there was no longer a single unified church in Europe, and no longer were European political and economic interests concentrated within the northwestern corner of the great Euro-Asian land mass. All this led to a good deal of military conflict, which was often good for parliaments throughout Europe, although it was not good for Europe itself. Conflict is expensive, and the winner-take-all nature of warfare tends to induce escalation in the resources committed to individual battles and to wars as a whole.

The kings and queens of Europe were increasingly in need of additional tax revenue, because their traditional sources of income were rarely sufficient to fund wars. This induced English kings to call parliaments more frequently to vote on tax proposals and to lend their support to new laws.

Parliaments also continued to play an important role in affirming the outcomes of controversial royal successions. In exchange for new subsidies, support for royal enterprises, and ratifying accessions, parliaments often asked for and received various “privileges” (freedom from arrest

¹³⁵ At first, the new discoveries were simply interpreted within the existing frame of reference. Columbus (1492) insisted that he had found a new Western route to the far East. However, his discoveries were reinterpreted by other explorers in the years following his famous voyages. And his new route to the far East became the new Western continents. Perhaps the most famous of these revisionists was the Medici bank representative Vespucci, who declared the western lands to be a “new world” (*mudus novus*) after several voyages. In honor of his controversial conclusion, and perhaps because of his control of the substantial Medici financial assets, his first name, Americus, began showing up on maps of the New World shortly thereafter.

¹³⁶ Criticism of Catholic doctrines and church behavior had, of course, long existed in Europe, both within educated elites and among illiterate peasant churchgoers. However, the grumbling of a few intellectuals and nonconformists on doctrine and various critical assessments of the behavior of church leaders did not produce a powerful mass movement until shortly after 1500.

¹³⁷ By the century’s end, the work of Copernicus (1473–1543), Galileo (1564–1642), and Kepler (1571–1630) had also begun to produce literally a new universe and, perhaps more important in the long run, a new scientific method that would subsequently produce the technology for a new civilization (Margolis 2002).

during parliament sessions). Parliament also obtained its own permanent meeting places in the sixteenth century.¹³⁸

The reluctance of parliaments to tax themselves to provide royal subsidies without receiving something in exchange induced kings and queens to seek new revenues that were beyond veto authority of parliament. Sovereigns could generally collect customs fees and tariffs. They could also rent or sell royal properties, appointments, and monopoly privileges. An entrepreneurial Sovereign might also sponsor business ventures (crown companies), colonization, and engage in piracy at sea. They were also more inclined to occasionally confiscate the wealth of nobles and others in the kingdom.

Economic growth and globalization increased royal income from tariffs and royal properties. In times of peace, these traditional sources of income sources normally allowed the Sovereign to rule without calling parliament.¹³⁹

Constitutional Exchange in Medieval England

During times of war, Parliament normally requested specific public policy changes in exchange for temporary new taxes. They also occasionally received new authority to intervene on a subset of public policy matters in exchange for temporary tax revenues.

The sovereign also normally accepted recommendations of parliament in policy areas in which royal and parliamentary interests were closely aligned. In such cases, acts of parliament helped legitimize royal policies that might otherwise be controversial, and also created precedents for broader parliamentary authority. For example, during the English reformation, Henry VIII used several acts of parliament to secure control over the Catholic church and the Church's resources in England. These acts indirectly expanded the English parliament's authority over religious matters and the sovereign.

The first recorded majority vote in the House of Lords occurred in its consideration of the 1532 Act in Conditional Restraint of Annates, which ended payments to Rome by clergy appointed to

¹³⁸ The Houses of Lords and Commons received permanent space in Westminster Palace in 1512 and 1550 respectively, albeit after a fire induced the Sovereign to move to other quarters (Field 2002: 69).

¹³⁹ Indeed, in two countries, these revenue sources were sufficient to allow the sovereign to dispense with parliaments, as in Denmark and France.

public offices (benefices). Parliament's Act of Appeal (1533) made the Sovereign the highest court in the land, ending appeals to Rome by ecclesiastical courts.¹⁴⁰ *The Act of Supremacy* (1534) made the Sovereign the "supreme head in earth of the Church of England called Anglicana Ecclesia." The *Bill for Dissolution of the Lower Houses* (1536) closed the smallest monasteries and confiscated their assets for the king. In 1539 a similar bill closed the larger monasteries and allowed Henry to confiscate their assets as well. The *Statute of Six Articles* (1539) codified Henry's theological dicta for the new Anglican church. Insofar as Henry VIII "deferred" to these acts, he had implicitly recognized a substantial expansion of parliamentary authority.

Henry VIII's interest in church reform was partly personal, a desire for divorce that could not easily be approved by the Catholic Church, and partly economic, his government needed resources to fight wars and reward supporters. The Church had enormous assets within England—perhaps more than Henry's. Taking over the Church also advanced his constitutional interests by providing him with more complete control of English governance. The church, its judicial system, properties, doctrines, courts, and pulpits had been largely beyond his control. Its lands could be used for revenue and as a manner of extending his control over parliament.

The Parliament's interests were less than perfectly aligned with those of the Sovereign in this case, because the Catholic bishops and senior abbots had long been members of the House of Lords. However, most "temporal" members of parliament (the nobles without senior church positions) had an interest in expanding the domain of parliamentary authority, in finding tax sources other than their own property and income, and many also sought to reform the Church, itself. The latter is not to say that a majority in the Houses of Commons or Lords were Protestants in the modern sense of the word, but rather that the problems of corruption and doctrinal inconsistencies within the Church were widely acknowledged, if not widely discussed (because of fear of being punished for heresy). Moreover, many of the temporal members of parliament would have anticipated their subsequent acquisition of monastic lands from the king and their relatively advantaged position in subsequent parliaments. Most of the members of the House of Commons and the temporal lords, thus, had economic and political interests in "clerical reform" that paralleled

¹⁴⁰ This jurisdictional dispute was a long-standing bone of contention for the Sovereign regarding the Church. For example, similar authority had been sought long before in the Constitutions of Clarendon adopted in 1164. The Church negotiated with King Henry II on this matter for many years, eventually inducing the king to reverse his position over the course of a decade (Morgan 2001: 144–45; see also the *Catholic Encyclopedia*). The rapid spread of the Protestant revolution throughout Europe prevented the Church from obtaining similar results in the sixteenth century.

those of Henry VIII. Two-thirds of the monastic lands acquired had been sold, rented, or given away by 1547 and three-quarters by 1558. Much of the Sovereign's newly found wealth was devoted to military ventures. Much of the remainder was dispensed as patronage to Henry's supporters (Morgan 2001: 285; Field 2002: 68).¹⁴¹

In addition, parliament obtained advantages in the long run that Henry VIII did not fully anticipate. By asking the Parliament to ratify the laws reforming the Church, Henry not only had expanded the scope of parliamentary authority, but implicitly had elevated parliament's statute law above all others. The English Church was reformed by formal acts of parliament, rather than divine revelation, or royal fiat.

Those acts changed the fundamental relationship between church and state in England and also changed the perceived importance of parliament and its rulings in the courts and throughout the country. The members of parliament expected to play a significant role in religious controversies from that point on, and did so. For example, Edward VI induced parliament to pass the first (1548) and second uniformity (1552) acts, which made English, rather than Latin, the language of the Anglican church, and also required church attendance. Queen Mary subsequently induced the Parliament to reinstate the links to the Papacy, reinstate laws against heresy, and repeal much of Reformation law, which parliament did, albeit with the proviso that monastic lands not be restored. (The latter suggests that parliament was not at this point entirely motivated by religious interests.)

Mary's heresy laws were rigorously enforced and at least 287 persons were burned at the stake (Morgan 2001: 298–99). Elizabeth I subsequently reestablished royal supremacy and full Protestant worship through acts of parliament in 1559.

¹⁴¹ In a few cases, nonetheless, Henry found it necessary to threaten pivotal members of parliament to bring them into line on important votes (Morgan 2001: 283). For example, in a private meeting with a prominent member of the House of Commons, Edward Montague, King Henry reportedly took Montague by the ear and said "Get my bill passed by tomorrow, or else tomorrow this head of yours will be off."

The royal threat was not entirely credible, in that the courts might have decided otherwise, but it was not an idle threat. The king often induced Parliament to pass bills of attainder against unpopular political opponents and reluctant public servants, who forfeited their life and property to the Sovereign as penalty for treason (i.e., disloyalty to the Sovereign). The bill was passed the next day (Field 2002: 70).

The balance of interests represented in the House of Lords was also affected by the reformation. After 1539, there were fewer lords spiritual, because only the bishops and archbishops of the new Anglican church were members of the House of Lords. The “Lords Temporal” formed a secure majority in the House of Lords *for the first time*.¹⁴²

In other respects, the post-Reformation parliament was similar to what it had been in Catholic times. The domain of parliament’s authority had expanded somewhat, but the parliament’s main area of authority remained taxes. Its basis for membership was not fundamentally altered, and its authority over public policy remained grounded in medieval documents, precedents, and informal customs and norms. The King continued to determine when parliaments would be called and when they would end. As a consequence, the timing of sessions of parliament tended to reflect the state of government finances.

The English government was largely “self-funding” during times of peace, relying on income from royal lands (which had expanded because of lands taken from the Catholic church during the Reformation) and tariffs. Additional revenue beyond the control of parliament could be obtained by selling monopoly privileges in what would otherwise have been competitive markets. Towns, guilds, and entrepreneurs sought and received privileges to be exclusive producers of goods and services, and often paid for their privileges. Oxford and Cambridge, for example, had long held monopolies for higher education. Such monopoly privilege and tariffs, naturally, made the many goods and services more expensive than they otherwise would have been. Monopolies in Elizabeth’s time included such products as: iron, transport of leather, salt, ashes, vinegar pots, lead, whale oil, currants, and brushes. Royal appointments were also often for sale. Parliament-approved tax receipts accounted for less than 10 percent of royal income during this period.

Parliament’s authority was extended slightly, partly in response to Queen Elizabeth’s new market-wide monopolies, some of which were especially costly and unpopular. Public demonstration opposing the Elizabethan monopolies occurred, and “antitrust” petitions were submitted to Elizabeth by parliament to revoke the monopolies. The queen was evidently convinced that she had gone too far, and eliminated several of her most burdensome monopoly “grants” (Field 2002: 89, Ransome 1883: 118-20).

¹⁴² With the closing of the monasteries, the abbots and priors ceased being members of the House of Lords. Prior to 1539, the lords spiritual had often been a majority in the House of Lords at meetings of parliament.

<http://www.parliament.the-stationery-office.co.uk/pa/ld199798/ldb/ldbrief/ldhist.htm>

This economic reform demonstrates that by the early 17th century, parliaments were beginning to believe that they could circumscribe traditional sources of royal revenues, as well as taxes, and also that public demonstrations could affect public policies. Elizabeth's revoking of monopoly privileges reduced and implicitly limited Elizabeth's traditional revenues.

Ongoing Fiscal Bargaining Between King and Parliament

Rabb's (1998) biography of Edwin Sandys provides a useful window into England's fiscal politics at this time. Sandys can be regarded as a liberal member of parliament. Sandys was involved in the repeal of Queen Elizabeth's monopolies and subsequently in the management of the Virginia Company that established England's first colony in North America. Rabb's biography discusses several instances of fiscal bargaining between the king and House of Commons during Sandys' time in office. For example, chapter 6, provides a fairly detailed analysis of single-round fiscal-policy bargaining that took place in 1610, as king James I requested new taxes to pay for the suppression of a rebellion in Ireland.

[In 1610 the] members of **parliament had been recalled, so far as the government was concerned, for one reason and one reason alone: money ...**

... in the end the members of parliament accepted the king's assurances and decided to "proceed notwithstanding." They now wanted confirmation of the adequacy of their offer, and also a more concrete set of proposals **outlining what the king might surrender in return** (Rabb 1998: 140, 149).

Other less detailed accounts can be found in most histories of England.

The Late Medieval Constitution of England

In addition to fiscal problems, there were also ongoing theological disputes and tensions during the sixteenth century and early seventeenth century. Many of these doctrinal disputes were politically important, because of the lack of separation between church and state in England. There were, for example, many debates in Parliament over what types of church services should be permitted within England. The English church was relatively tolerant during most of this period and allowed a broad range of services to be held, including those by nonconforming Protestants and Catholics.¹⁴³

The late sixteenth and early seventeenth centuries were also times of relative prosperity. The age of the shopkeeper emerged, as village stores augmented the ancient marketplaces as places of local

¹⁴³ The Church of England was relatively tolerant during this time, as indicated by its official name, "the Catholic and Reformed Church of England" (Morgan 2001: 352).

commerce. A small “middle class” of merchants, professionals, and successful farmers began to emerge below the nobility. A small leisure industry emerged, which allowed playwrights such as Shakespeare to take up the theater as a full-time occupation. The largest “manufacturing industry” was engaged in the decentralized production of homes, barns, and sheds. Population grew more rapidly than economic output, however, with the result that real wages fell for low and moderately skilled labor. Food prices increased about twice as fast as wage rates (Morgan 2001: 329).

However, neither religious disputes, tax revolts, international affairs, nor economic growth produced significant trends in the reforms of the medieval English constitution. The royal family remained by far the wealthiest and most powerful in the kingdom, which together with its power to appoint persons to government positions and its control of the largest military force in England, meant that the king or queen had a dominant influence over most policy decisions. The Sovereign continued to govern, for the most part, through its own hand-picked great and privy councils. (The Sovereign controlled about a thousand senior appointments in the national and regional governments.)

The members of the House of Lords were the first born male children of privileged families and senior members of the Church of England (who were often from noble families). The medieval procedures for selecting members of the House of Commons enfranchised about the 5-10 percent of the wealthiest men in the kingdom. Many of the Sovereign’s advisors were distinguished members of Parliament, but the presence of such persons in the executive indicated that their interests were aligned with those of the Sovereign, rather than parliamentary authority. Other members of parliament whose interests were less important or less well aligned with the sovereign’s were largely ignored. Short meetings of parliament were called, as necessary to request new taxation, and occasionally to pass desired legislation or to affirm the accession of new kings and queens.

There were neither a standing army nor an organized police force outside major cities. Local militia, small forces maintained by noblemen, and the king existed, rather than national ones. Volunteers marshaled by local leaders, rather than salaried civil servants, provided many local public services. The local county gentry largely determined local services and implemented parliamentary tax and regulatory policy. Day-to-day governance remained largely a local matter until the twentieth century.

Overall, the fundamental routines of English medieval governance and economic life were remarkably stable, although they would soon be challenged by constitutional conflicts that arose in England during the seventeenth century.

C. Collapse of the Medieval English Constitution and its Restoration: 1625–60

In the early seventeenth century, the medieval constitution of England was stretched to the breaking point by the Stuart kings. The proximate cause of constitutional distress was tax revenue, but this time negotiation with parliament failed to find a mutually agreeable solution. To circumvent parliament's veto over new taxes, James I and his successor Charles I greatly expanded the practice of selling public offices (benefices) and monopoly privileges, and also increased customs duties and tariffs.¹⁴⁴ In addition, the Stuarts made extensive use of “forced loans” and “ship's money” as sources of royal income.¹⁴⁵ Many of the new revenue sources appeared to be taxes in disguise, and others violated long-standing constitutional law and precedent. The latter were regarded as unconstitutional new taxes by many in parliament (and by the courts), but these objections were largely ignored by the sovereign.

When Charles I came to office in 1625, he wanted to finance a war with Spain and France. This required expanding government revenues and creating a national army, which induced him to call parliament three times during his first five years. In exchange for more tax revenues, the Parliament demanded a return to the medieval constitution. Parliament wanted the fiscal and judicial practices of James I reversed, and refused to provide subsidies of the magnitude that Charles I requested. In 1628 the Parliament submitted the *Petition of Right*, which formally listed grievances against the king and sought to have Charles I affirm constitutional practices that Parliament argued had been in place since the *Magna Carta*.

The Duke of Buckingham, acting on Charles I's behalf, attempted to pack the House of Lords by selling peerages to his supporters in order to obtain a favorable decision on government revenues.¹⁴⁶ The numbers of peers more than doubled from 55 in 1603 to 126 in 1628. James I and Charles I also applied harsh and somewhat arbitrary punishment to those who violated their mandates, using royal courts in a manner that violated long-standing procedures and norms of the English court system. Charles refused to accept parliamentary petitions of grievances, and after 1629

¹⁴⁴ In 1623, James I accepted parliament's *Statute of Monopolies* which greatly reduced but did not eliminate the ability of the crown to sell monopolies. For example, monopolies for “technical improvements” and restrictive corporate charters could still be sold (Price 1913: 35-42).

¹⁴⁵ Ships money was a demand for money from port cities, that would evidently be collected from ships as increased fees for port services. For parliament and its supporters, the constitutional issue was whether this was a tax or not. If it was a tax, then parliamentary approval would have been necessary. (Cross, 1914: 466, Morgan 2001: 313).

¹⁴⁶ Buckingham was impeached in 1627, but Charles dismissed parliament to end the proceedings (Field 2002: 99). Buckingham was subsequently murdered in 1628 (Morgan 2001: 349).

did not call another parliament for more than a decade. Instead, he raised money from other sources and was able to balance the budget without parliamentary subsidies after the war with France and Spain was over. Nonetheless, questions on the constitutionality of some of the royal income sources, as well as the burden of the royal revenues, continued to undermine Charles' support within Parliament.

Charles I's religious policies also reduced his support among Protestants, especially Puritans, inside and outside parliament. At his request, archbishop Laud tightened control of Church practices and doctrine and forbade some of the practices used by nonconforming Puritan churches. Puritan suspicions of papist conspiracies were reinforced by Charles' marriage with Henrietta Maria of France (a Catholic) and also by his alliances with Irish and Scottish Catholics to suppress the rebellious Presbyterian Scots. Together, his violations of the medieval constitution and his fiscal and religious policies caused political, economic, and religious opposition to intensify in many of the groups and regions represented in Parliament.

When Parliament was finally called again in 1640 to help finance and ratify the settlement with the Scots, not only was Parliament's bargaining position unusually strong, but its opposition to royal policies was also unusually strong. The Stuart neglect of the long-standing English constitution had created a major political crisis.

The 1640 Parliament met in mid-April. A majority of parliament was willing to finance the war in Scotland, but insisted on a return to the medieval constitution, as had the previous parliament more than a decade earlier. The House of Commons complained about religious innovations, the sale of monopolies, ships duties, the expansion of royal forests, military charges, and the violation of the liberties and normal procedures of parliament.¹⁴⁷

The House of Commons petitioned the House of Lords for a joint meeting (joint conference), which was agreed to by the House of Lords. Constitutional grievances were again voiced, but no actions taken. The king argued that all his policies were necessary for the safety of the nation and dismissed the "short" Parliament on May 5, 1640. The two "all or nothing" offers made by parliament were tabled, rather than resolved through negotiation and constitutional exchange.

In November of 1640, Parliament was again summoned, partly at the insistence of the Scots, who refused to accept a peace settlement unless it was ratified by Parliament. This time, Parliament was able to press for and obtain formal agreements with Charles I that affirmed the power of

¹⁴⁷ *Journal of the Commons, II, 10f.* Excerpts from the proceedings of the Short Parliament can be found at http://www.constitution.org/sech/sech_095.htm.

Parliament. Much of the new legislation simply formalized long-standing medieval practices, but some was substantially new. For example, the new legislation included the Triennial Act (no. 27: 144), which required Parliament to be called at least once every three years and allowed Parliament to be self-calling, if no royal writs were forthcoming after three years. A subsequent act (no. 30: 158) prevented the king from unilaterally dissolving Parliament.

These two acts made sessions of Parliament autonomous of the Sovereign for the first time in English history, and the latter was the constitutional basis under which Parliament continued to meet throughout the English civil war. (The “long” Parliament did not formally dissolve itself until 1660.) In exchange, Parliament passed and the king accepted the Tonnage and Poundage Act (no. 31: 159), which legitimated retroactively many of the “ship money” charges used to finance governance by James and Charles and extended them into the future, *but only for two months*. This freed James from various legal challenges to his revenue sources, but also made future royal solvency more dependent on parliamentary good will (Gardiner 1906: vol. iii).

The King’s authority to intervene directly on legal matters in the secular and religious courts was eliminated by acts that eliminated the Star Chamber and High Commission (no. 34 and 35). The consequent reduction in prosecutions for treasonous matters unleashed a torrent of popular pamphlets (Field 2002: 106). The use of ships money that had been used to finance the expansion of the Navy, was repealed (no. 36: 189), which increased parliament’s future authority over public policy by reducing royal revenues.

D. Constitutional Bargaining Fails and the English Civil War Begins

To this point, it can be argued that the constitutional legislation of 1640-41 simply reclaimed and formalized authority that Parliament had had or at least claimed to have at its various peaks of power during the previous 300 years. It formalized the long-standing practice of summoning parliaments every few years, reestablished a more independent court system, and affirmed parliament’s veto over new taxes. After the civil war had run its course and the crown was “restored” to Charles’ son, Charles II, this is also approximately where English governance found itself in 1660. Similar rules were adopted again in 1689 at the accession of William and Mary. In this sense, one could argue that there were three restorations of the England’s medieval constitution during the seventeenth century.

The robustness of the medieval constitution, however, was not obvious in 1640. Tensions between Parliament and king escalated, rather than diminished. England did not simply return to the

long-term balance of its medieval constitution. The “long Parliament” and Charles I continued to maneuver for control of public policy and subsequently for control of the army. Supermajorities in parliament favored the reforms of 1640-41.

As Parliament attempted to reduce the Sovereign’s authority below its traditional medieval levels, however, support, especially in the House of Lords, dwindled and the Parliament split into “royalist” and “parliamentary” camps. The royalist minority withdrew (and was subsequently excluded) from the parliamentary sessions in Westminster, as the military phase of the civil war began.¹⁴⁸

Their mutual suspicions escalated to open civil war in 1642. Parliament won the war, which produced 20 years of radical constitutional experimentation by the Parliament. Eight years later, several years after winning the war, the trial of Charles I for treason was still underway. The majority of the anti-royalist members, who made up the post civil war parliament, found for treason and favored execution, but a minority thought that execution would overturn the constitution and favored a less radical solution. To advance revolutionary aims, the majority decided to exclude their opponents from Parliament. This “rump” of the original long Parliament sentenced Charles to death in 1649, eliminated the House of Lords, and declared England a commonwealth.¹⁴⁹

The execution of Charles I must have appeared to be an irreversible “reform” to the republican majority of the much reduced Parliament. The execution of Charles I made it impossible for the excluded members of parliament (the previously excluded royalists plus the recently excluded moderates) to surrender to the king and restore the monarchy.

The details of the civil war, and much of the parliamentary politics during the war are largely beyond the scope of this book, in that they clearly violated long-standing constitutional practices and failed to have lasting institutional effects on English governance. The failure of the king and

¹⁴⁸ Departure of the royalist members, chiefly from the House of Lords, had reduced the Parliament by about half its original numbers. Many of these joined the king’s Parliament that met in Oxford in 1644. The king’s “mongrel parliament” met only once (Field 2002: 110). Constitutional negotiations between Charles and the Westminster Parliament continued throughout the civil war, but could agree to little.

¹⁴⁹ In December 1648, Colonel Pride reduced parliament by excluding 110 members (arresting 40 and barring 70 others). The resulting rump Parliament was essentially purged of moderates. The new rump Parliament included only about a sixth of the original 1640 parliament. A majority of this radical “rump” voted for the king’s execution. The rump majority included less than a tenth of the original 1640 parliament (Morgan 2001: 370, 372). In 1649, Charles was beheaded for constitution crimes (treason). The excluded group is likely to have included many who were originally in the “anti–Charles I” majority of the 1640 parliament, given the reduced attendance at parliamentary sessions.

parliament to find a compromise serves as a useful illustration of how divided governments can produce civil war when uncompromising factions emerge that are willing to violate standing procedures and norms. (It was partly this failure to come to terms that led Thomas Hobbes (1651), writing in the safety of France, to insist that nations should have only a single sovereign authority.) The failure of parliament's constitutional experiments to produce a stable government also provides a useful illustration of the difficulty of engineering major reforms of governance. The period 1642–60 was truly a revolutionary period.

The Agreement of the People of 1649, a Liberal Constitutional Proposal

After Charles I's execution, the "rump" Parliament subsequently attempted to draft a republican constitution. Their negotiations were influenced by new theories of governance that had emerged in the years before and during the civil war. The most influential of which was the "Agreement of the Free People of England," a surprisingly modern social contract (1649) supported by one of the first English constitutional interest groups, the Levelers. The "agreement" was written, widely disseminated within England, and actively supported two years before Hobbes finished his famous work on the social contract in 1651, and more than four decades before Locke finished his treatises on government in 1689.

The "Agreement of the People" was written by four men while imprisoned in the Tower of London. It was evidently based partly on earlier proposals. It proposes a series of radical liberal reforms to English governance, essentially a new constitution. Article I states that "the supreme authority of England shall reside" in a new 400 member unicameral parliament, with paid members, and representation "proportionate to the respective parts of the nation. Article II states that the "major voices" of parliament will be supreme ("shall be concluding to this nation") and that more than half the members to parliament will be elected. The elected members will chose the speaker of the parliament. Article III requires that all governmental officials be accountable to law and parliament.

Article VIII specifies annual elections for elected members of parliament. Article IX lists the duties of government: (i) foreign policy (peace and commerce) (ii) maintenance of "our lives limbs, liberties, properties, and estates," (iii) raising money, extending freedom, redress of grievances, and promoting prosperity. Article XI specifies that "all privileges or exemptions of any persons from the laws, or from the ordinary course of legal proceedings, by virtue of any Tenure, Grant, Charter, Patent, Degree, or Birth, or of any place of residence, or refuge, or privilege of Parliament, shall be

henceforth void and null; and the like not to be made nor revived again.” Articles XVIII and XIX call for reducing regulation of international trade. Article XXI calls for limits on the death penalty and the payment of damages to victims.¹⁵⁰

The supporters of the agreement became known as the Levelers, because most argued for the end of social privileges. (A few also argued for a major redistribution of wealth through land reform.)

The leveler proposals and other controversies during the period of the republic are important for subsequent English constitutional developments. This is not because they succeeded, which they did not, but because they focused on issues that continued to play central roles in constitutional debates in England and much of Europe for the next two centuries. Most of their constitutional proposals were adopted in the following two and a half centuries, although very few of their proposals were adopted in the seventeenth century.¹⁵¹

The Failure of the “Rump” Parliament and Cromwell’s Republic

Instead of placing procedural and policy constraints on itself, as recommended by the Levelers, the rump Parliament gradually transferred all remaining political authority to a new executive council of state through a series of acts adopted in the next four years. Oliver Cromwell, the Lord General of the Parliament’s army evidently decided that this process of constitutional reform was too slow and corrupt—or perhaps, not sufficiently responsive to his advice—and dismissed the rump Parliament (by force) in April 1653.

¹⁵⁰ A complete copy of this surprisingly modern proposal for a social contract can be found at: http://www.constitution.org/lev/eng_lev_07.htm.

¹⁵¹ The proposed social contract was widely circulated within England and must have been known to Thomas Hobbes, who sat out the civil war in France, where he wrote his famous book, *Leviathan*, published in 1651, in which he articulated a new social contract theory of governance.

The tone of the Hobbes’ governance chapters defending an all-powerful sovereign suggests that Hobbes believed that England would have been better off with the French form of monarchy, which was in a relatively autocratic phase, although he hedges a bit by allowing the possibility of an all-powerful parliament. Hobbes’ proposed covenant (ch. 17) states that citizens accept an oath like the following: “I authorize and give up my right of governing my self *to this man, or to this assembly of men*, on this condition, that thou give up thy right to him and authorize all of his actions in like manner.”

(Note that Hobbes allows for the possibility of a republican government with a supreme parliament, “this assembly of men.”)

Cromwell proposed a new Parliament composed of a 140 worthy persons to be selected by local Protestant church congregations (Field 2002: 122). Eight months later, in December 1653, Cromwell announced that he would rule via a new written *Instrument of Government* (IG: no. 97: 405).

Cromwell's new constitution did not break entirely with the long-standing architecture of the English medieval parliaments, but it did change many of its core procedures. The government of the new commonwealth was to be composed of three major branches: (1) the Lord Protector (a lifetime position analogous to a king to be held by Cromwell), (2) an advisory privy council (effectively a royal cabinet), and (3) a unicameral Parliament. A 400-man Parliament was to be elected and meet every three years. It would remain in session for at least five months. Suffrage (for men) required wealth greater than 200 pounds (which limited suffrage to the landed gentry). Parliament would initiate all legislation (subject to Cromwell's veto) and would be called on in times of emergency to vote new taxes. When Parliament was not in session, the council and Lord Protector would rule. During times of peace, taxes would be sufficient to maintain a 30,000-man army and a naval fleet, and also provide 200,000 pounds per year for administrative purposes.¹⁵² There was to be freedom of worship for Protestants.

Members of the privy council would hold their seats for life. As vacancies arose on the privy council, the Parliament would send the protector a list of six names from which the Lord Protector would choose a replacement. The constitution also included a supreme court. All acts of government could be challenged in court to determine whether they violated the Instrument of Government. The disposition of troops would be jointly controlled by the Lord Protector and the Parliament, if Parliament was in session, or by the Lord Protector and council if not. Evidently, the constitution could be amended by ordinary acts of legislation (no amendment process was mentioned).

Of course, the problem with such a constitution is that if the Lord Protector is sufficiently powerful to impose it unilaterally, he cannot be bound by its rules. This was evident even before the procedures of the new instrument of governance could be implemented. In 1654, following the very first election for Parliament under the new suffrage rules, Cromwell excluded 120 elected members who he considered hostile to his regime (Gardiner 1906: part V; Field 2002: 123).

Those allowed to take their seats petitioned Cromwell for additional constitutional reforms. Their proposals attempted to make the new government resemble that of England's medieval

¹⁵² Cromwell's proposed 30,000-man army was about 10 times that normally supported in times of peace. Charles II kept a standing army of just 3,000 (Morgan 2001: 378)

constitution. In 1657, parliament proposed reinstating the office of king (to be held by Cromwell), which Cromwell refused. They also proposed that the Lord Protector be able to appoint his successor, which Cromwell accepted, and also recommended the creation of a second chamber of Parliament (of lifetime peers) to be appointed by the Lord Protector. Cromwell accepted that proposal as well. Cromwell named his son, Richard, to be his successor and began filling the new elite chamber with loyal Puritan supporters. (Subsequent peers would have to be approved by the existing members of the new house of peers, which would have limited somewhat the opportunities of future kings to assemble a loyal house of peers.)

The process of replacing members of the privy council was also changed to give the Lord Protector, rather than Parliament, control over the initial proposal, with veto power in the council and Parliament. The elected chamber also gained the right to accept or reject its own members.

The End of the English Republic and the Restoration of Charles II

Overall, it is clear that the 1657 amendments enhanced Cromwell's already considerable authority under the original *Instrument of Government*. It is also clear that the *Instrument of Government*, both before and after amendment, was never a constitution—a document that describes durable procedures for making rules. Its procedures were never fully implemented and did not survive Cromwell's death in 1658.

Although Cromwell's son did temporarily inherit the position of lord protector, and did call for a new Parliament; the new parliament met in 1659 for just three months before being (unconstitutionally) dismissed. The authority of the commonwealth subsequently disintegrated in the face of a widespread tax revolt. The new commonwealth had lasted just six years.

As an alternative to the disfunctional government, the old rump Parliament was reassembled, but then dismissed by the army. In a quest for legitimacy, the surviving members of the more inclusive long Parliament were summoned. The old parliament met, lawfully dissolved themselves, and called for new elections under the rules adopted in 1641, ignoring nearly two decades of constitutional reform. The newly elected parliament called for the restoration of the monarchy in the person of Charles II, and the restoration of the principle of hereditary succession.

Negotiations with Charles II were undertaken and the result of that bargaining is evident in the 1660 *Declaration of Breda*, which is Charles II's statement of the conditions under which he would "return" to the throne. It includes a clear statement of the divine right of kings:

“we can never give over the hope, in good time, to obtain the possession of that right which *God and nature hath made our due.*”

It also promises to exempt most persons from royal retribution. There was to be a restoration of rights and a free and general pardon (with exceptions to be determined by parliament):

“the restoration of *King, Peers and people to their just, ancient and fundamental rights*, we do, by these presents, declare, that we do grant a free and general pardon, which we are ready, upon demand, to pass under our Great Seal of England.”

Only those who signed his father’s death warrant were punished (Morgan 2001: 178). Principles of religious tolerance were to be supported (through an act of parliament), and a royal commitment was made to pay the army its (overdue) past wages (which partly accounts for the military’s interest in the restoration).

“And because the passion and uncharitableness of the times have produced several opinions in religion, by which men are engaged in parties and animosities against each other (which, when they shall hereafter unite in a **freedom of conversation**, will be composed or better understood), we do declare a liberty to tender consciences, and that **no man shall be disquieted or called in question for differences of opinion in matter of religion**, which do not disturb the peace of the kingdom; and that we shall be **ready to consent to such an Act of Parliament**, as, upon mature deliberation, shall be offered to us, for the full granting that indulgence. ...

We do further declare, that we will be ready to consent to any Act or Acts of Parliament to the purposes aforesaid, and for the full satisfaction of **all arrears due to the officers and soldiers of the army under the command of General Monk.**”

By the end of 1660, English governance had returned to its medieval constitution and England’s short period of radical constitutional experimentation was over.¹⁵³

After two decades of constitutional experimentation the medieval English constitution was restored. The civil war demonstrates the difficulty of major constitutional reforms and also the robustness of England’s medieval parliamentary institutions. These, as well as the losses of the civil war, provided empirical foundations for the constitutional conservatism of many future English voters and political theorists. The return to constitutional monarchy was negotiated by a new Parliament reconstituted under its old rules.

¹⁵³ Breda also dates the beginning of the reign of Charles II from the death of his father 12 years before. “Given under our Sign Manual and Privy Signet, at our Court at Breda, this 4/14 day of April, 1660, in the *twelfth year of our reign.*” The full text is available at <http://www.constitution.org/eng/conpur105.htm>.

E. From Restoration to Glorious Revolution 1660–89.

As part of the negotiations with Parliament, all parliamentary acts between August 1641 and the Restoration were annulled, which implied that all the royal properties sold off during the civil war would be returned to Charles II and his supporters. This together with the sovereign's traditional access to customs duties, which were affirmed by the 1661 Parliament, meant that Charles II could rule without summoning Parliament to raise taxes during times of peace. Charles II proclaimed and subsequently promoted a modest extension of freedom of religion, although he also accepted Parliament's Test Act (1673), which restricted government offices to Anglican Protestants.

Legislation adopted prior to August 1641, however, had limited some royal revenue sources and eliminated the royal high courts (Star Chamber and High Commission), which meant that Charles was somewhat less autonomous than his father had been or at least claimed to be. In this respect too, it could be claimed that a restoration had taken place. Charles II's powers of taxation and legislation were not substantially different from those of kings and queens before 1600. He could still call and dismiss Parliament at his convenience, subject to the new three-year constraint and could still rule by fiat in policy areas other than taxation and those determined by common law.¹⁵⁴

After his accession, Charles II pursued the usual political interests of kings. Although he followed the letter of the law with respect to the triennial act, elections were avoided altogether for most of Charles' regime by keeping the very royalist 1661 Parliament (the Cavalier Parliament) in session for 18 years without calling for new elections (Morgan 2001: 381). Patronage was used at all levels of government and across all groups to elicit support (Morgan 2001: 379). The long-standing election laws of 1430 were undermined by transforming many borough charters into corporations, which allowed borough members of Parliament to be appointed by a handful of town officials, often replacing broader election processes. Less loyal but malleable members of Parliament were bribed (Field 2002: 128). The search for new revenues beyond the control of Parliament continued unabated.¹⁵⁵

Toward the end of Charles II's reign, it became clear that Charles' brother James, a Catholic, would be the next in line to the throne, because Charles did not have any legitimate children. That

¹⁵⁴ At the time of the restoration, the Triennial Act was revised to eliminate the "self-calling" of parliament, but the Sovereign remained legally obligated to call Parliament at least once every three years (Gardiner 1906, vol. III).

¹⁵⁵ In return for French subsidies, Charles promised in the secret Treaty of Dover to abolish Parliament and provide King Louis XIV the English Sovereign after his death (Field 2002: 127). Evidently, King Louis was unfamiliar with recent English history.

prospect produced what many historians regard to be the first nationwide political campaign in England. The Earl of Shaftesbury, a proponent of parliamentary supremacy, formed a political alliance that attempted to pass legislation to block the accession of James to the crown.¹⁵⁶ When Shaftesbury proposed the Exclusion Act in the House of Commons, Charles II simply dissolved the parliament (on three separate occasions). There was also opposition to excluding James in the House of Lords, because it would have broken the long-standing English practice of hereditary succession by adding new religious requirements for the accession to the throne (Morgan 2001: 383).

Shaftesbury's efforts demonstrated that an organized group of members of Parliament could affect national elections, a lesson that was not forgotten. Their campaign also produced durable party labels. The proponents of exclusion came to be called Whigs. The Whigs generally opposed Charles II, supported religious toleration for Protestants only, and sought to increase the power of Parliament relative to the Sovereign.¹⁵⁷ The opponents of exclusion came to be called Tories. The Tories supported Charles II, the rule of law, established religion, and the hereditary rules of succession.¹⁵⁸ After it was clear that Shaftesbury had lost, he fled to the Netherlands in 1681, followed soon after by his middle-aged protégé John Locke in 1683.

James II inherited the crown after Charles II's death in 1685. Like his brother, James received customs duties for life by an act of Parliament. But unlike his brother, James II proceeded to rule without Parliament, violating the modified Triennial Act (Field 2002: 128). He also exacerbated religious tensions by promoting centralization and a more tolerant, but anti-Anglican policy agenda. For example, he called in town charters and rewrote them to advance the cause of Protestant nonconformists and Catholics. Three-quarters of the local justices of the peace were sacked and replaced with Protestant dissenters beholden to the king (Morgan 2001: 385). A large standing army was organized in which Catholic officers were prominent. Full religious liberty was declared (for

¹⁵⁶ The length of Charles' first Parliament was unprecedented, had inadvertently allowed more stable political coalitions and leadership to emerge in Parliament.

¹⁵⁷ The "party" labels for the pro- and anti-exclusion voting blocks were coined as insults by their respective opponents. The term Whig was slang for a group of crazy Scottish Presbyterian rebels, and Tory was slang for the papist outlaws of Ireland. (Field 2002: 128). A few Whigs were, in fact, Presbyterians, although they could not yet be Scottish. The union with Scotland did not take place for half a century (1707). Tory MPs were, of course, Anglican Englishmen, rather than Catholics. MPs could not be Irish until the union in 1801, and could not be Catholic until the Test Acts were repealed and the Act of Catholic Emancipation was adopted in 1829.

¹⁵⁸ The exclusion act would have undermined the "divine right of kings" doctrine. If passed, sovereignty would have depended on criteria adopted by parliament, as well as birth, which would have increased the power of Parliament. These constitutional arguments also partly determined the language rationalizing William and Mary's accession to the Sovereign in 1689.

Catholics and Protestants), and Anglican clergy were instructed to read his declaration at their services.

Whether James' policies were benevolent efforts to increase religious tolerance, a campaign on behalf of James' fellow believers, or a Papist conspiracy; they were clearly policies that made the local elites and dominant religious communities worried about worse to come.¹⁵⁹ The local gentry and nobles were well organized, as were mainstream Protestants. And although neither group had an army at their disposal on this occasion, they did have contacts with someone who could potentially raise an army and who had an indirect claim to the throne, namely, William III, *stadhouder* of the Netherlands.

In 1687 William III had published a letter disapproving of James II's religious policies, but promising not to intervene in England unless he were invited to do so by leading Englishmen. The letter was published and evidently was well received within Protestant circles in England. As the Protestant daughter of the present king, James II, during his first marriage, William's wife, Mary, was next in the line of succession to the crown after James II.¹⁶⁰ In 1688 seven prominent Protestant leaders (including five members of the House of Lords, both Whigs and Tories) invited William to drive James II from office in order to protect Protestantism and Mary's claim to the throne. (Parliament, per se, could not do so because it had not been called to session since James II had acceded to the throne.)

F. William III, the Dutch States General, and the English Parliament 1688-89

William III was not, however, a king with sovereign power, nor did he literally have his own army. William was a middle aged man, a member of the most distinguished family in the Netherlands, and *stadhouder*, rather than king, of the Netherlands. (His name in the Dutch counting is Willem III.) William/Willem had considerable authority over the Dutch army, but he had little

¹⁵⁹ Both Charles II and James II were sons of Charles I. Their mother, Henrietta Maria, had been a princess of France. Upon his brothers accession to the crown, James became Duke of York and Duke of Albany (in Scotland). There is evidence that James had raised money from the French King to supplement his revenues in the absence of parliamentary revenues.

¹⁶⁰ Mary was the daughter of James II and his first wife, Anne. William III also had family ties to the English Sovereign, as the grandson of Charles I. He and Mary were cousins. The soon to be deposed James II was his uncle (Morgan 2001, table of descendants, appendix).

Perhaps more important for the future of English constitutional developments, however, was the fact that William III was the middle-aged patriarch of the distinguished Dutch Orange-Nassau family, a family that had long been influential in the Netherlands because of the family's implicit claim to the office of Stadhouder. (William III is Willem III in Dutch histories.)

authority over the navy, which would be needed to transport the Dutch army to England, and no budgetary authority to finance the invasion.¹⁶¹

To invade England, William had to persuade the Dutch States General that such an invasion would advance Dutch interests. William noted that England had taken the French side in the previous war during the reign of Charles II, which had nearly ended Dutch independence. Another war with France was thought likely in the near future, which would again threaten the survival of the Dutch republic. William/Willem argued that if he could secure the English throne, English resources would support the Dutch, rather than the French in the next war. This would greatly improve prospects for the Netherlands. The States General were persuaded and agreed to fund William's English strategy.

A Dutch armada carrying 20,000 troops arrived in England on November 5 (Claydon 2002: 28). A much larger, if much less experienced, British army marched to meet the Dutch invasion. The 40,000-man British army folded in disarray after several high level defections led James II to reconsider his plans, retreat, and subsequently to flee to France. William and the Dutch army marched, essentially without further opposition to London, arriving on December 18. William ordered the remaining members of the English army to leave London, and they did, which placed the city completely in the hands of William and the Dutch army.

The London members of the House of Lords met on Christmas day 1688 and asked William to take charge of government (Field 2002: 130). They also authorized him to call a "convention" Parliament (Claydon 2002: 63). A convention Parliament, composed in the usual medieval manner, met in early January 1689. On January 27, the Parliament resolved that James II had broken the contract between king and people and had vacated his office (Field 2002: 130). After more internal negotiation and evidently a threat by William to return to the Netherlands with the Dutch army if not offered the crown (Claydon 2002: 63), Parliament offered the crown to both William and Mary on February 13, 1689 in an act of Parliament that has come to be known as the English Bill of Rights.

Both the offer of the crown and the conditions under which the crown would be accepted were clearly negotiated within Parliament as well as between Parliament and William and Mary. The reign of William and Mary is the *only time* in which England had *two sovereigns*.

¹⁶¹ For more constitutional details of governance in the United Provinces of the Netherlands, see chapter 15 below.

The Bill of Rights addresses several issues simultaneously. The first part of the Bill of Rights describes why James II was no longer king, even though he was alive and well in France. In short, he had violated the constitution, and, moreover, had “abdicated the government and the throne [is] thereby vacant.” The second part lists powers that the previous kings had “pretended” to have, including the power to impose taxes without parliamentary assent and to create their own courts. These, it was stated, had no basis in long-standing constitutional law. (Many of these grievances had been claimed about previous kings as well, as noted above.) The second part lists various rights—the right of free speech in Parliament, the right to bear arms for self-defense, the right to a fair and speedy trial by jury—and suggests that “for redress of all grievances, and for amending, strengthening and preserving the laws, Parliament ought to be held frequently.” (Most of these rights had been claimed by Parliaments since the fourteenth century. It could, thus, be said that section two tries to reset the constitutional clock back to August 1641, once again—this time, by nullifying the innovations of Charles II and James II.)

The third part offers the crown (of England, France, and Ireland) jointly to William and Mary and provides for the order of succession. Although this was the only time in history that England has had two sovereigns, a rationale for this exceptional provision is not provided by the text.

The fourth part reaffirms the Test Act and essentially extends the Test Act to the Sovereign for the first time. From hence forward, Catholics and those married to Catholics were excluded from the throne, and moreover could not sit in the Parliament. This ruled out the lawful return of James II to the throne (which parliamentary Whigs had previously tried to block with their Exclusion Act) and also reduced Protestant fears about Catholic conspiracies.¹⁶²

Overall, the Bill of Rights reasserts Parliament’s long-standing rights and only very moderately extends them. Indeed, the striking thing about the Bill of Rights is how few new powers or restrictions are listed. Apart from ruling out future Catholic kings and providing for a dual monarchy, very little new is adopted. This is acknowledged in the document, which states that Parliament

“do pray that it may be declared and enacted that **all and singular the rights and liberties asserted and claimed in said declaration are the true ancient and indubitable rights** and liberties of the people of this kingdom.”

¹⁶² A complete copy of the English Bill of Rights can be found at: http://www.constitution.org/eng/eng_bor.txt.

The conservative nature of the Bill of Rights was evidently necessary to secure broad support within the Houses of Commons and Lords for the act as a whole. Parliamentary records indicate that many members continued to support James II's claim to the Sovereign, and many others wanted long-standing constitutional practices be continued. They clearly remembered the failures of Cromwell's Commonwealth, three decades earlier. Only a minority of the recorded debates seemed interested in a "glorious revolution." Most members of parliament favored continuation of as much of the medieval constitution as possible under the circumstances. Consequently, the provisions in the Bill of Rights cover familiar ground. It simply codified fundamental laws that had been accepted by parliaments and kings for much of the previous four centuries.

To obtain the protection of the Dutch army, the crown was offered to both William and Mary, not to Mary or William alone. To obtain the crown, William and Mary agreed to rule in accordance with the laws of the land, including those enacted by Parliament and accepted by the sovereign—as had been promised many times before in English history at times of accession.

Although the medieval English constitution remained in place, the parties in power and their circumstances were substantially different than they had been in the past. This, more than the English Bill of Rights, affected the course of public policy and constitutional reform for several decades by creating new opportunities for constitutional exchange.

Chapter 13: Constitutional Exchange in England: From the Glorious Revolution to Universal Suffrage

A. Constitutional Exchanges and the Glorious Revolution: Willem-William III and the Parliament

From an early age, William-Willem III had been educated in the fields most useful for a future *stadhouder*: in military matters and strategies for negotiating with a sovereign republican government (Claydon 2002: 15). During his adult life, William had become very good at building support within the provincial governments and in the States General. This was necessary in the context of Dutch constitution (see chapter 15) because the provinces, rather than the stadhouder were sovereign, and had veto power over both budgets and legislation. The office of stadhouder was normally combined with that of captain general, which made the stadhouder responsible for the army and one of the most influential persons in the Netherlands.

As stadhouder, William-Willem III was used to dealing with a sovereign national parliament to obtain funds for his executive responsibilities, especially for national defense, as national security was the primary charge of the Dutch *stadhouders*. (Claydon 2002: 25). By the time that stadhouder Willem III became William III, King of England, he was a middle-aged man with substantial experience in military leadership and bargaining with parliament. He was not, as kings of England tended to be, long destined to the throne and used to royal deference throughout his life, although he belonged to a very distinguished and powerful Dutch family and was married to the daughter of James II.¹⁶³

From approximately 1580-1790, the Netherlands was organized as a confederation of provincial governments, which themselves were often organized as confederations of local governments. The office of *stadhouder* was, in principle, an appointed rather than hereditary position, and a regional rather than a national position, although in practice the provinces always chose their *stadhouders* from the Orange-Nassau family. Filling the office of stadhouder was not automatic, and the office was left empty several times in Dutch history. For example, it had been left empty for two decades after the death of William-Willem III's father, Willem II. Overall, this balance of authority was nearly the

¹⁶³ Willem-William had an indirect claim to the English Sovereign, as the son of Willem II of the House of Orange (who died when Willem III was very young) and Mary Stuart, the daughter of King Charles I. He married Mary (the daughter of James II, who was, thus, the niece of Charles II) in 1677 at the age of 27 (Claydon 2002: ch. 1).

opposite of the English Sovereign's historical relationship with parliament. Essentially unanimous support within the States General was necessary to obtain national resources for the Dutch army, and this could not be taken for granted.¹⁶⁴

In 1689, as *stadhouder* of most of the Netherlands and king of England, Willem-William III continued to have the security of the Netherlands and its conflict with France very much on his mind. He was, consequently, very interested in resources for war with France and willing to bargain with parliament to obtain those resources. This is not to say that William was less interested in authority and wealth than previous kings, nor that war with France was not in England's long-term interests, but William III—as opposed to Charles II or James II, who had often been allied with France—was very concerned about French power and was used to working within constitutional constraints to advance his interests in a manner that previous Stuart kings were not.¹⁶⁵

William's crown also depended more on parliamentary support than had recently been the case, because James II and his wife Mary had hereditary claims to the throne. William, consequently, was more interested in parliamentary good will and was more willing to trade royal prerogatives for tax revenues than previous English kings.

The 1689 parliament, in contrast, was more self-assured and independent than the one that restored the Stuart monarchy and also more interested in shoring up its own authority. The announcement of French support for James II's effort to recapture the English and Scottish thrones, increased parliament's own interest in supporting William's campaign against France. James II was unlikely to be as generous as his brother had been after the civil war three decades earlier.

¹⁶⁴ The confederal structure of the Netherlands indirectly gave the city of Amsterdam a veto on national tax requests. Amsterdam had the largest tax base of any community in both Holland and the Netherlands. The province of Holland generally used unanimous agreement to pass major tax and military bills (Claydon 2002: 24–25). The province of Holland had similar veto power in the national States General. For more details about Dutch governance at this time see Israel (1995). An overview is provided in chapter 14.

¹⁶⁵ For example, in 1672 William refused King Charles II's (his uncle's) offer to press for his elevation to the king of Holland as part of a peace settlement with France. He refused, in part because the offer involved a smaller Netherlands and, in part, because "his countryman were more attached to their liberties than they would be to any royal ruler." (Claydon 2002: 19)

Shortly afterward, in gratitude for its liberation from the French, the elites of the province of Gelderland offered William III the sovereign office of duke, rather than the appointed office of *stadhouder*, which would have ended that province's republican form of government. Several other provinces complained that a Gelderland Dukedom would undermine the Dutch constitution. William, perhaps with greater aims in mind, refused the elevation to duke and accepted the lesser post of *stadhouder* (Claydon 2002: 23).

Opportunities for constitutional exchange between king and parliament were, consequently, the greatest they had been since the Magna Carta was signed four and a half centuries earlier. A deferential, rule-following, and resource-hungry king with urgent duties abroad confronted a parliament anxious to expand its control of public policy. The constitutional bargains struck over the next dozen years were pivotal events in English and Dutch history. William's success with the parliament is evident in the enormous funding that parliament provided him for his war with France. The tax base was expanded and tax rates were increased. Tax receipts more than doubled over those of James II, rising from two million to more than five million pounds in 1694 (Claydon 2002: 125–26). Expenditures rose even more rapidly, with the consequence that British debt expanded to unprecedented levels (North and Weingast 1989), accomplished in part via the Dutch method of earmarking some taxes for debt service and repayment (Stasavage 2003).¹⁶⁶

Central government employment tripled in size from 4,000 under James II to 12,000 under William, while the British army and navy approximately doubled in size during the nine-year war with France (Claydon, 2002: 25–26). The long-term geopolitical success of William's "English strategy" is also obvious.¹⁶⁷ The British had been inclined to intervene on the French side under Charles II and James II, but after William III, English efforts to contain French influence continued for three centuries (Morgan 2001: 402). The Netherlands survived as an independent country.

The price paid for parliament's support in the nine-year war with France (1688–97) was also clear. The Coronation Act of 1689 required the sovereign to "solemnly promise and swear to govern the people of this Kingdom of England ... according to the statutes in parliament agreed on, and the laws and customs of the same." In exchange, William and Mary obtained the traditional sovereign revenues for life. The customary revenues were, as ever, too little to support large-scale military campaigns, and taxes for war required the support of parliamentary majorities. Such taxes were normally extended for short periods, between one and four years, as they had been in the past.

In 1694, a new Triennial Act was passed, which (again) required parliaments to be called at least once every three years, but this time required new elections at least once every three years. The

¹⁶⁶ Interest paid on foreign debt fell significantly during William's reign, evidently in large part because of the adoption of Dutch practices (Stasavage 2003:74–78, 2002: 126–31), which facilitated the large-scale borrowing necessary to fund a good deal of the great military expansion. It also bears noting that Dutch financiers were more willing to purchase English debt, given that England now had a Dutch king.

¹⁶⁷ His interest in bringing England to the Dutch side in its contests with France dated at least back to 1677, when he arranged to marry Princess Mary, who was at that time second in the line of succession after her father (Claydon 2002: 23–24).

Triennial Act together with the parliament's short-term tax policies required more frequent elections to the House of Commons, which made the House of Commons, more independent of the Sovereign. No longer, could a king "lock in" an especially supportive parliament by keeping it in session for more than a decade, as Charles II had done immediately after the restoration.

Parliamentary audit and increased parliamentary control over expenditures were the result of precedents established by William's effort to win the trust of parliament on military matters and thus obtain more resources for his French campaigns (Claydon 2002: 73–77; Reitan 1970). Parliament's power of the purse was further strengthened early in William's administration, when he relinquished several of the questionable revenue sources used by Stuart sovereigns for most of the past century. Resistance, at this point, would have undermined his efforts to fund military campaigns (i.e., to pay the Dutch and English armies) and to build a more powerful British navy to confront France on the continent and abroad.¹⁶⁸

The power of the purse had always provided parliament with some indirect control over the military, but parliamentary involvement in military matters expanded greatly during William III's period in office. This was perhaps most apparent, when following the peace of Ryswick in 1697, the British army was reduced to less than a third of William's request, about an eighth of its peak during the nine-year war with France. Parliament had always been opposed to and unwilling to finance standing armies. In 1699 parliament induced William to disband his trusted Dutch guards (Claydon 2002: 146–52).

Parliament's greater budgetary authority was also expanded by a new division of funding responsibilities that emerged during and after the war with France. William III's revenue stream had always been more uncertain than even that of the previous Stuart kings. This was largely because of the nature of wartime finance in parliamentary systems and his interest in rapidly expanding it, but also a consequence of the manner in which he and Mary had come to the crown. They had essentially inherited James II's standing revenues, rather than formally obtaining new ones on accession. Instead of pressing for a resolution of his finances in 1689, William pressed for new military funding. After a decade of negotiation, permanent (lifetime) revenues were finally secured after the conflict with France was settled. In 1698 the Civil List Act provided William III with permanent revenues, but provided only for domestic (nonmilitary) expenditures (Reitan 1970). Military expenditures would be paid for with a separate budget.

¹⁶⁸ William himself spent the summers of the eight-year war on the continent leading military campaigns against the French.

It bears noting that William's domestic budget was somewhat larger than accorded previous kings, although it included the new caveat that only tax revenues up to £700,000 per year could be used for royal purposes. Revenues beyond that could only be used by the king with parliamentary permission. This prevented William and his successors from profiting from economic growth, as previous kings had, and also limited the sovereign's ability to maintain a standing army, the responsibility for which was entirely shifted to parliament for the first time (Reitan 1970). Revenues for support of the military in times of peace continued to be granted only for relatively short periods, as they had been in most past periods, but the parliamentary "subsidies" became the entire budget of the English army, rather than subsidies in the contemporary and medieval sense.¹⁶⁹

Had government expenditures not increased so much, the income from royal properties together with the customs revenues for life might have been sufficient to fund peacetime governance, as £2,000,000 had been sufficient a decade or two before. In the present environment, royal incomes were far below that required for peacetime government finance. This, together with the new method of financing the army, made William and his successors far more dependent on parliamentary tax bills, whether at peace or a war. The bargaining power associated with the governmental purse was now continuous, rather than available only during times of war.

In 1701 William also accepted the Act of Settlement. This act did not affect William, but was to bind his successors. The first part of the act affirms Princess Anne's position as next in line to the throne and greatly elevated the German Electors of Hanover in the line of succession. (William and Marry had no children.) Anne was Mary's sister, another daughter of James II, and married to the brother of the king of Denmark at the time of her accession. Her successor, George I of Hanover, was her second cousin, the great grandson of James I. George was the closest Protestant relative of Anne. There were more than fifty closer relatives, but all were Catholics.

The second part of the act is of greater constitutional interest, because it changed the rules for succession, imposed a number of new restrictions on future sovereigns, and increased judicial independence. For example, it required future kings and queens to "join in communion with the Church of England." This new religious requirement was more restrictive than required under the 1689 Bill of Rights. Mary, who had died in 1694, would have been eligible for the Sovereign under the new rules, but not William. William was himself Protestant and satisfied the 1689 requirements,

¹⁶⁹ Charles II and James II had received permanent revenues that were about twice as large as William's, but included funds for routine military expenditures. The civil list thus reduced the king's fiscal responsibilities and allowed for a somewhat more comfortable private life, but also greatly reduced his ability to shift resources among government services (Reitan 1970).

but he was brought up in the Dutch Reformed Church, which was more Presbyterian than Anglican (Claydon 2002: 99). The Act of Settlement also forbade future kings (from other lands) from engaging in wars outside England without the permission of parliament and prevented all future sovereigns from leaving “the domains of England, Scotland, or Ireland without the consent of parliament.”

The act of settlement also elevated the privy council (the cabinet of this period) somewhat and specified that, “no persons born out of the kingdoms of England, Scotland, or Ireland ... shall be capable to be of the Privy Council, or a member of either House of Parliament.” The latter ended the centuries-old custom by which the king was automatically a member of the House of Lords, which reduced the ability of foreign born kings, such as the German born George I and George II, to monitor and negotiate directly with members of the House of Lords.

The act of settlement also reduced royal opportunities for influencing the parliament by declaring that “no person who has an office or place of profit under the king, or receives a pension from the Sovereign, shall be capable of serving as a member of the House of Commons.” (This last provision was, subsequently, weakened by the Regency Act of 1706, which required new elections for members of parliament who became Sovereign employees. This was a much milder restriction, because elections at the time were rarely contested.) In addition, the settlement increased judicial independence by giving senior judges lifetime appointments during good behavior, “judges commissions be made *quamdiu se bene gesserint*,” that is, subject only to parliamentary impeachment.

By the time of William’s unexpected death in 1702, the formal and informal constitutions of England had been rewritten to increase parliamentary independence and control over governance.¹⁷⁰ Parliaments could meet regularly—with or without royal invitation—and electorates, however small and elite they might have been, routinely judged their representatives at least once every three years. Parliament’s power of the purse had been increased by shifting more control over revenue sources to the parliament, many of which had previously been independently claimed by kings, at the same time that the size and cost of governance expanded to beyond the royal household’s remaining standing revenues.

The precedent of audit and earmarked budgets reduced the sovereign’s discretion to use tax receipts as they might desire and further reduced opportunities for a king to buy support in parliament. Freedom of speech and petition opened up the domain of public discussion on a variety

¹⁷⁰ William, the heroic military leader of many campaigns, died from injuries sustained after falling off a horse.

of matters that previously might have been deemed treasonous and punished accordingly. The judiciary was more independent than it had been in past centuries.¹⁷¹

Royal Authority after William III

It was not necessarily the case that these late seventeenth century precedents and unvetoes acts of parliament would continue to bind future queens and kings. All English constitutional changes are reversible, as the 1706 Regent Act undid reforms of parliament adopted by the 1701 Act of Settlement. A clever king who obtained a supportive parliament could, in principle, repeal or amend any of these acts through majority votes. Precedent is to a significant extent in the eye of the beholder. Just as many routine disputes under common law are based on disagreements about what “the law” is, so were many of the constitutional disputes between parliaments and kings in previous centuries. Moreover, then as now, there is no formal procedure in England through which constitutional violations can be set aside.

Although it is often written that the Glorious Revolution created parliamentary governance in England, royal power did not disappear with the Bill of Rights, nor with the death of William III. The last sovereign to veto a parliamentary decision formally after it was passed by majorities in both houses was William’s successor, Queen Anne, who vetoed the Scottish militia bill in 1707. However, she was not the last to affect the course of public policy in the small or large. The division of power between king and parliament had clearly shifted from king toward parliament between 1689 and 1702, but to an intermediate point, rather than from one extreme to the other.

The sovereign continued to have and exercise the power to appoint and dismiss ministers, call and dismiss parliament, and could directly affect the composition of parliament through town charters and elevation to the nobility. The power of royal patronage, although reduced after the budgetary and audit practices implemented during William’s reign, continued to be a useful method of influencing the behavior of members of parliament. Although there were many patrons who employed members of parliament, the king or queen was by far the largest patron. Queen Anne had 100 “placemen” in her parliament (Field 2002: 141). A third of the House of Commons was on the executive payroll during George I and George II.

¹⁷¹ In this, it could be argued that William achieved his stated goal, announced on October 10, 1688 just before the invasion in his *Declaration of Reasons*: “a free and lawful parliament . . . and securing to the whole nation the free enjoyment of all their laws, rights, and liberties under a just and legal government.” The complete text of William’s declaration is available at <http://www.jacobite.ca/documents/16881010.htm>.

The necessity of parliamentary to obtain tax revenues, new constraints on royal finance, and greater expenses indirectly increased the importance of political parties and the leaders of those parties after William III's bargains. Insofar as a particular leader could deliver a majority, they could bargain directly with the sovereign. However, the sovereign was often the most important of such "parliamentary" leaders. They had the ability to create "court majorities" in the Houses of Commons by bargaining with prominent local families that controlled seats in the House of Commons, by employing members in the executive, and by simply appealing to voters. Such residual authority provided kings and queens with a good deal of control over public policies decisions and naturally reduced the need for explicit vetoes.

That royal veto power continued to exist during the century after Anne's 1707 veto became obvious in 1801, when Minister Pitt's powerful cabinet resigned over the king's threatened veto of the cabinet's proposed Catholic Emancipation legislation (Hill 1996: 157). Indeed, the most important of the electoral and parliamentary reforms of the nineteenth and twentieth centuries, the election reform of 1832 and the Parliament Act of 1911, occurred in large part because of threatened interventions by two Kings in support of constitutional reforms desired by majorities in the House of Commons.

B. The Balance of Authority between British Sovereigns and their Parliaments in the Eighteenth Century

Several significant reforms of the written constitution were adopted during the first decades of the eighteenth century that affected the balance of authority between the sovereign and the parliament. The Scottish Union Act of 1707 brought Scotland firmly into the England sphere of influence by abolishing the Scottish parliament and formally linking the crowns of Scotland and England. Forty-five new seats were created in the House of Commons for Scottish town and county representatives and nine new nobles seats for the House of Lords. A revised property qualification for the House of Commons was adopted in 1711. County representatives (knights) had to have 600 pounds of income per year and burgesses 300 pounds per year. The Septennial Act of 1716 revised the Triennial Act and extended the maximum length of parliament from three to seven years, reducing what little electoral competition there was and by most accounts increasing royal authority by strengthening the effects of patronage.

To some extent, these constitutional reforms can be interpreted as "ordinary" partisan majoritarian politics, in that the reforms were intended to advance Tory or Whig political objectives,

or royal ones. For example, the Scottish Union was adopted by a Whig majority, and the new Scottish members subsequently voted with the Whigs. The Tories supported the property qualification in 1711 to reduce part of the Whig electoral support, as the Tory base of support was in the upper middle gentry (Field 2002: 143; Hill 1996: 51). The Septennial Act of 1716 allowed an existing Whig parliament to be extended without an intervening election and provided it (and George I) with four more years to use patronage to cement the Whig faction's control of parliament.

After the Septennial Act, the written rules of the national political game remained stable for more than a century, but the unwritten procedures of governance continued to be revised to take account of the rising cost of governance and a century-long sequence of foreign kings.¹⁷² Many of these informal revisions were indirect consequences of the new budgetary circumstances of the sovereign. As the size of governance increased well beyond the sovereign's own revenues, parliamentary "subsidies" became essential for day-to-day governance (Mathias 2001: 39). The short-term tax bills passed by parliament, in turn, necessitated annual meetings of parliament and cabinet ministers who could deliver majorities in both the Houses of Lords and Commons.

The use of ministerial councils was an ancient royal management technique, but in the eighteenth century, the need for ongoing parliamentary majorities substantially reduced the range of ministers that could be hired (or fired) by the sovereign. The king or queen remained the principal, but more and more authority was delegated to his or her agents. The ministers, in turn, became increasingly independent of the sovereign, because their authority was increasingly based on the extent of their support in the two chambers of parliament. It became commonplace for the sovereign's top minister to be a member of parliament who could deliver reliable majorities.

The reliance on a single parliamentary leader to craft majority support through policies and royal patronage, as with Walpole and Pitt, helped established organizational patterns and norms that allowed the modern office of prime minister to emerge. Once selected, these early "prime" ministers would be allowed to dispense the sovereign's patronage (jobs) to increase support for the sovereign in the parliament.¹⁷³

¹⁷² William III (1689–1702), George I (1714–27) and George II (1727–60) were foreign by birth. Anne (1702–14) had lived in Denmark with her husband for nearly 20 years before her ascension to the throne. George III (1760–1820) was born in Britain, but evidently spoke English with a German accent, possibly because he had a German-speaking mother, father, and wife.

¹⁷³ Walpole (1721–42) is often regarded as the first Prime Minister. He had the support of both

Continued on next page...

The use of a parliamentary “prime minister” to create and manage majorities in the House of Commons and Lords also gradually led to cabinet governance. As the scope of government increased and sovereign interests focused on foreign policies and expanding the empire, more and more domestic policy decisions were turned over to the royal council of ministers. Cabinet governance in its modern sense, however, did not emerge until well into the nineteenth century.

This was partly because disciplined, well-organized, political parties had not yet emerged. Parties in the eighteenth and early nineteenth centuries were loose coalitions of members with common interests, rather than disciplined national organizations that crafted platforms and provided substantial electoral support. British politics in the eighteenth century was not characterized by the competitive elections and intense electioneering that are the hallmarks of modern democracies. Many borough elections and most county elections were uncontested and were substantially controlled by local elites (O’Gorman 1989: 334). In 1761, for example, only 4 of 40 county elections were contested, and only 42 of 203 borough elections (Field 2002: 143).

Indeed, the number of seats controlled by local elites expanded during the eighteenth century, as the number of “nomination” boroughs in the House of Commons increased from about 60 to more than 200 during the course of the century. It also became increasingly common to purchase nominations, which became more valuable as the authority of parliament increased. The price of a seat in the House of Commons was bid up from 1,000 pounds to 5,000 pounds in the course of the eighteenth century. (O’Gorman 1989: 13, 21). Local elites who sold “their” seats would deliver the necessary votes and/or prevent opposition. (A few such seats were simply attached to ownership of particular pieces of land.) These nomination seats allowed the sovereign to exercise significant influence over the composition of parliament, because only a relatively small number of local sponsors needed to be influenced.

The sovereign influence within parliament was strengthened by his or her authority to elevate families to noble ranks. This allowed kings and queens to affect the composition of the House of Lords, and to influence members of both chambers of parliament, many of whom sought noble titles and/or elevations for themselves and their sponsors. Patronage also affected the distribution of

George I and George II, and used both parliamentary and royal patronage to his and the Sovereign’s mutual advantage.

The Whigs essentially excluded Tories from government positions. On the other hand, it was the Whigs’ superior access to foreign credit as well as the latent Jacobism of many Tories that initially predisposed George I to favor Whig ministers (Field 2002: 146; Hill 1996: 59, 77).

persons who would actually attend meetings of parliament, by providing a subset of both Lords and Commons with paid positions based in London.

Consequently, kings and queens were normally “blessed” with parliamentary majorities whose interests were well aligned with their own interests throughout the eighteenth century. George I and George II preferred Whigs to Tories, in part because of Tory support for James II and James III’s claims to the throne—and, sure enough, Whig majorities were had by George I and II. George III was less partisan and less predisposed toward Whigs, and the Whig dynasty fell (Field 2002: 136–37, 146,149).

This royal influence on the composition of parliament continued well into the nineteenth century. George IV (1820–30) was known to favor Tories, and managed to have a Tory majority in parliament—partly because he expanded Lords from 339 to 400 members (Field 2002: 164). William IV (1830–37) was known to favor Whigs, and the Tory majority was replaced by a Whig majority in the election that followed his accession to the crown (Pugh 1999: 48; Lee 1994: 58–59).

In 1800 parliament had more control over public policy than it had ever had before, but the British sovereigns retained considerable direct and indirect control over public policy.

C. Politically Active Interest Groups in Late Eighteenth- and Early Nineteenth-Century England

Toward the end of the eighteenth century, a series of economic, technological, political, and ideological shocks began to transform the still largely medieval lifestyles and political outlooks of British commoners and nobles. International and intranational trade expanded rapidly during the eighteenth century, reflecting agricultural innovation, declining transportation costs, and population growth (Mathias 2001: 66–7, 88). English turnpike and canal systems expanded dramatically during the mid- to late eighteenth century, which helped create a more integrated domestic economic market (Morgan 2001: 428–29, 483). Prosperity in northern Europe, improved ship designs, and expanding European trade networks (which were only partly a consequence of Empire building) increased international trade worldwide (Mathias 2001: 87–88).

New large-scale techniques for spinning thread and weaving cloth led to major new manufacturing centers (Mathias 2001: 243–45), and the Industrial Revolution was beginning to gather steam with Watt’s modifications of Newcombe’s engine in the 1774 and 1781 (Morgan 2001: 480). Expanding commerce and population growth caused new urban centers to emerge, as noted

above, and older commercial centers to grow larger. Large-scale manufacturing became more and more commonplace and less tied to particular cities as trading networks expanded and became more dense.

In the second half of the eighteenth century, reduced transportation costs and somewhat less intrusive censorship allowed a broader and more rapid dissemination of news and opinion, which led to a more truly national political system. For example, newspapers became commonplace during the eighteenth century, which increased knowledge of national and international political controversies and scandals. The (London) *Times* began publication in 1785. A number of influential books were published in the late eighteenth century by thoughtful men also helped stimulate interest in liberal economic and political reform. Adam Smith's (1776) *An Inquiry into the Nature and Causes of the Wealth of Nations* provided a thorough attack on the monopoly practices of previous centuries and defense of free trade and specialization, which helped to energize economic liberals for the next two centuries. Jeremy Bentham's (1789) *Introduction to the Principles of Morals and Legislation* challenged the customary foundation of law and suggested that laws and institutions should promote the greatest happiness to the greatest number. Edmund Burke's *Reflections on the French Revolution* (1790) argued that major institutional reforms, particularly revolutionary ones are unlikely to improve long-standing institutions. Paine's rebuttal the following year, *Rights of Man and of the Citizen*, focused additional attention on individual rights and civil liberties, as opposed to family or aristocratic rights.¹⁷⁴

A variety of organized groups took up the cause of parliamentary reform at the end of the century: The Society for Constitutional Information (1791), the Friends of Universal Peace and Rights of Man (1791), the London Correspondence Society (1792), Friends of the People (1792), and Sheffield Association (1792). These were largely middle class groups, but their memberships extended into parliamentary elites and the working class (Lee 1994: 16; Hill 1996: 150–51, Pugh 1999: 22–23). These groups organized large-scale and more or less peaceful demonstrations and petition drives that promoted reform, rather than revolution. Petitions and mass demonstrations became more common events in the early nineteenth century. Earl Grey, who was a member of Friends of the People, sponsored a series of parliamentary reform bills beginning in 1793. Such proposals revealed that significant support for reform already existed, but not enough to adopt

¹⁷⁴ All three books were widely read and translated. They continued to be widely read and cited throughout the nineteenth century, and are still on college reading lists today. Locke's book was an immediate best seller, selling 200,000 copies in 1793 (Field 2002: 156).

reforms. Grey's proposals attracted yes-votes from about 25 percent of the members of the House of Commons (Hill 1996: 233).¹⁷⁵

Groups of men and women organized to increase their own wealth through collective bargaining and also to achieve political reforms. The new middle and upper-middle classes were largely excluded from political life by the wealth requirements for suffrage and seats in the House of Commons. The 1711 property qualifications for the House of Commons prevented middle class and poor Anglicans from sitting in Commons (until 1859). Population shifts had reduced the representativeness of borough governments, to the extent that it had ever existed. The Test Act of 1673 prevented dissenters and Catholics from seeking parliamentary office. The Test Act of 1673 prevented dissenters and Catholics from seeking parliamentary office (until 1829). Many joined or supported groups that lobbied for expansion of suffrage and reapportionment (Pugh 1999: 22; Mathias 2001: 334).

Interest in parliamentary reform, of course, was not a new phenomenon in England. Parliamentary reform had been seriously debated in England at least since the Leveler's "Agreements" of 1647 and 1649.¹⁷⁶ However, the late eighteenth-century revolutions in America and France had renewed interest in civic equality, suffrage reform, and the proper assignment of seats across the country.

Interest in reapportionment was largely a consequence of the new factory-based production of textiles in northern England, where new urban centers emerged that were underrepresented in the House of Commons. The new industrial centers of Manchester, Birmingham, Leeds, and Sheffield were among the seven largest cities in England, but they had only county representation (two MPs) in Commons, while 49 two-member districts existed with fewer than 50 eligible voters (Field 2002: 142). Industrialists organized groups such as the General Chamber of Manufactures and petitioned parliament for favorable economic policies and also reforms of parliament (Morgan 2001: 482).

¹⁷⁵ Some three decades later, Grey became Prime Minister in more favorable circumstances and finally passed a bill very similar to his early proposals. (He served in the House of Lords at the time, inheriting the family title after the death of his father in 1807. See <http://www.spartacus.schoolnet.co.uk/PRgrey.htm> for a short biography.)

¹⁷⁶ Grey's 1792-97 bills, however, were not the first late eighteenth century efforts at reforming the rotten boroughs. Reform bills had been offered even before the French Revolution. In 1785 Pitt had proposed shifting seats from smaller boroughs to larger ones in his reform bill, which included compensation for the "owners" of the small borough seats. In that case, as in 1797, George III was opposed to reform and helped marshal opposition to the bill (Hill 1996: 145). Grey's 1792-97 efforts were largely opposed by his own party, as Pitt's interest in reform had disappeared after the French Revolution (Hill 1996: 50-51).

Reapportionment was also supported by many politically-active liberal groups of the time, in part because many liberals lived in the underrepresented parts of the country.

Curtailing Political Interest Groups

Although free speech had been obtained for members of parliament by the Bill of Rights, political speech remained circumscribed outside the parliament. For example, Thomas Paine had to flee the country for France in 1792 (or face trial for sedition) after Pitt condemned his “monstrous doctrine” (Pugh 1999). Paine’s critique of monarchy was unacceptable political discourse in England at that time. Rumors of revolt and revolutionary plots were abundant during the late eighteenth and early nineteenth century.

When the first French Republic declared war in 1793, England shifted to a war footing and curtailed civil liberties to quell demonstrations in favor of constitutional reform. The Habeas Corpus Act was suspended in 1794. The Treasonable and Seditious Practices Act and the Seditious Meeting Act were passed in 1793 by large supermajorities. Treasonable practices included the transport and publication of writing opposed to the constitution. (Paine’s publisher was sentenced to a year and half in jail for selling the *Rights of Man*.)

Meetings of more than 50 persons were allowed only with magistrate approval. Moreover, large demonstrations in opposition to the Seditious Meetings Act were themselves seditious and broken up. In 1799 correspondence societies and trade unions were banned under the Corresponding and Combination Acts (Lee 1994: 19; Field 2002: 157). These political “gag acts” as well as medieval laws defining treason were used to prosecute reform, antiwar, and labor organizers, which postponed large-scale efforts to promote constitutional reform until well after the war with Napoleon ended in 1814.¹⁷⁷

Not all organizations were affected by the anti-sedition acts, or the subsequent restrictions passed in 1819 (the Six Acts). For example, “friendly societies” continued to flourish as did reform-oriented, local newspapers. In 1801 about 700,000 people belonged to such local service and insurance clubs. By 1815 membership approached a million and by 1830 about one in four males were members (Gerrard 2002: 169). The Masons continued to expand their membership and influence.

¹⁷⁷ See Field 2002: 156–62; Pugh 1999: 22–24; Hill 1996: 155; Lee 1994: 54; Morgan 2001: 486–88; and Holmberg 2002.

After the Napoleon's defeat and the restoration of the French monarchy, these laws were repealed or weakened, which allowed reform groups to be organized again. During the following decades, well over 100 politically active groups organized mass meetings, petition drives, and demonstrations, issued pamphlets, and lobbied ministers behind the scenes (Hamer 1977: 8; Lopatin 1999: appendix). Correspondence societies provided links between the clubs with shared interests, including public policy (Lee 1994: 54; O'Gorman 1989: 312).

Such groups sponsored large-scale demonstrations and petition drives. For example, in 1816 more than 400 petitions favoring the abolition of the income tax arrived in parliament (Hill 1996: 176). Although the economic and anti-tariff efforts were successful, the constitutional reform movements were not. Indeed, parliament responded to large-scale demonstrations with legislation curtailing those groups, the Six Acts of 1819, rather than reform. Jury trials lessened the impact of these laws in that juries would not very often convict those charged or apply maximal sentences. The treason act of 1351 still defined seven offenses as high treason, including various assaults on the royal family and "levying war against the king within his realm or adhering to his enemies" (Holmberg 2002).

Most public gatherings that pressed for reforms were peaceful, but the reform movement naturally induced the formation of antireform groups, which intensified verbal conflicts and occasionally led to violence. The language of politics often tends to be hyperbolic and emotional, and although there was no counterpart to the American or French Revolutions in the United Kingdom, there were outspoken demonstrations and petition drives that focused attention on constitutional issues.¹⁷⁸ The repeal of the 1799 combination act in 1824 allowed local trade associations and unions to organize.

D. Constitutional Bargaining and the "Great Reform" of 1800–35.

The bargaining models developed in part I of the book imply that constitutional exchange is most likely to be observed during unsettled times, because the economic and political interests of kings and parliaments are also unsettled in such times. The analysis also predicts that constitutional bargaining to be relatively commonplace, although not constitutional reforms. It also predicts that

¹⁷⁸ No coordinated uprisings or attacks on government buildings or persons took place. Indeed, it was often quite the reverse, as in the Peterloo "massacre" in 1819 when 11 persons were killed at a parliamentary reform assembly by a cavalry charge during a very large but, evidently, peaceful meeting at St. Peter's Field in Manchester. The speakers were arrested, as were the newspaper reporters who wrote up accounts of the meeting and cavalry charge (A nice overview is provided by: http://en.wikipedia.org/wiki/Peterloo_massacre).

constitutional bargaining will be multidimensional and that tax reforms will often be associated with the bargains struck. Such predictions are largely borne out by the course of constitutional reform in England during the nineteenth century.

The British Parliament in 1830

In 1830, the House of Commons included about 270 seats (of 658) from “nomination boroughs,” in which a very small number of persons could select a candidate for the House of Commons, who would (usually) run unopposed (Lee 1994: 57–59; O’Gorman 1989: 26). Seats in the House of Commons were disproportionately allocated to the south and the new northern industrial centers were essentially unrepresented in the House of Commons. Cornwall with a population of 300,000 elected 42 members of parliament, while the county of Lancashire with a population of more than 1.3 million elected just two members. Southern electorates were often even smaller than these numbers suggest, as for example Old Sarum’s electorate consisted of just 11 voters.¹⁷⁹

The least representative boroughs had suffrage rights that were attached to particular pieces of property, “burgages,” which could be assembled under a single ownership, which in a few cases allowed a single person to select a member of parliament. Others were selected by very small electorates, as with the “rotten” borough of Sarum. At the other extreme were town (boroughs) in which all freeholders or all taxpayers were entitled to vote (O’Gorman 1989: 21–33). Overall, about 10–12 percent of the adult male population were eligible to vote, and the typical voter was surprisingly middle class. For example, Garrard (2002: 26) reports that the electorate in 1830 was composed as follows: landed gentry (13.6 percent), merchants and manufacturers (5.8 percent), retailers (20 percent), skilled craftsmen (39.5 percent), semiskilled workmen (19.2 percent), and those employed in agriculture (6.4 percent).

Partisan Interests in Reform

Neither of the mainstream parties favored a wholesale redistribution of seats nor universal suffrage, but many Whigs favored a reallocation of seats and revisions of borough suffrage rules. The Whigs had long been a liberal reform coalition by the standards of the early nineteenth century

¹⁷⁹ It is interesting to note that the Pitt family owned much of the real estate and voting rights in Old Sarum in the eighteenth century. Their Sarum real estate entitled them to nominate 2 members of parliament. Members of the Pitt family, thus, often sat in parliament during this period. They sold their lands in Old Sarum during the nineteenth century. The price paid was said to be 60,000 pounds which suggests that the value of seats in Commons had risen to nearly 30,000 pounds.

(Hill 1996: 178). For example, the Whig coalition had long opposed restrictions on freedom of the press; pressed for free trade, including repeal of the corn law act of 1815; opposed laws forbidding Catholics and dissenters from holding public office; and had proposed several parliamentary reform bills. Of course, reapportionment and suffrage reform were politically easier for the Whigs to support, because the preponderance of the reallocated seats would come from conservative (Tory) districts. Of the 270 nomination districts most likely to be affected by reform, only 70 routinely returned Whigs (Lee 1994: 57).¹⁸⁰

Liberal arguments and lobbying campaigns gradually persuaded a majority of the electorate that reform was inevitable and may have also influenced the sentiments of a future king. George IV's brother William IV, who had served in the House of Lords, and generally supported the Whigs during his time there.

George IV died in 1830, and the election associated with William IV's accession returned a pro-reform Whig government later that year, thanks in part to William IV's support for Whigs (Phillips 1992: 18–21). The new Whig government proposed a suffrage reform bill that called for a substantial reallocation of seats, uniform rules for the election of borough MPs, and a substantial expansion of suffrage. That proposal was defeated, however, narrowly in the House of Commons at its second reading. Twelve hundred petitions were presented to the 1830 parliament in support of suffrage reform (O'Gorman 1989: 310).

Reform Tactics

Earl Grey asked the new king to call for new elections, and parliament was dismissed. The ensuing campaign focused largely on suffrage reform, and returned a large Whig majority to the House of Commons. Grey's coalition received 71.1 percent of the votes cast in Great Britain (Rallings and Thrasher 2000: 3). In 35 of the 40 county elections, the Whigs took both seats. Of the 187 Tories elected, 90 percent came from districts that would lose their seats if the Whig reforms were adopted (Hill 1996: 193). This time the reform easily passed in the House of Commons, but a majority of the House of Lords opposed the reforms, 199 to 158.

¹⁸⁰ Although completely isolating pragmatic and ideological interests is beyond the scope of the present paper, it is also clear that as support for popular sovereignty expanded within England (and Europe), the relative importance of the House of Commons and of the liberal factions within Commons (and their continental counterparts) increased as well. This provided some members, at least, with pragmatic interests in supporting greater openness in politics.

The rejection of reform by the House of Lords led to scattered riots, a few of which were targeted at peers and bishops who had opposed reform. It also induced a middle-class tax revolt and bank boycott. The unenfranchised middle class (widely) withheld taxes and withdrew funds from the banks. As a consequence, the Bank of England's reserves fell by 40 percent (Hill 1996: 195).

After the defeat in the House of Lords, Grey's ministry resigned, and William IV encouraged the formation of a minority Tory government. When this failed, he invited Grey to return to government and agreed to create 41 pro-reform peers, if necessary, to assure passage of the reform act (LeMay 1979: 32). Correspondence between the king and Earl Grey reveal concerns about royal property claims and assurances that royal property claims would not be challenged by parliament (Grey 1867: 9-14.) A third reform bill, slightly modified to please the House of Lords, again easily passed the House of Commons. The changes, the external pressure, and the royal threat to create new Whig lords induced a majority of the House of Lords to accept the reform.¹⁸¹ The king accepted the bill, and the first substantial reform of election laws in 400 years took effect.

Reforms of the House of Commons

The great reform approximately doubled the electorate to about 20 percent of adult males by broadening the franchise in most boroughs. All households with property holdings rated at 10 pounds per year were entitled to vote in boroughs. County roles were expanded to include 50-pound renters as well as the 40-shilling householders already enfranchised under the medieval suffrage law of 1430. (There are 20 shillings to the pound.) One hundred and forty-three seats were taken from the smaller boroughs, including 112 from towns and villages with populations under 1,000 that previously had their own members of parliament. Sixty-five seats went to the new industrial centers, sixty five more to county representatives, and the remainder were redistributed among London, Scotland, and Ireland.¹⁸²

¹⁸¹ The conservatives (Tories) could, thus, continue to control one house of parliament even if the liberals (Whigs) would win the next several elections for the House of Commons. Had the conservatives in the House of Lords failed to pass the electoral reform and that chamber given a liberal majority, the pace of subsequent constitutional reforms is likely to have been much faster. The liberal coalition did win the next three elections, but lost in 1847. Between 1830 and 1885, liberals won 11 of 13 elections. The modifications implied that fewer seats would be shifted from England to Scotland (6) and Ireland (5).

¹⁸² Lang (1999: 31–37) provides a nice overview of the details of reform. He reports that the 1832 reforms increased the electorate (those actually voting) from about 500,000 to about 800,000 of

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The great reform did not eliminate the over representation of the south relative to the north, radically expand suffrage, or end patronage, but it did make patronage less decisive in future elections and increased electoral competition (Lee 1994: 61). Before 1820, it was rare for even a third of the English elections for seats in Commons to be contested (Lang 1999: 19). After the reform, it was rare for less than two thirds of the English seats in Commons to be contested (McLean 2001: 90). The 1832 reforms also changed the basis for representation within the House of Commons from more or less equal representation of boroughs and counties to a system more or less based on electorate size (Jennings 1961: 13).

Many members of parliament continued to draw salaries from royal appointments and from other wealthy individuals and interest groups. Indeed, changes in the economic production and transport associated with industrialization had created new groups who were in a position to support and reward MPs. An extreme example of this occurred in the mid-nineteenth century when a large number of the members of parliaments served on the board of directors of major railroad companies. Parks (1957) notes that

of the 815 M.P.s who sat from 1841-47, **145 were railway directors** ... in 1867 there were 179 ... as a result railway bills poured through Parliament.

Members of parliament did not receive a salary for their services to the central government until 1911 (Machen 2001: 102).

The new industrial interests and new urban centers were now better represented, as were the interests of what might be called upper middle class. This together with more competitive elections tended to make the House of Commons a more liberal body, whether seats were occupied by Whigs or Tories. Liberal interests were evident in education reform (1833), the abolition of slavery (1833), poverty law reform (1834), child labor acts (1833, 1842), and trade liberalization (1846) (Morgan 2001, Floud 1997).¹⁸³

a population of 26 million. All such numbers, however, are estimates, as many votes in small districts were done through temporary physical means, rather than paper ballots: voice votes, counting of hands, and the like. The electorate increased as a consequence of economic growth, inflation, and tax increases. Turnout was, however, evidently not particularly high, except for a short time after the reforms. The number of votes cast actually shrank from about 800,000 in 1837 to about 570,000 in 1859 (Craig 1977).

¹⁸³ It bears noting that liberal interests were more often utilitarian than natural rights oriented or libertarian during this period. For example, those supporting education reform and factory acts generally recognized that reducing child labor would increase education levels (although some

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Increasing the number of seats in Commons held by representatives of the industrial districts also made pivotal members of the House of Commons more interested in industrial development than before. Trade policies were liberalized, as noted above, monopolies reduced, and the free trade zone of the empire expanded. Innovations and economies of scale in manufacturing gave British manufactures a cost advantage in many markets, which generated large trade surpluses and capital inflows. As a consequence, per capita income grew four times faster in 1830–50 than it had in the previous century (Pugh 1999: 36). Suffrage also expanded during this period, because more persons met the property and income requirements of the 1832 reforms.

E. Party Cabinets and Parliamentary Rule in the Mid-Nineteenth Century

Reapportionment, redistricting, and the expansion of suffrage had significant effects on the distribution of authority between the king and parliament, even though the reforms only directly affected parliament. Much broader campaigns were subsequently necessary to obtain seats in Commons. This made parliamentary majorities in the House of Commons more difficult for kings and queens to engineer than they had been in most past centuries. Before the reform, the majority of the English members of the House of Commons ran unopposed. Before 1832, it was rarely the case that more than a third of the seats were contested (Lang 1999: 19). Although those elected to office were still often from the landed elite (Pugh 1999: 82), they had to be responsive to local economic and political interests to hold office (Schonhardt-Bailey 2006).

In addition to the indirect effects of suffrage reform and electoral competition, the sovereign's control over public policy was also reduced by other reforms that indirectly affected negotiations between the king and parliament. For example, Curwen's Act of 1809 made the sale of seats in parliament illegal. Many sources of royal income were phased out and a new income tax was phased in. The protectionist Corn Laws were repealed in 1846, which somewhat reduced the income of the large landholders, including the king. It also eliminated tariffs on 600 articles and reduced them on 500 others, which reduced, or at least limited, one of the most important sources of executive income.

factory owners had their own schools for children) and thereby improve child welfare in the long run, even if it reduced their family's liberty and income in the short run.

(Adults that competed for the jobs held by children would have pragmatic reasons to reduce child labor, but few of these were represented in parliament under the suffrage laws of nineteenth century England.)

As part of the bargains used to reduce tariffs, “temporary” income taxes (in a series of three-year tax bills) were introduced (Edwin 1914: 138–142, Lee 1994: 81). Together with increased commerce and industrialization, this implied that more and more of the government’s revenues were provided by temporary tax bills that had to be renewed to keep it up and running.¹⁸⁴ It bears noting, however, that the use of the income tax for public finance allowed government budgets to increase. Government expenditures rose from about 133 million pounds in 1856–57 to 143 million pounds in 1859–60 (*Historical Statistics of Europe 1750–1988*).¹⁸⁵

The king or queen continued to appoint cabinet ministers, but the appointments was increasingly constrained by parliament’s budgetary authority at the same time that the scope of royal patronage and other sources of influence over members of parliament was reduced. New cabinets could be appointed, but could not govern without parliamentary support and there was less and less that the sovereign could do to persuade members of parliament to vote the “right” way. By refusing to approve new taxes and other policies, parliament could essentially shut government (and the royal household) down during times of peace as well as war.

The cumulative effects of the restrictions on royal revenues and adjustments to elections laws were increasingly evident in the policy bargains reached between the sovereign and parliament. That parliament had become the dominant policymaking body, rather than simply delegated authority in areas of little interest to the sovereign, had become undeniable by 1858.

¹⁸⁴ The expanding potential tax base is evident from all accounts of this period. For example, data for the English experience are developed by Lindert (1986). Lindert’s table 1 indicates that the value of noble estates averaged £ 2032 in 1810 and rose to £9,855 in 1875. Merchant estates averaged £608 in 1810—far less—but had risen to £11,804 in 1875, both in constant 1875 British pounds sterling. Other classes/occupations also had significant increases in wealth, although not as great as that of merchants or the “titled persons.” Overall, it is clear that the fraction of wealth controlled by those outside the royal family increased substantially during this period. The population of nobles was essentially stable between 1810 and 1875 (rising from 22,000 to 25,000), while the population of merchants and professionals, and members of the industrial and building trades increased substantially—rising from 42,000 to 61,000 and from 638,000 to 2,835,000, respectively. Similar changes in the distribution of wealth and occupation were under way in much of Europe, although in most cases the expansion of commerce and industry came later than that in England. (Increases in parliamentary power also occurred somewhat later.)

¹⁸⁵ It was only after the Queen’s acquiescence on Gladstone’s appointment that the income tax came to be regarded as a permanent tax (Edwin 1914: 166). Here, it should be acknowledged that the need to keep government up and running also constrained Parliamentary tax policies, because voters and their patrons demanded it. In 1875 Gladstone campaigned on a promise to abolish the income tax, and he and his liberal allies were soundly defeated (Edwin 1914: 172–73).

In that year, the liberal government headed by Palmerston resigned and was replaced with a minority Tory government preferred by Queen Victoria. New elections were called, but unfortunately for the queen, her favored conservative (Tory) coalition lost the 1859 elections. Queen Victoria did not care for Palmerston, whose liberal coalition had won the election, and reappointed the conservative Derby to the office of prime minister. Her preferred prime minister, however, could not assemble a majority to pass legislation or taxes. Given the necessity of parliament's continuing financial support, Victoria grudgingly accepted Palmerston and subsequently Gladstone in 1860 (Pugh 1999: 96).

In this manner, a long series of minor constitutional bargains had gradually produced a parliament that was independent from the sovereign and had essentially complete control over legislation and taxation. Consistent with the analysis above, a series of constitutional and quasi-constitutional bargains had gradually increased parliament's control of public policy. In the British case, the nineteenth century reforms were substantially a consequence of industrialization and liberalism. Industrialization changed the distribution of wealth between the sovereign and parliament and created new potential tax bases. Liberalism provided a reform agenda that helped motivate politically active groups and gradually produced free internal and external trade, and other electoral and fiscal reforms.

The new procedures for selecting the cabinet and prime minister were rarely formally codified in constitutional documents or new legislation. Indeed communications between parliament and the Queen remained formal and deferential, and continue to be so.¹⁸⁶ Nonetheless, after 1860, the cabinets were party cabinets that reflected electoral results in the House of Commons. This transfer of policymaking authority from king and queen to parliament took place without significant internal revolutionary threats and without substantial democratization of politics. Only about 20 percent of adult men could vote in 1860.

Universal suffrage which did not emerge for another half century, which suggests, as implied by the analytical history of part I, that parliamentary authority over public policy and the degree of suffrage are generated by substantially independent mechanisms. The predicted ideological and partisan basis of suffrage expansion is evident in subsequent reforms of suffrage.

¹⁸⁶ Victoria's role in government, however, did not end in 1858. That she continued to play a role, especially in foreign policy, is evidenced by a steady flow of very deferential letters to Victoria from Palmerston and his successors.

F. The Gradual Expansion of Suffrage during the Nineteenth Century: The Second Reform of 1867 and the Third Reform of 1884

A number of groups pressed for suffrage and constitutional reform during the nineteenth century. Some of these groups were quite large and well organized. Among the most prominent groups was a group that lobbied for a written constitution, universal male suffrage, the secret ballot, free trade, and the reform of the poor laws. The Chartists organized large public demonstrations and produced several large petitions in favor of their reform agenda. However, they failed to obtain sufficient support in parliament for their reforms, in part because some prominent members of the movement threatened law and order, which induced a conservative backlash against their reform agenda.

Interest in suffrage reform and the secret ballot, however, did not end with the Chartist movement, as other groups organized and pressed for suffrage extension and ballot reform. Suffrage extension bills were introduced by “radical liberals” in 1852 and 1854 and defeated by overwhelming, but diminishing, majorities (Smith 1966: 29). Voter interest in reform was sufficient to induce the conservative members of parliament to take up the reform issue, and in 1859 the conservatives introduced a reform bill (Smith 1966: 41), partly with the aim of protecting conservative interests in the face of “inevitable” reform.¹⁸⁷

New regional reform organizations, with roots in the Chartist and anti-Corn Law leagues, added to the pressure in the 1860s (Smith 1966: 29, 39–40, Park 1931). A new Reform Union was formed in the northern industrial centers by “radical liberal” politicians, merchants, and prominent reformers in 1864 to press for liberal reforms, including the secret ballot, a return to triennial parliaments, redistributing seats in the House of Commons in proportion to borough and county populations, and a very broad franchise to include all males not on poor relief. They emphasized the

¹⁸⁷ In May of 1859, Disraeli argued in the House of Commons that parliamentary reform had become a pressing matter of public policy. “Thus Parliamentary Reform became a public question, a public question in due course of time becomes a Parliamentary question; and then, as it were, shedding its last skin becomes a Ministerial question. Reform has been for 15 years a Parliamentary question and for 10 years it has been a Ministerial question” (Quoted in LeMay 1979, 180). Disraeli’s remarks clearly imply that interest groups may directly establish an issue as a “public question” and indirectly establish an issue as a ministerial issue.

universality of the interests advanced by their programs, citing Mill and Gladstone, rather than class-based arguments (Cowling 1967: 243–52).¹⁸⁸ The Reform League was founded in London during 1864 by middle- and working-class activists. Its funding came from lesser lords, industrialists, and from the Trade Council. It promoted a similar constitutional agenda, but used somewhat more aggressive and radical language to promote reform (Cowling 1967: 246, 248). In 1865, the London Working Men’s Association was formed largely from members of the trade unions to campaign for expanded suffrage, including lodgers not on poor relief (Cowling 1967: 247). These three groups organized numerous talks in medium-size towns and cities throughout England. Their members included journalists as well as elected politicians, and so their views were widely reported in the press throughout the country.

After three decades, constitutional reform was again part of the mainstream political agenda, and there is evidence that changes in taxes were part of the bargaining over suffrage. Consider, for example this excerpt from a letter from Palmerston to Queen Victoria on January 27, 1861:

If Mr Gladstone were to propose a democratic budget making a great transfer of burdens from indirect **to direct taxation**, and if, the Cabinet refusing its concurrence, Mr Gladstone were to retire, the Conservative Party would **give the [Queen’s] Government substantial support** except in the case of the Government wishing to take an active part in war against Austria. ... by the end of that time [of Conservative governance] the country, it might be hoped, would be prepared for a **good and real Reform Bill...**

The Second Electoral Reform of 1867

In the 1865 elections, there was a changing of the guard as a new generation of members entered the House of Commons and leadership posts were passed on to a new generation of leaders. Earl Russell with the assistance of Gladstone formed a liberal reform government, with the support of Whigs (right liberals), liberals, and radicals (left liberals).

Early in 1866 Russell proposed a major reform expanding the national suffrage laws substantially beyond that of 1832, although less than advocated by many reform groups. The

¹⁸⁸ Gladstone normally argued for a limited expansion of suffrage, to include those “fit” to participate in national politics. For example, in the House of Commons on May 1864, he suggested that: “every man who is not presumably incapacitated by some consideration of personal unfitness of political danger is morally entitled to come within the pale of the constitution. [That is to say,] fitness for the franchise, when it shown to exist—as I say that it is shown to exist in the case of a select portion of the working class—is not repelled on sufficient grounds from the portals of the Constitution by the allegation that things are well as they are” (quoted in LeMay 1979: 184).

Russell-Gladstone reform bill obtained a slim majority in the House of Commons on its first reading—one that was much smaller than anticipated because of large-scale defections among Whig MPs (who by the standards of this period were right liberals). The bill failed on its second reading (after amendment) in the face of conservative and Whig opposition. Parliament was recessed, and during the recess, the Reform League and Working Men’s Association organized large-scale demonstrations in favor of expanding the suffrage throughout the country, including several large and occasionally disorderly demonstrations within London (Cowling 1967: 11–12; Smith 1966:135, 160).¹⁸⁹

The Russell cabinet resigned without requesting new elections, and the queen asked the leader of the conservative opposition, Derby, to form a new government. A new cabinet was formed in 1867 with the assistance of Disraeli. The new government was a right of center coalition of conservatives and conservative Whigs in the House of Commons (the “Cave” faction of right liberals). As in 1832, there was again royal support for suffrage reform. In her speech to parliament and in subsequent letters to Derby, the Queen Victoria insisted that electoral reform should be addressed by the new government (Smith 1966: 135).

The Disraeli reform proposals were in some respects more liberal than those rejected in the previous year, but were crafted at the margins to benefit conservative electoral interests in light of demographic research (Machin 2001: 65).

Three suffrage issues were addressed by the Derby-Disraeli reforms: extension of suffrage for national elections, a modest redistribution of boundaries and seats in the House of Commons, and suffrage extension in the towns (boroughs) for local elections beyond that for national elections. (i) The borough franchise was expanded beyond the level sought by the Liberals to include renters (who might be influenced by their conservative landlords). *Renters* of £12 properties were now eligible to vote in the boroughs and residency requirements in the towns and villages were reduced from three years to one year. Ownership requirements for suffrage in the counties were reduced

¹⁸⁹ One of the demonstrations is often referred to as the Hyde Park Riot. The riot began as a peaceful march, but involved an unlawful trespass in Hyde Park and some destruction of park property. The police tried to disburse the 20,000-person crowd, at which point a riot ensued. The police were rebuffed with sticks and stones. Several dozen demonstrators and policemen were injured in the fray. One policeman subsequently died from injuries. The cavalry was called out, and the crowd disbursed. The demonstrators were not entirely political, nor surly revolutionists, as the demonstrators played games and climbed trees throughout the park. All this took place within sight of Disraeli’s apartment, which may have contributed to the demonstrators’ influence. Mrs. Disraeli reported that “the people in general seem to be thoroughly enjoying themselves” (Smith 1966: 129–131, 135).

from £15 to £12. (ii) The boundaries of boroughs were expanded to shift liberals from county electorates, where suffrage remained subject to a higher property restriction. Only 30 seats from the smallest districts were redistributed, and only about half went to boroughs. After a good deal of debate and amendment, the bill was passed by a coalition of radical liberals and conservatives over the opposition of mainstream liberals, who objected to the conservative biases in Disraeli's bill.¹⁹⁰

The second reform bill of 1867 nearly doubled the electorate, increasing it from just more than a million in 1866 to just under two million in England, and from 1.35 million to 2.48 million in the United Kingdom as a whole (out of a population of 30 million).

The wealth and tax thresholds for voting were lowered more in the boroughs (town and urban districts) than in the counties. Borough electorates rose from 600,000 to 1.43 million, while those in the counties rose from 758,000 to just over a million (Smith 1966: 236). Although the borough seats became more representative in the sense that a broader cross-section of society could vote, boroughs did not have representation in the House of Commons that was proportional to their populations. The 19 largest boroughs with a combined population of 5 million returned 46 MPs, while the 68 smallest boroughs with an aggregate population of 420,000 returned 68 MPs (Smith 1966: 240).

The "advanced" (left) liberals from the industrial midland and northern boroughs had obtained increased suffrage, but not increased representation, while the country gentry were protected from a substantial increase in electoral competition. About one in eight persons living in boroughs were eligible to vote after the reforms, but only about one in 15 persons residing in counties.¹⁹¹ The conservative advantage in the counties was evident in subsequent elections (although they won majorities in Commons only in 1874). In 1874, the conservatives received 38.32 percent of the votes cast in England and Wales, which elected 154 MPs. The Liberals received only about 1 percent fewer votes, 37.39 percent, but elected only 101 MPs (Smith 1966: 225).

The expansion of suffrage further increased the importance of partisan organizations for election campaigns and, consequently, also increased party discipline, which pushed British politics

¹⁹⁰ One of the many proposed amendments that was rejected was sponsored by J. S. Mill, who attempted to replace the word "man" with the word "person" throughout the suffrage bills, which would have expanded suffrage to women. Mill's women's suffrage proposal received only 73 votes in support (Smith 1966: 204).

¹⁹¹ The expansion of suffrage in Scotland and Irish counties was passed in separate bills in 1868 and was more substantial, although the final fraction of voters was smaller than in England and Wales, 1 in 24 and 1 in 26 respectively (Smith 1966: 239). These ratios include women and children.

and parliamentary voting patterns toward their modern partisan forms. In 1860 only about 58.9 percent of liberals voted with their party leaders in the cabinet and only about 63.0 percent of conservatives routinely opposed them. By 1881, 83.2 percent of the liberals supported their party leaders on critical votes and 87.9 percent of conservatives. Party-line voting reached the 90 percent level in both parties in the following decade (LeMay 1979: 178, Stephens and Brady 1976).

The Third Electoral Reform of 1884-85

The reform act of 1867 reduced, but did not eliminate the disproportionate representation that had long characterized the House of Commons. In terms of population, the ratio between the largest and smallest district of a member of parliament was about 250 to 1. Together with the wealth tax requirements, the distribution of seats in the House of Commons allowed the landed gentry to retain disproportionate influence within government, even as the importance of land holdings per se decreased. Electoral districts were rooted in historic town-county divisions and larger towns and counties had multiple representatives (normally two or three) elected simultaneously in district elections. The House of Lords continued to be populated by nobles and senior church officials.

Moderate and left-liberal organizations lobbied for further reforms. In the late nineteenth century, they were joined by labor unions, whose policy agendas normally included support for suffrage expansion. The secret ballot was introduced in 1872.

In 1884 the liberal government of Gladstone proposed a significant increase in the franchise by placing county voters under the same rules adopted for the towns in 1867. The conservatives were opposed to this reform, unless it was combined with a redistribution of seats to protect “their” seats. There were speeches throughout the country on the issue, and the queen encouraged conservative and liberal leaders to find a compromise. As had always been the case, assembling simultaneous majorities in a liberal House of Commons and conservative House of Lords was a nontrivial task that required a good deal of negotiation, bargaining, and compromise (Chadwick 1976, McLean 2001: 79–83, Machin 2001: 94–102).

In the end, a compromise was worked out in which two separate bills would be adopted (one extending the franchise and one redrawing electoral district lines and reallocating seats). The second reading of the redistribution bill took place in the House of Commons on December 4, 1884, and the franchise bill passed Lords on December 5 (Chadwick 1976, Machin 2001: 97).

A variety of possibilities had been discussed before the final agreement, including: a shift to single-member districts, proportional representation, and women’s suffrage, but these more radical

reforms were rejected in favor of more modest reforms. The proposed redistribution bill was read in the House of Commons in December 1884, and the boundaries, which were partially settled by bargaining among leaders, would be finalized by a boundary commission in early 1885. The boundary commissions' proposal would be voted on in the House of Commons soon after the report was made (Chadwick 1976, Machin 2001: 97).

The new districts were to be linked to population, rather than historical town and county boundaries. There would be more single-member districts, although multiple-member districts were retained. New districts were developed on a more uniform basis for Scotland, Ireland, and England for the first time. Towns with populations less than 15,000 would be merged into county districts. The ratio between the largest and smallest districts shrank to 8:1, one fortieth of their previous ratio.

The 1884 suffrage bill extended suffrage in the countryside without very much affecting the urban electorate, which enfranchised a broad cross-section of the rural middle and working class. The redistribution of seats (mostly accomplished by creating new seats) gave somewhat greater weight to urban voters in subsequent parliaments. The electorate again nearly doubled in size to about 5.5 million voters (Machin 2001: 97). About two-thirds of adult men had the franchise—essentially all male heads of households that met residency requirements.

G. Parliamentary Democracy Emerges 1906–28

British politics at the end of the nineteenth century was very different from that at its beginning. The shift to parliamentary dominance was essentially complete, with partisan cabinets and with the center of parliamentary authority increasingly in the elected chamber of parliament. Suffrage had expanded from less than 10 percent of adult males to more than 60 percent. This was a more restrictive suffrage than in several other European countries in 1900, but comparable to most countries undergoing liberal reforms in the nineteenth century. The electoral reforms had made British electoral politics more competitive and the House of Commons more representative of the average person's interest than it had ever been before. Corruption and vote buying had been reduced by several pieces of legislation, including the 1883 parliamentary elections (corrupt and illegal practices) bill. Political parties had emerged as increasingly modern and disciplined organizations, although they had not entirely taken their contemporary form.

The distribution of election districts were more equal than in the past, although there were still a large number of relatively small districts. The larger districts selected several MPs simultaneously. Graduates of the major universities also had plural votes in that they could vote for university

representatives and in any district in which they met wealth and residency requirements. Wealthy persons had “plural votes” in that they could vote in any district in which they met wealth and residency (property) requirements. About 10 percent of the electorate had plural votes (Morris 1921: 10).

The hereditary House of Lords retained veto power on legislation, which tended to bias legislative results and constitutional reforms in conservative directions. The sovereign formally retained considerable authority, but most of it had long been informally ceded to parliament. The sovereign, however, as a popular, well-informed participant in political life, could influence policies through public statements, access to the elites in the Houses of Lords and Commons, and contacts with other European sovereigns and influential families. The sovereign also retained the right of “elevation” through which new member of Lords could be created, which gave the king or queen an indirect veto over the House of Lords—although one that could not be exercised routinely. The latter had played a role in the reforms of 1832 and would again play a role in constitutional reform in 1911.

Many of the new rural voters were culturally conservative and supported the expansion of the British Empire during this period, which gave conservative parties considerable support within the newly enfranchised middle class (McLean 2001: 100–101). The reforms of 1885 together with disagreements within the Liberal coalition on “home rule” for the Irish shifted control of the House of Commons to conservatives for most of the next two decades.

Few significant constitutional reforms were proposed in this period, although universal male suffrage and freer trade remained goals for many liberal reform groups. The British women’s suffrage movement came to its own in that period. The labor movement became more politically active towards the end of the century. A new labor party was added to the mix of liberal and conservative coalitions, and an Irish coalition labored for greater independence (home rule), although relatively few Labor MPs were elected before 1918. (Liberal and labor parties coordinated their campaigns for several elections prior to 1918.). Smaller groups lobbied for proportional representation.

In 1906 the liberals won parliamentary elections to an extent not seen since 1832, based partly on constitutional issues. Four hundred liberals were elected, which along with the support of 40 members of labor and 83 Irish nationalists gave them a large supermajority in the 670 member House of Commons. The House of Lords, however, with a large conservative hereditary majority

continued to oppose liberal legislation and constitutional reforms, such as ending plural voting in the counties (which tended to favor conservatives).

In 1909 the House of Lords vetoed the budget for the national government, after several decades of deference to the House of Commons on budgetary matters (LeMay 1979: 189–192; Machin 2001: 129). The bill included new taxes on inherited wealth and introduced the principle of progressive taxation, which directly threatened conservative and aristocratic interests (Lang 1999: 137–38). This was not the first House of Lords veto of legislation passed in the House of Commons in the twentieth century, but it led to new elections and a series of major constitutional reforms. The most important of these was a major reduction in the authority of the House of Lords, which cleared the way for many of the major reforms that followed.

As in 1832, the king supported liberal proposals from the House of Commons by threatening to add liberals to the House of Lords until the measure passed. The 1911 constitutional reform reduced the influence of the House of Lords from an absolute veto to the ability to temporarily block bills favored by the House of Commons (for up to three years). Although this compromise did not completely end bicameralism, it ended nearly five centuries of formal equality between the Houses of Commons and Lords on legislation, and created a new very asymmetric bicameralism that assured the continued dominance of the House of Commons¹⁹²

By removing a long-standing veto player with predictable conservative interests, this constitutional reform potentially opened the door to many other reforms, although such reforms did not immediately take place. Minor reforms such as the end of plural voting were vetoed (delayed) by the House of Lords for the next few years, while others such as women's suffrage were delayed within the House of Commons (Morris 1921: 85–117). World War I naturally caused public and parliamentary attention to be shifted to foreign affairs and away from constitutional reform issues.

The end of the war, however, combined with the new constitutional procedures created new opportunities for reform. The term of the 1910 parliament had been extended beyond the normal limit, because of its role in managing the war. This allowed the House of Lords to play a significant role in the constitutional negotiations. The Lords ability to delay proposed reforms meant that some reforms could not be adopted by the first “long parliament” of the twentieth century.

¹⁹² It bears noting that such inter-parliament conflicts had been less frequent before 1866, because the House of Commons had been less liberal and more members of that chamber had been members of noble families, on noble payrolls, or supported by them in other ways (Sack 1980).

A broad package of constitutional reforms was introduced at the end of the great war, the details of which reflected a good deal of bargaining among Liberal and Conservative party leaders during the war (Morris 1929: 113–99). The Representation of the People Act of 1918 included another major expansion of suffrage, another redistribution of seats in parliaments among districts, and a reduction of plural voting (to a maximum of two members of parliament). Essentially all adult men over the age of 21, except those on poor relief or with criminal records, and women over the age of 30 were now entitled to vote. The new electorate more than doubled, increasing from 8 million to more than 21 million (Morgan 2001: 592.).

Proportional voting for the seats in the large urban multiple-member districts was finally rejected as a compromise between the Houses of Lords and Commons (Machin 2001: 146). Perhaps surprisingly, the number of university seats in the House of Commons was increased from 9 to 15, and graduates from several relatively new universities were given the right to cast votes for university seats, which were normally conservative ones at that time (Morris 1921: 197–200).¹⁹³

H. Conclusion: Parliamentary Democracy in the U.K. Emerged through Constitutional Bargaining and Reform

The English parliament emerged in the fourteenth and fifteenth centuries from earlier forms of the king and council architecture. During most of its first three centuries, parliamentary power ebbed and flowed with the king's need for new tax revenues and the bargaining skills of parliamentary leaders. Only the veto power the parliament on new taxes continued essentially uninterrupted. Other protections and powers were obtained by various parliaments and then lost or ignored according to the interests and ambitions of the king or queen of the day. Parliaments were called and dismissed by the Sovereign and were normally called only when the Sovereign needed additional revenues (subsidies) from parliament. Medieval parliaments, consequently, met irregularly and for relatively short periods. The power of the medieval English parliament was nontrivial, but very limited by contemporary standards.

¹⁹³ The parliamentary seats for Oxford and Cambridge Universities date to the thirteenth century, when Henry III granted these towns monopolies in higher education (Brooke, Highfield and Swaan 1988: 56). Their monopolies ended in the early nineteenth century when a handful of new universities were founded, as with University College in London (1826), King's College London (1829) and the University of Durham (1832). Several polytechnic universities were founded in the late nineteenth century. (Five other universities existed in Ireland and Scotland.)

A gradual shift of policymaking authority from the king to the parliament began at the end of the seventeenth century, during the reign of William III. This is nearly a century earlier than in most of the other countries focused on in this book and reflects unusual opportunities for constitutional exchange between William III and parliament in the decade after William and Mary's accession to their royal offices. These changes, and a series of somewhat disengaged sovereigns in the first half of the eighteenth century allowed parliament and cabinet ministers to gain additional authority¹⁹⁴

Trends in the Eighteenth and Nineteenth Centuries Favored Parliament

The center of policymaking power did not shift back to the sovereign as it had on previous occasions. Instead, parliament continued to bargain for and to obtain additional authority over public policy. More or less stable political factions of MPs emerged in both chambers toward the end of the seventeenth century as noted in chapter 12 (Hayton 2002; Hill 1996: ch. 2); however these voting blocks did not account for the whole of parliament, nor were these voting blocks organized in the contemporary manner. Relatively few elections were contested, MPs were unpaid, and MPs attended parliament more or less at their convenience. Being a member of parliament was not a full-time salaried position.

The lack of party discipline and professionalism, along with the preponderance of uncontested elections, allowed patronage to affect the balance of power (Field 2002: 140–41). The sovereign, consequently, continued to have significant influence over electoral outcomes to the House of Commons. For example, the Whigs took power shortly after George I's accession to the Sovereign, in part, because George only appointed Whigs to senior positions in government. The Whigs remained largely in control until George III's accession in 1760, who was less favorably disposed toward partisan politics in general and to Whigs in particular than his grandfather and great grandfather had been. Under George III, the Tories assumed power for the first time in 50 years.¹⁹⁵

¹⁹⁴ Queen Anne (1702–14), whose succession was an unexpected consequence of the 1689 Bill of Rights, which elevated her above her father and brother, had lived in Denmark with her husband for many years before inheriting the crown, was not trained for leadership, and often suffered from ill health. The first two Hanoverian kings, George I and II (1714–60) were, like William, foreign born. George I spoke German rather than English at court and was at least as interested in political developments in Hanover and the Holy Roman Empire, as in the United Kingdom. George III controlled the course of policy on many occasions, he was mentally ill and incapacitated during several periods of his long reign (1760–1820).

¹⁹⁵ In his words, George III wanted to “put an end to those unhappy distinctions of party called

Continued on next page...

Neither the party system, nor cabinet governance had yet emerged. Nonetheless, the sovereign could not always control electoral outcomes, nor the members elected. Shifts in the composition of the House of Commons, thus, somewhat limited the king's choice of ministers and, thereby, affected the ordinary course of public policy. Men like Walpole and Pitt who could deliver majorities in parliament (using the king's patronage) became powerful and influential statesman.¹⁹⁶

In the nineteenth century, trends favoring parliament continued and strengthened. A series of reforms to suffrage law, tax law, and to the national bureaucracy made the House of Commons substantially independent of the sovereign at the same time that the interests represented in Commons became more commercial and liberal. Shifts in finance, new demands for government services and reform, and the need for reliable majorities in parliament induced kings and queens to appoint members of the leading parties of the House of Commons to posts in the executive cabinet.

This gradually shifted effective control domestic policy and foreign policy to the House of Commons.

Independence of Suffrage and Parliamentary Authority

From 1689–1860, parliament's authority expanded without significantly expanding suffrage. This demonstrates that it is possible to have parliamentary rule without highly contested elections or broad suffrage. The determinants of suffrage reform, as hypothesized in chapters 7 and 8, evidently differ from those that determine the balance of authority between kings and parliaments. Groups outside of government pressed for constitutional and other reforms, as had often been the case in previous centuries, but the nineteenth century interest groups were more successful than previous centuries. New technologies for organizing and coordinating demonstrations were available, and new economic and ideological support for suffrage expansion emerged, which made constitutional bargains on suffrage possible.

Whigs and Tories by declaring that I would countenance every man that supported *my* Administration.” Quoted in Hill 1996: 105–106. He proceeded to appoint his nonpartisan tutor, the Earl of Brute to be his chief minister. The king, true to his word, subsequently appointed men who would put king over party, both Tories and Whigs, to posts in his administration (Hill 1996: 106).

¹⁹⁶ The term prime minister was coined with Robert Walpole in mind; however, this title was not meant as a complement, but as an insult composed by Walpole's enemies (Field 2002: 145). Perhaps, Walpole appeared to be too deferential to George I and II. Walpole was not, of course, the first minister in English history to have had a great effect on English public policy, but he was the first to do so in the post-William III era when parliamentary majorities played a more important role in policy formation. Robert Walpole is often regarded as the first Prime Minister of Great Britain. He led the majority in the House of Commons from 1721–42.

Constitutional Bargaining, Rather than Revolutions

The constitutional bargains struck reflected the political interests of those engaged in negotiations, which were partly induced by preexisting political institutions and partly grounded in their evolving ideological and economic interests. The interests represented in the House of Commons and in the House of Lords changed as industrialization took place and as liberal ideology penetrated into the highest levels of government. There were many lobbying groups, petitions, and mass demonstration in support of constitutional reform, but no credible or immediate threats of revolution. Institutions were not ignored or destroyed by revolutionary constitutional negotiations, but rather were reformed a little at a time using standing procedures for intra-governmental negotiation and reform. There is evidence of compromise and bargaining in every reform. Most reforms were modest, and most remained in place for several decades at a time.

Through a long series of reforms, parliament gradually obtained complete control over public policy. Cabinets became increasingly determined by the electoral outcomes and majority parties in the House of Commons. Suffrage gradually expanded and by 1930 was essentially universal.

Most of these reforms took place at approximately the same time that they were occurring in the other European kingdoms, largely between 1825 and 1925—a period in which manufacturing and commerce replaced agriculture as the main source of wealth and in which liberal ideas and reformers favored increasingly open political and economic systems.

Table 13: Major Constitutional Developments in English Constitutional History

Date	Event	Description
1215	Magna Carta	Establishes right to jury trial, and Council of Barons (including bishops and abbots) with veto power of new taxes
1265	Montefort Parliaments	Invites four knights from each shire (county) to his first parliament. Two burgesses from every major town are also included in his second parliament.
1414	Equality of Commons and Lords	Proclamation of Henry V that laws be adopted with the assent of both the Houses of Commons and Lords
1429	Election Law Statute	49 shilling franchise established in the shires (counties), allowing 5 percent of adult males to vote for shire representatives to the House of Commons.
1445	Election Law Statute	Boroughs to have two elected representatives each, who must be residents and possess the wealth of a knight (or squire).
1489		Court decision holds that legislation requires the assent of both the Houses of Lords and Commons.
1533	Act of Appeals	Appeals by ecclesiastical courts to the Pope eliminated (makes the Sovereign the final level of appeal in both secular and religious courts).
1534	Act of Supremacy	Sovereign as head of English Church (rather than Pope), creation of Anglican Church
1534	First Act of Secession	Parliament passes and the king accepts rules for future accession to the Sovereign. (The rules were suggested by the king.)
1536	Bill for the Dissolution of the Lessor Houses	Dissolution of smaller monasteries with all their assets turned over to the Sovereign. Abbots and priors are subsequently removed from the House of Lords, ending the majority of the “Lords Spiritual.”
1536	Union of Wales and England	English law extended to Wales, 24 Welsh MPs join Parliament.
1641	First Triennial Act	Parliament to be called at least once every three years, will be “self-calling” if the Sovereign fails to issue writs
1641	Act Against Dissolution	Forbids the king from unilaterally dissolving Parliament
1642–60	Civil War and Commonwealth	Period of parliamentary rule (by a subset of the 1641 Parliament) followed by the authoritarian rule of Cromwell
1660	Breda Proclamation	Restoration of parliamentary monarchy: England returns to constitution of August 1641 (prior to Act Against Dissolution)
1664	Second Triennial Act	Requires parliaments to be called at least once every three years, but eliminates the self-calling provision.
1673	The Test Act	Forbids Catholics and dissenters (mostly Presbyterians and Puritans) from holding public office
1689	Bill of Rights	William and Mary offered joint sovereignty, right to jury trial affirmed, right of free speech in Parliament affirmed, forbids a standing army in peace time, and excludes Catholics from the Sovereign.
1694	Third Triennial Act	Modifies the previous Triennial Act. A meeting of Parliament is required at least once every three years, and the maximum duration of Parliament is set at three years
1689-1702	Precedents of William III	Annual tax bills, earmarked taxes, earmarked budgets, audit of Sovereign accounts, parliamentary consultation on military and foreign affairs, Bank of England is established.
1698	Civil List Act	Provides William III with additional tax sources for life, but caps the new revenues at £700,000/year, beyond which approval of Parliament is required.
1701	Act of Settlement	Advances the Hanovers in the line of secession (as the nearest Protestants), future kings and queens can only leave Great Britain with permission from Parliament, MPs are forbidden from being on the royal payroll.
1706	Regency Act	Provides for a regent council after Queen Anne’s death, naturalized all Protestant Hanoverian successors. It also weakens the 1701 provision regarding MPs on the royal payroll. MPs may now take paid positions, but must stand for reelection after taking a new position.
1707	Union of Scotland and England	Scottish Parliament abolished, 45 Scottish members join the “English” House of Commons and nine elected peers join the House of Lords.
1711	Property Qualification Act	County representatives to the House of Commons (knights) required to have 600 pounds of income per year and town representatives (burgesses) 300 pounds per year.
1716	Septennial Act	Modifies the Third Triennial Act, by setting the maximum duration of Parliament at seven years.
1801	Union with Ireland	The Irish Parliament is abolished, 100 Irish MPs join the “English” House of Commons, and 32 new peers join the House of Lords.
1828	Repeal of the Test Act	Allows Catholics and dissenting Protestants to run for office and hold appointed positions in government

Perfecting Parliament

1829	Catholic Emancipation Act	Allows Catholics to sit in Parliament.
1832	Great Reform Bill	Major reform of the House of Commons: the borough franchise is made uniform, which doubles the franchise from 10 to 20 percent of male voters; and seats are redistributed from very small boroughs to the new industrial centers and counties.
1833		Slavery outlawed in the British Empire
1835	Municipal Corporations Act	Replaces 178 unelected corporate borough governments with elected town councils. Extends local franchise to all male taxpayers with a three-year residency, mandates poor relief.
1859		Repeal of wealth qualification for members of parliaments.
1867	Second Reform Act	Approximately doubles franchise for parliamentary elections by extending the vote to all male property owners; redistribution of seats; expansion of borough boundaries; ends requirement of new elections for member of parliaments who take or change posts in the government.
1869	Municipal Franchise Act	Extends right to vote in municipal elections to women taxpayers.
1872	Ballot Act	Secret ballot introduced for parliamentary elections
1883	Corrupt Practices Act	Places limits on election expenditures by candidates according to a schedule that varies by size of electorate.
1884	Third Reform Act	Extends the franchise to occupants (renters) of properties worth more than 10 pounds per annum.
1885	Redistribution of Seats Act	Reallocates seats, and divides most of the remaining two-seat boroughs to establish single-member districts.
1911	Parliamentary Act	Eliminates the House of Lords' veto power (House of Lords can only delay legislation for two years). It also revises the Septennial Act so that the maximum term of Parliament is limited to five-year terms, members of Parliament receive salaries for the first time.
1918	Fourth Reform Act: Representation of the People Act	Universal suffrage for men older than 21 and for women older than 30 (with some minor residency restrictions); polls to be held on the same day; free postage for candidate mail associated with elections.
1918	Redistribution Act	Increases the size of the House of Commons, formally adopts principle of equal-sized districts, and redistributes seats accordingly.
1922	Irish Free State Act	Irish Parliament re-established, Irish MPs no longer called, except those from Northern Ireland.
1928	Equal Franchise Act	Women's suffrage put on same basis as men's suffrage (21 years of age).
1948	Representation of the People Act	The remaining two-member constituencies are eliminated (12), as are the university seats; redistribution of seats.
1949	Parliament Act	Delaying ability of House of Lords further reduced to one year for legislation
1958	Life Peerage Act	Provides for the creation of life peers and allows women to sit in the House of Lords.
1973		United Kingdom joins the European Union, confirmed by national referendum in 1975 (67.2 percent yeas).
1981	Representation of the People Act	Disqualifies those serving prison sentences of more than 12 months in the United Kingdom from serving in the House of Commons.
1998	Registration of Political Parties Act	Political parties are required to register names (to prevent attempts to confuse the electorate).
1999	Devolution of Powers	Substantial decentralization of policymaking to Wales and Scotland. First elections to the "new" Scottish Parliament and Welsh Assembly.
1999	House of Lords Act	Restricts the number of hereditary memberships in the House of Lords to 92.

Sources: Morgan (2001), Field (2002), Rallings and Thrasher (2000), and Stephenson and Marcham (1938). See also *A Brief Chronology of the House of Commons*, House of Commons, 2002.

Chapter 14: The Swedish Transition to Democracy

A. Sweden's Written Constitutional History

Swedish constitutional history is in many ways similar to that of England, although its international entanglements and its evolutionary path differ somewhat from the English case. Sweden originated as a relatively small kingdom in the early fourteenth century, at about the same time that its first constitutional documents were drafted (Helle, Kouri, and Jansson 2003: 401–402, Weibull 1993: 18–22). At its territorial peak in the seventeenth century, its domain included lands in northern Germany, Poland, Russia, the Baltic States, and Finland. Norway was ruled by the Swedish king during most of the nineteenth century. Although not a small country today, Sweden is much smaller now than it was in past centuries. As in the English case, the Swedish constitution consisted of several written laws and customary procedures with special status, rather than a single foundational document. Its constitutional laws, perhaps surprisingly, have been more stable than the territory governed and may be argued to be among the oldest in the world.

It bears noting that usage of the term constitution in this book differs somewhat from that used by many Swedish legal scholars. “Constitution” is normally translated into Swedish as *grundlag* (foundational or grounding law). Under that definition, there have been just two Swedish constitutions during the period of greatest interest for this book. Sweden’s 1809 grounding law remained in place from 1809 until 1975. However, by the usage adopted here, the Swedish state may be said to have operated under at least four different constitutional systems from 1809 to 1975, because its core procedures for choosing public policies underwent four major reforms.¹⁹⁷

The nineteenth and early twentieth centuries included three periods of major reforms and many other periods in which minor reforms were adopted. The “new” constitution of 1809 was a relatively liberal document with clear medieval antecedents. That constitution reaffirmed parliament’s veto power over taxation and specified formal procedures for constitutional amendment. It included a four-chamber parliament based on the estate system. The Riksdag Act of 1866 changed the

¹⁹⁷ That collection of constitutional rules essentially specified that Sweden was governed jointly by a king and Riksdag and also characterized royal succession. Under that collection of rules, Sweden went from a substantially unelected parliament with four chambers to a two-chamber parliament elected with wealth-weighted voting in 1866, universal male and female suffrage under proportional representation in 1909–20, and a unicameral parliament in 1970. In addition, the position of the king evolved from the dominant figure in Swedish politics to a largely symbolic figure in the early twentieth century.

architecture of parliament from a four-chamber assembly a bicameral one grounded in elections. Major electoral reforms were adopted in 1907 and 1920 that produced universal male and women's suffrage. Another significant reform was adopted in 1970 when the two chambers of the Riksdag were merged into a single chamber, although that reform is beyond the scope of the present chapter.¹⁹⁸ Other unwritten reforms also occurred, as the balance of public policymaking authority shifted from the king to the parliament in the late nineteenth and early twentieth centuries.

Although Swedish governance was not always bound by its constitution, for the most part, Sweden's rules for creating laws and amending its constitution have been followed for seven centuries.

Origins of Swedish Constitutional Law

The evolution of Swedish governance is generally clearer than that of England, because more of its constitutional reforms are formally codified in written constitutional laws.

In the early Middle Ages there were many rival kingdoms, which were gradually unified into three kingdoms: Sweden, Norway, and Denmark through wars of conquests and arranged marriages. The early kings of Scandinavia were normally elected at formal meetings called variously *tings*, *lagtings*, and *althings*, which can be considered precursors to modern parliaments. Indeed, the contemporary Danish parliament is called the Folketing or Folketinget: the people's ting. Medieval *tings* combined aspects of modern judicial and legislative branches of government. They were deliberative assemblies that met at regular intervals to settle disputes, pass sentences on law breakers, and select kings.¹⁹⁹ There were local, regional, and national tings. Once elected, a king normally retained office until his death, although kings were occasionally replaced for extreme malfeasance of their duties.

Contemporary Sweden's constitutional law may be said to have begun at a national ting. In 1319 after a 20-year period of considerable turmoil and mayhem, Magnus Eriksson, the son of Duke Erik, was elected at a national assembly at which, according to the *Rhymed Chronicle*, "both the commons and privileged estates had assembled to elect a king." Magnus Eriksson was only age 3 and was evidently selected as part of a compromise to restore order and reduce conflict over the top posts in government. It was agreed that governmental decisions would be made by a council representing major noble families, who initially served as regents and would later form the royal council after Magnus came of age. The regents (royal council) promised to govern by rule of law, observe due

¹⁹⁸ See Congleton (2003c) for an analysis of Sweden's twentieth-century reforms.

¹⁹⁹ Petersson (1994: 6) briefly describes these early collective decisionmaking bodies.

process, and committed the new king to the same procedures. The regents also committed the king to impose new taxes only after consultation with the royal council (Helle et al. 2003: 401–9, Weibull 1993: 22).

Helle, Kouri, and Jansson(2003:702) refer to the agreement that formalized Eriksson’s election as the Swedish Charter of Liberty. Weibull (1993: 22) refers to the agreement variously as the Letter of Privilege and as the Swedish Magna Carta. The dates and details mentioned for this period (and many others) vary a bit among historians. Here and in several other places in the historical narratives, I apply what might be called the law of the blind men and the elephant. When several historians describe the same events in different ways and/or similar events at different dates, I assume that they are all essentially correct. The precise details of Eriksson’s accession are less important for the purposes of this book than his subsequent creation and use of a national legal code.

Approximately thirty years later, King Magnus Eriksson promulgated a new unified legal code for the entire kingdom (the Land Law). The new legal code was a synthesis of the best practices in Scandinavia and served as the foundation of Swedish law until the nineteenth century. Eriksson’s Land Law created a uniform criminal and civil law for the kingdom as a whole, specified judicial procedures, and included constitutional provisions, which included and extended the promises made on his behalf in the 1319 charter.

The constitutional provisions of Eriksson’s Land Law stated, for example, that the king “shall be true and faithful to all his subjects and he shall not harm anyone poor or rich, except according to law and after legal process.” It called for a royal council to be selected (by the king) that would consist of 12 Swedish nobles and 7 native-born church officials, who would serve on the council for life (Upton 1998: 1–2, Helle et al. 2003: 700–01). The royal council would have veto power, “in the future no laws should be given to the common people without their [the council’s] aye and good will” (Wigmore 1912: 21). It further states that new taxes would be negotiated with delegations of the provinces and that subsequent kings would be elected by such assemblies (Helle et al. 2003: 701).²⁰⁰

The main provisions of Eriksson’s land law were repeated many times, as for example in Kristoffer’s code ratified in 1442 (Weibull 1993: 22). A new official text was printed and distributed

²⁰⁰ Similar civil codes and more or less representative constitutional structures had been adopted by Denmark (Jydske Law) and Norway (Laws of Gula-thing, and Jonsbok) in the century before (Wigmore 1912: 17–20). An early fifteenth century (illustrated) version of Eriksson’s national law code can be found at the library of Uppsala University (on parchment).

in 1608 (Upton 1998: 2). In this manner, Swedish governance became grounded in written documents that remained in force for centuries at a time.

The Letter of Privilege of 1319 was less an agreement between a king and council than an effort by the Swedish elite to constrain their still very young sovereign. However, the “privilege” became accepted as the law of the land and can be regarded as the first Swedish constitution (Weibull 1993). The king’s authority was also constrained by local governments and by international alliances, such as the Hanseatic League and Kalmar Union, and by complex family relationships within northern Europe.

Standing tax revenues from land, many of which were paid in the form of produce, had been fixed in the previous century. There were also excise taxes on copper and obligations for nobles to provide military service to the kingdom when called upon (partly in exchange for tax exemptions). Magnus Eriksson made Stockholm the official port city of Sweden, through which all foreign trade was to pass. This made tariffs and similar payments easier to collect and also made Stockholm the main commercial and political city of Sweden (Helle et al. 2003: 333–34).

Royal income, however, was relatively small and a good deal of day-to-day financing took the form of loans against future income. Loans were evidently easier to obtain than new taxes from the council. The loans were partly from the Catholic Church and partly from noble families in northern Europe (Helle et al. 2003: 407–408).

B. Emergence of the Swedish Parliament

Eriksson’s land law codified the practice of calling for assemblies of nobles, church officials and regional governments, but it did not create a formal architecture for such assemblies. This emerged gradually over the course of the next two centuries.

A series of Swedish national assemblies were called during the fourteenth and fifteenth centuries to address tax issues and to elect sovereigns (Bellquist 1935, Helle et al. 2003: 701–02, Sawyer and Sawyer 1993: 95–99). These assemblies were initially similar to *tings* in that they were arranged at times of religious and commercial festivals, to increase participation. The latter suggests that national assemblies during this time were not considered to very important, possibly because central governments were not considered to be very important. Governance was quite decentralized during the late Middle Ages.

The most important of the early Swedish assemblies occurred in 1388, when it met and elected Margrethe of Denmark to be the next Swedish sovereign, a few years after Eriksson’s death. In

1389, Margrethe arranged to have the crowns of Denmark, Norway, and Sweden placed on a single head (that of her grand nephew, Erik), which began the period of the Kalmar Union (1389–1521). The Kalmar Union was a period of joint sovereignty, rather than a merger of the three countries (according to Swedish and Norwegian accounts). The national laws and councils of Sweden, Denmark, and Norway remained distinct, as was normally the case during periods of joint sovereignty in Europe.²⁰¹

Sweden's Land Law remained in place, as did most national, regional, and local governmental institutions, including its royal council, which was largely populated by Swedes. Accession charters normally required the Danish kings to consult with the three councils of state and to call their parliaments as required. Assemblies of regional governments continued to be called in Sweden to deliberate on new taxes and royal succession. Such meetings occurred, for example, in 1396, 1441, 1448, 1520, 1521 (Sawyer and Sawyer 1993: 71–79).

The specific institutional form that emerged for meetings of the Swedish national assembly evidently reflected Danish practices. The Danes distinguished among the “estates” (groups that had their own legal rights), and Danish government included a national parliament of the estates, which had been called the Riksdag since 1241 (Helle 2003: 680, Wigmore 1912: 547–48).

Secession from the Kalmar Union

Disputes between the Danish sovereign and the Swedish and Norwegian councils did occur, and occasionally rose to the point of armed revolts (usually over taxes).

In 1435, the usual centralization disputes of this period led to a rebellion in Sweden. The leader of that rebellion, Engelbrekt, called a meeting of nobles, clergy, burghers, and peasants in Arboga. The groups met separately and each initially had equal veto power. They agreed to carry through the decision of a majority of the chambers, and agreed to support Engelbrekt in his negotiations with the Danish crown. They also elected Engelbrekt and Knutsson protectors of Sweden. Subsequent negotiations (and a bit of military resistance) formally increased Swedish autonomy in 1438, and subsequently produced a Swedish king in 1448 (Toyne 1948: 86–89, Sawyer and Sawyer 1993: 76).

²⁰¹ Queen Margrethe was related to the Swedish royal family through marriage to Magnus Eriksson's son, Håkon. Magnus Eriksson had been sovereign of Norway as well as Sweden during most of his lifetime.

The transition from Erisson to Håkon to Margrethe was not a simple or uncontested one, although it was consistent with the rules of inheritance in Scandinavia at the time, and was ratified by a Swedish national assembly as required under Eriksson's Land Law (Sawyer and Sawyer 1992: 69-75).

During the first decades of the sixteenth century, the centralization contest between Sweden and Denmark was finally resolved in Sweden's favor as the Danish army lost a series of battles and Hansaetic support for Sweden was enlisted against the Danes. In 1523, the leader of the Swedish war of secession was elected king of Sweden by the Riksdag (at Strängnäs).

Gustav Vasa, although bound by the procedures of the Land Law, acted rapidly to buttress his authority.²⁰² Sweden's territory expanded, as lands were taken from Denmark and added to Sweden. As the Swedish territories expanded, the countrywide tings were replaced by formal gatherings of the four estates: the nobles, burghers (town leaders), clerics, and peasants (non-noble landowners).

In this sense, it could be said that the Swedish Riksdag (as a four-chamber national parliament) and the kingdom of Sweden emerged more or less simultaneously. The four estate architecture of the Swedish parliament continued until 1866. The king continued to appoint and consult with his council of state, whose members continued to be chosen from among the most powerful families in Sweden. Day-to-day governance, however, was literally based on the king and council template. The council of state (Riksråd) met far more often and exercised greater influence over day-to-day policies than Sweden's parliament.

The balance of policymaking authority among the king, council of state, and Riksdag fluctuated somewhat during the next two centuries, although the king remained the dominant figure in national politics during most of this period. The king had veto power over the recommendations the Swedish parliament and could normally engineer support in the parliament for policies of interest to him.

The Shifting Balance of Authority

During periods in which kings were away (or were minors), the council of state would rule Sweden in the king's name. During other periods, kings would delegate more or less authority to their councils according to their personal interests on matters of state and policy agendas. Parliament (the Riksdag) was called principally to deal with tax issues and successions. Most of the kings accepted accession charters at the time they came to office, which normally committed them to rule lawfully and constitutionally, while obliging their subjects to abide by the law.

In 1527 King Gustav Vasa with the support of the parliament ended Catholicism in Sweden, making Lutheranism the official state religion, with himself as head of the Swedish Lutheran Church. The Protestant Reformation produced large transfers of real estate from the Catholic

²⁰² Norway remained under the Danish Sovereign until the end of the Napoleonic period when the king of Sweden also became king of Norway.

Church to the sovereign, which as elsewhere in northern Europe, reduced the need for royal subsidies from the parliament, increased the king's ability to reward personal loyalty, which naturally increased support for the reformation within the parliament and royal autonomy (Toyne 1948: 130–34).

In 1544 sovereignty was made formally hereditary for the house of Vasa, which temporarily eliminated the parliament's control over succession. This reduced the parliament and council's ability to draft accession charters, which reduced parliament's influence within the government for the next fifty years. In 1594 there was no direct Vasa heir, and the council and parliament intervened to determine who would rule.²⁰³

The parliament elected a new sovereign, and required the new king (Sigismund) to accept an oath of accession, which among other conditions specified acceptance of Lutheranism. Sigismund accepted and the next several kings also accepted accession charters and took oaths of office (*konungaförsäkran*) at the time of their accession. (The religious condition for accession was introduced in Sweden approximately a century before it was introduced in Great Britain.)

An especially restrictive oath of office was negotiated in 1611, under which the seventeen year old Gustav Adolphus pledged not to “make laws, declare war or peace, or form alliances without the estates' and council's consent not to impose any new taxes without first consulting with the council” (Weibull 1993: 40). It was in Gustav Adolphus' reign that the first formal Riksdag Act was adopted (in 1617). It affirmed the legal requirement that the king consult the four estates before declaring war or forming alliances. In 1650 the parliament secured veto authority over all new laws (Toyne 1948: 156-60, Roberts 1986: 4). In 1660 a protocol calling for the routine meetings of the parliament was adopted, which gave the Riksdag a more independent standing.²⁰⁴

As in other places, accepting a parliamentary veto reduced but did not eliminate the sovereign's control of public policy. A medieval king did not have to resort to violence to affect parliamentary decisions. Patronage, customs of royal deference, elevation, and land grants could be used to align the interests of members of the council of state and parliament with those of the royal household.

²⁰³ An early Swedish contract theory of the hereditary monarchy was developed by Erik Sparre in 1590 (Roberts 1986: 64).

²⁰⁴ A series of other reforms were adopted at more or less at the same time. Positions in the council of state (Riksråd) were henceforth limited to nobles. Five major departments of government were also organized, including ones for the chancellor, treasury, admiralty, the marshal and high Steward. Schools were also established for noble children and a pathway for talented commoners into the low nobility was established. A meeting place for nobles was established in Stockholm (Riddarhuset). The courts were reorganized and the law more uniformly applied. (Toyne 1948: 156-60).

The king's army could also be occasionally employed to threaten and punish those who opposed royal policy, although not arbitrarily. As a consequence, shifts of policymaking authority from the parliament to the executive branch normally reflected the skill of a particular king and his advisors, rather than new laws, and so were not always codified in formal documents.

A very public example occurred when Karl XI took office in 1675. After a 15-year regency with considerable evidence of mismanagement by his five regents and the council of state, Karl asked the lower chambers of the parliament (the burghers and farmers) to investigate the regents and council of state (who were largely from major noble families). The lower chambers found against the regents and directed that essentially all countships, baronies, manors, and other estates owned by the guilty parties revert to the Sovereign (*reduktion*). The penalty eliminated the fortunes of many of the most influential families in Sweden. Karl XI used the proceeds of land sales and grants to reduce debts, increase his support, and finance his relatively efficient government.

Karl XI elevated many loyal senior bureaucrats and army officers to the nobility, after the *reduktion* had reduced the number of the old aristocratic families in that chamber. Many of the new nobles had little personal wealth and so depended entirely on their positions in the military and bureaucracy for their incomes, which provided the king with additional influence in the noble chamber (Roberts 1986: 4–6). The new nobles were relatively more likely to attend and vote in the noble chamber of the parliament, because most lived and worked in Stockholm. Consequently, they tended to dominate proceedings in the noble chamber.²⁰⁵

Karl XI also created a new, more efficient Swedish bureaucracy, which could regulate and interpret laws but not, in principle, adopt new laws without parliament approval. Riksdag approval, however, was somewhat easier to obtain, with the support from the new members of the noble chamber (the Riddarhuset) and other members of parliament employed in the bureaucracy.

During times of war, the parliament and council often gave kings temporary authority to impose new taxes for a few years at a time during a period of war. In 1693 the parliament extended the royal taxing power again, but this time for “the period of crisis.” The absence of an explicit time limit essentially freed Karl XI, and subsequently Karl XII, from parliamentary fiscal constraints, because wars and other “crises” were commonplace at this time. This mistake essentially eliminated the bargaining power of the parliament for the next 25 years.

²⁰⁵ Elevation also evidently allowed Karl XI to save money on bureaucratic and military salaries (Roberts 1986: 73–75). (Karl is sometimes translated as Charles by English historians.)

The result was a nearly absolutist period of Swedish governance. Indeed, Karl XII, perhaps inspired by British precedents, never called the parliament into session. National debts rapidly increased, as Swedish resources were consumed in a variety of unsuccessful military campaigns, in spite of the king's new freedom to raise taxes.

The unexpected death of Karl XII in 1719 reversed the tide of events favoring royal authority, because Karl XII died without children.

C. The Age of Liberty, 1720–71

The absence of a clear heir (together with the army's support for the parliament) provided the parliament with the opportunity to choose the next king. Army leaders had declared that they would not take an oath to a king not elected by parliament. There were two natural alternatives, Karl Frederick of Holstein, the grandson of Karl XI, and Ulrika Eleonora, the sister of Karl XII.

Negotiations with the two potential sovereigns were undertaken with restoring the medieval constitution and enhancing the parliament's authority in mind (Roberts 1986: 6–7, 30, and 60). As a consequence of those negotiations, Ulrika Eleonora accepted an oath of office (accession charter) that included the promises of no taxation without parliament consent, freedom of election for the three representative chambers (those representing farmers, townsmen, and church officials), and the right of free speech in the parliament (Roberts 1986: 60, note 9). These privileges had been granted to Swedish parliaments in previous times—although they had been largely ignored during the reign of Karl XI and Karl XII.

Additional opportunities for constitutional bargaining arose, when the new queen attempted to have her husband Frederick [landgrave (duke) of Hesse] elevated to the throne. The result was a new constitutional regime characterized by three documents negotiated by the parliament and accepted by the queen and her husband: (i) a new instrument of government (*Grundlag* 1720), (ii) Frederick's Accession Charter (1720), and (iii) a new Riksdag Act of (1723). The new constitutional documents reestablished and strengthened the parliament's control of legislation and taxation. In 1734 a new civil code was adopted to update existing civil law, although it and the new instrument of government remained grounded in Eriksson's Land Law.

Under the new constitutional regime, the Riksdag would meet three months every three years, and all new laws required majority approval in three of the four chambers. New taxes required support in all four estates. A "secret committee" composed of 50 nobles, 25 clerics, and 25 burghers served as the agenda maker for legislation in the parliament. A similar committee had formerly dealt

with sensitive foreign policy issues (secrets), but was now given responsibility for developing policy proposals, and monitoring the cabinet (council) and the courts. The farmer's estate was excluded from the committee.

All nobles had the right to participate in their chamber, with the consequence that it was the largest of the four chambers, although normally nobles from distant provinces without business in Stockholm skipped meetings and votes.²⁰⁶ Members of the lower three chambers were generally selected via elections of various kinds, often through wealth-weighted voting and/or indirect elections (Roberts 1986: 70). The burgher representatives were often appointed by town councils, and in many periods, the majority of the town representatives were burgermeisters (mayors). The farmer representatives were often appointed by local county governments, which were often dominated by large landowners, in part because of weighted voting. The clerics were elected by their fellow clerics, with fairly broad participation during much of their history. Weighted voting, indirect elections, and variation in local eligibility for suffrage continued until the early twentieth century.²⁰⁷

The combination of agenda control and veto authority gave the Swedish parliament far greater authority over legislation than it had possessed in previous centuries. However, the reformed council of state (Rådet) remained important during the age of liberty. It issued rules when the parliament was not in session, which it was not 33 months of every three-year cycle.

Members of the council were selected by the king from a short list of candidates (normally three) recommended by the parliament. Council members could not sit in the parliament. The king served as the council's president and had two votes (of 18). He also had the ability to settle ties. The nomination lists, however, allowed the parliament significant control over the selection of ministers and other advisors of state for the first time. The parliament could also impeach individual ministers (Roberts 1986: 82–89, Weibull 1993: 53). The council's major rulings had to be affirmed at the next meeting of the parliament, although this proved to be more difficult task than one would expect,

²⁰⁶ Nobles could also appoint representatives to sit in their seats and occasionally sold this privilege (Verney 1957: 25).

²⁰⁷ Suffrage in the towns was possible for all resident burghers who paid taxes, but votes were weighted in proportion to their financial contributions. Suffrage for the peasants was similarly constrained by land ownership and independence, and votes were often weighted by land holdings. (Roberts, 1986: 70). There were no national suffrage laws at this point. Instead, the towns made up their own rules, which varied somewhat throughout Sweden.

because the council and the parliament often disagreed about how “major” a given ruling was (Roberts 1986: 82).²⁰⁸

Although suffrage was limited by significant wealth qualifications, elections were often competitive.²⁰⁹ This, together with the benefits of coordinated voting in a parliament with decisive policymaking authority caused political parties to emerge (the “hats” and the “caps”), first, as coalitions of representatives with shared interests and then for purposes of national political campaigns.²¹⁰ The early political parties affected parliamentary decisions, including its suggestions for membership on the council of state, which allowed party leaders to indirectly control a broad range of governmental decisions.

Royal power did not completely disappear, as is sometimes claimed, but was greatly diminished in importance from 1720–72. Sweden did not become a republic. Formal control of the executive remained with the king, and a broad cross-section of members in the parliament held appointed positions in the bureaucracy of one kind or another, which gave the king some leverage over the parliament. The king’s ability to use patronage, however, was far from complete, because many administrative positions were lifetime appointments reserved for nobles alone. Leadership positions in the army were also limited to nobles. Frederick I’s ability to intervene in governmental affairs was further reduced by his inability to speak Swedish, and by his lack of standing relationships with influential Swedish families.²¹¹

Frederick I died in 1751 without (legitimate) children. He was followed by Adolf Frederick, who ruled from 1751-1771, and who took office under a similarly restrictive accession charter and constitutional rules. Constitutional negotiations continued under Adolf Frederick with revised amendment procedures adopted in 1766 and a reduction in state censorship. The freedom of the

²⁰⁸ Parliament and the secret committee instructed the council on a variety of matters including foreign policy, monetary, and fiscal policies. The council was the fiduciary agent of the estates, but they had little control over the council while they were not in session (Roberts 1986: 82–86).

²⁰⁹ Fregert (2009: 5) reports that only a few percent of the population belonged to the Noble, Clergy, and Burgher estates, and that suffrage for the peasant estate included between 20 and 30 percent of the adult male population. Elections were made more direct and qualifications for suffrage more uniform in the parliamentary reforms of 1866.

²¹⁰ The “Hats” are sometimes regarded to be the Swedish equivalent of the English Tories (who often had French support), and the “Caps” as Sweden’s Liberals (who often had Russian and occasionally English support). There were a number of politically important English, French, and Russian international intrigues at this time, which are neglected to focus on constitutional developments. See Svanstrom (2008:210–50) for a somewhat dramatic presentation of them.

²¹¹ After 1723, the Frederick I was reported to devote most of his energy to hunting and romance rather than governance (Nordstrom 2000: 108).

press acts of 1766 eliminated pre-publication censorship, except for religious materials. It remained a crime, however, to publish material attacking the king, the estates, or the Lutheran church (Roberts 1986: 106). A Swedish enclosure movement began the mid-eighteenth century, followed by organizations that lobbied for suffrage reform (Roberts 1986: 138, 144, 208).

Economic Problems and the End of the Age of Liberty

The parliament was able to bring the budget into balance and to pay down the war debts of Karl XI and XII during the first 20 years of the age of liberty. However, it was not able to keep the budget in balance in the long run. This occurred partly because of the separation between budget and tax decisions, but mainly because of participation in two expensive wars. Deficits increased during most of the second half of the age of liberty (and continued to expand after it had ended). Toward the end of the period of liberty, fiscal crises were commonplace, inflation was high, a severe recession was under way, and army salaries were not always paid on time or at all.²¹²

Adolf Frederick was succeeded by his eldest son Gustav, in 1771, who became Gustav III upon his accession at the age of 26. The Riksdag met the same to consider institutional reforms to address its fiscal problems, but it could not find a compromise that would satisfy the four chambers of the parliament, as required for constitutional reforms. In earlier periods, when some of the four chambers had disagreed with a royal proposal, the king might have simply accepted the advice of the chambers that supported his proposal. Under the 1766 amendment procedures all four chambers had to support constitutional reforms.

Partly because of Riksdag's failure to deal with Sweden's economic problems, parliamentary dominance of public policy came to an end shortly afterwards. In 1772, with the poorly and irregularly paid army at his side, Gustav III "suggested" constitutional reforms that increased royal authority over public policy. The parliament "accepted" Gustav's reforms by acclamation with armed troops assembled outside (Roberts 1986: 206, Svanstrom 2008: 253-5). Although many of the members of parliament favored a stronger monarchy, it is clear that the king's implicit threat changed many votes. Gustav's 1772 instrument of government reversed the tide of political liberalization, although at first it could be said to have simply restored the medieval constitution.

²¹² A careful description of the budgetary process and economic conditions during this period is provided by Fregert (2009). His figure 3 plots nominal and real Swedish government debt for 1719–76. It implies that much of the new debt between 1745 and 1776 was monetized, leading to inflation. Attempts to reverse the inflation and bring the budget back into balance, in turn, induced a recession and another fiscal crisis.

Under the revised constitution, the king regained his former authority to appoint members of the council of state, and to call and dismiss parliament. The Riksdag ceased to be self-calling, but it retained its veto over new taxation and legislation. No new taxes, laws, or wars could take effect without the consent of a majority of the four estates. Indeed, the Riksdag's power of the purse was initially enhanced somewhat by its new control of the Swedish national bank, the Riksbank (Fregert 2009). Trade and freedom of the press were somewhat liberalized through reforms adopted in 1774.

Gustav's intervention in 1772 was evidently quite popular, given the economic circumstances of that time. Stockholm was said to be filled with a "tumult of rejoicing" after the new instrument of government was adopted (Roberts 1986: 204).

Significance of the Age of Liberty

Sweden's the Age of Liberty is important for the purposes of this book, because it affirms several predictions of part I. First, the more liberal constitution of 1720 was not invented whole cloth, but rather reformed preexisting Swedish political institutions. The king and council template remained in place, as the balance of authority shifted from one nearly polar case to the other. The new division of policymaking authority was the result of bargaining, rather than revolution. The shift in policymaking authority from king to parliament resulted from queen- and king-specific agreements in the form of accession oaths and constitutional reforms negotiated with (potential) sovereigns. Even fairly substantial shifts in constitutional authority can occur peacefully when the bargaining power of the parliament increases relative to the king (and vice versa).

Second, as in Britain, the Swedish age of liberty demonstrates that parliamentary domination of policy formation is not necessarily accompanied by major expansions of suffrage. A Swedish suffrage movement began to gather momentum in 1769, but the estates, if anything, were inclined to increase the requirements for membership in the parliament, rather than reduce them (Roberts 1986: 208–10). Electoral reform is not always in parliament's interest.

Third, the English and Swedish cases also demonstrate that liberalization in Europe did not require the inspiration of the French or American Revolutions, although policies clearly reflected ideological (liberal) goals as well as economic and partisan ones. Although pragmatic interests were arguably more important than liberalism, the torrent of political pamphlets published during the Age of Liberty (partly a consequence of reduced censorship) demonstrated that liberal ideas had already affected the political theories and debates of Swedish intellectuals, voters, and politicians.

Constitutional debates included arguments favoring a free press, due process, and separation of powers in the 1760s (Roberts 1986: 61, 106–08).²¹³

Fourth, the relatively poor fiscal policies of the parliament in the second half of this period suggest that parliaments, like kings, may have problems controlling their tendencies to spend more than is raised through taxes. National debt fell somewhat during the first decade or two of parliamentary rule, but rose substantially during its later period, particularly during the “hat” government. The national debt increased substantially between 1757 and 1765, largely because of participation in the Pomeranian war, but also because of peacetime extravagance (Roberts 1986: 19–20). Indeed, the fiscal problems were so severe that the government lacked the means to pay interest on the national debt and salaries for the army and bureaucracy, which created the support necessary for Gustav III to end parliamentary rule. Parliamentary rule by itself does not assure fiscal responsibility.

Fifth, the Swedish and English experience suggest that the political influence of kings who do not speak the national language tends to be smaller than that of sovereigns who are able to undertake their own direct negotiations with parliament, the bureaucracy, and the army. As a consequence more authority is delegated to ministers and, indirectly, to parliament. The English and Swedish parliament’s authority rose under two German speaking kings and declined when a native speaker rose to the throne (George III and Gustav III). This suggests that personality and bargaining skills as well as institutions affect the balance of authority between kings and parliament.

Economic and Other Political Developments in the Eighteenth Century

The Swedish economy began gradually industrializing and internationalizing in the eighteenth century, as in much of Europe. A Swedish East India Company was established in 1731, which helped produce a new silk industry. Water-powered equipment for metal working was invented by Polhem and the Celsius thermometer by Anders Celsius in the mid-eighteenth century. Botany was placed on a rational, scientific foundation by Linnaeus, who also revised the Celsius thermometer by

²¹³ It is an exaggeration to say that all of Sweden’s constitutional reforms and public policies resulted from domestic pressures during the sixteenth and seventeenth centuries. Sweden had long received subsidies from France and England in exchange for participation in continental wars. Partly for that reason, war and international alliances had absorbed much of Sweden’s governmental time and treasure since the Protestant Reformation. Adolf Fredrik’s accession to the throne in 1743 as successor to Fredrick I (who died without heirs shortly after his queen) was clearly influenced by international considerations as well as domestic ones (Roberts 1986: 31).

making 100 the boiling temperature of water and 0 its freezing point, reversing Celsius' initial mapping of temperatures into numbers. New Royal Academies of Science and Literature were founded. Copper and iron industries, which had prospered since the sixteenth century, grew more rapidly as new uses for metals were developed.

Steam engines were introduced by Triewal in the late eighteenth century. However, land reforms and the first railroads were not completed until the mid-nineteenth century (Roberts 1986: 139; Verney 1957: 22). Consequently, economic life in 1800 for the most part reflected its medieval foundations. Mercantilist policies continued to affect internal and external trade. Rural trading was constrained to favor specific market towns, many guilds retained monopoly privileges, and exports of silver and gold were controlled (Roberts 1986: 137, 165, and 208).

D. The 1809 Instrument of Governance

The 1772 instrument of government had essentially restored the medieval constitution. It did not attempt to return to the nearly polar case of Karl XII. Parliaments were routinely called and passed legislation and tax bills. The tax base was expanded to include noble estates, which had previously been largely untaxed. Royal successions, however, continued to be far from routine, as infertility and unexpected deaths remained commonplace for the royal family, as well as commoners. European entanglements continued to influence Swedish foreign and domestic policies. Swedish governance, nonetheless, remained fairly stable for nearly 40 years, although trends in those years favored royal authority.²¹⁴ Governance during the second half of the age of liberty with its high debt, inflation, and even famine had undermined support for parliamentary rule, but not parliament's interest in greater authority.

²¹⁴ Gustav III's Act of Union and Security of 1789 attempted to secure somewhat greater authority for the king by reducing the independence of the nobility. It abolished noble privileges with respect to taxation and high office. It also established a new supreme court and reduced parliament's control over legislation and the declaration of war, although it preserved parliament's veto over new taxes. The act was accepted by the clergy, burgher, and farmer chambers, but rejected by the noble chamber. Gustav proclaimed the act to have come to force, nonetheless.

His unconstitutional overruling of the nobles chamber on this and subsequent tax decisions is said to have led to his assassination in 1792 (Weibull 1993: 73–75, Ward et al. 1909: 780–82, Grimberg 1935: 314).

Another dispute over succession to the throne in 1809 provided the Swedish parliament with another opportunity for constitutional renegotiation.²¹⁵ The Riksdag was again in the position of selecting a king (or two in this case). Accepting a new constitution was made a condition for occupying the Swedish throne. A revised grundlag (instrument of government, IG) was quickly adopted by the Riksdag and accepted by the new king, Karl XIII, as a condition of his accession.²¹⁶

The 1809 instrument of government was, of course, not entirely new.²¹⁷ It specified the traditional architecture for Swedish governance: a constitutional monarchy with a king, a council of state (cabinet), and a parliament. It also described a distribution of authority between the executive and the parliament that was still very much in the executive's favor, although less so than under Gustav III's 1772 instrument of government. For example article 4 stated that: the **king alone** should govern the kingdom in accordance with the provisions of the constitution (IG). Many of its provisions simply restored the medieval balance, which had shifted in the king's favor during the past few decades. The king was forbidden to deprive "anyone of life, honor, personal liberty, or well being unless he has been legally tried and condemned" (article 16). The king was also bound to consult with his cabinet on most matters, including the declaration of war. He was bound to consult with parliament on matters of taxation and budgeting:

The **ancient right of the Swedish people to tax themselves** shall be exercised by the **Riksdag alone** (article 58) ... **No general tax**, of whatever name or character, **may be increased** without the consent of the Riksdag, the duties on imported and exported grain alone excepted' nor shall the king lease the revenues of the state, or establish any monopoly for the benefit of himself and the crown or of individuals and

²¹⁵ Gustav Adolf IV was deposed by a broad coalition of army officers and government officials (many of whom were members of the Riksdag). His heirs were declared disqualified for the throne in March 1809. The overthrow of Gustav was quickly ratified by the Riksdag, and the constitution of 1809 was drafted while negotiating with successors (Weibull 1993: 76). This "parliamentary" coup d'état occurred partly because of Gustav's failures in warfare (through which Finland was lost), partly out of concerns for his mental competence, and partly by his neglect of constitutional governance. (A few years later, the Vienna Congress granted the Swedish sovereign the Norwegian crown [from Denmark] in compensation for losing Finland to Russia.)

²¹⁶ Karl XIII was the brother of Gustav III, who was relatively old, and childless. At essentially the same time that Karl XIII was chosen to be Gustav IV's successor, his successor was also chosen, but surprisingly, from well outside Swedish royal and noble circles. Karl XIII's successor was to be Jean-Baptiste Bernadotte, a commoner, who had risen to high military office in France during its revolutionary period (Marshall). He took the name Karl XIV, when he became king of Sweden and Norway in 1818. Bernadotte renounced Catholicism and converted to Lutheranism to qualify for the throne. However, he never learned to speak Swedish.

²¹⁷ A translation of the 1809 Instrument of Government can be found in Dodd 1909: 219-59. The article numbers referred to below are from that translation.

corporations (article 60). ... **All taxes voted** by the Riksdag, under the headings mentioned in the preceding article, shall be collected **until the end of the year** within which the new taxes are to be voted by the Riksdag (article 61).

It devolves upon the Riksdag, after examining the needs of the treasury, to vote supplies to meet such needs and also to prescribe the special purposes for which separate items of appropriation may be used... (article 62).

Members were granted freedom of expression during meetings of parliament, and interference with a member's efforts to attend sessions of the Riksdag was punished severely (article 110).²¹⁸ The king retained the authority to appoint the council of state, and retained substantial executive discretion to implement public policy as he and his council saw fit.

Beyond these more or less traditional medieval authorities and privileges, the Riksdag gained the authority to censure individual members of the king's cabinet, although not to remove them from office. The council was no longer protected by royal immunity. The 1809 instrument of government also guaranteed routine meetings of the Riksdag of three months in duration (articles 49 and 109) and assured annual meetings through a one-year limit on royal tax authority (article 61). The Riksdag thus gained greater control over taxes and the budget than in any previous period except during the Age of Liberty. All royal acts had to be countersigned by the council of state.

Three other fundamental laws completed the constitutional core of Swedish governance: a new Riksdag act, a revised law of succession, and a revised press act were given explicit constitutional status (Article 85). Fundamental laws were to be interpreted literally (article 84). Procedures for amending the fundamental laws required the consent of two successive sessions of the Riksdag and the king (Article 82).

It was under the 1809 instrument of government that Sweden made its transition from monarchy to parliamentary rule and democracy during the nineteenth and early twentieth centuries. The major reforms of the next century affected the organization of the Riksdag, election law, and civil liberties, rather than the fundamental architecture of Sweden's constitutional monarchy. Major reforms were adopted using formal constitutional procedures for amendment. Minor reforms were adopted as ordinary legislation.

²¹⁸ Anyone, including ministers or other high officials, who forcibly interfered with a member of parliament's efforts to dispatch his duties was deemed guilty of treason. The mandated punishment for treason required that a guilty person's right hand be cut off, his bones broken on the wheel, and then executed. In addition, the treasonous party's properties were forfeited to the sovereign (Verney 1957: 23).

Sweden's gradual transition to parliamentary democracy required neither palace coups nor popular revolts, although many peaceful demonstrations took place. Rather, changes in underlying political and economic circumstances led to a series of constitutional bargains that made the Riksdag a more effective advocate of its institutional and partisan interests. This together with the rise of liberal ideology, industrialization, and emergence of more disciplined political parties gradually transformed Swedish governance into a modern parliamentary democracy.²¹⁹

E. Constitutional Bargaining Produces a New Bicameral Riksdag in 1866

In many respects, the constitutional history of Sweden after 1809 parallels that of England. Policy reforms were commonplace, and there was a clear liberal trend in the pattern of reforms. Public demonstrations were also commonplace, although there was little if any real threat of revolution.

Liberal pressures for reform were immediately evident in the period following the adoption of the 1809 Instrument of Government. The estates themselves were modified, as representation in three of the four estates was extended to include new groups. In the 1820s the clergy estate invited new members from the major universities and from the Swedish Academy of Science. In 1830 the burgher estate added industrialists to its long-standing guild-based membership. In 1845 suffrage for the farmers' estate was expanded to include (non-noble) owners of tax-exempt land and further expanded in 1863 to include middle-class property owners.²²⁰

Other significant procedural and public policy reforms were also adopted. In 1830 parliamentary debates were made public. In 1842 compulsory education was introduced. In 1846 King Oscar I abolished the guild system (by decree).²²¹ In 1860 a law of religious toleration was passed. Jews with sufficient property acquired the franchise in 1865. Numerous proposals for the reform of the Riksdag were also introduced, including demands for unicameral (1830) and bicameral

²¹⁹ By coincidence, the first Swedish factory using steam was founded in Stockholm by an English mechanic (Samuel Owen) in 1809 (Grimberg 1935: 339).

²²⁰ Representatives for the farmers' estate were indirectly elected at the county (*bärad*) level by electors selected at churches; only Lutherans were allowed to vote until 1860. Only tax-paying farmers could participate in these elections, and no representative could be from other estates or in the employment of the Sovereign, which eliminated nobles, burghers, clerics, and bureaucrats from the farmer estate (Verney 1957: 29–30). Such restrictions did not apply to the other estates, who often served in the army or bureaucracy.

²²¹ Oscar I was the son of Karl XIII. He came to office in 1844 with the death of his father, who had lived well into his 80s. Oscar was a well-educated, relatively liberal man in the years before he assumed the throne. He initially chose his advisors from the liberal party, although shifted toward the conservative party towards the end of his rule (Grimberg 1935: 330-31).

parliaments (1840 and 1851), with memberships based on elections, rather than occupation, but none secured the necessary approval of all four estates.

A consensus for placing parliament on an electoral basis was present in the farmers' and burghers' estates, and support for other reforms of parliament had been increasing somewhat in the noble chamber and council of state, as economic and political liberal ideas and industrialization gained ground during the first half of the nineteenth century. However, no proposals for parliamentary reform gained broad enough support to be adopted. To be adopted, majorities in all four existing chambers and acceptance by the king were required.

In 1859 the accession of Karl XV changed the non-institutional interests of the king and his cabinet, which provided new opportunities for constitutional negotiations. New men were appointed to the royal cabinet, including Baron Louis de Geer, who became minister of justice and chancellor. De Geer was a long-serving senior bureaucrat, a member of a successful industrial family, a noble, and also a moderate liberal interested in parliamentary reform.²²² In 1863 chancellor De Geer proposed a new, more liberal organization of the Riksdag.

Much of what De Geer proposed had been suggested before, but his reform package was more carefully crafted to acquire the support needed for constitutional reform, and there was greater support for political liberalization in the 1860s than in previous periods. De Geer proposed that the old four chamber Riksdag be reorganized into two chambers: a first and second chamber. All members of the reorganized Riksdag were to be elected for fixed terms of office, although new elections could be called during the terms by the king. Members of the first chamber would have 125 members with relatively long terms of office (nine years), would be relatively old (older than 35 years) and relatively wealthy, and would not receive a salary, but live on their own means. The second chamber would have 190 members with relatively short terms of office (three years). Membership in the second chamber was to be less restricted and more directly elected than that in the first chamber.

Chancellor De Geer managed to achieve the required level of consensus in the farmer, burgher, and noble chambers by proposing an indirect wealth-weighted voting system for the first chamber, based on existing appointment procedures for selecting representatives in the farmer and burgher chambers, and a more direct franchise for the second chamber. The interests of the clergy were also

²²² The institutional details in the rest of this chapter are for the most part from Verney's (1957) careful political history of the Riksdag in the nineteenth century. Grimberg (1935), Metcalf (1987) and Grofman and Lijphart (2002) also provide useful institutional details.

taken into account. A new church assembly was to be formed in which national church matters would be decided by the clergy without being subject to veto by the other estates (Verney 1957: 64).

The new 125 seat first chamber was designed to protect the interests of the wealthier members of the three secular chambers. Its seats were reserved for men with substantial property. Only 6,000 persons were eligible for seats in the first chamber, and most of those lived in Stockholm. There were no residency requirements, so that those living in Stockholm could run for office in whatever province in which they might expect sufficient electoral support. Members of the first chamber were to be elected indirectly by 24 provincial councils in a manner roughly analogous to that of the U. S. Senate at that time.

The influence of wealthy Swedes in elections for the first chamber was reinforced by a striking feature of mid-century election laws for the provincial councils. All taxpaying citizens could vote in elections for provincial councils, including independent women. However, votes for provincial councils were weighted according to a schedule of tax payments. A person in the highest tax category might cast as many as 5,000 votes. A similar system was used in towns, where persons in the highest tax categories could cast up to 100 votes (Verney 1957: 50, 91). The weighted voting system often allowed local elections to be determined by a handful of wealthy men or women. In 10 percent of the districts, the weighted votes of just three or four voters could be decisive (Verney 1957: 91, Särilvik 2002: 333). Election by provincial councils, nonetheless, implied that local interests could not be entirely ignored by their representatives. And, although many nobles would secure offices in the first chamber, eligibility was now defined by wealth or tax payments, rather than family heritage, *per se*.²²³

The interests of upper middle-class farmers, burghers, and liberals were advanced by De Geer's proposed second chamber. Majorities in the farmers' and burghers' chambers had long favored somewhat broader suffrage and a reduced role for the nobility in the Riksdag and government. Members of the second chamber were for the most part directly elected for three-year terms. 135 seats were allocated to rural districts and 55 to town districts. Voter eligibility, however, was more

²²³ Weighted voting by the members of parliament themselves had previously been possible. For example, Anders Danielsson of West Gothland had once been chosen to represent twenty 7 districts and so had 27 votes in the farmer's chamber, one fifth of the votes in that chamber. (Grimberg 1935: 327-28).

restricted for the direct elections of members of the second chamber than for the indirect elections for the first chamber.²²⁴

Voters for second chamber elections had to be males (Lutherans), eligible to vote in local elections, and had to satisfy national eligibility requirements in addition to local ones. There were three national eligibility qualifications for suffrage: paying taxes on 1,000 riksdaler of real estate, renting 6,000 riksdaler of real estate (for a period of more than five years), or paying taxes on more than 800 riksdaler of income a year. Given the Swedish economy at the time, and its associated distribution of wealth and income, the electorate for the second chamber was less than half that of the first chamber. The second chamber's electorate consisted for the most part of successful farmers, bureaucrats, small businessmen, doctors, and lawyers.

In contrast, eligibility for seats in the second chamber was less restricted than for the first chamber. Representatives simply had to be older than age 25 and eligible to vote in the local elections. The latter implied that representatives to the second chamber also had to meet minimum tax payment constraints (article 19), but the lack of national standards implied that eligibility for seats in the second chamber was much broader than that for the first and that it varied somewhat according to local assessments and tax laws.

Elections were to take place every three years (article 15) and meetings of parliaments were to be annual. Terms in the first chamber were to be nine years, a third of which would stand for election every three years, and terms in the second chamber would be three years. Salaries were paid to members of the second chamber, but not the first. Disagreements among the chambers regarding fiscal matters would be determined by a joint vote, which the second chamber was likely to dominate, because it had more fifty percent more members.

Ownership of real estate was given preference in the new suffrage rules for parliament, because De Geer, as true of many nineteenth-century liberals, believed that ownership of real estate gave a man a greater stake in the country (Verney 1957: 52–53). To vote in elections for the second chamber, it was sufficient to pay taxes on 1,000 riksdaler of real estate, which was only one-eightieth of that required for eligibility for membership in the first chamber. Satisfying the voter income

²²⁴ Särilvik (2002: 332–33) notes that local voting districts were initially allowed to use either direct or indirect elections. A majority of districts used indirect election in the early years, but these were gradually phased out. Multiple member districts for major cities also existed during this period. All these details were, of course, matters worked out among the interests already represented in the chambers. About 20% of adult males had the right to vote for members of the second chamber.

requirement required payment of taxes on 800 riksdaler of income, which was one-fifth of that required for seats in the upper house (articles 6 and 14).

The king's acceptance of the proposal was made more likely by the fact that the reorganization of the Riksdag did not directly affect his power. The king retained powers of veto and initiative, and laws continued to be published and issued in his name (articles 79-82, see Verney 1957: 52–58). The king was also promised a somewhat increased budget (Verney 1957: 156) and the authority to appoint the ministry and the speakers of the two chambers. The first chamber would also be reliably conservative, although royal influence over it was likely to diminish, because noble government officials (senior bureaucrats and military officers) without property were not likely to be returned to office.

Noble support for the proposal was increased by the wealth requirements for seats in the first chamber and the weighted-voting system of the provincial councils. These made it likely that many of those already sitting in the noble and burgher estates would obtain seats in the reformed Riksdag (Verney 1957: 50–52, 89). It also increased support by industrialists (iron mongers and miners) who favored economic liberalization, by reducing the influence of the petty nobility and allowing them to obtain seats in the upper chamber (Verney 1957: 32, 77–82).²²⁵ Majorities in the burgher and farmer chambers had long favored reforms along the lines proposed by Verney.

In late 1865, after four years of public and private debate, votes were taken in each of the chambers. The proposal passed easily in the farmer and burgher chambers, where similar proposals had long had success. The final outcome would not be known until after the noble chamber voted, where previous proposals had failed. The noble chamber accepted the proposal 361 to 294. The clergy quickly followed.

After the last four-chamber parliament had completed its work in June 1866, the king signed the Riksdag Act, and the parliamentary reforms negotiated by De Geer became law. After ratifying the reforms, the king declared:

We end today not only a memorable session, but a whole era in the history of the Swedish people, an era that is measured in centuries.”

As a consequence, as Verney notes, “Some of the pomp and ceremony left Swedish life. The heralds and trumpeters appeared for the last time and Ministers ceased to ride in their colorful robes to the State opening of Riksdag. (Verney 1957: 78).

²²⁵ De Geer was such a person. Baron Gerard Louis De Geer (1818–96) was the son of a wealthy landowner, who had risen to the ministry through a distinguished legal career and, of course, family connections.

The parliamentary reforms were significant reforms of Sweden's long-standing medieval system of governance. Although suffrage was still very restrictive and only men of wealth could sit in the first chamber, membership in the chambers of the new Riksdag rested on elections for the first time, rather than a noble family heritage, appointment by the king, or membership in particular economic and religious organization. The changes indirectly made future reforms more likely, because it increased parliament's ability to negotiate with the king. The Riksdag has somewhat greater tax and legislative authority than in the past (except during the age of liberty), fewer chambers had to be consulted, and the interests of members in the two chambers were somewhat more aligned than before.

F. 1866–1906 Political Support Grows for Expanded Suffrage

Support for further liberalization of Swedish governance existed within the Riksdag and also within a number of politically active interest groups around the country. However, the remaining constitutional reform issues were somewhat less clear cut for liberals than those in many other countries, and support for further reform was not initially very great among the new officeholders. Suffrage eligibility for the elections to the provincial councils was very broad by the standards of the nineteenth century, although the effect of relatively broad suffrage was reduced by weighted voting, which in turn produced relatively low turnouts. The voting districts for the second chamber somewhat favored the towns. Rural districts required 40,000 residents to send a representative, whereas town districts required only 10,000 residents (Verney 1957: 52). Although this was not equal representation, it was relatively equal by mid-nineteenth century standards.

The main liberal constitutional reform issues were, consequently, not simple ones such as suffrage expansion or unfair districts, but rather opposition to weighted voting in the first chamber and support of suffrage expansion in the second.

Besides blunting liberal criticism, the 1866 reforms also weakened the link between economic and political liberals. Sweden's new industrialists no longer had to press for expanded suffrage or reapportionment to influence internal and external trade policies (as in England). As wealthy men, they were eligible to sit in the first chamber and could also disproportionately determine its membership by casting weighted votes for the provincial councils. Because apportionment was more or less fair, political liberals also faced institutional interests that worked against suffrage reform in the second chamber. Proposals for reform of the second chamber were likely to be popular among

middle-class liberals, who could not vote, but less so among upper-middle-class and wealthy liberals who determined the members of the second chamber. Reform of the first chamber's rules would be supported by many members of the second chamber, but few in the first.

Moderate liberals and conservatives were satisfied with the reforms, as were the most active economic interest groups of that time. As a consequence, the new suffrage rules proved to be quite stable for the next 40 years, although there were minor reforms. Economic growth, higher taxation, and changes in municipal voting rules gradually increased the municipal electorate from 20 to 34 percent of adult males between 1870 to 1902 (Dodd 1909: 233).²²⁶

Economic Development

The period after the 1866 reform of the Riksdag was one of rapid economic growth and industrialization, punctuated by recessions. Major new firms were founded. The mining, timber, and banking industries were reorganized. A railroad system was constructed to connect the major cities. Water-driven saw mills were replaced with steam driven mills. A paper industry emerged. Farmland expanded with the completion of the Swedish enclosures, which increased food production and freed labor for other purposes. New industries in explosives, matches, chemicals, and telephones were founded. Exports of manufactured goods and raw materials expanded. Population and average income expanded (Magnusson 2000: chs 5–6; Heckscher 1954).

Industrialization and changes in transportation had direct effects on the employment, location, lifestyles, and welfare of most Swedes. At the beginning of the nineteenth century, about three-quarters of the population resided in agricultural districts. By 1910 the agricultural sector accounted for less than half of the Swedish population. In 1850 only about 10 percent of Swedes lived in cities; by 1950 more than half did (Heckscher 1954: 214–15). Swedish life spans and population levels increased, as per capita income nearly tripled during the late nineteenth century.

²²⁶ The size of both chambers, for example, tended to increase through time. In addition, the number of members in the second chamber varied somewhat, as communities could merge for the purposes of elections to meet population requirements; consequently the number of representatives in the second chamber varied with population growth and community interests in merging to form electoral districts. In 1894 it was agreed to limit the number of seats in the first chamber to 230 and those in the first to 150 (Verney 1957: 109).

By these measures at least, governance by the wealthy was better for industry and for most Swedes, than governance by nobles had been. Economic growth accelerated during 1896–1912 as new industries expanded. It bears noting, however, that this was also a period in which Swedish emigration, especially to the United States, was very large.²²⁷

Politically Active Interest Groups

The policy goals and size of Swedish interest groups in the late nineteenth and early twentieth centuries were affected by the same technological changes that induced changes in economic scale and organization in industry. Greater income and wealth provided more resources for all individual pursuits, including politics. The concentration of workers and firms within cities reduced the cost of organizing labor unions and producer cartels. Technological innovations, such as the train, telegraph, and telephone, reduced the cost of coordinating activities within cities and across the nation as a whole in those industries that remained diffuse, such as iron works and timber. The new industries and the new organization of work often created new, or at least more obvious, common economic interests. In economic terms, industrialization in Sweden caused the benefits of many kinds of collective action to rise and their costs to fall.

Liberal movements and other movements on the left grew faster than their conservative counterparts. This was partly because the liberal and labor movements advanced middle-class and working-class interests, two sub populations that were rapidly expanding as a consequence of industrialization and increased commerce. The latter was partly a consequence of previous reforms, insofar as liberal economic reforms in Sweden (and elsewhere) had produced rapid economic growth. Reducing economic privileges from the medieval period allowed new technologies to be adopted more rapidly and specialization to increase, which increased average income, as predicted by most economic theories. There was also additional evidence that more open political systems do not necessarily produced policy disasters, as many conservatives had predicted. Budgets, if anything, tended to be better controlled by representative parliaments than kings; at the same time that many government services became more widely available.

²²⁷ Heckscher estimates that real per capita national income increased nearly threefold in 1861–1914 (1954: 260). Heckscher notes, however, that beginning around 1880 the money wages of farm laborers fell dramatically (p. 258) in part because of imported agricultural products. This would have increased real wages other sectors, which is consistent with the increase in the population of Sweden and average longevity. However, it also evidently induced many tenant farmers and farm laborers to seek their own personal farms in the United States.

Economic developments, together with increased numbers of middle- and upper-middle class families, lent support to liberal ideas about economic and political systems, at the same time that industrialization and urbanization undermined traditional defenses of age-old medieval institutions.

A variety of politically active groups inside and outside of government pressed for market and educational reforms, reduced alcohol consumption, and also for suffrage expansion and trade liberalization.²²⁸ In areas in which industrialization produced new problems, parliaments and interest groups generally attempted to solve those problems with new policies and organizations, rather than with a return to the medieval order. Some problems and solutions were more extreme in Scandinavia than in more populous countries. For example, increases in the scale of the efficient production of goods and services naturally generated more monopolies in Sweden's relatively small economy than in larger or more open economies. The favorable prices engineered by monopolists and cartels were, in turn, often countered by the creation of new Swedish organizations, such as cooperatives, that could provide services at lower cost to their members (Strode 1949: ch. 12).

Late Nineteenth-Century Swedish Liberals

Liberalism has a long history in Sweden, but interest in liberal ideas broadened during the nineteenth century at the same time that liberal support for openness and civic equality increased. Heckscher attributes much of the rise of liberalism in the middle of the nineteenth century to writings by Bastiat and Swedish liberals such as Hans Forssell and J. W. Arnberg. He also notes that the creation of the *Nationalekonomiska Föreningen* (National Economic Society) in 1877 provided a useful forum for liberal businessmen and senior civil servants (1954: 263). Verney (1957: 137) notes that J. S. Mill's *On Liberty* and writings by Hedin were influential among the leadership in the new liberal political organizations in the period after the 1866 Riksdag Act. He also suggests that the founding of the *Verdandi*, a student organization, increased the dissemination of liberal ideas.

The economic and political reform agendas of nineteenth-century liberals were supported by a variety of interest groups, scholars, and politicians. A common ideology, and sense that the public interest could be advanced through industry and political reform clearly reduced organizational costs for many liberal reform groups and trade associations. Their universalist utilitarian and natural

²²⁸ As in many other counties of Europe, the high tide for free trade occurred in the middle of the century when most Swedish tariffs were repealed. Toward the end the century (as in 1888), however, protectionist tariffs had been reintroduced for many commodities, and free-trade movements reemerged, although they were less successful in the late nineteenth century than they had been mid-century.

rights-based arguments generated support for their reform agendas within all income groups and occupations, although groups varied in their support for specific proposals than others.

The liberal view of economics implied that innovation, increased production, and perhaps free trade were ends in their own right and socially important engines of progress (Heckscher 1954: 214). The liberal view of politics implied that the purpose of government was to advance shared interests such as equality before the law and economic progress. Public education should be universal, and all those who were capable of casting independent, well-informed votes should be able to do so.

It bears noting, however, that the liberal reform agenda was a moving target. During the second half of the nineteenth century, the center of gravity of Swedish liberalism became more “radical,” as was true in much of the rest of Europe. Self-described liberals increasingly favored nearly universal suffrage, industrial regulations to increase market competition, and modest social insurance.²²⁹

Late Nineteenth-Century Swedish Economic Conservatives

Institutional and social conservatism are common perspective among persons who are content with the existing order. In the late eighteenth and early nineteenth century, this perspective led many persons to support the medieval order. In the late nineteenth century, such conservatives defended the 1866 reforms, the end of serfdom, and the liberalization of trade. Conservative political theorists and politicians often recounted past glories, but few late nineteenth-century conservatives wanted to reverse the reforms of 1866 or return to a feudal society.

Indeed, many conservatives thought that the economic reforms of the 1850s and the 1866 political reforms had worked quite well, although perhaps trade liberalism and reduced censorship had gone a bit too far in some cases. The late nineteenth-century conservatives had gradually adopted policy positions that were not so different from those of early and mid-nineteenth century liberals. Conservatism in the late nineteenth century was not an explicitly class-based ideology, nor an entirely static world view, although it did tend to favor the status quo.

As in the case of liberals, there were pragmatic as well as ideological reasons to take a conservative stance with respect to public policy and constitutional issues. Those favoring cultural and political conservatism because of respect for cultural evolution, national religious beliefs, and

²²⁹ An example of the policy consequences of a limited franchise can be found in Wicksell’s analysis (1896) of the effects of government policies on the working class, who were at that time ineligible to vote in Sweden. His analysis suggests that the taxes paid by the working class, whose interests were not directly represented in the legislature, generally exceeded the value of services they received from government (see Wagner 1988: 159).

history were normally joined by those who profited from existing arrangements and those who were risk averse about constitutional experimentation. Anti-liberal arguments were taken up by many industrialists, who had previously favored the liberal reform agenda, but profited from protectionist measures in the late nineteenth and early twentieth centuries. For example, Swedish cartels in sugar, milling, and oleomargarine were able to obtain significant and profitable protective tariffs in the early twentieth century (Heckscher 1954: 263). In the late nineteenth century, the Farmers' Party shifted from relatively liberal to relatively conservative positions on many policy issues. For example, the Farmer's Party opposed suffrage reform in the 1880s, because they realized that the newly enfranchised would include fewer landholders from rural districts than earlier in the century. The new middle-class owned houses, rather than farms (Verney 1957: 110). The party also shared protectionist interests with many large landholders and industrialists, because imports from Russia and North America had reduced prices for Swedish farm products.

Social Democrats in Late Nineteenth Century Sweden

Another important political group emerged in the late nineteenth century to the left of mainstream liberals. Many were simply the radical liberals of their day, a new generation of left liberals with relatively strong interests in civic equality. Such persons pressed for universal suffrage, greater support for public education, and changes in the civil code to increase the symmetry of bargaining between firms and labor. They tended to oppose cartels and other barriers to trade. In addition to Sweden's "radical" liberals, there was also new ideological movement that thought private property was less an engine of growth than a device through which privileged persons secured unfair advantages in political and economic life. A significant subset of the latter were influenced by Marx's ideas about social evolution, conflict, and economic justice.²³⁰

It was widely recognized that advancing labor union interests would be easier if middle and working class interests were directly represented in the Riksdag. Labor unions, thus, often pressed for suffrage reform at the same time that they lobbied for labor law reform and social insurance. Unions of different trades in different industries often favored limited work weeks, social insurance, safety regulations, along with universal male suffrage. Their shared policy interests led to the formation of nationwide organizations in the late nineteenth century, including a new Social Democratic Party.

²³⁰ A good overview of the ideas and norms that shaped the outlook of moderate "socialists" is provided in Castels (1978), who analyzes the social democratic movements that swept through Europe in the early twentieth century.

Many of the most radical leaders of the Social Democratic Party promoted public ownership of the means of production, although its mainstream leaders, such as Branting and Lindahl, could be regarded as “left liberals,” rather than revolutionaries, who favored the reform of capitalism and extension of suffrage, rather than radical reforms, as became obvious when the Social Democrats became the dominant party after World War I.

Suffrage Movements, Parties, and Reform

Suffrage expanded slowly during the nineteenth century as economic development and government growth took place. Income and taxes rose, without substantial changes in electoral law. Representation of the unenfranchised in the Riksdag was largely through the “radicals” of the Swedish liberals, who were elected to the second chamber by upper middle-class voters, and the odd industrialist with sympathies for left liberals. Those lacking the franchise for the second chamber, however, were better organized at the century’s end and thus potentially more influential than they had been before, which provided additional political and economic support for constitutional reform. In 1890, a Universal Suffrage Association was founded with support among liberals and social democrats.

The gradual increase in the importance of the Riksdag and in the number of voters required to win seats created new benefits for partisan organizations, and new political parties were gradually organized after 1866. The first to organize were the farmers, who dominated the second chamber for the first 20 or 30 years after the 1866 reforms. A Social Democratic Party emerged out of the suffrage and labor movements in 1889. A new Liberal Party was organized in 1899, as a coalition of more or less like-minded members of the Riksdag organized over dinner at Tattersall’s restaurant, many of whom were also involved in the suffrage movement.²³¹ Nationwide economic organizations such as labor’s Landsorganisationen (LO) were organized partly with the support of the Social Democrats in 1898. Industry’s employer association, Svenska Arbetsgivarföreningen (SAF), was organized with the encouragement of the Conservative and Liberal Parties in 1902. (Heckscher 1954: 136, 235). A new conservative party was formed in 1904 (the National Election League). Both labor and industrial economic interest groups hoped to profit from reforms that

²³¹ Verney (1957: 98–99) discusses an earlier and less formal liberal party, the New Liberal Association, organized in 1868 just after the parliamentary reforms were adopted. It was, however, unsuccessful in its legislative aims and disintegrated in the next two years. The Farmer’s Party was evidently much more successful in its early forms (1867), partly because it was based on membership in the old farmer estate.

increased their party's control of public policy. A petition in support of suffrage reform with 364,000 signatures was presented to the Riksdag by liberals in 1898.

Pressure for economic and suffrage reform was further increased by various union strikes. Although most strikes were conducted to advance negotiations with specific firms or industries over wages, workweeks, and working conditions, the Swedish labor movement occasionally organized large public demonstrations in support of specific public policy reforms, including two very broad strikes in 1902 and 1909 that supported suffrage and labor law reform (Strode 1949: 172).²³²

A series of proposals for reform were made by members of the second chamber, especially after 1900. For example, in 1902 prime minister Boström proposed extending the vote for members of the second chamber to all taxpayers at the same time that a Swedish income tax was enacted (Steinmo 1993: 64). This was followed by proposals by his government and others in the second chamber for various forms of proportional representation and for extended suffrage in 1903 and 1904; all of which were blocked by the first chamber.²³³

Norway's secession in 1905 further increased dissatisfaction with the incumbent parties, officeholders, and current institutions. The liberal coalition continued to gain members in the second chamber during this period, and its leader, Staaff, was invited to become the prime minister in 1906. He accepted and brought four fellow liberals to the ministry (the other six ministers were nonpartisan administrators). This led to a torrent of legislative proposals and several proposals for constitutional reform. The proposed constitutional reforms were again defeated in the first chamber (one lost 102 to 18) in part because the king refused support the bill in the first chamber. Reform clearly required a more sophisticated constitutional bargain than the one(s) proposed by Staaff.

²³² The *New York Times* (June 22, 1902) and some other references report that the strikers had been promised universal suffrage for the 1904 elections, but universal suffrage was not adopted until several years later.

²³³ Although the ideological foundations of many activists in the Social Democratic Party and the labor movement differed from that of most Liberals, there was significant agreement among liberals and social democrats on constitutional reform issues.

This was evidently because many of the most influential Swedish Social Democrats were “left liberals” rather than radical Marxist reformers. Here, one may note that Hjalmar Branting, the son of a prominent university professor who became the leader of the Social Democrats and helped organize the 1902 strike, opposed bloodshed and favored an evolutionary approach to reform. “It will take longer by evolution, but not so long as it would take to undo the destruction of property and spirit a revolution would bring” (quoted in Strode 1949: 171).

The first chamber generally opposed further liberalization of Swedish politics, because most reforms would reduce the influence of those represented in the first chamber or the first chamber itself.

G. 1907–20: Another Round of Grand Constitutional Bargaining

After the failure of his reform bill, Staaf resigned as prime minister and conservatives were invited to head the government (without an intervening election). Prime Minister Lindman proposed several reforms of the voting procedures by which members were selected for the two chambers of the Riksdag. Lindman's reforms were partly motivated by the broad support for expanding suffrage in the second chamber (as evidenced by the general strike of 1902 and liberal reform proposals) and partly by the concern of conservatives that expanded suffrage would end their influence over governmental decisions.

First, Lindman proposed that the franchise be expanded by reducing the property requirements in a manner that would double the franchise for the second chamber (from 500,000 to 1,000,000). This modification would allow nearly universal male suffrage. Second, he proposed that the weighted voting system used for selecting members of the first chamber be moderated (maximum votes were reduced from 5,000 to 40). Third, he proposed that proportional representation (PR) be introduced for elections to the first and second chamber. The method used for the first chamber would be "double proportional representation" in which the provincial councils would be elected using PR and their votes would select the members of the first chamber using PR. Under the proposed D'Hondt rule, which favored the largest party, double PR would help preserve the conservative dominance of the first chamber, even with the reduced weighted voting system.²³⁴ Fourth, he proposed that PR also be adopted by the committees within the Riksdag. The term of office for the first chamber were also to be reduced from nine to six years, and wealth requirements for seats in the first chamber were reduced from 80,000 to 50,000 krona.

As in 1866, the proposals were carefully crafted to secure majority support in each of the chambers of the Riksdag and the approval of the king. Proportional representation was seen as a method for minority parties (such as the conservatives in the first chamber) to retain influence in the

²³⁴ Under the D'Hont system, seats are allocated as follows: (i) the party with the most votes gets a seat, (ii) that party's vote is divided by two and the party with the largest vote (given that division) gets a seat, (iii) that party's vote is divided by three and the party with the most remaining votes gets a seat, and so forth until all the seats are filled. After the 1920 reforms, this electoral system worked to the benefit of the Social Democrats, as they became the party with the greatest electoral support. See Särilvik (2002: 342–45) for a careful analysis of this effect.

Riksdag after reductions in weighted voting and expansion of the franchise. The broadened suffrage appealed to Liberals and Farmers in the second chamber, who were divided on PR. (Most Liberals favored the continuation of plurality voting in single-member districts.) There was only a single Social Democrat holding office at that time, and he favored an end to weighted voting.

Lindman's compromise satisfied demands for universal male suffrage, but protected the interests of conservatives in both chambers with PR and weighted voting. The king's interest in reform was increased somewhat by a proposed 25 percent increase in the budget for the civil list, and the fact that his powers would not be altered. After several rounds of intraparlimentary negotiations and compromise, Lindman's final proposal was passed 93 to 52 in the first chamber and 128 to 98 in the second in April of 1907. It was ratified in 1909 after an intervening election, as required under the 1866 amendment procedures (Verney 1957: 154, 167–69, Weibull 1993: 113, Svanstrom 2008:417–18).

These reforms set the stage for the emergence of more disciplined political parties in the years to come. Proportional representation gave party leaders direct power over their members in the legislature by allowing the leadership to control who would be on party lists and thereby who could potentially be in the Riksdag. The expanded franchise also created a new electoral base by which the Social Democrats would shortly come to dominate Swedish politics, although in the short run, both Liberals and Social Democrats gained from the reforms. The Liberals won the 1911 election.

Party Governance Emerges

Sweden was neutral during World War I, although its military budgets for national defense were increased. In 1914 the king made a speech that supported conservative proposals for further expanding the military budget, which the present Liberal-Social Democratic coalition opposed. The King's speech, however, violated the custom that had emerged in the late nineteenth century. The "proper" method through which a king's interests should be presented to the parliament was indirect, through "his" cabinet, rather than through speeches by the king himself. The king was supposed to remain in the background of parliamentary debates, above the fray.

The Liberal ministry resigned in protest of the king's more direct intervention. Elections in 1914 returned a Conservative plurality to the second chamber. In spite of the conservative victory, the king's speech and the ministry's reaction is often regarded as the last time that a Swedish king publicly participated in parliamentary debate (Verney 1957: 190).

The shift to parliamentary dominance of policy was essentially complete, but not to party government. The king continued to exercise some discretion in his appointments to the cabinet, although these were increasingly determined by the electoral outcomes. For example, the king selected a moderate conservative civil servant, Hjalmar Hammarskjöld, to be prime minister in 1914, rather than a leading member of the majority party in parliament.

In 1917 conservatives lost the election, and the king accepted the recommendations of the majority Liberal-Social Democratic coalition of the second chamber, with a Liberal prime minister (Edén) and Social Democrat as finance minister (Branting), both from the second chamber.²³⁵ This coalition is said to mark the beginning of party government in Sweden, although Swedish kings had long paid attention to electoral results. (This routine deference to the majority parties in the second chamber was not formally incorporated into constitutional documents until 1975.)

Universal Suffrage

The Liberal-Social-Democratic coalition government pressed for additional constitutional reforms as World War I ended, and those reforms completed the transition to parliamentary democracy.

Between 1918 and 1920 the franchise was further expanded as property restrictions for voting were eliminated and women were granted the franchise. Voters still had to be taxpayers of sufficient age, but most other restrictions were eliminated. Persons who were on relief or bankrupt, however, were not eligible to vote until the suffrage reforms of 1945 (Verney 1957: 215). The weighted-voting system modified 10 years earlier was eliminated, although differences in the electoral method and wealth qualifications for the first chamber remained. Members of the first chamber continued to be restricted to the very wealthy until 1933 (Verney 1957: 215).²³⁶

The resulting more disciplined and more broadly representative bicameral Riksdag became the chief architect of public policy in Sweden for the next 50 years. The social democrats emerged as the dominant political party in Sweden, although it could be regarded as “left liberal,” in that it

²³⁵ The Social Democrats had held more seats in the directly elected second chamber than the liberals since the 1914 elections. After the 1917 elections, their lead was 86 to 62 in the second chamber. Liberals, however, held more seats in the indirectly elected first chamber. It was during the 1917 election that the radical left broke from the Social Democratic Party and formed their own coalition, which was about a sixth as large as the mainstream party.

²³⁶ The first chamber remained indirectly elected by provincial councils. The terms of office also differed, although these were modified by the 1918–20 reforms. Members in the first chamber retained office for eight years and those in the second chamber for four years (Verney 1957: 248).

continued to favor democracy and open markets, even as it attempted to reform the latter. The party's economic advisors in the late 1920s included Erik Lindahl, Gunnar Myrdal, and Bertil Ohlin (Steinmo 1993: 83–86, Verney 1957: ch. 10). The more radical members of the labor movement departed in the 1920s to form their own party.

H. The Evolutionary Nature of the Swedish Constitution

Most of Swedish constitutional history from late medieval times until 1918 can be regarded as a bargaining contest between the Riksdag and the king in which their bargaining positions and strengths shifted back and forth over the centuries. Peaks in parliamentary powers are often marked by formal revisions to the instruments of governance, as in 1617, 1634, 1660, 1720, and 1809. Kings occasionally regained power through constitutional reform, as in 1680 and 1772, and also by playing the estates off one another. At times of maximum royal authority, the powers of the Riksdag were rather limited, although the king and council template remained in place. The flexibility of the king and council template, together with the lack of an effective constitutional court, meant that day-to-day governance reflected the particular personalities, talents, and circumstances confronted by those in government, as often stressed by political historians.

After 1809, the flexibility of the king and council template remained evident, although constitutional compromises exhibited a clear liberal trend for the next century. Parliament was reformed a number of times in a manner that changed the bargaining equilibria between the king and parliament and the selection process for members of the king's executive council (ministry).

The trend can be explained as a joint consequence of the rise of liberalism and industrialization. Economic reforms preceded political reforms in Sweden, insofar as education reform, free trade, land reform, and the extension of religious tolerance were well underway before the reform of the Riksdag in 1866. Many of the proposed reforms of parliament demonstrate that political liberalism had penetrated the aristocracy and king's inner circle as well as the towns and rural districts during the early nineteenth century. Pressures for reform diminished after 1866, in part because so much success had been achieved in 1866, and in part because of the conservative institutional interests produced by the procedures of the new Riksdag. Further industrialization, however, continued to empower liberal and labor-based interest groups, who were finally able to persuade the Riksdag to undertake additional reforms of suffrage in the early twentieth century. Together formal and informal reforms of Sweden's procedures of governance produced parliamentary democracy shortly after World War I.

This path of reform in nineteenth-century Sweden is very consistent with the analytical history developed in part I of the book. The king initially remained the dominant figure in public policy formation, but could not neglect parliament, because he needed an overall majority in the joint vote to assure that budgets would pass. Leaders of significant coalitions within the second chamber were often invited to be consulting ministers (Verney 1957: 134). The Riksdag gradually accumulated authority after the 1866 reforms through its control of taxation and public budgets, gaining complete control early in the twentieth century. Fine-grained negotiations and compromise (i.e. constitutional exchange) among the king, the parliament, and the executive council are evident throughout Sweden's transition to parliamentary democracy.

The peaceful and lawful nature of Sweden's transition to parliamentary democracy remains evident in the medieval roots of its contemporary architecture. After 1925, the king and Riksdag continued to have roles in policymaking, but the balance of policymaking authority had essentially reversed itself over the course of a century of constitutional bargaining. The king's authority had become largely advisory and ceremonial, as might have been said of the relatively weak parliaments during most of Sweden's medieval period. The balance of authority over public policy in 1925 emerged as informal shifts in bargaining equilibria associated with changes in the Swedish parliament and the balance of interests represented there, rather than through an explicit constitutional reform.

It was not until 1975 that the bargaining equilibrium that emerged between the Swedish parliament and king in the first decades of the twentieth century was finally written down in new constitutional documents. It bears noting that the 1975 instrument of government continues to assign minor authority to the king (who, for example, presides over special sessions of the Riksdag [*Instrument of Governance*: Ch. 5, Article 1] and continues to characterize the rules of royal succession. It also bears noting that the 1975 constitution, in contrast to the 1809 instrument that it replaced, begins with what might be regarded as a liberal statement concerning popular sovereignty, civic equality, and the constitutional basis of Swedish governance:

All public power in Sweden proceeds from the people. Swedish democracy is founded on the free formation of opinion and on universal and equal suffrage. It shall be realized through a representative and parliamentary polity and through local self-government. Public power is exercised under the law. (Holmberg and Stjernquist 1996: 65).

Table 14: Major Constitutional Developments in Swedish Constitutional History

Date	Event	Description
1319	Letter of Privilege	Binds the Sovereign to govern by rule of law, promised due process, and allowed new taxes to be imposed only after consultation with the Royal Council
14th century	Magnus Ericsson's Land Law	Provides for the election of a king, describes his duties, and the election and functions of the members of the Council of State
1389	Kalmar Union	Common kingdom of Sweden, Norway, and Denmark established, each with their own parliament and council.
1442	Kristofer's Law	New Royal Charter, a revision of Eriksson's law
1523	End of Kalmar Union	Gustav Vasa elected king by the Riksdag, after successful war of secession from Danish Sovereign
1527	Protestant Reformation	Protestant Reformation initiated by Gustav, king becomes head of the new Swedish (Lutheran) Church, Catholic church properties confiscated
1544	Succession Pact	King made a hereditary office for the House of Vasa
1594	Accession Charters reestablished	Kings sign an accession charter before taking office, in which they promise to govern constitutionally (all future kings and queens sign one, except Charles XII)
1617	First Riksdag Act	Formally establishes the four-chamber system of parliament with veto power over new laws and taxes
1634	First Instrument of Government	Clarifies and extends the Royal Charter and form of government
1660	Swedish Triennial Act	The Riksdag is to meet every three years (i.e., parliament becomes self-calling)
1680	Instrument of Government Revised	Parliament exempts Charles XI from many provisions of the Instrument of Government, although Riksdag retains its veto power on new taxes
1719	Succession Pact Revoked	Following the death of Charles XII without heir, the Riksdag revokes the hereditary foundation of the monarchy, and Queen Christina accepts the new procedure.
1720	Second Instrument of Government	Reestablishes constitutional monarchy, with greater authority placed in the Riksdag, laws to be approved by the Council of State, its members selected by the king or queen from lists prepared by Riksdag
1723	Second Riksdag Act	Formalizes internal procedures of parliament and establishes a procedure for removing council ministers ("ministerial responsibility" established)
1766	Ordinance for the Liberty of Printing	Eliminates pre-publication censorship (except for religious books) and includes rules regarding access to government documents, amending the act requires agreement by two successive parliaments (i.e., the act has constitutional status).
1766	Ordinance for the Better Execution of Laws	The justice chancellor henceforth to be appointed by parliament, rather than the king, a formal amendment process for constitutional law is adopted, constitutional amendments require approval by all four chambers of two successive parliaments and the king, many reforms of the bureaucracy are adopted.
1772	Reform of the Second Instrument of Government	Gustav III negotiates a shift of authority from the Riksdag and council to the king. Legislative authority is to be shared between king and the Riksdag. The Riksdag ceases to be self-calling, but retains veto power on taxes and new legislation. The king has veto power on legislation and can impose new taxes if the country is attacked.

Perfecting Parliament

1789	Act of Union and Security	Gustav III obtains further authority over the council of state and Riksdag, a new court of appeals is established, of which the king is a member and casts two votes
1809	Third Instrument of Government	Reestablishes the Riksdag's authority on legislation and taxation, and provides the Riksdag with new budgetary authority.
1810	New Succession Act	Sovereign is again made a hereditary office, with the new Bernadotte line.
1840	Cabinet Act	Government administration organized into departments, and heads of departments become ministers in the government's cabinet.
1860	Religious Tolerance Act	
1866	Third Riksdag Act	Four-chamber medieval parliament is transformed into a two-chamber elected parliament (the first chamber elected via wealth-weighted voting); the first chamber is indirectly elected by regional governments, and the second is directly elected by voters; national election law replaces district level laws.
1907-09	Lindman's Electoral Reforms	Reduces weighted voting for the first chamber, lowers wealth restrictions for elective office, adopts PR for electoral colleges of both first and second chambers, and for parliamentary committees
1920	Edén-Branting Suffrage Reforms	Essentially universal and equal suffrage for men and women becomes the rule for both the first and second chambers, a system of direct PR is adopted for the second chamber.
1969	Fourth Riksdag Act	The two-chamber parliament is merged into a single, directly elected chamber based on PR
1975	Fourth Instrument of Government	Unified constitution adopted that combines elements of previously separate constitutional laws into a single document; the sovereign's diminished policymaking authority is explicitly described.

Sources: Holmberg and Stjernquist (1995), Verney (1957), Roberts (2002).

Chapter 15: Constitutional Reform in the Netherlands: from Republic, to Kingdom, to Parliamentary Democracy

In contrast to the kingdoms of the United Kingdom and Sweden, the constitutional monarchy of the Netherlands is a relatively recent innovation. The Netherlands has not always been a kingdom, nor part of some other kingdom, as might be said of Norway and Belgium. From the late sixteenth century until the late eighteenth century, the *Republiek der Verenigde Nederlanden* (United Provinces of the Netherlands) was a relatively liberal federation of seven sovereign provinces. Its territories consisted of the northern lowlands of the Rhine, and its national policies were jointly selected by a committee of provincial representatives and a *stadhouder*. The stadhouders' autonomy was greater than that of contemporary prime ministers and presidents, but his authority was less than that which kings normally had during the seventeenth and eighteenth centuries.

That the kingdom the Netherlands is relatively new makes the lowland kingdom a very useful addition to the present study, because it demonstrates that relatively peaceful transitions to democracy within parliamentary systems do not require a long history of negotiations between kings and their parliaments, nor a deeply rooted, long-standing political culture. The first half of chapter 15 provides a short history of the Dutch republic and the origin of the kingdom of the Netherlands. The second half of the chapter focuses on its nineteenth-century transition to parliamentary democracy.

Its republican is of interest because its success helped stimulate and support the work of enlightenment scholars and played important roles in the constitutional developments of the United Kingdom and United States. Its scholars included such influential men as Grotius, Spinoza, La Court, and Mandeville. Many well known scholars from other less tolerant countries spent time in the Netherlands in the seventeenth century and many others published their books and pamphlets at Dutch printing houses. William III, King of England, was *stadhouder* Willem III for much of the Netherlands for many years before obtaining the British crown. As noted in chapter 12, the republic sponsored the Dutch invasion that made Great Britain's "Glorious Revolution" possible. The Dutch republic's confederal government was also used as a model during constitutional deliberations in the United States (Riker 1957, Congleton 2008).

The Kingdom of the Netherlands (*Koninkrijk der Nederlanden*) was established in 1815 as part of the reorganization of Europe worked out by the great powers in Vienna following their victory over Napoleon and his French army. In spite of its relatively short experience as a kingdom, the evolution

of Dutch parliamentary practices in the nineteenth century parallels those of the long-standing British and Swedish monarchies. As in the other kingdoms, increases in commerce and industrialization helped to energize politically active liberal, commercial, and labor groups. Constitutional bargaining and a series of agreements gradually shifted policy making authority from the king to the parliament. A series of electoral reforms adopted during the same period caused members of parliament to be elected on the basis of increasingly broad suffrage.

The Dutch case demonstrates that the European path to parliamentary democracy was not rooted in a deep evolutionary pressures within constitutional monarchies, but rather was a consequence of increased support for liberal reforms that emerged in the nineteenth century. It also demonstrates the durability and flexibility of the king and template for governance.²³⁷

A. Setting the Stage: The Emergence of the Dutch Republic

Recorded history in the low countries begins when the Roman Empire reached the place where the great central European river (the Rhine) enters the North Sea. Julius Caesar brought all the remaining territory south of the main channel of the Rhine within the Roman Empire in 57 B.C.. Those territories remained Roman for more than 400 years, until the empire began to disintegrate along its frontiers in the early fifth century. The Romans did go north of the Rhine, but their primary fortress cities and commercial centers were along its southern shores. Consequently, Latin and French influences are far stronger south of the Rhine (contemporary Belgium and the southern Netherlands) than in the North, where Germanic and Frieslandic influences dominate. In this respect and many others, the Rhine played an important role for the peoples of the low countries, from our first knowledge of them.

The Rhine did not only divide the future Netherlands from the future Belgium, the geography and geology of the Rhine created commercial and cultural ties with Germanic Europe. The Rhine is central Europe's most important gateway to the North Sea and the Atlantic Ocean. Its large delta includes many channels through which the Rhine reaches the sea, which provided many potential harbors for transshipping goods from central Europe to other parts of the world, including England and Scandinavia. Fishing and commerce were important economic activities for the Rhinish lowlands from very early times.

²³⁷ Belgium seceded from the Netherlands in 1830, established its own constitutional monarchy, and followed a similar peaceful transition to parliamentary democracy during the next 80 years, thereby demonstrating that peaceful transitions in non-Protestant countries were also possible. The state religion of Belgium is Catholicism.

The marshy nature of the delta and its relatively long coastline with the North Sea, however, created problems as well as commercial opportunities. Floods were commonplace, and dry land was scarce. The marshlands isolated the coast somewhat from the mainland and reduced its agricultural productivity at the same time that commerce and fishing encouraged independent political and economic communities to develop. Towns often built hills and dikes to protect themselves from floods and storm tides. Villages and towns often joined forces to build protective larger dikes to protect settlements and existing farms and to drain marshland to create new farmland, promoting the formation of loose regional associations.

These collective efforts to cope with the Rhine delta, in turn, produced specialized knowledge of flood control, drainage, and maritime enterprises. The soft and flat delta lands made expansion of the natural waterways relatively easy and the same efforts could simultaneously produce more arable (dry) land for agriculture. An intricate maze of canals gradually developed, which were the most efficient method of transporting goods and people to market in the centuries before invention of the steam engine. By the time the lowlands found themselves (largely) in the hands of the Duke of Burgundy in the early fifteenth century, the northern and southern Netherlands were among the most urbanized areas of Europe. Their fishing and commercial fleets were among the largest in the world, and their cities among the most prosperous (Israel 1998: 113–16; Barker 1906: 23–25).

Governance at that time was largely in the hands of local town councils and noblemen, as was true of much of continental Europe in that period. There was no national or regional government, although continental institutions existed: the Catholic church and Holy Roman Empire. Most of the separate provinces had their own parliaments (provincial estates), and most towns had their own mayors and town councils. The 17 provinces of the low countries did not form a single autonomous polity or administrative area, although many belonged to the Burgundy family, whose territories more or less followed a southern branch of the Rhine (the Meuse) from present day France to its delta.

A loose regional government for the lowlands was established by duke Philip the Good of the House of Burgundy when he called for a meeting of the States General in 1464. Representatives from all of the provincial and town governments assembled, mostly for the purpose of being advised by Philip, who was attempting to centralize control over his far-flung properties. The states general met when called by Philip and only for as long as the meeting advanced Philip's purposes. In this respect, the Burgundian States General was similar to other parliaments during this time period. It was a consultative body with very little policymaking authority (Israel 1998: 21–22).

In addition to the States General, the Burgundy family created the office of *stadhouder* (provincial governor). The Burgundian *stadhouders* for the Rhine's lowlands were initially chosen from the southern (Belgian) nobility who had the wealth, connections, prestige, and education to be effective representatives of Burgundian interests in the lowlands (Israel 1998: 23). The *stadhouders* normally had power of appointment (or at least agenda control) for major regional offices and served as arbitrators of major disputes within their territories. In this manner, a somewhat unusual form of the "king and council" template, with an assembly of local governments and governor, became the regional government of the Rhine's lowlands.

The authority and influence of the Burgundian *stadhouders* varied through time as the centralizing efforts of the Burgundian administration ebbed and flowed. During times when local provinces obtained greater autonomy, as in 1477, *stadhouders* were constrained by their respective provincial parliaments, which had veto power over new taxes and significant power over the creation and implementation of new laws. During such times, the provincial parliaments of the Burgundian period were routinely consulted about laws and appointments, and occasionally vetoed Burgundy appointments of *stadhouders* and bishops. During periods of increased centralization, the formal authority of *stadhouders* increased, and the regional governors could use their power of arbitration and appointment to advance Burgundian interests in the provincial governments and town councils (Israel 1998: 25–26).

The Great Privilege

It was marriage and inheritance law that produced the great family-ruled domains of Europe during the late Middle Ages, although this process of amalgamation was not without problems and was often reinforced by territorial armies.

Philip's properties were inherited by his son, Charles the Bold, in 1476 and, subsequently, by his daughter Mary in 1477, following the death of Charles in January 1477 in a battle with the Swiss, who opposed Burgundian efforts to further centralize political authority (Israel 1998: 27). Shortly after coming to power, Mary found herself under attack by the French king, who disputed her claim to the Burgundian territories. Women could not always inherit noble titles and lands. In desperation, Mary negotiated the Great Privilege with her provincial governments in exchange for their help in the conflict with the French king.

The Great Privilege granted Burgundian towns and provinces veto power over new taxation and war and also gave the cities the right to refuse payment of taxes for which they had not voted.

The privilege also granted provincial courts priority on legal matters and allowed the States General in the Netherlands and their provincial counterparts to meet on their own accord (Barker 1906: 39–40). This authority was very rare among the medieval compacts of the day. Most other national assemblies met only when called by the local sovereign (normally a baron or count in the English terminology). The self-calling provisions of the Great Privilege gave the provinces, cities, and regional parliaments considerable autonomy, which of course, increased their ability to resist usurpation of their powers of governance.²³⁸ From that point on, the States General exercised significant authority over the regional public policies of Belgium and the Netherlands.

Many of the veto powers and procedures and even the location of governance (Den Haag), specified in the privilege continued in place for several hundred years. Indeed, it could be said that the representative States General established by Philip the Good in the mid-fifteenth century continues to this day in both the Netherlands and Belgium, albeit in much modified form.

The Habsburgs and the “Spanish Netherlands”

Support for Mary against the king of France increased after issuing the Great Privilege, but not enough to turn back the French army. Fortunately, Mary was betrothed to an important member of the Habsburg family, a man who would become the emperor of the Holy Roman Empire. Maximilian sent his father’s German troops to Mary’s defense. The Habsburg armies prevented the Burgundian properties outside of France from coming under the control of the French king.

In this manner, through marriage, the territories that would become the Netherlands became part of the powerful Habsburg family’s territories. A subsequent series of marriages brought the German and Spanish crowns to a single head.

Mary’s son, Philip the Handsome, married Joanna of Castile, and their son Charles subsequently inherited the Spanish throne (from Isabella and Ferdinand) in 1516. It is for this reason that the

²³⁸ The Great Privilege applied to most of the other principalities of the Burgundy domain, which at the time included parts of northern Italy and Switzerland, as well as a large area of modern-day France. The Burgundian holdings were greatly diminished in number and importance when the French king, Louis XI, took over the main Burgundian holdings later in 1477. Many other holdings of Burgundy (outside of France) were rescued by Mary’s marriage to Duke Maximilian of the powerful Habsburg dynasty (who later became the Holy Roman Emperor Maximilian I). In one intervention, Maximilian sent his army into Belgium., winning an important victory over the French at Guinigate in 1479, which preserved the Netherlands as an autonomous region.

pre-revolutionary Netherlands are often referred to as the Spanish Netherlands.²³⁹ The same young man, Charles, subsequently became emperor of the Holy Roman Empire through his grandfather Maximilian in 1519. Thus, through little of his own doing, but as a consequence of a very good genealogical tree, Charles V became the ruler of one of the largest empires ever assembled, an empire that included much of Europe and most of South America.

For much of this period before 1800, politics in Europe was a family affair, rather than a national one. As national states emerged and the Holy Roman Empire declined, the Austrian branch of the Habsburg family provided the hereditary kings of Austria and subsequently the emperors of Austria. As such, they remained among the most influential families in Europe until the twentieth century.²⁴⁰

The Protestant Wars, Centralization, and the Dutch Revolt

Prior to the Great Privilege, it is clear that resistance to the centralizing efforts of the House of Burgundy took place throughout the Burgundian territories. For example, as noted above, Charles the Bold was killed in 1477 during an attempt to retake Lorraine after it had resisted Burgundian efforts to centralize policymaking and tax authority. After Mary's Great Privilege was adopted, local governments in the lowlands continued to defend their new formal tax and legislative veto authority, which made it very difficult for the Habsburgs to finance and govern their lowland territories. The Habsburgs, naturally, attempted to renegotiate and weaken the Great Privilege. The local governments naturally resisted those efforts. In some cases, negotiation failures led to pitched battles, as for example, the Hoeksen party of Holland launched military campaigns against Burgundian-Habsburgian authorities in the early 1480s.

These long-standing political centralization conflicts were reinforced by religious ones in the sixteenth century. Luther's famous "95 Theses" were "nailed" to the Wittenberg church door at

²³⁹ The Habsburg family held numerous duchies throughout Europe, but their main holdings were centered around present-day Austria. After the Dutch revolt the part of the lowlands that remained under Habsburg control (present-day Belgium) came to be called the Austrian Netherlands.

²⁴⁰ Charles V was born in Ghent in 1500 and became the king of Spain at the age of 16. Charles V ruled until 1556, when he abdicated and retired to a monastery in Yuste, Spain, turning the Habsburg territories over to his son Philip II. Charles V was born in the low countries, spoke Dutch (Flemish), and continued visiting the Netherlands even after assuming his position in Spain and subsequently the Holy Roman Empire. (Charles V is known as Carlos I (and Carlos V) in Spain, Karel V in the Netherlands, and Karl V in Germany. The English name is used in this case to reduce confusion as the historical analysis shifts across national boundaries. Charles V was of international importance, rather than a national leader.)

approximately same time that Charles obtained the Spanish and German crowns. Luther's critique of church practices and reinterpretations of biblical texts, together with other protests against Catholic practices and corruption, greatly intensified the long-standing decentralization conflicts throughout much of Europe.²⁴¹ The eventual Dutch revolt was largely a consequence of conflict between local elites and the Habsburgs regarding the extent of local control over taxes, appointments, and religious practices.

The Habsburg territories had been Catholic for centuries, but the new Protestant doctrines stressing independence from the centralized religious authority of Rome were very appealing for those already favoring decentralization, as well as for those Christians who questioned various aspects of Catholic religious practices. Such views were common in the Holy Roman Empire and northern Habsburg domains. Lutheran and Calvinist doctrines, consequently, found many supporters in the lowland territories, especially in the provinces north of the Rhine's main channel. Religious and centralization conflicts intensified and were often bloody in Northern Europe.

In an attempt to end the war, Protestantism was legitimized within the Holy Roman Empire by the "Religious Peace of Augsburg" in 1555. The Augsburg treaty allowed 300 local rulers (dukes and barons) to choose between Lutheranism and Catholicism for themselves (and implicitly for all of their subjects). The treaty did not end religious tensions in Europe, but did allow Protestant princes and barons to openly support Protestant beliefs within their domains, to suppress Catholic ones, and to gain control over Church properties. Traditional local political autonomy was augmented with significant religious autonomy throughout the Holy Roman Empire.

The treaty of Augsburg advanced Protestantism in the north more than south of the Rhine, because the leading families of the north were more closely linked to German noble families (or held German titles themselves), who largely declared themselves Lutheran. This was, for example, true of the Nassau family, which ruled the Barony of Breda, a province in the center of the Rhine's lowlands.²⁴²

²⁴¹ This is the mythic version of events. There are no eyewitness accounts of this famous event. Most scholars now believe that it never actually happened. Rather, Luther evidently mailed or presented a letter to the archbishop of Mainz and Magdeburg in October of 1517 that objected to various church practices (particularly the recent increase in sales of indulgences) and also presented his 95 theses, which reinterpreted biblical texts. This letter and other works came to the attention of church authorities in Rome, who insisted that he recant, but Luther refused. He was declared an outlaw in 1521 and was hunted by troops of Charles V for many years.

²⁴² The Orange territory with its associated rank of prince was inherited by the Dutch Nassau's

Continued on next page...

Charles V's son and successor, Philip II attempted to reverse both areas of local autonomy after he assumed the Spanish crown in 1556 by aggressively suppressing local tax resistance and Protestantism.²⁴³ Partly in response to these policies, in 1566 Protestants throughout the Netherlands stormed Catholic churches destroying images of Catholic saints. Philip II sent an army to restore order and to increase his control of appointments and policymaking in the Rhine's lowlands. As a consequence, Protestant doctrines and their supporting organizations were largely suppressed south of the Rhine by local authorities, although the cosmopolitan city of Antwerp remained an important center of Calvinist thought.²⁴⁴

By bringing the Spanish inquisition to the Netherlands, Philip II increased resistance to Habsburgian rule among Protestants throughout the lowlands. His execution of 80 "rebellious" nobles in the south in 1568 further alienated the aristocracy, and made it clear that Philip II was not interested in compromise. By forcing a 10 percent sales tax through the States General in 1569, the last in a long series of Habsburg tax increases to finance the suppression of Protestants, Philip II also alienated pragmatic businessmen and farmers who would otherwise not have been interested in politics or civil war. It was clear that Philip II would not defer to local aristocratic families or respect long-standing rights and privileges.

The Constitutional Foundations of the United Provinces of the Netherlands

In 1579 the seven northern provinces met in Utrecht and formally created a mutual defense alliance against Spain. Open warfare with the Habsburgs had occurred for at least a decade. For example, the important Spanish siege of Leiden had occurred in 1573–74. The treaty thus could be said to have formalized military relationships among the provinces that had already successfully resisted the Spanish for a decade; however, it also provided the basis for future policy decisions.

Willem I from a somewhat distant French branch of the family in 1544. Willem was appointed *stadhouder* of several of the major lowland provinces (Holland, Zeeland, and Utrecht) by Philip II in 1559 at the age of 26.

²⁴³ Charles V abdicated in 1556, and the Habsburg properties were divided between Charles V's brother and his son. Austria and other properties in the Holy Roman Empire went to Charles' brother Ferdinand I. Spain, Naples, Burgundy, and the Netherlands to his son Felipe (Philip II). The Spanish branch of the Habsburg family died out in 1700, and produced the war of Spanish succession (1701–14).

²⁴⁴ Calvin (1509–1564) himself was the son of a French attorney, educated in Paris, and lived in the French part of Geneva, Switzerland for much of his life. The French speaking elites of the southern lowlands would have found his writings much more accessible and congenial than Luther's German.

Article 1 united the seven provinces as if a single province, and also assured the provinces and cities their historic privileges. Article 2 permanently bound the provinces together in a mutual defense alliance. Article 9 affirmed the core procedures of the Great Privilege, which had been much contested by the Habsburgs. It specified that new general taxes and declarations of war and peace required the unanimous consent of the provinces. Other national policies would be determined by a majority of provincial votes. Article 13 provided for religious tolerance in accordance with the pacification of Ghent (recently negotiated in 1576). The provinces were free to regulate religious matters, provided that everyone remained free to exercise their religion. Articles 9, 16, and 21 specified that the *stadhouders* were to arbitrate differences among the provinces on matters of general interest and on matters of constitutional law (Barker 1906: 99–100; Rietbergen 2002: 84).

Negotiations with the Spanish continued to be fruitless, and thus on July 26, 1581, the States General adopted the Dutch declaration of independence (the Act of Abjuration). The line of reasoning developed in this pre-Enlightenment document is surprisingly similar to that developed by Locke a century later and also that crafted by the committee of Jefferson, Adams, and Franklin in Philadelphia two centuries later (Congleton 2008).

The Dutch declaration espouses a theory of limited government, includes a list of grievances, and mentions the natural and ancient rights of man. The Act of Abjuration uses the “necessity” of escaping from tyranny as its justification for secession:

As it is apparent to all that **a prince is constituted by God to be ruler of a people, to defend them from oppression and violence as the shepherd his sheep;** and whereas God did not create the people slaves to their prince, to obey his commands, whether right or wrong, but rather the prince for the sake of the subjects (without which he could be no prince), to govern them according to equity, to love and support them as a father his children or a shepherd his flock, and even at the hazard of life to defend and preserve them. And **when he does not behave thus, but, on the contrary, oppresses them, seeking opportunities to infringe their ancient customs and privileges, exacting from them slavish compliance, then he is no longer a prince, but a tyrant,** and the subjects are to consider him in no other view...

All these considerations **give us more than sufficient reason to renounce the king of Spain,** and seek some other powerful and more gracious prince to take us under his protection; and, more especially, as these countries have been for these twenty years abandoned to disturbance and oppression by their king, during which time the inhabitants were not treated as subjects, but enemies, enslaved forcibly by their own governors...

So, having no hope of reconciliation, and finding no other remedy, we have, agreeable to the law of nature in our own defense, and for maintaining the

rights, privileges, and liberties of our countrymen, wives, and children, and latest posterity from being enslaved by the Spaniards, been constrained to renounce allegiance to the king of Spain, and pursue such methods as appear to us most likely to secure our ancient liberties and privileges.²⁴⁵

The first and third excerpts provide an early theory of natural rights and of limited governance a century before Locke's *Two Treatises on Government* was published in 1689.

The second of the three excerpts demonstrates that the Dutch were initially reluctant to form a completely republican government without a prince or king at the helm. However, no king or queen accepted the proffered throne—most likely because of the military and economic costs associated with doing so. At the time of the Dutch revolt, the Habsburgs were the most powerful family in Europe, and Dutch success was by no means assured.²⁴⁶ Instead, existing Burgundian institutions were modified to serve as a national government.

The military force raised by the northern principalities and led by Willem the Silent (of the Orange-Nassau family) succeeded in pushing the Spanish Army out of the north, and temporarily from much of the southern lowlands.²⁴⁷ The southern half of the Rhine's lowlands (Belgium) was subsequently subdued by the Spanish and remained in Habsburgian hands for another two centuries, but a new independent republic was established in the northern half of the Rhine's delta.

²⁴⁵ The translation of the Act of Abjuration is taken from Thatcher (1907: 189-97) as modified by Jerome S. Arkenberg, <http://www.fordham.edu/halsall/mod/1581dutch.html>.

²⁴⁶ Nonetheless, England and France often supported the Dutch revolt, along with a number of Lutheran princes from Germany. This was more likely done to reduce the power of the Habsburgs than for religious reasons. France was ruled by Catholics in this period.

²⁴⁷ Willem I was himself a complex and interesting figure. He was a favorite of Charles V, who had appointed Willem to the office of stadhouder to represent Habsburg interests in the Netherlands. However, Willem defended the autonomy of the Dutch provinces against Charles V's son (Philip II), who attempted to centralize authority and crush Protestantism in the low countries. At first he did this peacefully through his office as stadhouder and, after his lands were confiscated by Charles V, through open warfare.

Willem was a member of a Lutheran family, although he was himself an avowed Catholic—until he joined the Dutch revolt. In 1573, he converted to Calvinism. The conversion to Protestantism allowed him to lead and energize most of the religious and secular groups that opposed Spanish rule of the Netherlands. (The political convenience of his conversion suggests that Willem's religious beliefs were a bit flexible at the margin and served practical, perhaps more than spiritual ends.)

William's leadership of the Dutch resistance naturally attracted the attention of Philip II, who posted a 25,000-crown reward for William's assassination in 1580. When Willem was assassinated in 1584, however, Philip refused to pay the assassin's family (Barker 1906: 107-109). William's highest noble title, "the Prince of Orange" was derived from his family's control of a principality in Catholic France. Willem the Silent is often referred to as Willem I, the first stadhouder of the United Provinces of the Netherlands.

B. The Government of the Dutch Republic 1581–1795

The successful and somewhat fortunate Dutch war of secession allowed the procedures specified by the Union of Utrecht and its Act of Abjuration to become the constitutional core of national governance in the United Provinces of the Netherlands for the next 200 years.

In combination with the Great Privilege, the Utrecht treaty favored those represented in the provincial governments, which were often controlled by representatives of the major urban centers.²⁴⁸ The requirement of unanimity for new taxes helped keep the central government small and the broad consent required for other policies made nationwide laws and projects difficult to adopt and implement. In practice, seven provincial assemblies were sovereign. The provincial assemblies and city governments had essentially complete control over local government finance, public services, and regulation.²⁴⁹

The provincial assemblies were composed of representatives from city governments and from the countryside. The cities were normally represented by persons appointed by their town councils (*vroedschap*, “wise men”). In many cases, city councilors served for life and their replacements were selected by the remaining city council members. The countryside was normally represented by the local nobility. The specifics varied somewhat by province, but in many cases the urban representatives dominated deliberations at the provincial level. For example, in Holland the cities appointed eight of the nine members of the provincial states general (Barker 1906). Together, the provincial systems of representation and need for broad consensus at the states general, allowed the cities, especially Amsterdam, to have considerable influence over the policies of the national government.

After the Dutch independence, *stadhouders* were appointed by the provincial governments, rather than by the States General. Given the autonomy of the provinces, one might have expected each province to appoint a unique *stadhouder*. However, rather than seven *stadhouders*, as might have been expected, only one or two persons held the office of *stadhouder* at a time. The same person(s) was

²⁴⁸ Seven provinces could vote in the States General: Holland, Zeeland, Utrecht, Friesland, Groningen, Overijssel, and Gelderland. Holland was the most populous, wealthiest and most influential of the seven. The states of Brabant, Vlaanderen, and Linburg were governed by the States-General as spoils of war for many years. Drenthe could not vote in the States General, but exercised a degree of provincial sovereignty (Rietbergen 2002: 84).

²⁴⁹ In addition to the States General, a National Assembly was created by the 1581 declaration of independence. Its decisionmaking procedures and representation were very similar to that of the States General. However, it met very infrequently and is therefore neglected in the present overview (and by most historians).

(were) normally appointed captain general(s) of the Dutch army throughout the Netherlands. (The Dutch navy was normally controlled by the other person[s].)

Although not formally a hereditary office, *stadhouders* were always chosen from the Orange-Nassau family. The northern provinces chose their stadhouders from one branch of the family and the southern provinces from another, until that branch ended. This occurred in part because of tradition. Orange-Nassau family members had often been appointed *stadhouders* in Burgundian and Habsburg times. Support for Orange-Nassau family members also reflected the important roles that that the family had played in the Dutch war of secession and in subsequent wars with France. It also bears noting that the family's wealth and past influence over appointments provided it with a base of support within the provincial assemblies. As a consequence, the Orange-Nassau family was the most influential family in the Netherlands, although it had far less control over public policy than truly royal families had at this time.²⁵⁰

As in any divided government, there were often disagreements between *stadhouders* and the States General on matters of national policy. These reflected to a significant degree institutionally induced differences in their interests. As national leaders, *stadhouders* had a more encompassing interest in national unity, centralization, and development. As leaders of the army, *stadhouders* were especially interested in military expenditures, although less interested in spending money on the navy. The provincial members of the States General represented local political and commercial interests. As agents of local elites, provincial governments were less interested in national policies, generally opposed to national taxation, and more inclined to support profitable naval and capital projects than army salaries (which might well be used to increase centralization). The States General, thus, tended to support decentralized authority, naval power, and peace treaties.

With respect to the latter, they did so because they believed that war was costly and bad for commerce, and because war increased the power and prestige of the *stadhouder(s)*. As a result, peace treaties were often accepted over the objection of the *stadhouder* and military budgets were normally smaller than the *stadhouders* desired. For example, the 12-year truce of 1609 was adopted by the States General over the objection of *stadhouder* Prince Maurice (Rietbergen 2002: 80). Nonetheless, during national emergencies, the States General was willing to finance both the navy and army, often by selling bonds that were backed by new earmarked taxes (Stasavage 2003). About 90 percent of the

²⁵⁰ Toward the end of the republican era, the position of *stadhouder* was formally made a hereditary position. Willem IV became the first hereditary *stadhouder* of all the provinces in 1747. He was shortly thereafter succeeded by his son, Willem V, who served as the last *stadhouder* of the republic from 1751–95 (Rietbergen 2002: 160).

Dutch republic's national budget went for national defense during this period of the 80-year war of secession with Spain (Ferguson 2002: 41). National defense was often a matter of life and death for the republic. At such times, the *stadhouder* was a very important man, even if he was neither sovereign, nor the main locus of policymaking within the Netherlands.²⁵¹

After the death of Willem II in 1650, the office of stadhouder was left empty for 22 years in the south.²⁵² A new stadhouder was finally appointed in 1672 during a time of grave military threat. The French were repelled, but the risk from France and its English ally was not eliminated. Subsequent, Dutch geopolitical strategy played a pivotal role in English history, as noted above in chapters 12 and 13. After securing permission to invade England from the States General, Willem III led a successful invasion of that country, which induced James II to flee to France. Negotiations with the Parliament in 1689, Willem III became the king of England (as William III) and held the offices of stadhouder and King of England until his death in 1702.²⁵³

Even as king of England, the long-standing *stadhouder* preference for the Dutch army over the Dutch navy continued to influence Willem/William III's military policies. In the ensuing war against France, Willem III used the Dutch army on land and the British navy on the sea. The latter made the British navy the unchallenged leader on the world's oceans, which in the long run undermined Dutch commercial international interests and promoted British ones—a sensible strategy for a *stadhouder*.

Economic and Political Effects of Decentralization

The control of public policies by local urban commercial elites together with a mobile and well-trained work force contributed to Dutch prosperity. Contemporary mercantilist theories and practices were less binding in the Netherlands than in other European countries, because of its long-standing orientation toward international trade and because its decentralized governance

²⁵¹ The title “Prince of Orange” is taken from an ancient French territory and title (prince) acquired through inheritance in 1515. The title was more prestigious than other Nassau titles (which included baron and count) and became part of the Nassau family legacy, even after the province was taken over by the French king in 1672. The Nassau family already had substantial holdings in the Rhine's lowlands and had served as provincial *stadhouders* in the fifteenth century.

²⁵² Willem II's son, Willem III, was born the week after his death. Willem III was only 22 when he was appointed stadhouder for the other provinces in 1672. Two of the seven provinces had appointed stadhouders during this period, Groningen and Friesland, but from a northern branch of the Nassau family..

²⁵³ More details are provided in chapters 12 and 13. Willem III had been invited to intervene in English politics by several prominent members of parliament.

generated competition among localities for the large inflows of new capital and labor, which favored those with relatively open internal and external trade networks. Together these produced rapid economic growth, which encouraged further immigration by increasing economic opportunities for immigrants relative to those available elsewhere in Europe.

Economics was not the only reason for the influx of persons and capital into the Netherlands. If not a liberal state in the modern sense, the United Provinces was a relatively safe haven for nonconformist religious and political ideas. Although the Union of Utrecht called for religious tolerance, as did many of the republic's early political leaders, tolerance was not always supported by provincial and urban governments. Local autonomy, however, implied that a place could nearly always be found in the Netherlands where nonconforming intellectual perspectives and religious practices would not be contested by local authorities. As a consequence, thousands of Protestants and other nonconformists from the southern provinces (Belgium) moved to the Netherlands in the late sixteenth and early seventeenth centuries. A similar immigration from throughout Europe followed, including thousands of Huguenots from France and several hundred English Puritans. European liberals of this period also found the Netherlands useful places to work and to have their work published.

The population of the United Provinces grew rapidly and commerce expanded as innovators, capitalists, craftsmen, and scholars converged on the Netherlands. Amsterdam became a metropolis, and many other towns became cities. New universities, newsletters, journals, and printing companies were founded.

Unfortunately for the Republic, the rapid growth of wealth generated by its internal tax competition, relatively free trade policies, and tolerance of political and religious nonconformists attracted the interest of the Dutch neighbors. Moreover, its borders and coastline were normally poorly defended during times of peace, because provincial autonomy allowed the provinces to free ride on the provision of national public goods, including national defense. This tended to exacerbate the military crises of the next two centuries (Barker 1906: 181–82, 364–65, and 379–83). A low-level war with Spain dragged on for 80 years, with periodic major engagements, and the Spanish war was subsequently replaced with British and French conflicts.

C. Constitutional Significance of the Dutch Republic

National governance in the Dutch republic was based on an intermediate version of the king and council template in which the balance of authority shifted as military threats increased and

diminished. Two centuries later, such divided governments would be fairly common, but in the seventeenth century, this form of government was extremely unusual. In the Netherlands, national assemblies often had dominant authority over public policy, especially during times of peace. This was also true at provincial and local levels of governance, where provincial and town councils, rather than kings (dukes or barons), had extensive control over public policy decisions. Votes were counted in the various regional and national assemblies, although those who held office were not broadly elected in the modern sense. There were no popular elections.

Nonetheless, the republic provided useful evidence about parliamentary governance, the effects that voting rules can have on parliamentary decisions, and of how decentralized systems of governance based on such divided governments operate. The supermajority and unanimity rules of the national government's reduced its ability to "impose" taxes and regulations on the provinces. As a consequence, most fiscal and regulatory decisions were made at the provincial and city government level. The supermajority provisions of its national policymaking system, however, while preserving considerable decentralization, also made the republic a fairly rigid system of governance in which its component parts were difficult to reform. Toward the end of the republican period, there were true revolutionary pressures, as the pro-reform "patriots" pressed for liberal constitutional changes that would change the basis of representation within the local and national assemblies, while the anti-reform "Orangists" successfully defeated their proposed reforms in the assemblies (and once or twice on the battlefield).

Decentralization, itself, tended to produce relatively liberal economic policies and a relatively open society. Inflows of capital and labor tended to increase prosperity, and competition for capital and labor tended to favor provinces with relatively few trade barriers and restrictions on immigration. Although, the republic was not dominated by liberals, there were many economic liberals, such as La Court, who played significant roles in the more successful provincial governments. Competition for labor and capital also tended to favor provinces with relatively liberal policies with respect to censorship and religion.

Dutch interest in the enlightenment and its associated political and economic reform agenda were relatively broad by the standards of the seventeenth century. Several famous Dutch scholars are mentioned at the beginning of this chapter and several are quoted in chapter 9, but there are many other examples. For example, consider this passage in praise of rationality taken from a piece written by the Jacob Hendrix in 1582:

“A **free mind**, in which an unrestricted intellect governs, **can see and observe ... what is honest, profitable, righteous, lawful**, proper, possible, feasible, and necessary ... the mind inflamed by the fire of passion **cannot** judge rightly in private nor in common matters” (Van Gelderen 1993: 169).

Dutch readers and publishers were interested in liberal ideas and willing to print books and pamphlets that discussed radical reforms of king-dominated systems of governance. Many influential books about political theory and constitutional design were published at Dutch presses, often in Latin during the seventeenth century, but also in many other languages. Elsewhere such books were more likely to bring death penalties and long jail sentences to their publishers than profits.

Proponents of enlightenment and liberal ideas were also somewhat more free to write and publish their theories in the Republic than elsewhere in Europe. Descartes spent two decades working in the Dutch republic. John Locke spent five years in the Netherlands as a political refuge, where he completed his influential work on governance and religious tolerance. The safety of such persons, however, was largely a consequence of its decentralized political institutions, rather than widespread liberalism or tolerance per se in the Dutch republic.²⁵⁴

In the eighteenth century, scholars from other countries often used the experience of the Dutch republic to motivate or illustrate general theories, as in Montesquieu’s (1748) chapter on decentralization and Adam Smith’s (1776) discussion of the benefits of trade liberalization. Dutch references and illustrations were used during the constitutional conventions that led to the founding of the United States of America (Congleton 2008).

D. Revolutionary Times, 1795–1814: the Batavian Republic, First Kingdom, and the French Empire

The polar cases of the king and council template were briefly visited by the Dutch during 1795–1814 as the two-century-old republic was replaced by a new more centralized system of governance as a consequence of two decades of exogenous political shocks.

Most historical accounts suggest that centralization within the Republic tended to increase during the second half of the second century, because a single stadhouder, Willem IV, was appointed for all of the Netherlands in 1747 during another war with France, and the office was made formally hereditary. Partly for this reason, ideological competition and interest in constitutional reform intensified between Dutch liberals and conservatives at the national level.

²⁵⁴ See Israel (2002) and Van Bunge (2003) for careful surveys of Dutch contributions to the European enlightenment.

A large, loosely organized, more or less liberal political reform movement called the “patriot movement” emerged in the second half of the eighteenth century. The patriot movement began as a series of loosely affiliated reading societies that debated and pressed for Dutch constitutional reform. As true of other liberal movements of the eighteenth century, the members of the patriot movement often quoted and referred to such English political theorists as Locke, Price, and Priestley in their pamphlets and arguments for reform in addition to their Dutch predecessors. In the second half of the eighteenth century, a few patriot groups acquired arms and trained in military operations, for example, the *Free Corp* (Israel 1998: 1136). Thomas Jefferson occasionally met with leaders of the patriot movement during his tour of office in Paris.

However, both peaceful and revolutionary efforts were largely unsuccessful, until the French army provided additional support, shortly after the French Revolution. In 1795, with help of the French army, the patriots induced Willem V to leave for England on January 18, and a mild Dutch counterpart to the French Revolution took place. Although much less bloodshed was involved, the patriot revolution also demonstrated the difficulty of radically reforming political institutions.

After Willem V’s departure, the patriots organized a constitutional convention to write a new national constitution and found a new government, the Batavian Republic. The States General called for elections to a constitutional assembly in January 1796. Elections to the constitutional assembly were based on essentially universal male suffrage. All men older than 20, in favor of popular sovereignty, and not on poor relief could vote for representatives to the constitutional assembly. This was very broad suffrage for its day.

Constructing an acceptable new constitution at the special assembly required much negotiation and bargaining, but finally a federal constitution with sufficient support emerged from the assembly. As required for those espousing popular sovereignty, the proposed design was placed before the public in a direct referendum. Unfortunately, the constitution was rejected in the referendum of August 1797. The constitutional assembly resumed meetings and negotiations, and several more months of fruitless constitutional renegotiation followed.

Finally, in January 1798, the French ambassador assumed the leadership of the constitutional assembly and dictated a unitary constitution with separation of church and state, broad male suffrage, and abolition of guilds, feudal duties, and the slave trade. This French proposal for a unitary state was accepted in a referendum in April 1798. Although the Batavian Republic was somewhat more stable and more humane than its French counterpart of that period, its constitution was also revised several times in a manner that tended to concentrate policymaking authority. For

example, in 1801 the Batavian constitution was reformed to concentrate executive power in a small committee. Two years later, it was reformed again to centralize executive power in a single person in 1805.

Later in 1805, the Batavian Republic was replaced by the first Kingdom of the Netherlands, as Napoleon appointed his brother Louis to be king. This, too, proved to be unstable. In 1810 the Netherlands became part of the French empire with the annexation of the Netherlands by Napoleon.

E. The Kingdom of the Netherlands: 1815–48

The Congress of Vienna and the Kingdom of the Netherlands

After the great powers had defeated Napoleon in 1813, the son of Willem V, prince Willem, arrived in the Netherlands from England with English support. A new constitution was quickly drafted by supporters of the House of Orange. It called for a new States General, a unicameral parliament to be appointed by regional governments. The old office of stadhouder, however, was replaced with that of king, with much enhanced authority. As a consequence, prince Willem was crowned king Willem I, rather than *stadhouder* Willem IV, by the new States General on March 15, 1814.

At roughly the same time that Willem was taking power in the Netherlands, the great powers held a Congress in Vienna to redraw the map of European governance with an eye to major power interests and to the future security and political stability of Europe. The great powers (England, Prussia, Russia, and France) agreed to merge many small polities into larger ones, ending the independence of many long-standing polities and creating new ones. The Holy Roman Empire was replaced by the German Confederation. Bavaria was elevated to a kingdom. Switzerland was reestablished. Venice lost its six-century-long independence and became part of the Habsburg domains. The Vienna Congress also placed Norway and Sweden under a common crown, transferring Norway from Denmark to Sweden; formally placed “Swedish Finland” and part of Poland under the Russian sovereign.²⁵⁵

²⁵⁵ The Vienna conference also encouraged the great powers to continue their alliance, which indirectly created a pan-European diplomatic forum, the Concert of Europe. Both the alliance and concert helped to reduce European tensions during the remainder of the nineteenth century.

.It was by no means clear at the time that the kingdom of the Netherlands would include the former Habsburg territories to the south, what became Belgium in 1830. Many evidently believed that those lands would revert to Austria. Willem I, however, lobbied for their merger with the North and was successful. On July 31, 1814, Willem I and his government took over the administration of the South. (The Vienna Congress shifted parts of Spain and Italy to the Austrian Sovereign to compensate the Habsburgs for the loss of their Belgian territories.)

According to the terms worked out between the House of Orange and the great powers in Vienna, the North, and South were to be equal parts in a new unitary state, the details of which were to be worked out by the new Netherlands' States General and King (Kossman 1978: 109–11). A constitutional commission with 12 members from the north and 12 from the south undertook the task of refining the new constitution. Negotiations between northern and southern representatives show that a variety of interests, including liberal ones, were represented in the constitutional convention. It established a new bicameral States General with the first chamber based on nobility and royal appointments for life, and the second indirectly selected by provincial governments. The north, unlike the south, with its republican history lacked a proper nobility, although it had many influential and wealthy families, several of which had noble titles in the Netherlands or elsewhere. Willem I predictably “solved” the problem of northern peers by elevating his most prominent supporters to the new noble chamber.

The second chamber was a federal chamber composed of 55 members from the North and 55 members from the South, each elected by their respective provincial governments (Rietbergen 2002: 124). The provincial governments were modeled after the French system and were organized on the basis of the three medieval estates, the nobility, the towns, and the rural class. Representatives for the town and country were indirectly elected by urban administrators and county electoral colleges. One third of the members of the second chamber stood for election every year (Van Raalte 1959: 2). Suffrage rules for the urban administrators and for the county electoral colleges were based on tax payments and were substantially more restrictive than under the short-lived Batavian Republic. Only about 80,000 Dutchmen and 60,000 Belgians were entitled to vote out of populations of about 2.4 million and 3.4 million respectively (Kossman 1978: 113; Maddison 2003: table A-3A).

The bicameral parliament had formal power to veto proposed budgets and did intervene on budgetary matters. However, until 1840, budgets were normally proposed only *once every 10 years*, which left day-to-day governance almost completely in the hands of the king and his ministers. The constitution called for all routine peacetime expenditures to be part of a decennial budget. Of

course, the king and parliament occasionally disagreed about what was routine. Extraordinary budgets were approved one year at a time (Van Raalte 1959: 2).

Amendments to the constitution had to be approved by majorities in the first and second chambers, and formally accepted at a meeting of the provincial states and by the king. The former prevented the king from simply adopting new constitutional provisions by fiat, and the latter protected the king from usurpation by the parliament. (No formal provision for constitutional review was provided.)

The new constitution was clearly a king-dominated form of the king and council template. It included many provisions that were similar to those of other constitutional monarchies based on late medieval negotiations, although never before present in the Netherlands. The king's appointment of the members of the first chamber, together with his control of ongoing government policies, gave King Willem I considerable control over public policy. To a considerable degree, he and his ministers ruled by royal decree for most of his reign (Rietbergen 2002: 124, Van Raalte 1959: 2).

Belgian Secession of 1830

Equal representation in the second chamber was consistent with the Vienna mandate for equal participation in the new unified national government; however, the south naturally felt shortchanged by this compromise. Those living south of the Rhine (Walloons and Flemish) outnumbered those from the north (Dutch) by more than 30 percent.

A variety of policies implemented by Willem I during his first 15 years further alienated the south. Dutch was gradually introduced as the official language of the Southern courts and government (1819). The language of civil service and governance became predominantly Dutch; which excluded many educated Belgians from government service. Although Dutch (Flemish) was widely spoken in the south, most educated Belgians were from French-speaking households and trained at French schools. A new system of public primary schools was established in the South, which competed with the long-standing Catholic system, which now had to be certified by governmental authorities. In 1825 all Latin schools founded without government permission were closed (Kossman 1978: 127). These policies increased literacy in the south, but also increased Catholic reservations about the new union with the north.

By actively trying to "bring the south into the north," Willem raised suspicions among lay Catholics and French-speaking aristocrats that their lifestyles and wealth were threatened by the new regime. Many intellectuals and businessmen in the south believed that they were being held back by

“northern” policies. A liberal Belgian petition movement gained momentum in the late 1820s, which advocated freedom of education, a free press, and personal liberty. Petitions were distributed by politically active groups, signed by hundreds of thousands, and presented to the States General. The king and his ministers essentially ignored the petitions, because by constitutional law, such documents were irrelevant, and taking formal account of them would have implicitly changed the constitution. A right to petition would have provided direct participation for citizens and politically active groups, rather than the indirect one allowed by the constitution.

In 1830 an economic downturn produced large numbers of bankruptcies, falling wage rates, and unemployment in the South, which further increased discontent. By the end of 1831, a series of working-class demonstrations, resistance by liberal and Catholic interest groups, and mistakes by Willem I and his ministers led to southern secession. Willem objected to the secession both militarily and diplomatically, but the secession was sanctioned by the French and British. In 1831 a new Belgian constitutional monarchy was formed under Leopold I, a Bavarian duke who had fought against Napoleon.²⁵⁶

Many of the same considerations that led to the Belgian secession and to a new relatively liberal Belgian constitution were soon to induce major reforms of the Dutch constitution.

Reforms of 1840: Ministerial Responsibility and the Rule of Law

In 1839 Willem I formally acknowledged the secession of Belgium, which required revising the 1815 constitution, because the southern provinces no longer required representation. The constitution of 1815 prevented the king from modifying the constitution by decree, which gave the parliament a chance to renegotiate some of the procedures of governance. The second chamber had also recently vetoed the king’s proposed 10-year budget. The Belgian secession had shifted the full burden of the Netherlands’ debt back on the northern provinces and reduced tax receipts. The fiscal problems faced by the king increased the parliament’s bargaining power with respect to constitutional reforms, as predicted by the models of part I, and as it often had in other systems in which parliament held the power of the purse (Kossman 1978: 162–64, 182).

Several liberal proposals for reform of the constitution had already been made and rejected. The second chamber refused to accept the current budget proposal unless some recognition of ministerial responsibility was incorporated into the constitution (Van Raalte 1959: 4).

²⁵⁶ During the Burgundian period, all residents of the territories of the Netherlands had been referred to as *Belge* in French or as *Belga* in Latin. However, by 1830 the term *Belge* indicated residents of the southern Netherlands alone (Kossman 1978: 118).

Both the king and the first chamber were initially opposed to constitutional reforms beyond those necessary to take account of the Belgian secession. However, there were new constitutional gains to trade, because of changes in the composition of the first and second chamber and the fiscal conditions. After additional negotiation and bargaining, several liberal amendments were adopted by supermajorities in both chambers in September 1840.²⁵⁷

The 1840 reforms eliminated the 10-year budgetary cycle and required that all departments submit two-year budgets. In addition, every future decree by the king had to be countersigned by a minister, and royal ministers could be prosecuted if they were suspected of violating ordinary or constitutional law. The requirement that decrees be countersigned by ministers by itself would not have affected the king's freedom of action very much, insofar as he retained complete control over appointments. The fiscal and immunity reforms, however, increased the king's need for ongoing support within parliament.

Previously, both the king and his "servants" were above the law, and there was no penalty that the States General or the courts could impose if the king or his ministers ignored constitutional law or ordinary legislation. After the reforms, the responsible minister could be fined, jailed or executed, which made ministers more responsive to parliament (and the constitution) than before, and indirectly reduced the king's power of decree. Equally important, the king would also require routine support in both chambers of the Dutch parliament to keep tax revenue flowing to "his" treasury. These reforms ended the era of royal governance in the Netherlands by shifting Dutch governance to an intermediate form of the king and council template.

Willem I abdicated shortly after the reforms were adopted to pursue an unpopular marriage. His son, Willem II, took office in October 7, 1840 (Kossman 1978: 180; Van Raalte 1959: 4).²⁵⁸

F. Thorbecke's Constitutional Reforms of 1848

In 1839 a professor of history at Leiden University, wrote *Comment upon the Constitution*, a book criticizing the 1815 Dutch constitution. In his book, Professor Johan Thorbecke argued in favor of broader suffrage, the parliamentary appointment of ministers, and other liberal reforms. A second edition was published in 1843 that took account of the 1840 amendments, but advanced similar

²⁵⁷ The amendments included approval by a meeting of the second chamber augmented by representatives of the provincial states.

²⁵⁸ Willem II had had a rather non-Dutch childhood. During the French period, he lived in Berlin, where he received a Prussian military education, and in England, where he attended Oxford University. He served in the British army in 1811 at the age of 19 as aide de camp of the Duke of Wellington. He married Anna in 1816, the sister of the Czar of Russia.

arguments. Thorbecke's work was typical of liberal books, pamphlets, and newspaper articles that addressed constitutional issues at that time. Thorbecke, however, was not simply an academic theorist, but also a respected member of the second chamber of the parliament. In 1844, Thorbecke proposed a series of constitutional reforms. His proposals were rejected, as many other proposals for liberal reforms had been rejected over the years.

A few years later, King Willem II also became interested in constitutional reform. On March 16 1848, in an often quoted conversation, Willem II reported to a group of diplomats from the major powers that "from being very conservative, he had in the course of 24 hours become very liberal." This statement was used to introduce his new strategy of constitutional reform as a method of maintaining the position of the House of Orange, which he described in some detail at the same meeting (Van Raalte 1959: 16). The king's new interest in liberal constitutional reform is often attributed to the demonstrations that swept across much of Europe in 1848, especially in Paris and Bonn.²⁵⁹ These events surely influenced his constitutional strategy somewhat, although it was not the first time that he had proposed constitutional reforms, and it bears noting that demonstrations in the Netherlands were not especially widespread.²⁶⁰

The king's hand was not forced, but it seems clear that Willem II now believed that some liberal reforms were unavoidable and sought to control their course. In early 1848 the king's ministers proposed 27 amendments to the Dutch constitution. Liberals and moderates in the second chamber favored more liberal economic and administrative reforms than proposed by the king's ministers, while Catholics wanted more religious freedom than proposed (Kossman 1978: 183–88). A majority

²⁵⁹ In 1848 a series of large, but mostly peaceful, demonstrations favoring constitutional reform took place in many parts of Europe. For the most part, the demonstrations were illegal, and in this sense revolutionary, a term often used by historians to describe the events of 1848, although there was little bloodshed. There was, however, little evidence of revolution in the Netherlands. The Kingdom of the Netherlands, like much of Europe, was in economic distress, but there were no large-scale riots or takeovers of government buildings in the Netherlands. Some 16 percent of the Dutch population were on poor relief, which suggests that a welfare state was already present in the Netherlands and may have reduced the urgency of those suffering from economic distress. Peaceful demonstrations, nonetheless, made it clear that support for liberal reforms was rising in the Netherlands, as in other European countries, particularly among the middle class.

²⁶⁰ Eighteen years earlier, Willem II had proposed to his father that Belgium be granted a "separate administration" as a possible method of reducing Belgian opposition to the Orange sovereign, after negotiating with Belgian liberals. An emergency session of the States General was called by Willem I, which voted in favor of such reforms, but they were too little and too late to overcome pressures for Belgian secession (Kossman 1978: 153). This experience without doubt also influenced Willem II's thoughts and decisions in 1848.

in the second chamber thus rejected the proposed reforms, and the royal ministers resigned (Van Raalte 1959: 5).

In pursuit of more viable proposals, Willem II appointed a constitutional commission headed by Professor Thorbecke on March 17 and solicited a new cabinet under the leadership of Count Schimmelpenninck. Count Schimmelpenninck agreed to lead the reform cabinet under three conditions: (i) that he could select the other members of the cabinet, (ii) that the new cabinet would review the proposed reforms of the Thorbecke commission, and (iii) that the king would accept significant constitutional reforms. By accepting Schimmelpenninck's conditions, the king accepted what many regard to be the first ministerial government in Dutch history (Van Raalte 1959: 17).

Given Thorbecke's published work and his proposals while in the second chamber, the constitutional commission's recommendations were predictable. They would be more substantial than those adopted in 1840 and proposed by the king's ministers, but not as radical as many outside parliament favored. Thorbecke did not believe in radical reform, but rather in evolutionary reform. Moreover, his reforms had to be adopted constitutionally, which required majority support in the two chambers of parliament, among the provinces, and support of the king. Thus, predictably, his proposed 1848 reforms were modest, relative to the French or Dutch constitutional experiments of the late eighteenth century.

Thorbecke submitted three carefully crafted reforms for approval on April 11. First, he proposed a major reform of the bicameral States General to place it on electoral foundations. In effect, the old first chamber of nobles would be eliminated. The confederal second chamber would become the new first chamber. A new, directly elected chamber would become the "second" chamber. The federal chamber of the States General would have 39 members and be indirectly elected by the provincial governments. The new second chamber would have 50 members and be directly elected from single-member districts under restricted suffrage (Van Raalte 1959: 57). Members of the second chamber would serve four-year terms, and elections for half the members would be held every two years. Members of the first chamber would serve for nine years. A third of its members would stand for election every three years. Budgets were to be annual, rather than biannual. Sessions of both chambers were to be open to the public (Van Raalte 1959: 5–6).

Although the elections would determine essentially all of the members of parliament, the proposed electorate for the new second chamber was slightly *reduced* relative to that of second chamber that it replaced. The new more uniform tax requirement reduced the franchise from perhaps 90,000 to 75,000 out of a population of three million (Kossman 1978: 194). Qualifications

for suffrage at provincial and national elections were to be determined by the same law. Moreover, eligibility for seats in the two chambers was still restricted to Dutch elites. For example, to be eligible for membership in the first chamber, an individual had to belong to the highest category of taxpayer, which made about a 1,000 taxpayers eligible for seats in the first chamber (Van Raalte 1959: 5). Such rules helped to secure support from the first chamber, many of whom would expect to be elected to a seat in the new first chamber. It seems clear that these reforms were designed to make electoral foundations more acceptable to members of the noble chamber and urban elites. The eligibility rules for the new first chamber implied that a majority of the current peers would be “re-elected.”

Second, the principle of ministerial responsibility was taken a step farther than in the 1840 reforms. Thorbecke proposed that parliament be able to dismiss cabinet ministers as well as punish them for illegal or unconstitutional actions. The king’s other prerogatives were left unchanged, except that the Dutch colonies would no longer be treated as the king’s royal property (reducing his non-parliament based income and colonial authority). The king remained free to appoint his ministers, veto legislation, dismiss parliament, declare war, elevate persons to the nobility, and call for new elections for each chamber. To compensate for this reduction in authority, royal income was increased and guaranteed (by section 2).

Third, freedom of assembly, worship, and the press were guaranteed by the new constitution, as was funding for public education. The former assured Catholic support for the new constitution in the second chamber, because it meant that the Catholic Church would be free to organize bishoprics for the first time since the sixteenth century. Increased support for public education reduced opposition from Protestants and increased support among moderates, because tax revenues would support education in church-run schools as well as secular ones (Kossman 1978: 291).

Overall, Thorbecke’s proposed constitutional reforms shifted additional policymaking authority from the king to the parliament, slightly changed the membership of the Parliament, and moderately expanded civil liberties. It provided electoral foundations for the Dutch parliament in a manner that made the reforms acceptable to majorities in the first and second chamber.

The ability of parliament to dismiss ministers meant that the ministers were no long entirely agents of the sovereign. Indeed, ministers became increasingly responsible to parliament during the next two decades, as new bargaining equilibria emerged. The elimination of the old chamber of appointed lifetime peers also diminished the king’s influence within parliament, because the Dutch peers had been chosen in large part because of their loyalty to Orange interests. Nonetheless, the king retained far more control of public policy under the 1848 constitution than his *stadhouder*

forebears had possessed in the days of the Dutch republic. Netherlands remained a kingdom; the king could veto laws, appoint governments, and dismiss the parliament.²⁶¹

Willem II found this moderate shift of authority to be an acceptable compromise with politically active liberals. The king pressed the first chamber peers into accepting elections. Liberals, moderates, and Catholics, with the king's support, provided majorities for the Thorbecke proposals in the second chamber, which in turn were accepted by the king. In this manner, negotiation and bargaining, rather than revolution or pressing revolutionary threats, produced a major reform of the constitution of the kingdom of the Netherlands. After 1848 the kingdom of the Netherlands had an elected parliament with significant authority over public policy for the first time.²⁶²

Willem II himself never experienced the effects of the 1848 reforms. Shortly after swearing in the new Thorbecke cabinet in 1849 elected under the new rules, Willem II died unexpectedly, and his son, who was far less favorably predisposed to reform, became King Willem III.

The Gradual Emergence of Cabinet Governance, 1848–68

The 1848 reforms were not a liberal “revolution” or coup, but rather a bargain worked out among all politically active groups. As might be predicted, the reforms had relatively small, short-term effects on the authority of the Dutch political elites, although it did affect the distribution of policymaking authority among those groups and between the parliament and the king. Between 1848 and 1877, more than a third of the 410 men who became members of parliament were from families with noble titles. Of the 100 different cabinet ministers, 81 came from noble or patrician

²⁶¹ Other liberal provisions are scattered throughout the 1848 constitution, including rights of due process (articles 151 and 156), the requirement of warrants to enter private property or read personal mail (articles 158 and 159), freedom of association (article 9), freedom of the press (article 7), and freedom of religion and religious association (articles 167, 168, and 169). The new constitution also included central government responsibility for poor relief (article 193) and reformed local and provincial governance. For example, town governments would consist of a locally elected council, whose president would be selected from among those proposed by the king (Article 143).

²⁶² The constitutional and national assemblies of the Batavian Republic (1796–1805) were also elected (and on the basis of broader suffrage rules, although Orangists and federalists were initially excluded). Thus, it could be said that for the second time in Dutch history, the Netherlands had an elected parliament.

However, the Batavian Republic was not fully independent in that it was subject to French monitoring and intervention (Kossman 1978: 91–97; Rietbergen 2002: 118–19). It also bears noting that the authority of the new parliament, although larger than it had ever been within the kingdom of the Netherlands, remained below that of the States General of the Dutch Republic for several more decades (Van Raalte 1959: 6).

families. Most of the other members and ministers were from the successful business and professional strata of Dutch life. (The latter had played a role in the old Dutch republic and in the provincial governments, but had been less influential in the kingdom.) The overwhelming majority of the men elected to the new parliaments had law degrees or training in the law. It was clearly a government of relatively wealthy, well-connected men (Kossman 1978: 273–74).

Although parliament could dismiss individual ministers for nonperformance, it was not clear how far their authority over the cabinet extended. For the first 20 years after the 1848 reforms, cabinet ministers continued to serve at the pleasure of the king, including the two Thorbecke cabinets of 1849 and 1862. For example, in 1853 Thorbecke dutifully resigned when the king (and much of the country) openly disapproved of his liberal policy with respect to Catholics, although his ministry continued to have majority support in the second chamber (Van Raalte 1959: 18). This suggests that Thorbecke believed that the king's power of appointment and dismissal was not significantly reduced by the constitutional reforms.

On the other hand, there were practical limits to the king's power of appointment under the new budgetary arrangements. The power of the purse granted to the second chamber in the constitutions of 1840 and extended in 1848 allowed parliament to exercise veto power over the policies of ministers and their ministries—as long as a particular parliament could maintain electoral majorities. The importance of parliamentary support for ministers became very evident in 1868, when parliament vetoed the proposed budget of the Foreign Affairs Ministry over a policy dispute on Luxembourg. The cabinet offered to resign, but the king refused their resignations, arguing that parliament had unconstitutionally interfered in the government's execution of foreign policy.

The king called for new parliamentary elections and campaigned for a new pro-sovereign parliament. However, the electorate selected a parliament that supported parliament's right to criticize and sanction ministers and their policies. The newly elected parliament again vetoed the proposed budget of the recalcitrant ministry of foreign affairs. The king reluctantly accepted the resignation of his cabinet and appointed a new cabinet that was more respectful of parliamentary advice (Van Raalte 1959: 20). After 1868 the sovereign routinely chose ministers from the major parties in the parliament.

The governments elected under the 1848 constitution alternated between liberals and conservatives; with liberals holding power a bit more often than conservatives. Suffrage was far from universal, although it gradually expanded as the economy grew in the decades before the next series of constitutional amendments.

G. Dutch Liberalism and Political Competition in the Nineteenth Century

Nineteenth-century Dutch liberals were not Cartesian system builders, but rather were generally skeptical of such all-encompassing theories. They were evolutionists, while being skeptical of evolutionary theorists (Kossman 1978: 259–64, Stuurman 1989). The groups referred to as “liberals” in the Netherlands did not always agree about the end that reforms should achieve or cooperate their persuasive campaigns. What might be called “right of center” liberals sought reductions in trade barriers, suffrage of “competent” persons, and very little more. Centrist liberals pressed for educational reform, the abolishment of slavery, and a somewhat greater extension of suffrage, largely because of a more generous notion of competence. “Left of center” liberals (radicals) supported very broad suffrage, major educational reform, child labor laws, and a shift of tax instruments from excise to income taxation. In the late nineteenth century, such “radical liberals” were increasingly influential within liberal groups in the Netherlands, as elsewhere, and liberal thought drifted to the left, in this sense, as the nineteenth century progressed.

In mid-century, Thorbecke was by far the most important Dutch liberal, because he was simultaneously an important liberal theorist and three times the prime minister, in addition to being the author of the 1848 constitutional reforms. Economic and ideological trends, however, favored the more “radical” liberal ideas, as each generation’s “radicals” became the next generation’s conservatives. As in other parts of Europe, the center of gravity in Dutch liberalism shifted toward increasingly open politics and markets. The liberal magazine *De Gids* (the guide) was founded in 1837 and played an important role as a forum for ideas, criticism, and advocates for reform(s). The *Gids* was challenged in 1874 by the new more radical *Vragen des Tijds* (Issues of the Day).

Their opponents for most of the century were conservatives whose loyalties were not to an ancient kingdom and church, but rather to religious and cultural norms from the past. Conservative groups also included former liberals who thought that reforms had gone far enough, members of economic interest groups opposed to free trade, and pragmatists who generally benefited from the status quo. Conservatives remained skeptical of the usefulness of further political liberalization at each point in the series of reforms that gradually produced liberal parliamentary democracy in the Netherlands (Von der Dunk 1978, Kossman 1978: 275–77).

Political Parties

Political parties during most of the nineteenth century were loose affiliations of persons and small groups who could agree on the merits of particular reforms and/or politicians. Suffrage was very narrow, and it was not until it expanded toward the end of the century that disciplined political parties emerged. In 1878 the Calvinist anti-revolutionary (conservative) party was founded. The Liberal Union was founded in 1885, and the Social Democratic Labor party was founded in 1894. The new parties were formally organized, but their members remained open to new alignments and organizations.

For example, the most conservative members of the anti-revolutionary party broke away in the 1890s to found the Christian Historical Union party. A few years later, the Liberal Union split into centrist liberals and the right-of-center Union of Free Liberals (which subsequently rejoined the Liberal Union in 1921). The left of center radicals left the Liberal Union in 1891 to form the Liberal Democratic Union (VDB). The left-of-center liberals in the VDB worked with the Social Democrats for universal suffrage. (The VDB subsequently joined the Social Democrats in 1946.) A similar split occurred among Social Democrats and Marxists in the first part of the twentieth century (Van Raalte 1959: 10; Kossman 1978: 338–47, 515; Skillen and Carlson-Thies 1982; Sap 2000: 35–37; and Rietbergen 2002: 134.)

Most voters, of course, were not driven entirely by liberal ideological considerations, but rather influenced by them at the margin, as suggested by the models developed above. That is to say, most Dutch voters and politicians were pragmatists with dispositions for or against liberal reform.

Liberal Policy Reforms

Significant liberal policy reforms were adopted during Thorbecke's first and second periods of office. Policymaking power was decentralized somewhat in the municipality laws of 1850 and 1851, and local excise taxes were replaced with direct taxes. Policies protecting Dutch shipping were eliminated. Internal and external protectionism was dismantled as tariffs were reduced in 1854 and export duties eliminated in 1862. New higher burgher schools, which focused on science and modern languages, were introduced by Thorbecke in 1863 (Kossman 1978: 414).²⁶³ Slavery was abolished in 1863 (Rietbergen 2002: 134).

²⁶³ By all accounts the educational reforms and those that followed in the 1870s were very successful, as most graduates of the higher burgher schools went on to university training. Indeed, four won Nobel prizes in the early 1900s (Willink 1991).

In 1860 the rail network begun under Willem I was extended. New canals and dikes were built. International trade expanded rapidly, partly because of the free trade regimes adopted in the Netherlands and elsewhere, and also because of the increased income associated with new production technologies and more open markets. Foreign trade increased by 179 percent during the 1850–73 period. The increased exports were initially largely agricultural, but cloth and clothing followed as the factory approach was more broadly applied. Textile and agricultural production expanded. The Dutch population grew rapidly in the second half of the twentieth century (Kossman 1978: 264–65).

The most difficult and controversial of the mid-century reforms was expanding the freedom of association to include the religious organizations of Catholics and Jews.²⁶⁴ This was guaranteed by the constitution of 1848, but not fully implemented until 1853, when the Catholic Church established bishoprics in Utrecht, Haarlem, Breda, Roermond, and Hertogengosch. A subset of the Protestant community responded with petitions and sermons predicting a new inquisition, censorship, tyranny, and so forth—in short a return to the days before the Dutch revolt nearly three centuries earlier. Although not all Protestants were outraged, the king’s response was to ask Thorbecke to resign as prime minister, which he did, as noted above (Kossman 1978: 282). The liberal majority of the second chamber, however, pressed on with liberal reforms under new leadership. (Thorbecke did not regain the prime minister’s office until 1862.)

Suffrage Movements

From the perspective of the twenty-first century, Thorbecke’s failure to extend suffrage, rather than reduce it, further seems odd, indeed outrageous, but it should be kept in mind that universal suffrage had never been used to select a national government, except very briefly during the period of the French Revolution, where the results were not widely admired. Under Thorbecke’s law, suffrage expanded as personal income increased and their tax payments satisfied the qualification thresholds. Suffrage also expanded somewhat as taxes were raised. These factors by themselves gradually increased the electorate to 122,000 persons in 1887, about 14 percent of adult males (Kossman 1978: 351).

²⁶⁴ Jews and Catholics had long been worshipping in the Netherlands, but privately in “secret” churches, rather than openly, as had the Protestants before the success of the Dutch war of secession. Catholics were elected to the second chamber and provided important support for Thorbecke’s constitutional reforms in exchange for his support for extended rights to organize churches (Kossman 1978: 193, 278–79).

Early and mid nineteenth-century liberals favored allowing all appropriately qualified (independent and thoughtful) men to vote. Thorbecke's 1850 election law used direct tax payments to determine whether one was qualified or not, with thresholds for the countryside that were somewhat lower than for urban areas. This law was similar to many others in Europe at the time and was adopted by a relatively liberal government. It enfranchised about 10 percent of the adult males (Kossman 1978: 194).

Most politically active liberal groups focused their energy on suffrage expansion and educational reform during most of the nineteenth century, rather than universal suffrage. Educational reforms increased literacy and rising income associated with economic development increased economic independence. Consequently, many liberals began to think that universal suffrage would emerge gradually as education and economic opportunity expanded and more and more people qualified as independent, thoughtful voters. Suffrage expansion, if not universal suffrage, was an issue upon which a variety of liberal groups could agree.

After the parliamentary reforms of 1848, support for reforms of suffrage law gradually increased, and several political organizations devoted to suffrage reform were created. In 1876 an association called the *Algemeen Stemrecht* (universal franchise) was created by the Dutch left. In 1879 the *Comite voor Algemeen Stemrecht* was founded by left-of-center liberals. Other groups by socialists, labor unions, and liberals were founded in 1880, 1881, and 1882. These groups launched persuasive campaigns aimed at a broad cross-section of the existing and potential electorate. A woman's suffrage league was founded in 1894. Intellectuals wrote books that predicted near utopian results from universal franchise. Many of the political parties founded in the late nineteenth century also pressed for suffrage expansion. By the century's end, Social Democrats, radical liberals, liberals, and a good many conservatives supported universal male suffrage.

If sociological political theorists are to be believed, the existence of such mass movements should induce rapid changes in suffrage law. However, universal suffrage was not obtained for nearly two generations.

Suffrage Reform in 1887 and 1894

A new round of fruitful constitutional negotiations was launched when a conservative government commission proposed a series of 12 constitutional amendments in 1883. These could not generate the required level of support, and the proposals were withdrawn, revised, and resubmitted in 1885. Again there was too little support, and after a year of negotiations, new

elections were called in June 1886. The result was a small liberal majority in the second chamber and a new round of constitutional bargaining. Finally, in 1887, a package of 11 provisions were passed, including suffrage reform, a slight change in the size of the two chambers, and a provision for subsidizing Catholic Church schools (Blok 1912: 504-06). New elections were called, as required by the amendment procedures adopted in 1848, and the required support obtained in the (largely) reelected parliament.

The new suffrage laws eliminated the tax payment threshold. Suffrage was granted to all male heads of household aged 23 or older, who showed “signs of fitness and social well-being,” with “fitness” to be defined by parliament through new election laws. The standard of fitness chosen, approximately doubled the electorate from 14 to 28 percent of the electorate (Kossman 1978: 350, Ogg 1918: 226, Blok 1912: 505). Conservatives expected to benefit (and did) from an increased turnout of middle-class religious voters.

Catholic and Protestant political parties after 1888 were often partners in government, as old religious controversies on doctrine were put aside to advance shared policy objectives, especially subsidies for religious schools. Together they passed an educational reform bill in 1889, long opposed by liberals, that allowed free schools (religious schools) to pass on one-third of their costs to the national government (Kossman 1978: 354).

Debate over election law continued and various proposals were made to further extend suffrage by left liberals. In 1893 Tak van Poortvliet proposed allowing all persons who could read and write and who were self-supporting to be eligible to vote. That proposal, however, was too large of an expansion for moderate liberals and conservatives at that time, and was withdrawn. A few years later, suffrage reform was taken up again, but this time more successfully by a coalition of moderate liberals and conservatives. Von Houton’s 1896 reforms of Dutch election law redefined “fitness” in terms of modest tax payments (1 guilder), savings, rental payments, income, residency, and other measures of a man’s ability to vote rationally and independently. Suffrage doubled again to about 47 percent of the male population.

Consistent with the models developed in part I, these reforms reflected changes in the beliefs of pivotal voters and pivotal members of parliament—as well as a bit of political pragmatism on the part of parties who expected to benefit from reform. Although left liberals had long supported universal suffrage, moderate liberals did not believe that poor and relatively uneducated citizens were capable of exercising the franchise with sufficient competence to be given the vote.

Moderate and right-of-center liberals controlled the largest block of seats in the late nineteenth century parliaments, and so it was they (and their religious party opponents) who actually determined whether new suffrage laws would be adopted, rather than left liberals, the suffrage movement, or unenfranchised voters. Suffrage continued to increase gradually, reaching 60 percent by 1910 as education and wealth expanded and as election laws were reinterpreted (Kossman 1978: 361, Ogg 1918: 527–30, Blok 1912: 509).

The consequence of electoral reform was not “capture” by one of the main political coalitions, as might be predicted by an entirely opportunistic model of suffrage law. Government continued to shift among conservative, liberal, and left-liberal coalitions.

H. Electoral Reforms of 1917–22: PR and Universal Suffrage

Two decades of suffrage reform gradually allowed the Social Democratic party (SDAP) to become a significant party in parliament. The elections of 1913 returned 18 Social Democrats, 37 Liberals, and 45 Conservatives to the second chamber. The left-liberal coalition had adopted platforms that favored universal male suffrage and a new social security system. The Social Democrats, however, refused to participate in government with the liberals, and as a compromise a “non-partisan” cabinet was accepted under the leadership of van der Linden.

In 1915 prime minister van der Linden initiated a new round of constitutional bargaining with the three major parties-coalitions, as World War I was taking place. Three major reforms were negotiated and adopted through normal legislative and constitutional procedures in 1917. Male suffrage was made essentially universal. The first-past-the-post election process was replaced with a PR system. The school-funding provisions of the 1848 constitution were modified to allow full funding of “free” (religious) schools by the federal government.

All three parts of the package of reforms were necessary to generate the support necessary to amend the constitution. Without PR, the smaller parties feared being eliminated from parliament when universal suffrage was adopted. Liberals insisted on PR as a method for saving seats for the three liberal parties that held seats during World War I. Without constitutional provisions for educational funding guarantees, the conservative religious parties feared that expanding suffrage would end taxpayer support for religious schools. The secular left had routinely opposed financial support for the religious schools. The Social Democrats accepted such funding, however, because they were unlikely to have significant control over public policy unless suffrage was expanded.

Together the guaranteed funding for religious schools and PR produced sufficient liberals and conservatives support for package of reforms to be adopted (Kossman 1978: 555, van Raalte 1959: 20–23, Lijphart 1968: 98–104). The logic of universal suffrage was extended to include women in 1922, as essentially universal women’s suffrage was added to that of men. (If men were all competent to vote, surely women were as well.)

In the Dutch case, the new electoral rules benefited the religious parties and conservatives, rather than social democrats or liberals. As expected, the parties of the left became relatively more important after universal suffrage was adopted; however, they did not become the dominant coalitions, as in Sweden. Most of the new male and female blue-collar voters split between the Christian Democratic and Social Democratic parties, and the religious parties initially attracted more votes from the newly enfranchised. As a consequence, center-right coalitions of the religious parties formed the government in 1918, 1922, and 1925. Similar center-right coalitions continued to gain the favor of moderate Dutch voters for several decades.

Social Democrats were not routinely invited to majority coalitions formed by other parties until after World War II. They became the largest party in 1960. Liberal political parties as expected, lost seats after the 1917 expansion of suffrage. The 1918 elections supported 17 political parties in the second chamber, but the number of liberal members fell from 40 to 15. Indeed, Dutch liberal parties lost ground with nearly every increase in suffrage, which suggest that liberal interests in suffrage reform tended to be ideological, rather than partisan, although pragmatic interests clearly affected their constitutional bargaining positions and votes on how suffrage expansion would be implemented (Kossman 1978: 556-57).

In contemporary Netherlands, Social Democrats alternate with Christian Democrats as the “first” parties in left- and right-of-center coalition governments. In 2002 the Christian Democrats had their best finish since the 1950s.

I. Conclusions: Interests, Economic Development, and Reform 1815–1920

The Dutch transition to parliamentary democracy reflected opportunities for constitutional exchange that emerged during the course of the nineteenth century. As in Sweden, there were three major periods of reform. The first in 1813–16 established a new Kingdom of the Netherlands, with a relatively powerful king and relatively weak and narrow parliament. The second from 1840–1848 created an electoral basis for governance by replacing the noble chamber with a directly elected chamber. The third from 1917–1922 adopted universal suffrage and proportional representation.

Although the Netherlands remained a constitutional monarchy, control over public policy gradually shifted from kings and queens to the parliament during the nineteenth century.

As in England, the transition to parliamentary rule was faster than the transition to universal suffrage. Thorbecke's 1848 constitutional reforms formally shifted power from the king to parliament by giving it a stronger power of the purse and indirect control over ministers, but the same reforms reduced, rather than expanded, suffrage. Most of the shifts of authority from kings and queens to parliament were products of the new bargaining equilibria produced by Thorbecke's reforms. The sovereigns in the second half of the century retained formal authority to dismiss ministers, but support from majorities in elected parliaments was difficult to obtain without deferring to leaders of majority coalitions. Consequently, cabinets were increasingly populated by leaders of major political parties in the directly elected chamber of parliament, and kings increasingly accepted the recommendations of "their" cabinets.

Suffrage reform began several decades later (in 1887) and reflected ideological shifts and partisan interests within parliament. The qualifications for suffrage and for elected office were often revised as parts of carefully negotiated packages of constitutional reforms. For example, the reforms that produced universal male suffrage in 1917 also included a shift to proportional representation and reforms of educational funding. As predicted by the theory of constitutional reform developed in part I, the reform packages reflected the institutionally induced interest of the negotiators and addressed several issues at a time. The reforms were nonetheless incremental rather than revolutionary.

Perhaps surprisingly, the relatively liberal republican past of the Netherlands played almost no role in the constitutional developments of the Netherlands during the nineteenth century. Earlier liberal successes during the republic meant that the Netherlands began the nineteenth century with relatively more open trade, relatively greater religious and intellectual tolerance, and perhaps broader support for liberal ideas than elsewhere, but they did not produce a legacy of political institutions or politically active interest groups. The Netherlands did not return to its confederal structure with strong cities and provinces, and a weak central government. The office of *stadhouder* was not recreated or reinvented.

The pattern of nineteenth century reform was very similar to that of other constitutional monarchies affected by liberal tides and technological innovation. The royal office did not disappear, as might be predicted by other theories of constitutional change. Indeed, contemporary Dutch kings and queens retain much of their past formal authority. The Dutch constitution of 1983 states that

each of the chambers of parliament may be dissolved by royal decree (article 64) and that the Prime Minister and other ministers shall be appointed and dismissed by royal decree (article 43). Article 74 states that the King shall be the president of the Council of State and that the heir apparent is entitled to a seat on that council. The council is to be consulted on legislation and may draft general administrative orders.

Nonetheless, the bargaining equilibria that emerged as parliaments became more decisive and as the power of the purse became more importance were remarkably stable. As a consequence, Kings and Queens continue to remain in the background on most policy debates. In that and many other respects, the formal and informal constitutional bargains struck by the liberal movement of the nineteenth century arguably created both the mainstream Dutch politics of the twentieth century and the core procedures of governance through which it determines contemporary public policy.

Table 15: Major Constitutional Developments in the History of the Netherlands

Year	Constitutional or Political Event
58 BC	Roman empire reaches southern edge of the Rhine. In what came to be called the Netherlands, a series of fortress cities and trading posts were established, many of which remain today.
1450	States General created for most of the Netherlands by the Burgundy provinces.
1477	Mary's letter of preference grants the States General the right to veto taxes and meet as they wish, i.e., without being called by a king or queen. The Union of Utrecht formalizes the alliance of Protestant provincial governments and provides constitutional foundations for collective decisions by the Seven United Provinces. Provinces have the right to appoint their own stadhouders, and a different stadhouder is appointed in the north than in the south, although both are from the House of Orange.
1579	
1581	
1650–72	First stadhouder-less period in Holland and several other southern provinces.
1672–02	Office of stadhouder reestablished, Willem III takes office and drives the French out.
1702–47	Second stadhouder-less period: after Willem III's death in 1702, no stadhouder is appointed in the south.
1747	Office of stadhouder reestablished. Willem IV is from the Friesland line of the House of Orange and becomes the first stadhouder for all of the Netherlands. Willem IV drives the French out.
1793	The French declare war on stadhouder Willem V, who flees to England in 1795
1798	Batavian constitution adopted with a unicameral parliament elected under broad suffrage. The constitution provides for freedom of press and association, freedom of religion, independence of judges, and separation of church and state. It also formally eliminates guild privileges and feudal duties.
–1801	
1801-06	Napoleon replaces the Batavian constitution with a more authoritarian system, with R. J. Schimmelpenninck at its head.
1806-10	Kingdom of the Netherlands created with Louis Bonaparte as king (Napoleon's brother).
1810	Netherlands temporarily becomes part of France.
1813-16	Kingdom of the Netherlands established, a new constitution is drafted with a bicameral parliament with a more or less noble chamber and a federal chamber. Its territories include present-day Belgium,
1830	Belgium secedes and secures independence in 1831. Its new constitution is finalized in 1839 and causes constitutional issues to be revisited in the Netherlands.
1840	Constitution reforms increase parliament's power of the purse by shortening the budget cycle from 10 to 2 years and introduces ministerial responsibility.
1844	Thorbecke (a law professor at the University of Leiden) proposes nine constitutional reforms shortly after coronation of Willem II, but they fail to receive a majority in the lower house. King Willem II proposes constitutional reforms, but these fail, and his cabinet resigns.
1848	A new constitutional commission is created on March 17 (headed by Johan Rudolph Thorbecke). Peaceful demonstrations take place in Amsterdam for constitutional reforms.
1848	Thorbecke proposes major reforms of the Dutch constitution: a compromise between liberals and House of Orange supporters is reached, with support of King Willem II. Parliament is placed on an electoral basis. The new first chamber becomes a federal chamber (essentially the existing second chamber) The new second chamber is to be directly elected by about 10 percent of male adults; it controls the budget.

Perfecting Parliament

- Members of the first chamber are elected for nine years (one-third of members elected every three years). The second chamber is elected for four years (and increasingly dominated by liberals).
- 1848 Freedom of press, association, and right of petition established through legislation.
- 1849 King Willem II dies, Willem III becomes king, and Thorbecke becomes prime minister. He has poor relations with the new king who threatens Thorbecke with the gallows.
- Thorbecke resigns at Willem III's request after Protestants protest the return of Catholic bishops to the Netherlands for the first time in 200 years (under the new freedom of association rules).
- 1853 Religious parties gain seats in the next election.
- 1868 Parliamentary power becomes more extensive as a consequence of bargaining over the budget; ministers now clearly require significant parliamentary support as well as support by the king
- 1870 A Liberal Party is founded.
- 1869 Anti-Revolutionary Party (conservative coalition) is founded by Kuyper
- 1880 New "socialist" parties started in the 1880s, although they did not have significant representation in parliament. They are firmly linked to the labor and social democratic movements.
- 1887-94 Parliamentary reforms: expansion of male suffrage to 27 percent of adult men. First chamber now includes 50 members and second chamber 100 members. Reforms in 1894 extend suffrage to about 50 percent of male voters.
- 1891 Special meeting of Anti-Revolutionary Party (conservatives) to address labor issues. Catholic parties are encouraged to pay more attention to labor by Pope encyclical 1891.
- 1900 First national unions are organized and a major strike occurs in 1903. In response, the government tries to reduce the power of unions, but fails. There are Christian and secular unions closely related to the Christian Democratic and Social Democratic parties
- 1917-22 Major constitutional reforms adopted in a constitutional exchange.
- Universal male suffrage, PR for second chamber, first chamber remains indirectly elected by provincial councils, but with no minimum wealth threshold for chamber seats. First chamber to have six-year terms, with half elected every three years (in 1980 went to four-year terms). Educational funding for religious schools is adopted in exchange for support of other parliamentary reforms.
- 1922 Women's suffrage is adopted. Support for religion-based parties increases.
- 1938-72 Minor constitutional reforms.
- 1940-46 German occupation, government flees, no election until 1946
- 1983 Major constitutional reforms: royal authority is formally reduced and the bill of rights is extended. However, ministers are still formally appointed by royal decree and chambers may still be dissolved by royal decree. The first chamber has 75 members and the second 150 members.

Chapter 16: Germany: Constitutional Exchange in an Emerging State during the Nineteenth Century

A. Introduction: German Decentralization and Sovereignty

The next three historical narratives are less obvious applications of the king and council model of constitutional reform. Two are cases not usually associated with gradual democratization, Germany and Japan. The other case is often considered a revolutionary state, the United States of America, although as shown in chapter 18, parliamentary democracy had substantially emerged at the colonial level well before its war of secession. These more problematic cases help to test the generality of the theory of constitutional reform developed in part I, a theory that is intended to explain more than the successful nineteenth-century democratic transitions of a few European constitutional monarchies.

The first of the difficult cases to be examined is Germany. The history of Germany in the nineteenth century is usually told with an eye on the twentieth century, a century in which German foreign policy led to two continental wars of mass destruction.²⁶⁵ That such a fate lay ahead was not evident to observers at the beginning of the nineteenth century, nor was it inevitable. Indeed, observers in 1800 would have been surprised by this prediction. Germany had a very weak central government in the decades before, during, and after Napoleon's invasion of the Holy Roman Empire in the late eighteenth century. The empire was less a government than a loose association of independent city-states and duchies linked by language, religion, and commerce. There was clearly a German culture during this period, but the existence of a German state was debatable.

Germany's constitutional development in the late nineteenth and early twentieth centuries was marked by the formation of a new central German government, and its (partial) transition to parliamentary democracy was affected by an unusually large number of military events, as well as liberal shifts in ideology and economic development. As a consequence, this chapter differs somewhat from the previous historical narratives. It discusses more military events (although briefly) and also spends more time discussing "regional governments" than the other chapters. Many of the

²⁶⁵ See Blackbourn and Eley (1984) for further analysis of how this assumption, as well as French and English comparisons that emphasize bourgeois revolutions, have led many historians astray.

predictions concerning links among liberalism, industrialization, and the rise of parliament hold for the larger German duchies, such as Württemberg, Baden, Hanover, and Bavaria. Liberal influences are also evident in Prussia's development in the late eighteenth and early nineteenth centuries.²⁶⁶

In the German case, the nation-state formed incrementally along with its constitution. Partly as a consequence of this, much of its constitutional negotiation concerned centralization, rather than parliamentary reform. The division of policymaking authority tended to shift from the member states toward the federal government, as civil and military codes were standardized and central government services expanded into new areas such as social insurance. A centralized government with the power to tax did not emerge in Germany until 1871, and this government was formally the result of a series of treaties among the duchies, although it was catalyzed by military events that took place in preceding decades.

Government leaders in Prussia played leading roles in the military events that led to the treaties and in the drafting of the constitutional treaties themselves. Prussia's government thus receives disproportionate attention in the first half of this chapter, as it does from most German historians. Military threats and regional politics clearly played major roles in the design of Prussia's constitution as well, although liberalism, constitutional bargaining, and institutional conservatism are also clearly evident.

B. Setting the Stage: the Holy Roman Empire as the First German Confederation

The Holy Roman Empire is said to have begun when Otto was crowned emperor by the Pope in 962. At its peak in 1200, the first German confederation included modern Germany plus large parts of Austria, Switzerland, the Netherlands, the Czech Republic, and northern Italy. The king (emperor) of that confederation was an elective office, although participation in elections were very limited. The electoral college established in 1356 consisted of just seven electors, who represented

²⁶⁶ The term duchy is used below to describe a broad cross-range of small essentially independent territories that were formally parts of the Holy Roman Empire, not all of whom were ruled by the German equivalent of a Duke (herzog, landgrave, markgraf). The lesser German polities were not formally "duchies," because their territories were too small for that grand status, although they were normally ruled by a hereditary aristocratic family.

The true German "duchies" were relatively large territories, such as Württemberg, Baden, Hanover, and Bavaria. A few of the late medieval duchies survive to the present-day as independent polities, as with Luxembourg, Monaco, and Liechtenstein. Dozens of much smaller German polities also existed. Other terms such as state or *länder* are also used by English historians when describing members of the various German confederacies, although such terms fail to reflect their relative importance or the hereditary nature of most of their chief executives.

the major regions of the empire, the boundaries and method of inheritance of which were codified at the same time (by the golden bull). The elections normally took place in Frankfurt, and the pope normally crowned the emperor in Aachen, although Rome was not normally part of the empire. Nuremburg was the (first) site for the confederal assembly of the empire.²⁶⁷

Governance in the Holy Roman Empire functioned at two levels. At the level of the central government, representatives from several hundred independent cities, duchies, and church territories participated in imperial meetings at major cities in the empire, beginning with Nuremburg. These imperial assemblies can be regarded as the parliaments of the Holy Roman Empire (Reichtage or confederal diets). They were consulted on such matters as taxation, war and peace, marriage, and religion. The independence of the duchies was assured by constitutional laws adopted in the sixteenth century, which implied that imperial policy effectively took the form of agreements (treaties) among the member states and imperial “advice” from the central government (rather than enforced edicts). At the local level, sovereigns met with their own assemblies of important families and organizations (*landtage*) where similar matters were discussed. These assemblies often had veto power over new taxation and normally could propose new legislation. In some cases, policymaking authority was divided between the duch parliaments and sovereigns, resulting in a form of divided governance termed a *Ständestaat* (Fulbrook 1990: 26–27, Holborn 1959: 25–36).

As in the previous cases, the tax veto power of national diets, duchy estates, and town councils caused the distribution of policymaking authority to shift between the relevant sovereigns and parliaments as fiscal circumstances varied and as interests in authority were affected by relative wealth, emergencies, and as theories of the state. Major changes in fiscal circumstances and demands for authority often created new gains from exchange among policymakers. In federal and confederal systems, opportunities to trade tax revenues for political authority may also emerge with respect to the distribution of policymaking authority between central and regional governments. For example,

²⁶⁷ What the English would refer to as dukes, barons, and counts were essentially independent sovereigns in the German confederation, rather than part of a well-ordered aristocratic hierarchy. German titles reflected the size of the territories ruled, rather than their position in the hierarchy.

This de facto independence of sovereigns within the Holy Roman Empire is what made the Protestant Reformation in Germany possible. The local sovereigns simply ignored the kaiser’s support for the Catholic Church and countered his military efforts to impose (restore) order with their own military efforts to resist Habsburg efforts to centralize authority. The thirty years war combined religious and decentralization conflicts into a single bloody war throughout much of Europe.

large towns and cities often negotiated for and received freedom from duchy regulations and taxes (Holborn 1959: 25-26).

During military crises authority tended to shift in favor of the central government, because the demand for central government (and royal) revenues increases at the same time that demands for central government (and royal) services increases. Conversely, during times of peace, local autonomy tends to increase for relatively wealthier provinces.

From 1438 through 1806, Habsburg family members were routinely elected to the office of Holy Roman Emperor by seven hereditary electors. This hereditary claim to the throne allowed the Habsburgs to increase centralization somewhat, but the duchy and city governments resisted those efforts and remained largely independent. This was very evident during the Protestant Reformation, during which large parts of the empire took the Protestant side, while others, including the Habsburg territories, took the Catholic side of religious debates and engaged in warfare with each other. When the end to the religious wars were negotiated in 1648, local sovereigns formally received the authority to determine the religion of their territories. (The treaty of Westphalia also explicitly recognized the independence of the Netherlands and Switzerland, both of which had seceded from the empire in the previous century.)

During the seventeenth and eighteenth centuries, warfare and the shifts in commerce from overland routes to the Atlantic tended to reduce the relative wealth of inland duchies relative to those on the sea coast and also tended to reduce the relative wealth of those represented in parliament relative to royal families. The economies of most noble estates and many urban trading centers grew relatively slowly in this period, although revenues from customs and associated excise taxes increased. This tended to increase the authority of the inland dukes relative to their parliaments, and the governments of the coastal provinces relative to the central government. Several duchy parliaments gave up much of their veto power over budgets and legislation. For example, the Prussian parliament gave up much of its effective veto power through tax reforms in 1653 and 1667, which increased standing tax revenues and allowed the king of Prussia to maintain an army even during times of peace (Fulbrook 1990:77).

In the late eighteenth century, the economic tide reversed, and parliaments increased in importance at the same time that their policy interests shifted in a somewhat liberal direction. For example, in 1801 Bavaria introduced freedom of religious conscience and compulsory education, and, in 1807, ended or at least greatly reduced its internal tariffs. In 1808 the Bavarian nobility traded new taxes for greater influence over parliament. Similar constitutional bargains with parliament were

concluded by the Prussian government in 1810–12, partly as a consequence of Prussia's (initial) losses to Napoleon's armies.

The highly decentralized governance of the first German confederation remains physically evident today in the very large number of small German cities and towns with royal architecture and local defense structures: medieval palaces, formal gardens, castles, and remnants of city walls. In more centralized governments, such structures tend to be concentrated around the national capital and territorial boundaries, as in England, Sweden, and France. It bears noting, however, there are relatively few "parliamentary" buildings in German old towns, which suggests that the baronial diets met relatively infrequently in government buildings designed for other purposes. In republics, such as the United Provinces of the Netherlands, the public buildings and official residences from that period tend to be more modest in scale.

Decentralization in the German confederation was substantially reduced, although not eliminated, during the nineteenth century as consequences of warfare, treaty negotiations, and constitutional bargaining.

C. The Vienna Congress and the (Second) German Confederation 1815–67

Napoleon's invasion of the Holy Roman Empire in 1792 defeated a series of German regional armies over the course of 14 years, including the Prussian army and Austrian armies in 1805–6. With his army defeated and reduced, in 1806, Emperor Francis II (of the Austrian Habsburgs) gave up leadership of the Holy Roman Empire, and the empire-confederation was essentially disbanded (Holborn 1964: 371–72, 387–91).

In the territories conquered, the French induced a variety of legal and constitutional reforms. Smaller autonomous states were merged into larger ones with more centralized policymaking authority. In southern and central Germany, Napoleon also created a new federation, the Confederation of the Rhine, with a somewhat more centralized government than that of the former Holy Roman Empire. A new civil law (the code Napoleon) was introduced that eliminated some feudal privileges. Many of these steps tended to increase commerce. They reduced the number of borders at which tariffs could be collected, and somewhat simplified commercial law and reduced other internal trade barriers. Napoleon also induced the Confederation of the Rhine to secede from what remained of the Holy Roman Empire.

Napoleon's good fortune in war ended with his Russian campaigns in 1812, where a very cold Russian winter defeated and decimated the French army. A few years later, the remainder of the

French army was dispatched by a royal alliance of the English, Prussian, Austrian, and Russian armies. Defeat of Napoleon's army produced new possibilities for constitutional exchange within and among the major and minor duchy governments of the former Holy Roman Empire. Many of the institutions and theories of duchy governance and security had changed during the Napoleonic era.

In 1815, a congress of major and minor participants in the Napoleonic wars was held in Vienna. Although a very large number of governments played a role in the results and signed the treaties negotiated there, most of the most important negotiation was undertaken by the "council of five" major European governments. The "council of five" included Great Britain, Russia, Prussia, Austria and, surprisingly, France. Several of the Vienna Congress' geographic decisions and one of its constitutional decisions are especially important for German constitutional history.

First, the Congress merged many of the smaller polities of the old Holy Roman Empire into new larger ones. In many cases, it simply accepted mergers worked out by Napoleon. After the mergers induced by Napoleon and the Vienna Congress, the number of independent German polities was reduced from more than 300 to 42. Four were independent city states and thirty eight were autonomous duchies, including five territories that formally became German kingdoms: Bavaria, Prussia, Württemberg, Hanover, and Saxony. Second, Prussia, as one of the great powers, gained new territory along the Rhine (including Cologne), which significantly increased its population and economic resources, and moved its economic and political center of gravity toward the West.

Third, and most important constitutionally, the Vienna conference established a new German confederation (Deutscher Bund), loosely based on the old Holy Roman Empire. Its constitution was negotiated by the German committee of the Vienna Congress. The leading members of the committee were Austria, Bavaria, Hanover, Prussia, and Württemberg.²⁶⁸ Negotiations took nearly a year, and the final draft was proposed by Baron Wessenburg (a member of the Austrian delegation) and accepted by the committee (Nicolson 1946: 196-99). The negotiations and constitutional bargains accepted reflected the fact that the new constitution required the support of all the major duchies and kingdoms to be implemented.

²⁶⁸ Representatives from many other German duchies were also present in Vienna and were consulted regarding the constitutional architecture of the new German confederation. Representatives from Saxony (which lost 40 percent of its territory to Prussia), Hesse-Darmstadt, Luxemburg, and Holstein were also included in the final round of negotiations. Representatives of the major free cities were also admitted (Nicolson 1946: 197-9).

The new government consisted of a confederal diet, council of state, and prime minister. Each of the member states selected a representative to the confederal diet, who acted as an ambassador, rather than as an independent representative to a German assembly. There was no German citizenship at this time. The confederal diet used a weighted voting system to make decisions. The largest states had four votes each, while the other members had one or two votes (for a total of 69). Policy decisions in the diet required two thirds majorities (Ogg 1918: 195-6). The new confederal government, like the old, lacked significant power to raise taxes, although it was charged with the defense of Germany from internal and external enemies (Renzsch 1989; Fulbrook 1990: 101).

In addition to the diet, there was a council of state. The council was a relatively small “sub-diet,” analogous to the college of electors within the Holy Roman Empire. Eleven of the largest duchies had one vote each. Smaller states were grouped into six clusters that each shared a vote (for a total of 17 votes). Austria was entitled to appoint the president of the council and diet (article 5), which gave Austria’s Habsburg family and its chancellor, prince Metternich, additional influence insofar as the diet president had significant agenda control. Metternich is often regarded to be the chief architect of the confederation’s policy. The new German confederal government met in Frankfurt, Germany.

Article 2 of the treaty founding the new confederation states that the aim of the confederation is to maintain “the *external and domestic security* of Germany and the independence and inviolability of the individual German states.” German politics in the first half of the nineteenth century, consequently, remained very decentralized. Armies were controlled and staffed by the duchy governments, and only small fraction of total government expenditures within the confederation’s territory was controlled by central government decisions.

Austria’s relatively large influence in the new confederal government reflected the active role that its ministers played in the Vienna negotiations, rather than force of arms.

The Constitutions of the Member States: 1815–67

Several new duchy constitutions were developed after 1815, partly to adjust existing duchy procedures for the new territories governed, partly to reestablish local policymaking procedures after Napoleon’s defeat, and partly because the confederal treaty adopted in Vienna required the members to adopt a written constitution (article 13).²⁶⁹ Many others were reformed or had been reformed in

²⁶⁹ The requirement for written constitutions was clearly a compromise with German and Austrian liberals at the meetings in Vienna.

the period just before Napoleon's defeat. In both cases, the results reflected the interests of those participating in the constitutional negotiations.

During the late eighteenth and early nineteenth centuries, liberal political and economic theories were accepted by many in Germany, including university students and nobles that sat on royal advisory councils. Liberal theories and arguments were thus evident in constitutional and policy debates inside duchy parliaments. A few "enlightened" duchy rulers also pushed for liberal reforms in parliament using ideological, economic, and military arguments. After Napoleon, external threats were also taken more seriously, which provided an additional rationales for reducing internal trade barriers that discouraged industrialization. In these circumstances, new taxes could be traded for new legislative authority, as in Bavaria in 1808 and Prussia during 1810–15.

These pre-Vienna Congress factors were reinforced by liberal provisions of the confederal constitution, which included provisions for all citizens to be able to enter the civil service (rather than only nobles), freedom for all citizens to migrate and purchase land within the confederation, and equal rights for Christian churches (Holborn 1964: 446). Greater openness (reduced exit costs) would also have somewhat constrained duchy and local government decisions. As a consequence, the reforms of duchy constitutions in the early nineteenth century tended to be in liberal directions.

For example, Baden's constitution of 1818 included a lower chamber of parliament elected under wealth-based suffrage. Bavaria's constitution of 1818 included a bicameral parliament with a noble chamber and an elected chamber selected largely on the basis of wealth-based suffrage, although an eighth of the seats were reserved for noble landlords and another eighth of the seats for the clergy. Württemberg's constitution of 1819 included a unicameral parliament representing the three estates (church, town, and country) that had considerable veto power over new taxes and legislation. Such relatively strong, although far from dominant, parliaments were fairly common for the German duchies in that period (Möckel 1979: 261–65, Ogg 1918: 275–81).

The four city states (Hamburg, Lübeck, Bremen, and Frankfurt) had republican governments based on a mayor and council format. Three of the city-states had bicameral parliaments. Their second chambers were directly elected via wealth-based suffrage. Members of the first chamber were elected by the second and served as the city's ruling council, although both chambers had authority over legislation and taxes. A mayor (*burgomeister*) would in turn be selected by the ruling council as its chairman. The city councils had control over executive and administrative appointments and played central roles in determining public policies (Moraw 1989: 117, Ogg 1918: 280-1).

Liberal constitutional reforms slowed after 1819 as consequence of confederal decisions in Karlsbad, which reduced freedom of press and curtailed liberalism at German universities. However, modestly liberal constitutional reforms continued to be adopted. For example, in 1831 Saxony replaced an estates-based parliament with a two-chamber parliament; one chamber represented the old estates and the other was directly elected using wealth-based suffrage. Hanover adopted a relatively liberal constitution in 1833. There is also evidence of liberal influences in Bavarian constitutional developments. In mid century, liberal political coalitions often affected duchy and confederal German policies (Ogg 1918: 275–81).

This is not to say that liberals dominated constitutional or policy debates, but to say that the outcomes negotiated in duchy parliaments were affected by their interests. Conservatism was also clearly evident in the duchy constitutions throughout the nineteenth century. The old political institutions were not replaced by liberal ones, but although a few liberal reforms were introduced. In cases in which relatively large liberal reforms were introduced, the details often protected the interest of those involved in negotiations, as wealth-based suffrage tended to protect the interests of those already in government at the same time that liberal ideas about the proper method of choosing government officials were adopted. Institution-induced interests and the rationality of institutional conservatism do not change very much as the size of one's territory changes.

These conservative interests were buttressed by the central government's responsibility for defending aristocratic forms of the king-and-council governance. The old duchy institutions were largely restored, adapted to their new territories, and modernized, rather than rewritten whole cloth (Caldwell 1997: 17; Schmitt 1983: 19–21).

D. Liberalism in Nineteenth Century Germany

As in other parts of Europe, there was a significant body of political and economic liberal thought in late eighteenth and early nineteenth century Germany. As usual, there was no unique liberal position, but rather a broad range of arguments, persons, and organizations that supported reforms that would increase equality before the law, and/or support more open politics and markets.

For example, Immanuel Kant's 1793 essay "On the Relationship of Theory to Practice in Political Right (Against Hobbes)" provides a statement of liberal principles of political economy that places him as a moderate within the liberal spectrum of his time. Kant argued that a civil state is based on popular sovereignty, civic equality, and liberty:

The **civil state**, regarded purely as a lawful state, **is based on the following a priori principles: the freedom of every member of society as a human being, the equality of each with all the others as a subject**, the independence of each member of a commonwealth as a citizen.

No one can compel [a person] to be happy in accordance with his conception of the welfare of others, for **each may seek happiness in whatever way he sees fit, so long as he does not infringe upon the freedom of others** to pursue a similar end which can be reconciled with the freedom of everyone else within a workable general law—i.e. he **must accord to others the same right as he enjoys himself**.

These were the core beliefs of political liberals throughout the West. On the other hand, Kant, like Hobbes, grants the sovereign a monopoly on legitimate coercion and does not accept citizen's right of rebellion.

For he alone is not a member of the commonwealth, but its creator or preserver, and he alone is authorized to coerce others without being subject to any coercive law himself.

Whether Kant believed the latter was compatible with the former is not totally obvious. Although more liberal than appreciated outside of Germany, Prussia was not a liberal state at the time that Kant wrote (nor was France or England at the time Hobbes wrote a century earlier). In proclaiming limited sovereignty for his own sovereign or arguing in favor of a citizen's right to rebel when a sovereign violates the "a priori principles of a civil state," Kant would have been liable for state sanctions up to and including those associated with treason. Even an important philosopher knows when to curb his pen.²⁷⁰

The political writing of Kant's colleague Von Humboldt appears to be somewhat less inhibited in its advice to sovereigns. Von Humboldt was a very successful member of a recently elevated noble family. He had served as a Prussian minister and diplomat, was active in the founding of the

²⁷⁰ Kant's *Critique of Pure Reason* is sometimes used to classify him as conservative or anti-Enlightenment scholar. This classification, however, appears to use today's political spectrum (or at least that of the late nineteenth century), rather than the spectrum of liberalism that existed in 1800. In the eighteenth and nineteenth centuries, liberals generally criticized the existing aristocratic order, which was largely based on family privilege and status, and pressed for reforms that broadened opportunities.

Kant's critique of reason is not theological or historical, but rather a carefully crafted (rational) argument that attempts to demonstrate that reason has limits, which in 1800 would place him along side of such late-eighteenth century moderate liberals as Edmund Burke. The methodology of the critique is "liberal," as are many of its conclusions. To place excessive confidence in the power of reason is itself irrational and often tends toward illiberal ideas and institutions (Hayek 1989).

University for Berlin, and had been involved in constitutional negotiations at the Congress of Vienna.

Von Humboldt's critique of Kant is natural rights based and argues that the sovereign's main duty is to promote liberty, human development, and happiness:

A State, then, has one of two ends in view; it designs **either to promote happiness, or simply to prevent evil**; and in this latter case, the evil which arises from natural causes, or that which springs from man's disregard for his neighbor's rights.

If even to behold a people breaking their fetters asunder, in the full consciousness of their rights as men and citizens, is a beautiful and ennobling spectacle.

It must be still more fair, and full of uplifting hope, to witness a prince himself unloosing the bonds of thralldom and **granting freedom to his people**,—nor this as the mere bounty of his gracious condescension, but as **the discharge of his first and most indispensable duty**. (Von Humboldt [1792/1851] *The Limits of State Action*)

Von Humboldt arranged to have the *Limits of State Action* published after his death (1835). It was published until 1851, many decades after it was written (in the 1790s).

Liberals often rose to high posts in government, as had Von Humbolt in the first half and Eugen Richter in the second half of the nineteenth century (Raico 1990). Despite the difficulty of publishing books and editorials, or organizing demonstrations in favor of constitutional reform after the Karlsbad decrees of 1819, there were occasionally large illegal demonstrations favoring liberal reform. For example, in 1832, 25,000 persons assembled at the Hambach Festival for music and making political speeches favoring popular sovereignty, freedom of the press, and republican forms of government (Fulbrook 1990: 109).

There is also evidence that German conservatives gradually adopted more liberal theories of government as, for example, is suggested by the manifesto of the Prussian Free Conservative Party in 1867:

Absolutism has a glorious history in Prussia. Nowhere else in the entire world has this system of governance left a more indelible monument than in this state: the accomplishment of absolute monarchical power. But **the time of absolutism is past**. Today, it would destroy what it once brought into existence with creative force. Our people, like all civilized nations of this age, do not just need **a rightful share** in the **determination of their destiny** for their own satisfaction; the monarchy itself requires the cooperation of the people in order to fulfill its lofty mission. Only the crown of a free nation is due our monarch; **his throne rests most securely on the will of free men**.

Liberal Economic Reforms in the Early Nineteenth Century

Economic liberals were generally more successful than their political counterparts in Germany during the nineteenth century, because it tends to be easier to build coalitions favoring internal and external trade liberalization than for constitutional reform. Trade liberalization tends to advance the interests of those who expect to invest in or work for the larger economic enterprises that larger markets permit. By increasing the tax base, manufacturing expertise, and rates of technological innovation, industrialization also makes possible larger, better equipped armies and navies. Liberal economic reforms also can be more easily reversed than constitutional reforms if they don't work out as expected. Moreover, economic liberals were less affected by the Karlsbad decrees, as discussed in the next subsection, than political liberals.

The success of economic liberals is evident in a wide variety of reforms adopted during the late eighteenth and nineteenth centuries. For example, Prussia ended serfdom in 1807, reduced the tax preferences of nobles in 1810 and ended many aspects of the feudal estate in 1811. It ended internal tariffs in 1818. In 1828 Bavaria and Württemberg created a customs union. The states of Saxony, Hanover, and Brunswick created a commercial union. In 1833 a new customs union (*Zollverein*) was created and joined by most of the member states of the German confederation (Fulbrook 1990: 112–3). The customs union did not eliminate all intra-confederation trade barriers, but substantially reduced those barriers.

By mid-century, a number of politically active regional and national groups lobbied for liberal economic reforms. For example, in 1846 a German Free Trade Union was formed in Berlin by a group of businessmen led by John Prince Smith. By 1851 some 30 societies were affiliated with Smith's Central Association for Free Trade based in Berlin. Gatherings of proponents of free trade also occurred in Frankfurt in 1857. A similar gathering took place in Gotha in 1858, where free traders and leaders of the cooperative movement founded a new Economic Congress, which lobbied for free trade and other regulatory reforms for two decades. Proponents of free trade were also directly represented in national and regional parliaments, as in 1870 when Smith himself was elected to the lower chamber of the Prussian parliament (Henderson 1950).

As a consequence of the activities of these groups, a broad range of German tariffs were reduced during the middle of the nineteenth century. Public investments in transport infrastructure that were advocated by liberals were also undertaken. For example, the first railroad (between Nuremberg and Furth) was established in 1835, followed by many others, including one between

Leipzig and Dresden in 1837. New roads were built and old roads were paved. Canal networks were extended and steamboats began to operate on the Rhine (Fulbrook 1990: 113–14). Such reforms allowed a more integrated German market to emerge as commercial organizations and trading networks expanded to take advantage of economies of scale in production and greater specialization.

As noted above, support for liberal economic reforms is often pragmatic. That is to say, one does not have to become a political liberal to accept the economic case for ending medieval protections and promoting industrialization. In the sphere of economic policy, as Olson (1993) argues, sovereigns (and their officials) have an interest in promoting economic growth—as long as it does not place their sovereignty at risk. Indeed, many economic liberals argued that national security required economic liberalization. Nonetheless, there is evidence that economic liberals contributed to the economic policy debates and often drafted the reforms.

On the same [liberal] principle is to be explained the Edict of September 14th, 1811, which abolished the old prohibitions against the division of landed estates. On the **same principle** hereditary serfdom was abolished, and an effort made to regulate all forced services. **On the same principle** all trades were thrown open, all **monopolies of sale at particular mills and inns were abolished**, and “all props of idleness,” as Hardenberg puts it, done away. The guarantee for the new birth of the State [of Prussia] was sought, not in the artificial protection of the economically unfit, but in the development of the powers of the fit. **That policy has borne the most splendid fruits** (Bretano 1894: 76-77)

Although support for liberal economic reform tends to differ somewhat from that for liberal political reforms, economic reforms often have political consequences. Increasing freedom for the serfs and other farm laborers tends to weakened the landed aristocracy by reducing their local authority and their income from farming. Reducing the monopoly power of guilds and privileged towns weakens old urban centers relative to new ones. Reducing tariffs makes other taxes and parliamentary majorities more critical for funding government programs. Industrialization tends to produce a broad middle class that in the nineteenth century tended to support political liberalization and politically active liberal groups.

Censorship Limits Public Support for Liberal Political Reforms

The efforts of political liberals in Germany, however, were less successful than those of economic liberals, in part because debate on constitutional issues was limited by a variety of censorship and public assembly laws. The members of the confederal diet in Frankfurt represented, first of all, the political and economic interests of the sovereigns of their respective duchies. To

curtail popular demonstrations favoring liberal political reforms, the confederal diet adopted a series of national laws beginning with the Karlsbad Decrees of 1819, which forbade political gatherings, strengthened censorship, and discouraged the provincial diets from exercising “too much” power. The Karlsbad Decrees of 1819, for example, included the following provision:

Every Confederal state is answerable – not only to the parties directly offended, but also to the whole of the Confederation – for the published writings appearing under its supervision, hence for all [publications] included under the main provision of § 1, **insofar as the dignity or security of other Confederal states is thereby injured, [or] the constitution or administration of the same attacked.**

The central government had little ability to enforce such laws, because the member states were essentially sovereign entities, but the new laws provided duchy governments with a convenient rationale for suppressing ideas and groups that threatened their political and economic interests.

Historians often attribute these repressive policies to Metternich, who presided over the Confederal Council and Diet for three decades. However, it seems clear that censorship was one of the few areas in which the duchy leaders could find agreement. Local enforcement of the confederal laws varied somewhat. For example, Baden assured somewhat greater freedom of the press than in other duchies through its implementing legislation (Fletcher 1980). But, in general, the censorship laws and related strategies to reduce press autonomy were well enforced and had a lasting effect on political developments in nineteenth-century Germany.²⁷¹

During the first half of the nineteenth century, political censorship was reinforced by remaining internal trade barriers. Fetscher (1980: 379) notes, for example, that trade barriers prevented newspapers from realizing economies of scale. The price of the *Seeblatter* doubled as the newspaper left its town of publication (Konstanz) for other parts of Baden, and it doubled again as it crossed state boundaries. “Increases of 500–600 percent were not uncommon when several state borders had to be crossed.”

Harris (1987: 441) estimates that less than 1 percent of published pamphlets and books in Germany during 1848–71 can be classified as political, and much of what was published was done so anonymously. A freedom of the press law was finally enacted in 1874, but even then the effects of press freedom were reduced by Bismarck’s use of the Guelph Fund to hire reporters and support

²⁷¹ Similar laws were, of course, also adopted in other countries in the early nineteenth century to suppress demonstrations for constitutional reform, including England, as noted above.

newspapers that reported favorably on government policies and officials and opposed Bismarck's political opponents and their arguments.²⁷²

Liberal political ideas did not vanish from the minds of liberals with time to think about politics, nor did constitutional issues totally vanish from public discussion and demonstrations, as in Hanover in 1837 and Baden in 1837–44. The German censorship laws simply forced most liberal political and constitutional discussions underground, as side discussions in organizations created for other purposes, and at informal gatherings. Parliamentary debates, however, were largely free from censorship, which allowed relatively far-reaching debates on political reforms to take place through the publication of speeches made in national and duchy parliaments. And, of course, it was also possible to smuggle books and newspapers into Germany that were printed elsewhere.

In general, supporters of economic liberalization could more easily organize and disseminate their arguments, because publications supporting economic reform did not directly violate censorship law. They did not

threaten or violate the integrity of the German Confederation, the integrity and security of the individual confederate states, the maintenance of freedom and inner peace of Germany, **or aim at a democratic alteration of the Bund.** (paragraph 10 of the 1840 censorship ordinance, from Fetscher 1980: 385)

Efforts to lobby for economic reforms could be done in public through small organized groups, at universities, and in newspapers without violating prohibitions on political gatherings and political publications.

Political parties could be organized and campaigns for elective office on liberal economic policies. Liberal politicians and groups could publicly support liberal economic reforms, but only political reforms such as German unification, which did not threaten the confederal government or directly undermine specific duchy governments. And, many economic and political liberals were elected to the state parliaments on such platforms. Open support for greater parliamentary power or extended suffrage, however, would clearly have violated censorship and other confederal laws.

Indeed, a subset of liberals believed that political centralization would induce liberalization of the duchy governments, because of their successes in 1833, 1867, and 1871 and so evidently promoted German nationalism as a strategy for liberal reform.

²⁷² Censorship at the national level was greatly reduced in 1874, although editors could be tried for publishing controversial material. The censorship that remained was largely targeted at socialists for the rest of the century, even after the Social Democratic Party regained its status as a legal organization in 1890.

A Digression on the Rationality of Civil Disobedience

Confederal censorship and laws governing association tended to reduce public debates about constitutional reform, because they create risks (expected penalties) for the expression of one's true opinions, as discussed in chapter 7. Kuran's (1989) more dynamic analysis notes that the need for public expression and risk aversion varies among persons within every community. Consequently, the individuals that speak out and times when this occurs also tend to vary a good deal among people and places. He argues that the personal risk associated with the public expression of "private truths," tends to fall as the number of people expressing similar beliefs in public increases. In this way, a sudden wave of public demonstrations can be generated through a snowball effect as successively less intense and/or more risk-averse proponents of change join others who are already voicing dissent. Unlawful and other risky private beliefs are publicly expressed only when the risks from doing so are small.

Kuran's theory, in conjunction with German censorship, provides a plausible explanation for the reform demonstrations in Hanover and Baden. They also provides an explanation for the demonstrations in support for constitutional reform that took place between 1847 and 1849, when large number of persons in Germany (and in many other parts of Europe) turned out for large-scale demonstrations favoring liberal political reforms of various sorts. Outside of France and Austria, the 1848 demonstrations were more or less peaceful, although larger than had previously been experienced. Such public assemblies were "revolutionary" in the sense that they were illegal and novel in most places, although they were not revolutionary in the sense of being large-scale, violent, armed rebellions.²⁷³

The demonstrations in Germany in 1848, as in most other countries, favored a variety of economic and political reforms, but liberal ones dominated their constitutional proposals according to most historians. Demonstrators pressed for governance via rule of law, written constitutions, and expanded parliamentary powers (restoration of estate powers) and broader suffrage. "Radical" liberals insisted on universal suffrage, expansions of education, greater poor relief, and redistribution of wealth through land reform. Some groups, it should be acknowledged, also lobbied against

²⁷³ In Austria and France, considerable violence—as opposed to civil disobedience—occurred. Violence emerged in Vienna and the eastern parts of the Austrian empire, which induced Metternich to resign (at the Diet's request) and leave for safer ground in London. It also induced the aging Habsburg monarch to support constitutional reform. Violence also occurred in France, where a moderate king abdicated out of fear of a new French Revolution, which paradoxically led to a less constitutional form of government (that of Napoleon III).

economic liberalism: against external free trade and for a restoration of the old internal trade barriers.

In the political circumstances of 1848, it was not clear to duchy rulers whether what they observed was a precursor to revolution and overthrow, or simply evidence of broad support for constitutional and economic reforms. Most had never seen significant public dissent before, because such assemblies and their sponsoring organizations were illegal, and because of the personal advantages of law-following behavior when such laws are well enforced. In response to the demonstrations, the duchies often replaced a few cabinet ministers with liberal leaders from their parliaments.

Serious, high-level discussion of reforms was accepted by most demonstrators as success, and most demonstrators headed home to await reforms. Others who continued their civil disobedience, however, were forcibly dispersed—with many deaths in Prussia.

A Constitutional Convention in Frankfurt: May 1848–49

The most important of the high-level discussion in Germany took place in Frankfurt, where the confederal diet authorized a constitutional convention to meet and to propose reforms of the confederal constitution. Representatives to the constitutional convention were elected, although qualifications for suffrage included wealth or tax payment thresholds, as was the case for the duchy elections for their lower chambers. Turnout was small, and the result was an assembly composed largely of upper- and middle-class liberals. The constitutional convention had the power to propose reforms, but not to adopt them (Fulbrook 1990: 119).

The participants engaged in serious discussions and constitutional negotiations. A doctrine of fundamental rights was published on December 28. A rough agreement for a constitutional monarchy for Germany with an elected parliament and ministry responsible to parliament emerged early in 1849. A new German crown was offered to the king of Prussia in late spring by the convention. Other territorial issues were also addressed, but less successfully. For example, whether Germany should include the Polish parts of Prussia or the German-speaking parts of Denmark and Austria was never really settled. These involved religious and cultural divisions as well as geopolitical issues, and stable compromises could not be found. Many other issues also remained unsettled.

Unfortunately, the king of Prussia refused the constitutional bargain offered, and without Prussian support, little could be achieved at the confederal level. In the end, it proved far easier to agree that constitutional reform is necessary than to agree on specific changes, even within a single

political movement (Fulbrook 1990: 120–21). Although the conference itself was an important constitutional event for Germany because it was the first directly elected body for Germany as a whole, the constitutional conference ended in May with little effect on confederal governance. If large scale demonstrations were always sufficient to induce reforms, the confederal government would surely have been revised, but, this was clearly not the case.

The duchy cabinets appointed in 1848, however, were able to bargain directly with other policy makers for liberal policy and constitutional reforms. Such negotiations often produced constitutional bargains that included liberal reforms. For example, several duchy parliaments regained or enhanced their medieval rights of veto over taxation and legislation.

E. The Prussian Constitution of 1850

The most important of the duchy constitutional reforms was adopted in Prussia, where the constitution of 1848 replaced a traditional estates-based assembly that had been worked out during the 1840s, but only used in 1847. In 1850 the 1848 constitution was further modified, although not entirely in a liberal direction. In all three cases, Prussia's constitutional reforms were drafted with the king's support and subject to a royal veto. However, the constitutional reforms also had to be acceptable to those represented in the existing parliament, especially liberals, given the recent protests. The 1850 constitution thus included a large number of liberal constitutional features, although they were implemented in a manner that successfully protected preexisting political interests (Caldwell 1997: 17).

The reformed constitutional monarchy included a bicameral parliament with veto power over taxes and legislation (Caldwell 1997: 16–17). With respect to tax authority, it could be said that Prussia's new constitution approximately restored its medieval tax constitution. Regarding the organization of parliament, however, there were significant innovations. The upper chamber for the most part represented the interests of the ancient estates. It was made up of noble heads of household, city, and university representatives, church officials, and assorted lifetime appointments by the king. The new lower chamber was directly elected through essentially universal male suffrage, as insisted on by the radical liberals during the mid-century. Cabinet ministers were answerable to parliament, but only for constitutional infractions. The king retained control of the army and foreign policy.

Prussian qualification for suffrage were the most liberal in Europe at the time. However, the manner in which representation was determined from the votes cast was far less liberal and

unusually effective at preserving the preexisting distribution of political authority within Prussia. In other parts of Europe, the right to vote was determined by minimum tax payments, as also the case in most German duchies that held elections in 1850. In the Prussian constitution of 1850, however, it was representation, rather than suffrage that was determined by tax payments. The wealthiest taxpayers, who paid one-third of Prussian direct taxes, received one-third of the seats, the taxpayers paying the next third of direct taxes received a third of the seats, and the remainder elected the last third (Fulbrook 1990: 126; Ogg 1918: 257–60).²⁷⁴

This economic class–based system of representation made it possible for the king of Prussia and the aristocracy to accept essentially universal male suffrage without ceding significant political authority to the poor or middle class. A supermajority of the elected seats were determined by a small minority of German voters. Suval (1985: 233) reports, for example, that in 1888, after nearly four decades of industrialization, 3.6 percent of the electorate determined the first third of the seats, 10.8 percent the second third, and 85.6 percent determined the last third.²⁷⁵

The liberal cast of the 1850 Prussian constitution was not an accident, nor a fraud. It was not written to adopt the demands of those engaged in the demonstrations, as might have been expected by revolutionary theories of constitutional reform, but negotiated among persons already holding offices in the Prussian government. The negotiations included conservatives, pragmatists, and liberals, but the balance of interests at the table naturally favored conservatives (e. g., those opposed to political liberalization). The interests of those who had determined public policy in Prussia under its previous constitutions expected to control the upper chamber and the top-third of the second chamber. Moderate liberals were generally in favor of less than universal suffrage at this point, but expected to be well represented in the middle third of the elected chamber. Radical liberals and early social democrats were pleased to have suffrage extended to the working class and expected to be well represented in the lower third of the elected chamber.

The Prussian constitution was formally a law adopted by the sovereign, as true in most constitutional monarchies at that time. This usually created a variety of legal and practical issues about whether a king could simply revoke a constitution, which enhanced his government's

²⁷⁴ A similar three-class representation system was also used in most municipal elections within Prussia. In some 4,000 municipalities one or two persons controlled one third of the seats in the municipal assemblies (Ogg 1918: 259).

²⁷⁵ Participation also tended to be smaller in elections for seats in the poorest third (14–30 percent) than for seats in the wealthiest third (40–60 percent), as might be predicted by rational-choice models of electoral turnout. See Koch (1984: 382) for a table of eligibility and participation in earlier Prussian elections.

bargaining power with the parliament. Members evidently feared that if they pressed the king too hard, he would simply revoke the constitution.²⁷⁶

Constitutional bargaining in Prussia continued for the rest of the century, as liberals pressed for greater authority for the elected chamber and greater parliamentary control over ministers at the same time that many conservatives favored weakening the elected chamber. However, few reforms were accepted, and there was no clear liberal trend to the reforms until early in the twentieth century. This was in part because the constitution of Prussia already satisfied many liberal design criteria. It was also, of course, because the first chamber advanced the interests of those previously represented in Prussian government, who had little interest in reform.

The architecture of Prussia's 1850 constitution turned out to be important for the future of Europe, not because it was widely copied, but because the Prussian government that emerged under it played a pivotal role in German politics for the next 70 years.

F. German Unification and a New Federal Constitution, 1866–71

The German confederation's procedures and policies were not very much affected by the "revolution of 1848," and continued more or less as before, with relatively few policy decisions being made by the confederal government. Rather than liberalism and industrialization, the next three decades of constitutional reform in Germany were consequences of geopolitical tensions and wars between Austria and Prussia, the two largest and most powerful of the member states.

In 1866 a disagreement over the governance of a largely German-speaking duchy taken from Denmark in 1864 further polarized the confederation and led to a brief Austro-Prussian war. The military aspects of those wars are beyond the scope of this volume, except insofar as they affected constitutional developments.²⁷⁷ Prussia unexpectedly won the war with Austria and enlarged its territory by annexing several of the defeated Austrian allies in the north. The duchies of Hanover, Hesse-Kassel, Frankfurt, and Nassau became parts of Prussia, as did the former Danish duchy of Schleswig-Holstein.

Prussian territory after the war included most of present-day Northern Germany and part of present-day Poland. This made Prussia by far the largest of the German duchies. Prussia's victory

²⁷⁶ Kings often threatened to revoke "their" constitutions during the nineteenth century, although none were carried out. In long-standing parliamentary systems, institutional conservatism tended to make such threats less credible. The plausibility of such threats also diminished as the fiscal changes increased the bargaining strength of parliaments in the late nineteenth century.

²⁷⁷ See Bueno De Mesquita (1990) for a rational choice and statistical analysis of the Austro-Prussian war.

over Austria also implied that Prussia was also militarily the strongest member of the German confederation. The new balance of military power and political influence in Germany created new constitutional gains to trade.

The Constitution of the Northern Confederation: 1866–71

The Prussian government encouraged the remaining independent northern duchies to leave the old confederation, as it had done, and to join a new northern German confederation. A draft of a constitution for the new Northern Confederation was proposed by the Prussian government, and negotiations were undertaken among potential members. Membership in the new confederation was voluntary, but constitutional negotiations and internal deliberations regarding membership were undertaken in the shadow of the recent Prussian annexations.

To be adopted, the new confederal treaty had to account for the interests of its potential member states, which would require advancing the interests of duchy rulers and majority support by their parliaments. Partly for this reason, the proposed federal constitution of the Northern Confederation was loosely based on the proposals of the Frankfurt convention, and it satisfied a number of liberal design criteria for constitutional monarchies. The architecture of the new constitution, however, was designed with Prussian, rather than liberal, interests uppermost in mind.

The new government would consist of a sovereign king (initially referred to as the president of the federation), a council of ministers appointed by the king, and a bicameral legislature. The king appointed the council without parliamentary review, although the chancellor was subject to parliamentary oversight (although he did not require its support). The members of the federal chamber of the parliament (Bundesrat) were appointed by member-state governments and had the power to initiate and veto all legislation. In this the new federal chamber was similar to the diet of the German confederacy that it replaced. Voting in the federal chamber also used weighted voting. Member votes would be weighted roughly by population. Prussia held 17 of 43 votes in the federal chamber. Most other member states had only one or two votes (Renzsch 1989: 20–21).²⁷⁸

The second chamber (*Reichstag*) was new and of greater interest to liberals. It was directly elected in single-member districts by essentially universal male suffrage and had veto power over taxes and

²⁷⁸ Prussia included 20 million of 25 million of the confederation's residents after its expansion, and, thus, Prussia was in this sense *underrepresented* in the Bundesrat (Koch 1984: 110). Except for Prussia, the voting weights simply continued those of the German Confederation. This was also the case for the southern duchies when they joined in 1871, with the exception of Bavaria, which received 6 votes (Ogg 1918: 217-8).

legislation, although no formal power to initiate or amend legislation or budgets. (Men older than 25 years old who were not on poor relief or in bankruptcy could vote.) The electoral districts reflected historic community boundaries within the member states, and most districts initially represented about 100,000 voters (Suval 1985: 228). Of the 297 elected representatives, 235 were from Prussia, 23 from Saxony, and 3 from Hesse with similar or lesser numbers for the rest of the small duchies. Secret ballots were used, and voters could cast votes only in a single district.²⁷⁹ Electoral competition was clearly evident in most districts after the confederal treaties were ratified. A large number of groups obtained seats. The king (who would be Prussian) retained control of military and foreign policy.

Although the new constitution satisfied many liberal criteria for governance, Prussia's control of the executive branch and its large representation in both chambers of parliament effectively made the Northern Confederation an extension of the Prussian government. It had a Prussian king, who was inclined to appoint Prussian ministers to the council and other senior posts in the confederal government. For example, Wilhelm I appointed Bismarck to be chancellor and selected only Prussians as cabinet ministers. Prussia's representation in the federal chamber allowed it to effectively control the federal council. Even in the elected chamber, Prussian interests were likely to be decisive because of its relatively large population, although the interests represented were not necessarily the same as those of the Prussian government. The particular Prussian interests that would be advanced were largely determined by its 1850 constitution, which gave a relatively narrow cross-section of wealthy Prussians decisive control of both chambers of the Prussian parliament and the King control over its ministry.

Bismarck's proposed constitution for a Northern Confederation was sent to a popularly elected constitutional convention at about the same time that Prussia formally withdrew from the German Confederation in June 1866. In August a treaty of confederation was laid before the remaining northern duchies and independent cities. Liberals secured significant economic and procedural changes, including the right of the elected chamber to call the chancellor before it to defend government policy and veto power over the entire budget, as opposed to just the domestic budget (Hudson 1891, Koch 1984: 106–10, Feuchtwanger 2002: 152–57).

Formal procedures of ratification took place in the new member states, and the result was ratified by the new confederal parliament (Hudson 1891). Prussian approval was assured by the

²⁷⁹ An English translation of the Electoral Law for the Reichstag of the North German Confederation (May 1869) is available from the *German History in Documents and Images* project.

recent military victory over Austria, which increased Bismarck's popular and royal support and, thereby, the Prussian parliament's inclination to accept Bismarck's proposed constitution.²⁸⁰

The extent to which the implicit threat of further annexation was decisive for the other member states can be assessed by examining the constitution itself, which is less one sided than one might expect. Bismarck had clearly designed the constitution to secure support within the Prussian parliament and assent by potential members. Nonetheless, his proposed draft was rejected and significant amendments were incorporated during the first meetings of the confederal parliament in 1867. Liberal members of the new Reichstag lobbied for and secured amendments that broadened and strengthened the powers and privileges of parliament:

Reichstag members were granted legal immunity, the press was guaranteed the right to report Reichstag speeches regardless of content ... time tables for elections following a dissolution were accepted ... Reichstag ratification of certain types of treaties and ... real power over federal taxing and spending were adopted. (Mork 1971: 65-66)

In the years that followed, the right to publish Reichstag speeches allowed public debate to take place on many controversial issues, in spite of continued censorship of books, newspapers, and universities. Laws guaranteeing freedom of movement within the confederation were adopted in 1867. Equal civil rights, specifically those related to political office and participation, were extended to members of all religious groups in 1869. A common northern market emerged.

The 1871 Federal Constitution of the German Empire

The Northern Confederation's constitution formed the foundation for Germany's future constitutional development, because the southern duchies joined the Northern Confederation a few years later. German unification was widely supported among nearly all groups, including conservatives, liberals, radical liberals, progressives, and moderate socialists. Access to northern markets was of interest to southern industrialists and bankers. The militant policies of Napoleon III had also increased the apparent Southern benefits from affiliation with a larger more powerful polity. New treaties of association were negotiated, and the results were codified in a slightly

²⁸⁰ It is interesting to note that the Prussian parliament opposed the war. Consequently, budgets for the war with Austria were not approved by the parliament, as required under the 1850 constitution. Instead, Bismarck used money appropriated for other purposes to fund the war and began efforts to sell national railroads. His success in the war, however, produced ex post support for his Danish and Austrian policies and also divided the liberals in the elected chamber. This in combination with a few concessions to moderate liberals allowed his military budgets to be approved retroactively in 1867 (Stern 1977: 20-95).

amended constitutional treaty in 1871. In this manner, a new federal German state (with 25 states) became a reality, rather than a dream of nationalists.²⁸¹

The 1871 federal constitution of Germany was based on that of the Northern Confederation, which in many respects was among the more liberal constitutions in Europe at the time. The federal chamber, the Bundesrat, as in the Northern Confederation, consisted of representatives of the member states (duchy and free city) and were appointed by those governments. A (roughly) population-weighted voting system based on the voting weights in the Confederation was used in the Bundesrat; Prussia again had the most votes (17 of a total of 58), Bavaria the second most (6), and the rest of the duchies and cities between 1 and 4 votes each. Because duchies were normally ruled by king-dominated forms of the king and council template, the Bundesrat tended to be populated by nobles, although it was not formally a noble chamber. (The fact that no salaries were paid to members of either chamber also tended to limit members to relatively wealthy persons, although no wealth restrictions were included.) The Bundesrat was self-calling in that a request by one-third of its members required the king (kaiser) to call it into session.

The directly elected second chamber, the Reichstag, was selected on the basis of unusually broad suffrage using a secret ballot, and the distribution of votes among the duchies was based on population, rather than wealth or class, as in Prussia. National suffrage was not only broader than most of the duchy parliaments, it was broader than most of Europe in 1871. Electoral districts initially included about 100,000 voters each. The Reichstag had veto power over budgets and legislation. The Reichstag was also self-calling, and if dismissed by the king, new elections had to be held within 60 days and a new meeting held within 90 days. Ministers could be called for questions, but could not be formally sanctioned by the Reichstag, except for constitutional violations. Criticism from this chamber, nonetheless, often induced ministers to resign, as in 1867, 1869, and 1872.

²⁸¹ The Prussian king initially served as its president and hereditary ruler of the Northern Confederation, rather than its “king” (or kaiser). The executive office of the Northern Confederation was not a royal one, to which local rulers owed fealty. That changed in 1871 when the southern duchies joined. However, obtaining the new title required some negotiation. For example, the Bavarian king received a cash side payment in compensation for transferring some of his authority to the emperor. There were also some special provisions for Bavarian autonomy (Koch 1984: 108–12, and 119–21).

The title emperor was necessary because several of the duchies were ruled by kings. The name of the confederation was also formally changed to the German Empire (Deutsches Reich, rather than Norddeutscher Bund) by the 1871 constitution, after the elevation of the Prussian king to emperor (kaiser). The term king is used in the text to maintain consistency, and the new government is often referred to as the third confederation rather than the second empire.

Selection of the German chancellor and control over Germany's military and foreign policy, were retained by the king (who was simultaneously king of Germany and Prussia). This responsibility was important, because the main duty of the central government was initially national defense, foreign affairs, and the promotion of internal free trade, which were all controlled by the kings and his appointed council of state (Mork 1971: 67–68; Stern 1977: ch. 9; Koch 1984: 122–27, Ogg 1918: 217–24). All other laws were also formally royal proclamations, but new laws had to be approved by both chambers of the parliament and countersigned by the chancellor.

The constitution also included provisions for German citizenship, a national currency, railroad development, and government finance (via indirect taxation). It also standardized commercial and military law and specified that all persons were subject to seven years in the army, including three years of active duty. Amendments to the constitution required a three-quarters supermajority in each chamber of parliament. This implied that constitutional reforms could be blocked by 14 (of 58) votes in the Bundesrat, which gave Prussia veto power on constitutional reforms, because it had 17 votes. Constitutional reforms favored by Prussia, however, required supermajorities of the weighted votes from the other duchies in the Bundesrat and also a majority in the Reichstag.

The difficulty of formally amending the federal constitution locked in the core policymaking procedures and fiscal constraints of the central government, and some aspects of its military organization. Constitutional stability was further reinforced by the stability of Prussian elite interests and Bismarck's ingenuity at forming majority coalitions in the parliaments of the next two decades. Changes in the representation of either chamber were very unlikely to occur, nor was it likely that ministerial responsibility could be formally introduced.²⁸²

Politics in the Third German Confederation

The federal government's pan-German policies and national assembly created incentives for new pan-German political organizations to be formed. For example, it was at the first meetings of the Confederal Reichstag that national political parties began to take shape, for example, the National Liberal Party was established on February 27, 1867. A Catholic Center Party formed in 1871, a Social Democratic Party was formed in 1875, and a Conservative party in 1876 (Blackbourn

²⁸² An English translation of the constitution of 1871 is available from the *German History in Documents and Images Project*.

1998: 264–69).²⁸³ The early political parties were often loose affiliations of regional organizations that were prone to disagreements on specific policies, especially those with different regional effects. German liberals, for example, had already become divided about Bismarck's constitution for the Northern Confederation, and divisions among right, center, and left liberals continued through the rest of the nineteenth century.

Disciplined national political parties did not emerge for two decades, as loose alliances of fellow travelers on the right, middle, and left, frequently formed, divided, and reformed during the next several decades (Mork 1971: 64; Koch 1984: 140–47; Schonhardt-Bailey 1998). This reduced subsequent liberal influence on policy and constitutional developments in the federation. (Indeed, many of the provisions on which late nineteenth century liberals could have agreed were already incorporated in the constitution.)

Absence of Constitutional Reform during the Bismarck Era

Bismarck's constitution proved durable and relatively stable. During the late nineteenth century, kings in other parts of Europe began to give up their formal powers of appointment and control of foreign affairs in negotiations with parliament on budgetary matters. This did not happen in the new federal government of Germany, partly because of the particular alignment of interests within Prussia, partly because of the stability of the Prussian constitution, and partly because of Bismarck's extraordinary ability to use divisions in the Reichstag to create temporary majority coalitions in support of his government's policies (often by exploiting fears associated with imaginary international and internal crises).

The king, his chancellor, his ministry, and the rulers in other duchies had very similar views on how to advance their interests and how this should be done, which reduced opportunities for constitutional reform. In Bismarck's words:

We would **have succumbed to a parliamentary rule in the past 17 years**, if the princes [duchy rulers] **had not stood firmly by the Reich** ... the opposition in the parliament would be much reinforced if the present solidarity of the Bundesrat came to an end and Bavarians and Saxons made common cause with Richter and Windtorse.

²⁸³ The Social Democratic party was banned during 1878–90, although its members were able to stand for election to the Reichstag and were elected (Blackbourn 1998: 412–13). Previous to this campaign against the socialists, Bismarck had launched a campaign against the Catholics, especially the Jesuits, who were banned from Germany. Some 1,800 Catholic priests were jailed or exiled during that earlier campaign. While Social Democrats were banned, some 1,500 persons were imprisoned (Blackbourn 1998: 262–63).

It is therefore the right policy for your highness [Wilhelm II] to address yourself in the first place to your princely cousins. (Letter from Bismarck to Wilhelm II just before his accession in 1888, quoted in Feuchtwanger 2002: 241)

The absence of constitutional reforms does not imply that the elected chamber failed to exercise influence on policy, nor that influence could not potentially be used in constitutional bargaining. Parliamentary influence is evident in economic legislation of direct interest to liberals and in a variety of other matters, including military ones. For example, Schonhardt-Bailey's (1998) statistical analysis of role-call voting in the Reichstag demonstrates that economic and partisan interests affected votes on tariff policies. Tariffs increased in 1879, diminished in 1891–94, and subsequently increased again in 1902. Internal and external tariffs were reduced during the period in which liberal coalitions were important, even though these were important revenue sources. As the free trade coalition splintered and pragmatists lost confidence in the merits of free trade (or acquired economic interests that trumped their ideological inclinations), tariffs rose.

It was normally effective politics, rather than institutional design or threats, that allowed Bismarck to have his way in the Reichstag. "Anti-liberal" restrictions were adopted by the Reichstag by "his" more or less conservative coalitions. For example, a substantial weakening of the Reichstag's veto power on the military budget was engineered by Bismarck, who persuaded a majority of its members to accept a seven-year budget cycle for defense appropriations (about 90 percent of the central government's budget at that time), rather than face new elections in 1874 on the "wrong side" of the national defense issue (Mork 1971: 70–73, Feuchtwanger 2002: 187–88).²⁸⁴ Restrictions on political participation were accepted in 1878, when the Social Democratic Party was temporarily banned from politics.

This political ingenuity is also evident in Bismarck's last major reform, the social security program passed in 1889 with the encouragement of the new King Wilhelm II. As a master at building majority coalitions by exploiting national security concerns, Bismarck naturally used a national security argument to support federal old-age pensions:

I will consider it a great advantage when we have 700,000 small pensioners drawing their annuities from the state, especially if they belong to those classes who otherwise do not have much to lose by an upheaval and erroneously believe that they can actually gain much by it. (quote taken from Riminger 1968: 414)

²⁸⁴ Feuchtwanger (2002: 188) notes that "Bismarck was not sorry to see a compromise emerging, for a perpetual [military] budget would have weakened his position against the generals and made him that much less indispensable, as the only man who could manage the Reichstag."

German social insurance programs was thus adopted over the objections of most liberals and Social Democrats with the support of Catholic centrists and nationalist conservatives in the Reichstag.²⁸⁵ The new social security program in combination with national health and disability insurance adopted in 1883 and 1884 created the most extensive liberal welfare program in Europe at that time, although they were modest programs by today's standards.

The durability of the basic structure of Bismarck's social welfare program with its "pay-as-you-go" financing made it quasi-constitutional in nature, and it is one of the few parts of Bismarck's constitution that survives to the present in Germany and elsewhere.²⁸⁶

Constitutional Bargaining Intensifies after Bismarck: 1890–1918

After the death of King Wilhelm I at the age of 91 in 1888 and the departure of Chancellor Bismarck at the age of 75 in 1890, the nearly invisible shift of policymaking authority from the king to parliament that had occurred during Bismarck's tenure of office, became more apparent.²⁸⁷ In the post-1890 period, the chancellor's term of office was much shorter than before, because the new chancellors could not replicate Bismarck's genius for coalition politics. For example, Chancellor Caprivi's term lasted only from 1891 to 1894, and his resignation was in part induced by a failure to obtain Reichstag approval for an army reform bill in 1892. Chancellor Hohenlohe's government

²⁸⁵ Although universal suffrage allowed social democrats to run for office, socialists were generally blocked from political assemblies and did not have many votes within the Reichstag at this time. (Fulbrook 1990: 133–34, Koch 1984: 384–85). The left-of-center parties, however, evidently voted against their own constituents' interests in an effort to keep a unifying issue for future campaigns (Riminger 1968: 414–15).

²⁸⁶ This is not to say that Bismarck's only long-term impact was on social welfare programs. His constitutional innovations continued to be important factors in German politics for the next four decades and also, indirectly, in Japan. Also, his aggressive mode of domestic politics tended to promote polarization, which made constitutional compromise more difficult. In Richter's (1890) words: "... existing confessional differences were exacerbated, on the one hand, through the battle over church policy, carried out by way of the police and criminal regulations, and on the other hand, through the chancellor's attitude toward the development of the anti-Semitic movement. The rampant growth of interest parties, striving ruthlessly to exploit state authority at the expense of the general good, can be attributed to the policy of protective tariffs and to the kind of agitation for protective tariffs that the chancellor personally called for and fueled. The incitement of the parties against each other, the suspicions cast upon people's patriotism, and the denial of patriotism to any political dissident all result from a press corrupted by the Guelph Fund." (*Freisinnige Zeitung*, no. 68, March 20, 1890)

²⁸⁷ There was a short reign between Wilhelm I and Wilhelm II by Friedrich III in 1888, but Friedrich died within a year of his accession to office. Wilhelm II was the son of Friedrich III who was the son of Wilhelm I. 1888 is, for that reason, sometime referred to as the year of three emperors, as the German sovereign passed from father to son to grandson.

lasted a bit longer, six years (1894–1900), because he was more successful at building coalitions in the Reichstag (Sammlungspolitik). However, following a number of crises, Hohenlohe retired in 1900. Bülow remained in office for nine years, from 1900 to 1909. However, budget deficits increased as conservatives refused to raise taxes to support Wilhelm II's military buildup. Bülow subsequently resigned in 1909 when his coalition in the Reichstag disintegrated over fiscal reform. His successor, Holleweg, also struggled to find a stable coalition of support for expanding military expenditures. In 1912 the Social Democrats became the largest party in the Reichstag, which made pro-government coalitions even more difficult to assemble (Fulbrook 1990: 142–43).

The turnover of chancellors in 1890–1912 suggests that Bismarck's success came from effective coalition-building strategies that his successors lacked. Indeed, it could be argued that Germany's entry into World War I was partially a method of circumventing parliament—in that the sovereign had complete control of military and foreign policy during emergencies.

That liberal influence were present in the Reichstag is evident in a number of policy reforms adopted. Coalitions of economic liberals and progressives in the German parliament, often supported by Wilhelm II and the Social Democrats, were able to press for significant economic reforms that eliminated remaining feudal and mercantilist restrictions, abolished usury laws, established a legal basis for corporations, reduced restrictions on the free practice of crafts, removed restrictions on travel within Germany, and reformed the judiciary. Freedom of parliamentary debate and freedom of the press were broadened.

Overall, there is considerable evidence that the Reichstag's power of the purse became more important after Wilhelm I's death and Bismarck's retirement.

The Final Steps to Parliamentary Democracy: 1918–20

The final step to parliamentary democracy in Germany required a substantial increase in parliament's authority over public policy, rather than suffrage expansion, in contrast to the other countries analyzed in this book.

An increase in parliament's authority does not necessarily require ideological support, as tends to be the case for suffrage reform. Nor does an increase in parliament's authority require formal constitutional reforms. It is sufficient that the royal government becomes increasingly dependent on majorities in parliament to advance the king's agenda, whatever that agenda might be. In Germany, however, the usual liberal fiscal bargains could not be obtained, because Wilhelm II was not willing to accept ministers from the Reichstag's majority parties.

There were a variety of proposals for the reform of the German confederations' constitution, but no ingenious liberal was able to find a proposal that secured mutual gains for both the king and three-quarters of the national parliament until the desperate times toward the end of World War I in 1918. There were proposals for proportional representation, ministerial responsibility, and women's suffrage, although nearly all were rejected. Members of the parliament were, however, paid salaries following a 1906 amendment to the constitution.

Constitutional reform proposals were somewhat more successful in the duchies. For example, suffrage was liberalized in Bavaria, Baden, Hesse, and Württemberg by reducing or eliminating wealth restrictions for suffrage and changing from indirect to direct representation. Weighted voting was introduced in Hamburg and Hesse as part of the price of extended suffrage. In Saxony, suffrage was expanded, although a wealth-weighted representation system was introduced (Suval 1985: 232–33, 240; Blackbourn 1998: 409–10). In Prussia itself, significant reforms of local government were adopted, which reduced noble (Junker) hereditary rights, with the support of the Wilhelm II, who elevated a sufficient number of distinguished liberals so that the local government reforms could be approved in the noble chamber (Mork 1971: 67–68).

Constitutional negotiation at the national level continued through World War I, and significant reforms were finally accepted by the king toward the end of the war, although it is not clear whether a constitutional bargain was truly concluded or not.

In late 1918 the conservative war cabinet resigned, and a new moderate chancellor was selected (and ratified by a parliamentary vote). Chancellor Prince Max von Baden proposed constitutional reforms including the reform of suffrage (ending the three-class voting system of Prussia), ministerial responsibility to parliament, and control of the armed services by civilian government. These were accepted by Wilhelm II in October. However, parliament also insisted that Wilhelm II abdicate in favor of one of his sons, but he refused. Nonetheless, the October reforms were very popular among liberals and Social Democrats, who organized rallies and speeches to celebrate their success throughout Germany (Fulbrook 1990: 157; Orlow 2008: 95–96).

Unfortunately, as constitutional negotiations were being finalized, the king left Berlin to consult with his loyal generals. This was regarded as an act of bad faith and called into question whether the constitutional reforms accepted in October would be implemented. A constitutional coup was feared by reformers.

Partly because of Wilhelm II's apparent failure to abide by his constitutional bargain, Germany underwent an even more radical series of reforms in the next few weeks. The king's trip to his

generals helped to excite large-scale republican demonstrations by the moderate and far left throughout Germany. Local rulers accepted republican demands and resigned their offices, beginning with the king of Bavaria on November 7. In the following two days, most other duchy rulers abdicated in favor of their parliaments, although the duchy bureaucracies remained largely in place. Wilhelm II subsequently abdicated from Germany's imperial office on November 9, although he did not formally give up his Prussian crown until November 28 (Orlow 2008: 106–107).

There was no longer a German king or council of state with veto power over reforms, which provide new gains from constitutional exchange among members of the parliament. Chancellor von Baden resigned on November 9, after transferring his office to the Social Democratic leader of the Reichstag, the largest party in the Reichstag. This was done in a somewhat extra-constitutional manner, because parliament was not in session at the time and so could not provide the new chancellor with the vote of confidence required by the October reforms (Orlow 2008: 106).

The transitional government was based on constitutional proposals discussed before Wilhelm II's abdication. Representatives to a new Reichstag (National Assembly) were elected in January of 1919, and members of a new Bundesrat (Committee of the States) were appointed by the *länder* governments. The government (council of ministers) was appointed by a majority coalition of the new National Assembly, which was a center-left coalition of Social Democrat, Liberal, and Center Party members under the leadership of the Social Democrat Friedrich Ebert.

The new government called for a formal constitutional convention, which took place in the small city of Weimar.

The Weimar Republic

The first drafts of what became the Weimar constitution were prepared before the elections for the constitutional assembly. Hugo Preuss, a left liberal was given the task of writing a constitution a month after Wilhelm II's abdication. His draft constitution was discussed at length within the provisional government, by members of the Reichstag, and by a few distinguished scholars, including Max Weber. Those early drafts were subsequently revised in negotiations at Weimar, where among other changes, the office of president was strengthened. Approval, required majorities in the National Assembly, the Committee of the States, and by transitional government (Kolb 2004: 17–19). There was no longer a king or royal council of state to veto proposed reforms.

The proposed constitution adopted reflected institutional conservatism, in that it was largely based on the template of Bismarck's federal constitution, although it included a much stronger Reichstag, a weaker federal council (the Bundesrat was replaced by a Reichrat), and an elected president, rather than a king or hereditary president. The president was elected with a fixed term, but nonetheless had essentially royal powers during emergencies. He could appoint ministers, dissolve parliament, call new elections and national referenda, and rule by emergency decrees during times of crisis. The cabinet was responsible to parliament, and could serve only with continued majority support. The electoral basis of the Reichstag was changed in two ways: proportional representation was introduced and suffrage was extended for the first time to women. The constitution was approved after several months of negotiation and bargaining on August 11, 1919.

It is interesting to note that the Weimar reforms of the German parliament paralleled those being adopted elsewhere in Europe at about the same time. The new constitution created a government dominated by parliament and grounded in elections with universal adult suffrage. The formal transition also was largely constitutional and lawful, although governance in Germany was neither peaceful nor orderly in the period in which constitutional reforms were negotiated, nor entirely so in the years that followed. As in many other countries, central government's authority to use income taxation for revenues was adopted at the same time that other constitutional reforms were adopted as part of a constitutional bargain. The governments of the former duchies, *now länder*, also became republics after their governments had resigned. The *länder* retained considerable local fiscal and regulatory authority under the new constitution, although the central government had somewhat greater powers to tax than before.

In this manner, constitutional negotiations, often in the shadow of wars, made Germany a parliamentary democracy, although a republic, rather than a kingdom.

The Weimar Republic survived as a parliamentary democracy for only 14 years, after which it was captured and then effectively overthrown by the National Socialist German Worker's Party in early 1933–4 by exploiting its emergency powers provisions. Whether the Weimar constitution's failure was an inevitable event or a matter of bad luck, as believed by this author, is beyond the scope of this book. It seems clear, however, that the lack of continuity in political institutions and leadership at the national and *länder* levels, together with significant errors in the Weimar constitution contributed to the failure of the new German republic. These, together with the breakdown of law and order associated with the radicalization of German politics, paradoxically allowed Hitler to argue for and obtain emergency powers for his chancellorship in 1934, and

subsequently to end competitive politics and constitutional governance in Germany for more than a decade. Hitler's use of the Weimar Republic's provisions for emergency power (after 1934), demonstrates how quickly supra-constitutional authority can reverse a century of liberal progress.²⁸⁸

It is interesting to note that with the death of Hitler in 1945, the Weimar constitution essentially returned to force, as specific enabling acts expired and the offices of chancellor and president became separate again. Given this, it is not surprising that the "new" post war constitution for Western Germany is broadly similar to the Weimar constitution in its bicameral architecture and in much of its language, although its various emergency powers provisions (i.e. Article 48) were eliminated (Koch 1984:315-7, 340-3).

G. Conclusions and Overview

Overall, German constitutional history from 1815 through 1925 is largely consistent with the models developed in part I. Although military events were unusually important factors as catalysts for constitutional negotiations and development, the constitutions adopted were negotiated by members of parliaments, councils of state, and kings, rather than imposed by victorious armies or drafted by leaders of mass demonstrations. There were clear constitutional trades and compromises in each successive reform and constitution. There were also liberal trends. Suffrage and civil liberties expanded. Party competition and a relatively free press emerged by the end of the nineteenth century. The importance of parliamentary majorities tended to increase as national budgets increased

²⁸⁸ Hitler was appointed to the post of chancellor in January 1933 as the leader of the largest party in the Reichstag, having overtaken the Social Democrats in the 1932 elections. Emergency legislation was adopted in February, reducing freedom of the press and assembly, and new elections were quickly held, which increased the number of seats held by Hitler's coalition in the Reichstag. A temporary "enabling law" was passed in March by two-thirds supermajority in the Reichstag, as required for constitutional amendments. Articles 1–3 of the "law for the recovery of the people and the Reich from suffering" formally allowed the government to adopt new laws through unconstitutional procedures. (English translations of the title and details of the act vary somewhat.) For example, the act explicitly allows the Reich government to adopt fiscal policies without parliamentary review (Koch 1984: 306–11).

In 1934, following the death of President Hindenburg, the posts of chancellor and president were formally merged, instead of holding new elections for president as required under the constitution. The creation a new executive position, Führer, was a major constitutional reform, although it was adopted without formally amending the constitution. Hitler was appointed to the new position which combined executive authority with emergency powers. The enabling act, perhaps surprisingly, was renewed by the Reichstag in 1937, as required by the time limit included in the act. It was the unconstitutional merger of the Presidency and the Chancellorship that effectively ended the Weimar Republic.

and more disciplined national parties emerged, especially in the two decades before World War I. Internal liberal and economic pressures were sufficient to end feudalism and produce relatively liberal trade regimes internally and externally. Economic life in Germany became more urban, commercial, and industrial during the nineteenth century.

Suffrage and parliamentary authority were quite different phenomena in Germany, as predicted by the analysis of part I. Liberal pressures for constitutional reform were sufficient to obtain very broad suffrage at a very early date, although suffrage was not the only constitutional matter negotiated in 1850. To obtain the necessary support from conservatives required accepting other constitutional details that reduced the potential effects of broad suffrage on public policy. Indeed, parliamentary dominance never completely emerged in the third German confederation (second Reich).

This was evidently largely because of the particular persons involved in the negotiations between kings and parliaments. Only in late 1918, after several important veto players disappeared, were significant reforms of parliament adopted. German and world history might have been very different if Wilhelm I had accepted the proposal of the Frankfurt convention, if Bismarck had been less adept at forming majority coalitions, or if Wilhelm II had engaged in a bit of constitutional bargaining with his parliament a decade or two before World War I. In this, the German case can be said to be the converse of the British case, where parliamentary dominance emerged several decades before universal suffrage was adopted.

The reforms adopted at Weimar after Wilhelm II abdicated also reflected institutional conservatism, liberal theories of governance, and constitutional bargaining. The bargains struck produced reforms that were consequently very similar to those adopted by other European countries at approximately the same time, where similar theories and interests were represented at the negotiation tables.

Chapter 17: The Japanese Transition to Democracy and Back

A. Introduction

The first four case studies might lead readers to conclude that there was something unique about European culture that made it “ready” for parliamentary democracy in 1815. The king and council template had long been used for European governance and provided numerous opportunities for peaceful constitutional reform. Liberalism can be regarded as the political reform agenda of the enlightenment, and many of the technological innovations of the eighteenth and nineteenth centuries can be regarded as consequences the enlightenment’s emphasis on reason and nature. It can be argued that after a two or three century delay, the enlightenment produced the gains from constitutional exchange that led to parliamentary democracy. Insofar as the enlightenment can be considered European in origin, it might be argued that European ideas and institutions made Europe uniquely able to shift from autocracy to democracy without revolution.

The theory developed in part I is, however, not a theory of European transitions. It suggests that similar ideas and opportunities for constitutional bargaining will exist in other societies in which broadly similar institutions are in place and trends in constitutional bargaining opportunities favor liberal reforms. The last two case studies demonstrate that the European transitions were not unique.

Chapter 17 focuses on Japanese constitutional history in the nineteenth and early twentieth centuries during which parliamentary democracy emerged and then receded.²⁸⁹ As in the European cases, the king and council template of governance was widely used in Japan for governance at national, regional, and local levels. Constitutional negotiation and exchange were also commonplace in its medieval period, although there were no liberal trends in the constitutional bargains negotiated. During the late nineteenth and early twentieth centuries, liberal trends in economic and political reforms emerged for reasons similar to those in Europe. Coalitions that favored economic and political liberalization were in positions of sufficient authority to bargain with others in government and obtain modest reforms.

Insofar as liberalism and many of the new production technologies were imported from Europe, it can be argued that the enlightenment also influenced the course of reform in Japan.

²⁸⁹ This chapter is based on research presented at the 2006 meeting of the Japanese Public Choice Society, where many helpful comments were received. Thanks are especially due to comments by Professors Yokoyama, Oeda, and Suzuki.

However, the reforms were not entirely caused by new technologies and liberalism. The same liberal ideas, technologies, and supporting evidence were also present in Korea and China, for example, but did not induce similar reforms in the late nineteenth and early twentieth centuries.

The Japanese case suggests that new economies of scale in production and the penetration of liberal ideas produce liberal constitutional reforms only in settings in which constitutional exchange is possible and in which the interests of those favoring industrialization and liberalization are reasonably well-represented in government. This was not true of China and Korea, nor in European countries that failed to liberalize. The Japanese experience also suggests that liberal constitutional reforms can also be undone through constitutional bargaining and counter reforms.

B. Setting the Stage: Constitutional Governance in the Shogunate Era 1603–1853

The early history of Japan exhibits alternating periods of centralization and decentralization of policymaking authority. Periods of centralization were often marked by warfare as regional rulers resisted the efforts of those attempting to create a stronger central government. During the sixteenth century, a long series of such wars occurred between the emperor's forces and those of the daimyo (roughly the equivalent of dukes in English). The wars ended with the success of the emperor's commanding general, his shogun. The negotiated settlement at the end of the war produced a relatively stable system of governance that lasted for more than two centuries.

There are several unusual features of the system adopted. The shogun evidently believed that new oaths of fealty to the emperor and shogun after the wars would not eliminate future civil wars and wars of secession. Games of conflict tend to be social dilemmas, rather than coordination games; so incentives to renege on peace agreements nearly always exist. To bind local rulers to their promises to defer to the shogun required an enforcement device of some kind. In other places, peace treaties and oaths of fealty are reinforced by maintaining a large national army, but this tends to be expensive and produces other risks for government leaders. The shogun devised a safer and less expensive solution.

The peace agreement required each daimyo to spend at least one year in two in Edo (present-day Tokyo). Their families were required to reside in Edo during the periods in which the daimyo was away. This residency-hostage system reduced the likelihood of revolt in several ways. The residency requirement reduced the daimyos' day-to-day control over their territories, which made it more difficult to organize rebellions and also tended to make regional governance more law based. The hostage requirement reduced the daimyo interests in wars of secession by assuring that

strong sanctions would follow from such revolts. The residency requirements also caused a good deal of the attention and resources of the daimyo (and their advisors) to be invested in the usual status-seeking and rent-seeking activities of capital cities. Such games would tend to increase deference and active support for the shogun.

The peace treaty, however, was not simply imposed on the losers. Policymaking authority was not simply vested in the shogun and emperor, but remained divided between the central government (shogunate) and the regional governments headed by the daimyo. In exchange for their oaths of fealty and half-time residences in Edo, the daimyo retained the authority to rule their territories and collect local taxes. Their lands were exempt from central government taxes. Moreover, the daimyo would also play a significant role in national governance. A subset of the daimyo were always senior advisors to the shogun. Most others participated in regular meetings with the shogun at which policies could be fine-tuned (Mason and Caiger 1997: 197–98; Roberts 1998: 17–21).

Although no written constitution existed during the shogunate period, it is clear that standing rules for governance and civil law existed, which for the most part were based on earlier forms. At the national level, there were informal rules dividing national policymaking authority between the shogun and emperor. More formal rules divided the policymaking authority of the central government and the daimyo. The standing procedures for making public policy included advisory councils and a standing bureaucracy, and those procedures were largely taken for granted by high and low government officials.

[After the first three shoguns] their successors . . . came to office when the system was already in being. They had to rule as part of the established bureaucracy, abiding by existing laws and conventions and depending on the advice of serving ministers.
(Mason and Caiger 1997: 217)

Japan's central government differed from the European template, however, in that it included two parallel governments based on the king and council template: a de facto government based on a shogun and his senior council of advisors based in Edo, and a de jure government based on an emperor and his council of advisors based in Kyoto. Regional rulers (daimyo) also had advisory and executive councils. Towns were often ruled jointly by an appointed head man and council of elders (Mason and Caiger 1997: 210–11).

As in medieval Europe, a broad range of positions in medieval Japan were formally hereditary, including those of the emperor, shogun, and the regional daimyo. Many other positions were limited to persons of particular social rank. For example, only children of samurai were eligible for military service. Ordinarily, the oldest son inherited his father's authority and wealth, although in Japan, as

opposed to Europe, both illegitimate and adopted children could inherit the family title and lands. In cases in which no clear heir existed, a childless man would simply adopt a child (or grown man) or the relevant council would appoint someone to be the heir (Maison and Caiger 1997: 198–99).

As in medieval Europe, much of life was governed by standing rules, but those rules did not attempt to provide equality before the law.²⁹⁰ Political and social status determined the bounds of one's lawful behavior.

Lords and Vassals, superiors and inferiors **must observe what is proper within their positions in life.** Without authorization, no retainer may indiscriminately wear fine white damask, white wadded silk garments, purple silk kimono ... Persons without rank are not to ride palanquins ... Marriage must not be contracted in private, without approval. (Laws of Military Households 1615 (*Buke Shobaato*), Lu 1997: 207–08).²⁹¹

Strict rules governed relations between persons of different rank and regulated occupation and attire within each strata. Educational opportunities were essentially limited to the top strata of society. In the positions in which exams, rather than family, determined positions, there was thus an implicit barrier, rather than a formal class-based one.²⁹²

Standing civil laws created institutions for dispute resolution, economic regulation, taxation, and limiting social mobility. There were laws governing inheritance and secession. And, as in Europe, land could not be easily sold.

Constitutional Exchange in the Shogunate Era

The shogun was formally the emperor's agent, his supreme military commander. During the civil war, the shogun and his council exercised essentially complete executive authority, while the emperor remained aloof from the mundane matters of day-to-day military strategy and governance in the territories won. This division of authority largely remained in place after the civil war was

²⁹⁰ During some parts of the Tokugawa period, some positions in the civil service and medical profession were based on examinations analogous to those used in China and Korea at this time. This, in principle, created a path for social mobility. However, access to tutors, books, and the examinations largely reflected the wealth and status of one's family until the era of public education emerged in the nineteenth century. To the extent that there was social mobility in medieval Japan, it was largely through adoption and appointment rather than examination (Levy 1996: 117–20). Most positions at the top of Japanese society were formally hereditary.

²⁹¹ See Lu (1997: ch. 8) for examples from the civil code that specify different punishment for criminal activities, and status-based restrictions on sale of land, inheritance, on clothing, and against taking private revenge.

²⁹² Many of these restriction had parallels in medieval Europe, including class-based" dress (sumptuary) codes (Jones 2003:97)

over. For the next two and a half centuries, the emperor and his court lived comfortable, regal lives in Kyoto, but they exercised very little control over the course of Japan's public policy.

The center of government in many earlier periods had been in or near Kyoto, but the shogunate was based in Tokyo (Edo), some 400 kilometers away. The shogun and his (hereditary) samurai army exercised considerable control over the comings and goings of the emperors and their courts through the Nijo-jo fortress, which was located near the emperor's palace in Kyoto.

Constitutional bargaining took place, but for the most part it was between the daimyo and the shogun and between them and their respective councils, rather than between the shogun and the emperor. The fiscal constitution allowed the daimyo to offer tax revenue in exchange for increased authority over regional public policies, and the shogun and the central government often sought new revenues. Consequently, the shogunate period included a number peaceful shifts of authority between the central and regional authorities. Regional governments gradually secured increased autonomy in exchange for higher tax payments to the central government. The shogun also gradually transferred (delegated) authority to his council and the Tokyo bureaucracy for day-to-day rule (Mason and Caiger 1997: 215–16).

In the course of two centuries of bargaining, a complex decentralized largely unwritten constitution emerged. More or less hereditary councils in the central and regional governments and their respective bureaucracies controlled most day-to-day policy decisions, while the shogun and the major daimyo lived comfortable lives of high politics and leisure in Edo. The regions maintained their separate identities and important ties among them were often familial and tacit, as in medieval Europe, rather than formal and institutional (Mason and Caiger 1997: 201).²⁹³

Japanese Economic Development and Mercantilism

The end of armed conflict and stable system of property rights and law helped promote economic development throughout Japan. The income produced by commerce and manufacturing

²⁹³ When a contract or treaty is well negotiated, all parties not only expect to benefit, they actually do benefit. However, these agreements differ from those focused on by contemporary contractarians, because the parties to the new instrument of governance were not equal, nor were all affected parties necessarily consulted. The agreements were pacts between political elites and normally involved only a relatively small subset of the most powerful members of the polity. The resulting division of power, consequently, lacks the normative appeal of the social contracts analyzed by Buchanan and Tullock (1962), Rawls (1971), or Buchanan (1975). Such contracts among elites (pacts) can nonetheless reduce the deadweight loss of governance and also tend to make the political process more representative than would have been the case had the stronger party “simply” conquered the weaker. The former often benefits the wider citizenry.

grew relative to that of agriculture, at the same time that agricultural production increased as new methods of farming were employed and more land was brought under cultivation. Increased commerce and specialization gradually produced a new middle class of merchants, manufacturers, and professionals, often from samurai families, whose services as soldiers were less needed during times of peace. Many samurai became courtiers and businessmen, rather than full-time soldiers, and many daimyo diversified into manufacturing and commerce (Lu 1997: 228–35, 273–77).

The Closing of Japan

Prior to the Shogunate period, Japanese markets had been open to traders and missionaries from China and Europe, but this ended in the first half of the seventeenth century. A series of laws adopted between 1620 and 1640 severely reduced Japanese contacts with other nations. The Spanish were expelled in 1624. A 1635 edict transferred control of international trade to the central government in Edo, and reduced access to Chinese imports. The same edict eliminated opportunities for the Japanese to travel to other countries. A death penalty was to be imposed on Japanese who returned to Japan after foreign travel. A series of laws also ended the Christian religion in Japan (which had been promoted by Portuguese and Spanish missionaries in the previous century). A 1639 edict required that Portuguese ships were to be destroyed and their crews and passengers beheaded. Only the Dutch were permitted to retain commercial ties with Japan, and these were as limited as those of the Chinese merchants. (Lu 1997: 220–27).

Nonetheless, the advantages of peace and lawful governance were greater than losses from international commerce. The regional capitals became centers of commerce and culture in the seventeenth century, with populations that were significantly larger than those of comparable European capitals at the time. The population of Tokyo (Edo) was estimated to be about a million persons in 1700, at the same time that the population of London and Paris were about half a million each. Kyoto and Osaka had populations of about 300,000 each, while Amsterdam had a population of about 200,000 and Berlin and Stockholm had populations of about 60,000 each.

Decentralized policymaking in the 250 duchies and autonomous regions (*han*) allowed local variations in public policies to encourage economic development, while yardstick competition among the daimyo encouraged “best practices” to gradually disseminate throughout Japan. Decentralization within medieval Japan, however, also allowed local rulers to create monopolies and to regulate their borders. Sales of monopoly privilege and tariffs were significant revenue sources for the local rulers, as was also common in medieval Europe. For example, merchants might be given

monopoly privileges in exchange for providing a public services; as, for example, the merchants of Akaoka, Taruya, and Saga were granted a monopoly on lumber in Kochi as a reward for building a canal for the city. Economic associations (guilds) were common among merchants in most trading centers (Roberts 1998: 29, 42–43; Yu 1997: 234–35).

In combination with a national policy of international isolation after 1635, local barriers to trade, relatively high taxes, and the illiquidity of land impeded the development of national markets, although the mercantilist policies were undermined to some extent by Japan's extensive sea coast.

The system of **feudal government exercised a crippling influence, for each feudal chief endeavored to check the exit of any kind of property from his fief**, and free interchange of commodities was thus prevented so effectually that cases are recorded of one feudatory's subjects dying of starvation, while those of an adjoining fief enjoyed abundance. International commerce, on the other hand, lay under the veto of the central government, which **punished with death** anyone attempting to hold intercourse with foreigners (Britannica 1911, "History of Japan," pp. 33).

Economic historians report that commerce grew steadily through the eighteenth century, but declined somewhat in the early nineteenth century (Yu 1997: 273–80).

C. Constitutional Bargaining and Reform After Admiral Perry's Visit in 1853

It subsequently became clear that Japan was not developing as rapidly as Europe or North America.

A new "yardstick" was introduced in 1853. The arrival of Perry's four steam-powered ships of war in 1853 had significant effects on daimyo and samurai assessments of the quality of existing Japanese institutions. Perry's ships, his guns, and his gifts for the emperor and shogun revealed that Japan had fallen behind Europe in the past two centuries. Perry's return in 1854, produced negotiations and treaties of access (1854) and trade (1858) for the United States.²⁹⁴ Subsequent treaties reestablishing trade with European states were also negotiated, in large part because it was clear that Japanese technology had fallen behind that of the West.

This conclusion was not a superficial one that focused on equipment alone. Many senior government officials clearly understood that Western technology reflected organizational as well as technological advantages. To "catch up," many believed that a broad range of Western innovations

²⁹⁴ Commodore Perry's very formal negotiations with the Japanese in 1853 and 1854 involved presents and discussions, rather than gunshots or military intimidation. The proceedings are discussed in Forster (1903):150–65.

in economic, political, and military organization had to be analyzed and adapted to Japanese circumstances.

The shogun convened a special council of the major daimyo to determine the proper response to the new “yardstick” and the West’s insistence on more open international markets. A variety of long-standing quasi-constitutional domestic policies were reversed, and the Japanese people were henceforth encouraged to master Western technologies. Prohibitions on foreign travel and on the construction and purchase of seagoing ships ended. The translation of European scientific, legal, and political texts was broadened and accelerated as interest intensified and moveable type was introduced. New fortresses were built, cannons cast, and samurai troops trained in their use. The government ordered a battleship from the Dutch, who were also enlisted to “procure from Europe all the best works on modern military science.” The emperor directed that “at the seven principal shrines, special prayers should be offered for the safety of the land and the destruction of aliens” (*Britannica* 1911: 239).

The renewal of foreign trade after two centuries of closure clearly affected many Japanese family firms that now had to compete with distant foreign producers. It also clearly affected those in southern Japan, who previously had exclusive access to Dutch and Chinese merchants. A small liberal movement began to emerge that pressed for open foreign relations and a more representative political institutions. The first newspapers were printed, and many were critical of existing government policies and results. These liberalizing pressures were countered by conservatives who pressed for a return to “closure.” Trade increased the presence of foreign persons, who did not always follow the well-established etiquette of the shogunate era, which increased opposition to the intrusions of the uncouth foreigners.

The shogun was in the forefront of treaty negotiations and, by the standards of the time, could be regarded as a “liberal” in the sense that he and his advisors acknowledged the need for institutional reform and modernization. Southern daimyo were among the strongest opponents to foreign trade at the imperial court.

Neither the shogunate nor the imperial court was sufficiently powerful or influential to accomplish major reforms on its own. Negotiations between the imperial court and shogunate took place regarding foreign treaties, domestic policies, and institutional reforms, but without obvious results, because the shogun’s and emperor’s councils reached nearly opposite conclusions about the proper response. The shogunate argued for the end of closure, while many in the emperor’s court

argued for renewed closure. Naturally, both sides argued that the national interest would be advanced by their recommendations.

Constitutional conservatism implies that it takes more authority to change the status quo than to maintain it, and much of the central government's authority had been traded away during the past century or so. Consultations continued among representatives of the shogun, imperial court, and daimyo.

Disagreement between the Tokyo and Kyoto courts, in this case, implied that a constitutional crisis was at hand. With the failure of the shogunate to protect the homeland and to enforce its own policy of closure and evidence of slow growth for many decades, support for the old "two-government" system diminished, even among those who had previously benefited from it.

D. The Meiji Restoration of 1867 as Constitutional Exchange

A shogun died and was succeeded by Yoshinobu Tokugawa in 1866, whose council continued to press for modest reforms. An emperor died and was replaced by one of his sons in 1867, who is now known as Emperor Meiji.²⁹⁵ In 1867 a major reform of Japanese governance emerged out of a long series of negotiations, albeit reinforced by military efforts on behalf of the emperor by the southern daimyo.

The Meiji restoration is considered by some scholars to be a unilateral act of generosity on the part of the shogun to strengthen national governance and avoid civil war. By others it is considered an act of surrender accepted out of necessity in the face of a superior military force. There is, however, much that suggests that the policymaking shift in authority to the emperor's court was part of an agreement worked out behind closed doors. Such an agreement would have been made easier by changes in the persons who formally headed the two branches of government.

²⁹⁵ The new emperor was selected to be the crown prince in 1860 from among the previous emperor's (Komei) male children. He was given the name Mutsuhito at that time, and was known as Emperor Mutsuhito during his lifetime.

Japanese emperors and their periods of rule are renamed after their death. The name Meiji was given to the emperor after his death in 1912, which means "enlightened rule." I refer to this sovereign as Emperor Meiji throughout this chapter, as is customary among historians writing in English and in Japanese after Mutsuhito's death. The term "king" Meiji would be equally appropriate for the purposes of this book, insofar as the daimyo can be regarded as dukes or barons, rather than kings.

The Tokugawa regime accepted a shift of day-to-day policymaking authority from the relatively new and weak shogun to the relatively new and weak (15-year-old) emperor Meiji. The emperor's regime, in turn, accepted the need for a broad modernization of Japanese society.

In late 1867, the new shogun called a council of daimyo and high officials in Kyoto to announce his resignation, which was tendered the following day to the emperor.

Now that **foreign intercourse becomes daily more extensive**, unless government is directed from one central authority, the foundations of the state will fall to pieces. . . . **If national deliberations be conducted on an extensive scale** and the Imperial decision be secured, **and if the empire be supported by the whole people**, then the empire will be able to maintain its rank and dignity among the nations on earth—it is, I believe, **my highest duty to realize this ideal by giving entirely my rule over this land.** (Tokugawa Yoshinobu, reprinted from Mason and Caiger 1997: 259)

A few months in early 1868, a new “Imperial Oath” was required of all daimyo. It included five major commitments.

(i) We shall determine all matters of state by public discussion, after assemblies have been convoked far and wide . . . (ii) We shall unite the minds of people high and low . . . (iii) We are duty bound to ensure that all people . . . may fulfill their aspirations and not give into despair. (iv) We shall base our actions on the principles of international law. . . . **(v) We shall seek knowledge throughout the world and thus reinvigorate the foundation of this imperial nation.**

After the oath was read, 411 major and minor daimyo (including the 30 members of the emperor's advisory council) formally renewed their oath of fealty to the emperor by signing an official document (Breen 1996).

Bargaining and compromise is evident in that the imperial court had originally opposed shogunate efforts to negotiate treaties with the West and to modernize, but now fully embraced them, as implicitly did the 411 signatories. Bargaining is also evident in that the shift of governmental authority from the Tokugawa to the Meiji court was initially accomplished without substantial change in the central government bureaucracy or regional governments, although a significant constitutional reforms soon followed. Moreover, the surrender of the Tokugawa lands (*tenryo*) to the new central government (Mason and Caiger 1997: 259–60) was followed by a similar surrender of lands by the four powerful daimyo from the south that had provided military support for the Meiji restoration (Lu 1997: 305–15, Britannica 1911: 311).²⁹⁶

²⁹⁶ The oath was clearly negotiated and written by senior advisors, rather than the young emperor. The oath went through a number of drafts within the emperor's advisory council before being finalized (Pittau 1967: 11–15).

The emperor and his retinue moved from Kyoto to Edo and assumed control of the existing institutions of governance. The ruling council members were now selected by the emperor, rather than the shogun, and the city of Edo was renamed Tokyo (eastern capital), but the long-standing procedures for adopting and implementing public policies remained largely in place. Constitutional conservatism is evident in that policymaking authority remained largely in the hands of advisory councils at the central and regional government levels, and remained so to a considerable extent, even after the Meiji constitution was adopted 20 years later.²⁹⁷

Nonetheless, much was new. The imperial government had far more control over public policy than it had had for many centuries, and the new Imperial Oath included an implicit commitment for substantial reforms of the procedures of governance. The latter played an important role in constitutional negotiations for the next several decades, although it was not clear whether the emperor's commitment to "determine all matters of state by public discussion, after assemblies have been convoked far and wide" was a commitment to create a parliament or simply a promise to call the daimyo occasionally to Kyoto. The ambiguity evidently reflected that lack of consensus among the emperor's council of advisors about the proper form government should take.²⁹⁸ The details were slowly worked out through more than two decades of negotiation and institutional experimentation.

On other matters the new Imperial Oath was quite clear. The emperor's commitment to "seek knowledge throughout the world and thus reinvigorate the foundation of this imperial nation," implied that all Japanese had a duty to study foreign theories, reforms, and outcomes. As a consequence, many high government officials and scholars traveled to Europe and the United States and returned home with new theories, as well as practical ideas for the application of new industrial technologies and public policy reform.

The experience of the European monarchies was naturally of particular interest for those advocating liberal constitutional reforms, because it had both theoretical and practical relevance for Japan.

²⁹⁷ Emperor Meiji was formally the source of the shogun's authority, and the emperor continued to be the formal source of authority under the Meiji constitution. (It was not until after World War II that the basis for constitutional government shifted from royal delegation of authority to popular sovereignty.)

²⁹⁸ It is interesting to note that proposed drafts of the oath were more explicit about the form of government to be adopted. Some called for representative assemblies and others for a federal council of daimyo. See Lu (1997: 307–08) for alternative drafts of the oath.

E. The Liberal Tide and European Influence in the Early Meiji Era

Before Perry's arrival, Japan's contact with Europe in the two centuries was mainly through a small Dutch trading post on the small man-made island of Deshima in the bay of Nagasaki. Schools of Dutch study were founded near the Dutch trading post, and non-religious books and newspapers from the Netherlands were translated by Japanese scholars, albeit slowly and for limited distribution, because printing was done via wooden block, rather than with movable type. In this manner, some Western scientific ideas and philosophical ideas were available to interested scholars and students, particularly in the south. Indeed, the Dutch provided the shogun with advance notice that the United States would send ships to Japan a few years before Perry's arrived (*Britannica* 1911: 239). Contacts between the Satsuma and the Chinese continued via Okinawa. Additional international commerce also took place illicitly along the coast and with the Russians to the north (Mason and Caiger 1997: 205).

Changes in the laws governing travel and trade after Perry's arrival, together with encouragement from the shogun and emperor caused a major increase in Japanese knowledge of Europe and America. Extensive travel and trade had previously been punishable by death. After the new imperial oath, new translations and foreign travel brought Europe's political and economic theories to the attention of a broad cross-section of literate Japanese, including high government officials. For example, Nakae Chomin translated Rousseau's *Social Contract*. Nakamura Masanao translated J. S. Mill's *On Liberty* and Samuel Smile's *Self-Help*. The latter was a collection of rags-to-riches success stories that argued against the practice of using social status or class to determine a man's worth.²⁹⁹

Many of these European texts provided insights that appeared useful to persons interested in public policy, including senior officials in the Japanese government. For example, liberal economic theories provided an explanation for Japan's failure to keep pace with economic developments of the West. Japan's failure to keep up was not due to the cultural inferiority, but to policy mistakes.

²⁹⁹ Smile's *Self-Help* includes such challenges to the class system as: "Great men of science, literature, and art—apostles of great thoughts and lords of the great heart—have belonged to no exclusive class nor rank in life. They have come alike from colleges, workshops, and farmhouses—from the huts of poor men and the mansions of the rich. Some of God's greatest apostles have come from 'the ranks.' The poorest have sometimes taken the highest places; nor have difficulties apparently the most insuperable proved obstacles in their way. Those very difficulties, in many instances, would ever seem to have been their best helpers, by evoking their powers of labor and endurance, and stimulating into life faculties which might otherwise have lain dormant." (Available from the Gutenberg E-book Project).

The closed nature of the Japanese mercantilist system (both internally and externally) would have reduced economic growth by reducing gains from specialization, economies of scale, and technological innovation. Liberal political theories, in turn, explained why needed economic reforms had not been adopted in Japan. Representation had been too narrow and grounded on the wrong principles to support the reforms necessary for economic development to take place. Elite forms of government often protect their interests by “protecting” the status quo from “unnecessary” innovations and by providing themselves with monopoly privileges. Liberal theories thus provided coherent explanations for Japan relative weakness and, conversely, also suggested reforms that could allow it to catch up with the West.

Japanese Liberals

Literate Japanese did not become “Western” or “Westernized,” any more than the English became Dutch, or the French became English when they used innovations developed elsewhere. Rather, the European ideas that provided useful suggestions about constitutional, social, and economic problems and solutions were taken into consideration when constitutional issues were being debated and reforms were being devised. European experience provided evidence about how such reforms had been introduced in other polities, and what their effects tended to be. The “new” European texts stimulated new policy and constitutional debates throughout Japan in large part by inducing further analysis and refinement of older Japanese ideas. Shogunate-era scholarship, for example, included defenses for profits based on gains from trade and the promotion of persons based on their talents rather than their class or status. Older Japanese theories also included theories of governance that implied that good rulers should rule with their subject’s interest at heart, and that it was proper to allow free speech.³⁰⁰

As in Europe, these early liberal ideas were by no means the dominant ones in the eighteenth century Japan. It bears noting, however, the regions of Japan in which the most liberal views of economic activities were present were also regions from which a disproportionate number of Japanese entrepreneurs emerged.

During the second half of the nineteenth century, Japanese liberals and other proponents of reform used arguments that were in many ways similar to those used by European liberals and reformers, and such arguments were made both inside and outside government. As true in Europe at the time, however, Japanese liberals did not simply quote from Smith, Bastiat, Locke, Kant, Mill,

³⁰⁰ See Lu (1997: 228–55) for eighteenth-century excerpts from the works of Naito Kanji, Ishida Baigan, and Kumazawa Banzan.

and Rousseau. Rather, they produced arguments that reflected their own sense of culture, progress, and political opportunities in the Japanese context, given their new knowledge of European ideas. Japanese academics similarly produced syntheses of Western philosophers and older Japanese scholarship.

For example, various combinations of natural rights, contractarian, and utilitarian ideas were used by Japanese political liberals at the time of the Meiji restoration.

Heaven bestows life and along with it the ability and strength needed to preserve it. But though man might attempt to use his natural powers, if he lacked freedom his abilities and strength would be of no use. Therefore, throughout the world, in all countries and among all peoples self-determined free action is a law of nature. In other word, each individual is independent and society is for the good of all ... **The right to freedom and independence, which he receives from heaven cannot be bought and sold.** (Fukuzawa 1867, quoted in Craig 1968: 107).³⁰¹

The people who have the duty to pay taxes to the government concurrently possess the right to be informed of the affairs of the government and to approve or reject such governmental matters. This is the principle **universally** accepted in the world, which requires no further elaboration on our part. We humbly request that the officials not resist this great truth. [Opponents of reform] assert “Our people lack knowledge and intelligence and have not yet reached the plateau of enlightenment. It is too early to have a popularly-elected representative assembly.” ... We have **presented our case for the immediate establishment of a popularly elected representative assembly** and have argued also that the **degree of progress among the people of our country is sufficient** for the establishment of such an assembly. (Okubo 1874, quoted in Lu 1997: 327–29).³⁰²

As in Europe, Japanese liberals of this period did not completely accept notions of civil equality and rarely favored universal suffrage, but supported greater civil equality and more representative government. Liberal interpretations of the emperor’s oath were commonplace.

³⁰¹ Fukuzawa Yukichi is widely regarded to be one of the most influential of the liberal scholars in Japan. Yukichi Fukuzawa (1835–1901) attended university in Osaka, where he became familiar with European political thought through Dutch sources. In 1868 Fukuzawa founded a school in Tokyo named Keio Gijuku, as an institute of Western learning, which subsequently became one of the most prestigious universities in Japan. He had also traveled widely in Europe and the United States, as a member of three missions sponsored by the shogun. Fukuzawa’s picture appears on the present-day 10,000-yen note.

³⁰² Okubo Toshimichi (1830–1878) was one of the most important members of the imperial council in the decade after the Meiji restoration. Okubo was, for example, the finance minister in 1871, and a strong proponent of economic and political modernization and an opponent of war in Korea. Okubo, a samurai himself, was assassinated in 1878, because of his successful suppression of the Satsuma Rebellion of 1877. He is often referred to as one of the three great nobles (Ishin-no-Sanketsu) of the restoration.

Politically active writers in the 1870s, promoted liberal ideas and institutional reform in a variety of Japanese newspapers, periodicals, pamphlets, and books (Hane 1969). Many of the first generation of newspapers published in the 1870s could be regarded as liberal insofar as they advocated a “wider opening of the door to official preferment” (Britannica 1911: 47). As in Europe, advancing relatively narrow economic and political interests often required expanded political and economic participation.

More liberal newspapers were introduced in the 1880s. For example, in 1882 Fukuzawa launched the newspaper *Jiji Shimpō*, which advocated liberal themes such as independence and self-respect (*History of Constitutionalism in Japan* [henceforth, *HiCoJ*] 1987: 55). Weekly periodicals promoting liberal reforms were begun, including the initially liberal *Kokumin no Tomo* in 1887 by Tokutomi Soho. Several books advocating constitutions and representative democracy, among other reforms, were also written in the 1880s. Hundreds of groups were organized to explore philosophical issues of constitutional governance, as with the Gakugeikodankai in Itsukaichi (Devine 1979). Politically active groups were organized to press for liberalization of political and economic life. For example, the Movement for the Liberty and Rights of the People lobbied for a written constitution and national assemblies (Mason and Caiger 1997: 284; Devine 1979; Kaufman-Osborn 1992).

Ideas about hereditary privileges began to shift as notions of “equality before the law” began to replace older theories of family privilege among educated people, including many future members of parliament. Indeed, there were sufficient numbers of liberal groups and proponents of modernization that a confederation of liberal groups was organized (the Aikokushi or Patriotic League) to lobby for tax, regulatory, and political reform. Such groups attracted support from the growing rural and urban middle classes as well as liberal intellectuals and academics. In 1890 a nationwide temperance movement was launched. Meetings were held by proponents of constitutional reform in 1877, and petitions favoring constitutional reform (with 80,000 signatures) were submitted to the grand council on 1880 (*HiCoJ* 1987: 15, 19)

The first political party was organized by liberals in 1881 (the Jiyuto) well before the first national elections were held, to lobby more effectively for reform. Two other liberal coalitions were organized shortly after Jiyuto, the Rikken Seito (Constitutional Party) in 1881 and the Kyushu Kaishinto (Kyushu Progressive Party) in 1882. The emperor’s oath, which mentioned broadly representative assemblies, was often used by such groups to insist on a written constitution with an elected national assembly. In response, Okuma Shigenobu and other moderate conservatives

organized the Rikken Teiseito (Constitutional Imperial Rule Party), which lobbied in favor of imperial government, although it also favored a written constitution and gradual reform.

German Influences on Japanese Moderates and Conservatives

Many senior Japanese officials found the German experience to be of special interest, because Germany was also in the process of creating a new central government and had only very recently reformed its medieval economic and political institutions. They, like Japan, did so in a setting in which regional nobles had long had significant political authority and in which liberal arguments were increasingly accepted. The particular attraction of Prussia's 1850 constitution within the imperial council reflected its success at preserving preexisting political authority, while incorporating many liberal ideas.³⁰³

Conservatives and moderates were heavily influenced by German constitutional theorists. Among the German scholars mentioned by proponents of a strong monarchy were Stein, Gneist, and Roesler, who favored equality before the law with a strong royal government. Indeed, Roesler was invited to comment on proposed drafts of the Meiji constitution (Pittau 1967: ch. 5). Although accepting liberal arguments for civil equality and constitutional governance, moderate conservatives rejected liberal arguments in support of strong parliamentary systems, arguing that a strong monarch can govern more justly, because monarchs are less prone to capture by factions and class interests than are parliaments. Prussia's influences are also evident in some of the early Meiji military reforms.

By restoring its links to the world after the Meiji period began, and looking for insights elsewhere, Japanese intellectuals of all political views became far more connected to Western intellectual developments. And, as political theories and public debates among liberals and conservatives in Europe evolved during the late nineteenth century, similar shifts took place in Japanese theories and policy debates.

Right-of-center liberals were affected by the new conservative arguments. For example, Tokutomi Soho, was initially a moderate liberal, who favored constitutional representative government, equality before the law, and limited governance, although he rejected the natural rights and social contract theories of the state. Tokutomi gradually shifted his position in the 1890s in a

³⁰³ It is interesting to note that Heinrich Rudolf Hermann Friedrich von Gneist was also very influential within Germany. Gneist was a moderate liberal by Prussian standards of the time, who served as a member of the Prussian parliament for 25 years. Besides writing books and providing advice to Japanese reformers, while serving in the Prussian parliament, he also was employed by Friedrich III to teach his son, Wilhelm II, constitutional law.

more conservative direction, as he began to appreciate that military strength was an important determinant of evolutionary success (Pierson 1974). In much the same vein, Kato applies ideas from social Darwinism and Hobbes when he argues that:

The world seems to be in the **battleground of a struggle for existence**, in which **those who are superior**, mentally and physically, through biological reason of heredity, are **bound to win in life's race** and **control over the inferior for the same phenomena can be observed even more distinctly in the life of the lower animals** and plants ... hence there is **no such thing as the natural rights of man**. ... Thus ... **unless there had been an absolute ruler, our State would never have been organized, nor the rights of our people come into existence**. (Jinken Shinsetsu, 1882, quoted in Uyehara 1910: 115).

Many left-of-center liberals were similarly influenced by European arguments favoring labor law reform, expansion of social insurance, and redistribution.

F. Liberal Policy Reforms of the Early Meiji Period

The influence of liberal ideas was evident in policy debates within the highest levels of government and in the policy reforms adopted. As in many European countries, liberal policies were supported by idealists, because they advanced general national interests and human rights. As in many European countries, such policies were also often supported by pragmatists in pursuit of narrower economic and political interests. As a consequence, a series of policy reforms reduced hereditary privileges, codified civil and criminal law, and reduced internal barriers to trade. Universal education was adopted and the military reorganized in a manner that reduced class privileges.

The educational reforms of 1871 include a preamble that reflected the liberal perspective on education. Before the reform, education had been more or less limited to the samurai and nobles who were thought likely to obtain senior posts in national and regional governments. The preamble breaks with this narrow view of the purpose of education when it states that:

The **only way in which an individual can raise himself**, manage his property and prosperity in his business and so accomplish his career **is by cultivating his morals, improving his intellect, and becoming proficient in the arts**. The cultivation of morals, the improvement of the intellect, and proficiency in the arts cannot be attained except through learning. **This is the reason why schools are established ... It is intended** that henceforth universally (**without any distinction of class or sex**) in a village **there shall be no house without learning and in a house no individual without learning**. (quoted in Pittau 1967: 24).

The preamble's focuses on individual welfare, encourages nongovernmental applications of education, and clearly intends education to be class and status neutral for the first time. The ban on Christian churches was lifted in 1878.

A variety of liberal economic reforms and policies were also adopted during the same period. Restrictions on planting particular crops were eliminated in 1871. Internal barriers to trade were reduced and class-based rules that limited landownership, sales of land, and occupational choice were eliminated, as were restrictions on peasant ownership and careers. The first railroad was opened in 1872 as a demonstration project of less than 20 miles, but gradually railroad construction caught on and, by 1900, 3,000 miles of railroad tracks had been constructed. (As in the Netherlands, the early railroads were not superior to water-based shipping.) An income tax was introduced in 1887 that gradually replaced land taxes as the main source of government revenues (Maison and Caiger 1997: 272–77; Pittau 1967: 27–8; Minami 1994: 257–60; Lu 1997: 307–23).

Many of the quasi-constitutional reforms of government adopted in the first decades of the Meiji era advanced pragmatic interests in centralization. The duchy (*han*) system of the Tokugawa regime was formally ended in 1871, and regional nobles were encouraged to take up full-time residence in Tokyo, rather than continue their biannual migration. The smaller duchies (*han*) were merged into new prefectures. A series of land-tax reforms were introduced in 1873 that centralized taxing authority (although government expenditures continued to outpace revenues and produced significant deficits). In 1885, following several years of inflation, a new national Japanese currency was introduced that was convertible into silver (and subsequently gold) and regional currencies were eliminated. Such reforms reduced opportunities for regional dynasties to organize opposition to the new central government. These reforms also increased civil equality somewhat by reducing the authority of the *daimyo* and their families in their regions.

Civic inequality was reduced by many of the early reforms, although not eliminated. Opportunities were made more equal by reducing internal trade barriers and extending public education. The legal privileges of birth were revised, reduced, and simplified. Service in the military and national bureaucracy were opened to commoners. The “Peerage Ordinance” of 1884 established five ranks of nobility. The “new” nobles were largely from the historically powerful regional families, although many supporters of the Meiji regime were elevated at the same time (*HiCoJ* 1987: 22–23).

Of course, not all Japanese accepted the need for greater openness in commerce and governance, and not all those favoring such reforms were liberals.

The most serious conservative challenge to the early Meiji reforms occurred shortly after the military reforms of 1872 and 1876 were adopted. The military reforms of 1872 created a new universal military service that was in many ways similar to that of Prussia at that time, with three years of active duty, followed by four more years in the reserves. This reform eliminated the samurai's exclusive hereditary right to serve in the Japanese military, which was very controversial among the samurai. A subset of the samurai refused to abide by the new laws, which had greatly reduced samurai privileges.

The samurai opposition to the military reforms was partly pragmatic, as the reforms reduced their status and income.³⁰⁴ It was also partly ideological, as many samurai had a deep commitment to preserving Japan's medieval way of life and were equally skeptical about the effectiveness of the new Japanese army. As soldiers who shared the same concerns and were used to functioning within disciplined organizations, the samurai were able to organize an armed rebellion relatively easily, and did so in 1876–7.

The new nonhereditary Japanese army fairly quickly crushed the conservative Satsuma Rebellion in 1877. By doing so, the Satsuma Rebellion provided additional evidence that the new organizations, new equipment, and new methods were superior to the old.

G. Constitutional Bargaining and Reform after the Meiji Restoration

Nonetheless, bargaining and compromise among liberals, pragmatists, and conservatives are evident throughout the Meiji period. Governance was subject to almost continual reorganization during the first two decades of the Meiji era, which reflects the usual difficulty of adopting major reforms in large organizations such as governments. Indeed, a policy of gradual reform was announced in 1875 (Mason and Caiger 1997: 286).

In 1868, shortly after the imperial oath was made and accepted, the central government was reorganized into three agencies: Sosai (office of the emperor), Gijo (office of administration) and Sanyo (office of councilors). These were staffed by members of the imperial family, its court, and its daimyo supporters. This provisional government would be the first of many formal and informal

³⁰⁴ About 400,000 samurai had rights to a lifetime pension, which was a substantial drain on central government expenses. Many of the pensions were hereditary (*Britannica* 1911: 313). Cash “buy outs” of lifetime privileges and pensions were offered to the samurai with some success.

The army was further reorganized in 1876 along more European lines. The remaining samurai pensions were reduced, and the exclusive samurai privilege of wearing two swords in public was eliminated.

reforms of governance. Four months later, a formal law (the Seitaisho) created a template from which the new national government gradually emerged.

It specified that policymaking authority would be delegated to a grand Council of State (Dajokan). The “new” Council of State consisted of 26 councilors, mainly from the four regions (*han*) that had supported the emperor against the shogun. This royal council and its successors would function as the Japanese cabinet. The Seitaisho also provided for a delegation of authority among three subsidiary departments: one for legislation, one for administration, and one for judicial matters. The legislative department (Giseikan) was to consist of two bureaus and may be regarded as the precursor to a Japanese parliament. The upper bureau was a noble chamber that represented the ruling families of Japan. The lower bureau was more or less a federal chamber with representatives from the regional (*han*) governments. The Seitaisho also encouraged cities and provinces (*han*) to create representative assemblies (Lu 1997: 308-09, *HiCoJ* 1987: 10–12).

The daimyo responsible for the “assemblies” language in the emperor’s oath continued to press for representative assemblies with legislative authority, while the conservatives and pragmatists opposed sharing royal authority with such assemblies. As arguments and evidence shifted and as popular support for liberal reforms grew, the laws characterizing the assemblies were revised several times. The first assembly of representatives occurred in late 1869. The legislative department, as noted above, initially consisted of two chambers, the first for nobles, and the second for lesser nobles and samurai elected under a wealth-based system that somewhat resembled the Prussian system (Caiger and Mason 1997: 284, *HiCoJ* 1987: 11). These assemblies were initially delegated legislative authority, but in the following year the lower chamber was changed into a consultative body without legislative authority (Pittau 1967: 16; *HiCoJ* 1987: 10–12). Assemblies of prefecture governors also met in 1874 and 1878 (*Britannica* 1911: 319–20).

In 1871 significant reforms of the provinces and their governments were negotiated. The ancient feudal territories became prefectures to be governed, rather than family domains to be ruled. The regional daimyo continued to rule as governors of their old territories and retained their territorial treasuries. National and regional tax bases were reformed at the same time. Tax were to be based on land values, rather than agricultural output, which allowed tax rates to be reduced, but increased revenues, because of the tax base expanded. Regional governments were assured of 10 percent of the new tax revenues, rather than 40 percent of that previously raised from agricultural alone (*Britannica* 1911: 312; Minami 1994: 259; Totman 2000: 292).

Lobbying and Negotiations for a Written Constitution

Proposals for a new elected lower chamber were made in 1871, but no action was taken until four of the emperor's former state councilors—Itagaki, Goto, Eto, and Soejima—made a similar proposal in January 1874. A subsequent reorganization of governance created a new advisory “council of elders” (Genroin). The members of the Genroin were not elected, but rather chosen from the senior members of the Council of State. The Genroin would deliberate on laws and accept petitions on various matters.

The Genroin was subsequently given responsibility to draw up a formal constitution for post-restoration Japan (Hackett 1968). Their 1878 proposal was surprisingly liberal. It called for a bicameral parliament with significant legislative authority and required the emperor to take an oath to “adhere to the constitution before a meeting of both houses” (Pittau 1967: 74). It was, however, too liberal to be adopted by the Council of State as a whole (*HiCoJ* 1987: 14).

In 1878 a new law required that the provincial assemblies be selected via elections, which changed the basis for holding seats in the provincial assemblies and drafting election laws. The new local assemblies were also given the authority to veto new provincial taxes. These changes demonstrated that Japan's liberals were not simply making proposals, but affecting constitutional decisions by the central government. However, as conservatives doubtless anticipated, the new election laws were designed to minimize the effect that elections would have on the persons holding office. Those eligible to sit in the new representative assembly had to meet relatively high property qualification. Property qualification also determined who voted in the elections. Voting was by open, signed ballot. The assembly would meet for just one month each year. (*Britannica* 1911: 150; 319–20; Wada 1996: 6).

As a consequence, the persons selected for high office did not change very much after the reform was adopted. Most officeholders still came from the relatively wealthy families who had routinely served in advisory and administrative posts in the past. The effect of signed ballots helped to diminish the effect of voting, because it allowed the most powerful families in a community or prefecture to make sure that “their” former vassals cast their votes for the “right” candidates. Without such assurances, it is clear that opposition from influential families at court would have been far greater and the new liberal architecture for local government far less likely to have been adopted.

Overall, the net effect of the education, tax, and military reforms of the 1870s was to reduce aristocratic privilege and centralize policymaking authority, while increasing literacy, economic growth, and military strength. As in the United Kingdom, local government was liberalized somewhat before the national government, which tended to increase support for similar reforms of national governance. Liberal economic reforms continued to be adopted during the 1980s, although these were often coupled with conservative political reforms governing association, the press, and political parties. Censorship rules were toughened in 1882, 1883, and 1887 in response to public demonstrations of support for constitutional reform and remained in place until 1898 (Uyehara 1910: 182–3).

Nonetheless, constitutional debate and negotiations among conservatives and liberals inside and outside government continued throughout the 1870s and 1880s.

H. The Meiji Constitution Is Adopted

The emperor evidently remained interested in constitutional reform and solicited proposals from royal council members in 1878 and 1879. The proposals revealed both points of consensus and a broad range of opinion within the highest levels of Japanese government. Most of the proposals included a written constitution and representative assembly. There were, however, significant disagreements about the best division of policymaking authority between the emperor (and his royal council) and parliament. Proposed constitutions ranged from constitutional monarchies with a dominant parliament, similar to that of late nineteenth century England, to ones analogous to the Prussian system in which the authority of the king was maximized (Pittau 1967: ch 3, Lu 1997: ch. 11).

This consensus in favor of a national assembly led to an 1881 imperial proclamation that a new national assembly would be convened in 1891. Efforts to determine how such an assembly would be assembled continued in earnest. After eight more years of negotiations among insiders, a compromise was reached, and Japan formally became a constitutional monarchy. A written constitution was adopted at an imperial ceremony in 1889.³⁰⁵

³⁰⁵ Hirobumi Ito (1841–1909) is usually given credit for the Meiji Constitution, but the constitution was clearly a joint product of several of the emperor's closest advisors. Hermann Roesler, a German constitutional scholar, also played a significant role in this process, both suggesting a draft and commenting on revisions (Siemes 1962). Ito later served as prime minister several times and, perhaps surprisingly, is often said to have formed the first party government in 1900. He was assassinated in 1909.

The Meiji Constitution of 1889

The Meiji constitution is grounded on Japan's version of the divine right of kings, rather than popular sovereignty, and, thus, it is formally a declaration by the sovereign.³⁰⁶ The royal declaration states that the constitution is intended to bind future emperors as well as the current one:

We, the Successor to the prosperous Throne of Our Predecessors, do humbly and solemnly swear to the Imperial Founder of Our House and to Our other Imperial Ancestors that, in pursuance of a great policy co-extensive with the Heavens and with the Earth, **We shall maintain and secure from decline the ancient form of government.**

In consideration of the **progressive tendency of the course of human affairs** and in parallel with the **advance of civilization**, We deem it expedient, in order to give clearness and distinctness to the instructions bequeathed by the Imperial Founder of Our House and by Our other Imperial Ancestors, **to establish fundamental laws** formulated into express provisions of law, so that, on the one hand, Our Imperial posterity may possess an **express guide for the course they are to follow**, and that, on the other, **Our subjects shall thereby be enabled to enjoy a wider range of action** in giving Us their support.

We hereby promulgate, in pursuance of Our Imperial Rescript of the 12th day of the 10th month of the 14th year of Meiji, **a fundamental law of the State, to exhibit the principles, by which We are guided in Our conduct, and to point out to what Our descendants and Our subjects and their descendants are forever to conform.**

Compromises between liberals, conservative, and pragmatists are evident throughout the new Japanese constitution (law of the State).

The principle of rule of law is accepted. The constitution creates a new parliament and attempts to describe the balance of authority between the parliament, the executive cabinet (royal council), and the emperor. The Meiji parliament had veto power over new taxes, budgets, and new legislation. Meetings of parliament would take place annually, and its meetings would be open to the public. All royal policy decisions are to be cosigned by a cabinet minister. Elections play a significant role for the first time. Following the English design, the new parliament was bicameral with a hereditary chamber of nobles and a directly elected second chamber.³⁰⁷ The two chambers have essentially

³⁰⁶ An English translation of the Meiji constitution is included in Dodd (1909).

³⁰⁷ The supplemental imperial ordinance concerning nobles, states that the noble chamber also includes persons appointed by the emperor and representatives of city governments. All higher nobles were eligible for seats, but only a fifth of the lesser nobles, who would be elected by their fellow nobles (Dodd 1909: 33-4).

equal authority. The basic architecture and procedures thus satisfy liberal constitutional norms for the mid nineteenth century.

The Meiji constitution, however, was crafted in a Prussian-like manner that preserves most of the emperor's and his council's autonomy.

Eligibility for seats in the elected chamber and for voting were based on tax payments. The new electorate reached into the old samurai class and new upper middle class, but no further. Suffrage for the elected chamber required payment of national taxes greater than 15 yen, which at the time gave about 3 percent of adult men the right to vote in parliamentary elections, about 450,000 persons. The election law also specified four-year terms of office and single-member districts (with minor exceptions), although the districts were based on population rather than number of voters. This in combination with the existing distribution of tax payments, produced considerable variation in the number of votes that candidates would have to receive to win office. As few as 23 votes could determine a member of the new lower chamber (Uyehara 1910: 169–73, *HiCoJ* 1987: 20–22).

The Meiji constitution includes a bill of rights. However, all the rights listed could be revised by ordinary legislation, as could election laws. Free speech for members of the parliament was protected, but only inside parliament. Outside, it would be subject to the prevailing censorship laws (article 52). Other restrictions on the press and on political organizations remained in force (Uyehara 1910: 182-83, 219). Constitutional amendments required a two thirds vote in each chamber and consent of the emperor. Proposals for amendments had to originate as executive (imperial) proposals, which made the constitution very difficult to amend in practice. On other matters, the emperor and chambers of parliament shared agenda and veto control.

Overall, the constitution was clearly a compromise, a constitutional bargain, rather than a “fraudulent” document imposed by conservatives on the emperor's council.

Parliament's veto power on new laws and taxes was completely consistent with liberal constitutional practices in much of Europe. This would please Japanese liberals and others who felt their interests had not been well represented within the Meiji Council of State. Support for the constitution from the regional governments outside the imperial court was also assured by the new noble chamber and by the restrictive wealth-based suffrage. The foundation of the constitution and the emperor's ability to appoint the council of state would please conservatives by preserving the ancient metaphysical foundation of the Japanese state (Siemes 1962).

Preserving royal autonomy also made the constitution acceptable to the emperor. Roesler's commentaries on the Meiji constitution make it clear that many of its provisions were written with

preserving the historic (indeed mythic) authority of the emperor in mind. The emperor retained the power to declare war and peace, sign treaties, appoint and dismiss officials, elevate nobles, and determine the salaries of government officials (articles 1–16). In the absence of agreement for a new budget, the old budget would remain in effect (article 71). Parliament was also forbidden to reduce “fixed expenditures” adopted by the emperor before the constitution (articles 66, 67, and 76).

The two new royal councils that formally replaced the council of state and the Genroin are mentioned only briefly: the ministry or cabinet in article 55 and the advisory privy council in article 56. The practice of selecting a “prime minister,” “cabinet president,” or “chancellor” had become routine in the period prior to the constitution’s adoption, but this important office is mentioned only in passing in the constitution, as a person who could break ties in the parliament (article 47). The ministers were all appointed by and responsible to the emperor, rather than parliament. The emperor and his councils retained formal control of day-to-day governance, as had long been common practice in Japan.

Beckmann (1957) notes that in practice the new constitution assured that the emperor’s senior ministers and advisors would continue to exercise nearly complete control of substantial areas of public policy in Japan, assuring policy, procedural, and hierarchical continuity. The emperor and his council were clearly important veto players in the negotiations that led to the final constitution’s language.

Although not a radical document in terms of the persons holding seats in government, the Meiji constitution created new institutionally induced interests and new formal procedures for adopting public policies. Elections were used for the first time to select members of a standing chamber of the national government. A national parliament with veto power over taxes and other legislation existed for the first time. These created incentives and political property rights through which subsequent constitutional negotiations and exchange could take place.

Japanese constitutional history was very different from that of Europe before 1890, but after 1890 Japanese governance followed a similar path of constitutional reform through 1925.

I. Liberalism, Party Governance, and Suffrage Reform, 1890–1930

In anticipation of parliament’s veto power over new taxes, several tax reforms were passed in the 1880s, including a new income tax. As standing taxes, they were free from parliament’s veto after the constitution took effect (articles 62), and as predicted, they increased the revenue of the central government. Unfortunately for the emperor and his advisors, Japanese military and economic efforts

to expand Japan's empire on the Asian mainland (in Korea and subsequently China) proved to be very expensive, as were government subsidies to promote industrialization. Deficits continued to grow during much of this period and both government loans and revisions to the tax code were subject to parliament's approval (article 62).

As a consequence, the government was constantly negotiating with parliament for loans and changes in the tax system. Even before disciplined political parties emerged, leaders of liberal and conservative coalitions in parliament used budget negotiations with the emperor's council of state (cabinet) to advance their policy and constitutional interests.

The second chamber of the Meiji parliaments represented major landowners for the most part. As a consequence, majorities in the elected chamber favored tax reform that would shift more of the tax burden to excise taxes and also favored income tax reform. (Land taxes were still the main source of government revenues.) Majorities in the second chamber also supported constitutional reforms that would increase parliament's authority, such as making cabinets responsible to parliament.

Negotiations in parliament took place on a number of dimensions, and support for higher tax revenues in the parliament was obtained partly by using the emperor's power of appointment. For example, Itagaki, the leader of a large coalition in the elected chamber, was invited into the cabinet in 1896. Supporters of coalition leaders in parliament also obtained senior positions in the bureaucracy and within regional governments.

Thus, shortly after the constitution was implemented important posts in government were beginning to be filled by parliamentary leaders and their supporters. New taxes were also occasionally linked to proposals for suffrage extension in this period, although none passed in the 1890s (Akita 1967: 119).

The Emergence of Party Governance

Although suffrage was not very broad, the advantages of being a member of influential coalitions in parliament and of party organization in campaigns for office gradually induced more disciplined political parties to form. In many cases, the "new" parties simply reorganized and merged older conservative and liberal coalitions. For example, in 1898 the two leading liberal coalitions, the Jyuto and Shimpoto, merged to form the Constitutional Party (Kenseito). This merger created a liberal majority in the elected chamber and led to the first party cabinet in Japanese history, although a short-lived one.

The existence of the liberal coalition led to the resignation of Prime Minister Ito Hirobumi and the invitation of Itagaki and Okuma, the leaders of Kenseito, to form the first party government in June 1898.

There is now hardly any doubt that [your party, the Kenseito] easily controls a majority in the Diet and that the Diet, if it so wishes, is in a position to hinder the accomplishment of state affairs. It is consequently unquestionable that if you are given the responsibility of forming the next cabinet the conduct of state affairs will not be hindered by the diet

... I do not have the help of the lowliest member of a political party. And realizing that this makes it impossible to control a majority in the House, I handed in my resignation yesterday. (Remarks of Ito at a meeting with Okuma and Itagaki on June 25, 1898, quoted in Akita 1967: 135)

Unfortunately, Itagaki and Okuma could not agree on how to share the fruits of office, and a few months later, before the next meeting of the parliament, Japan's first party government resigned and was replaced with another cabinet organized by one of the emperor's senior military advisors, Yamagata Aritomo.³⁰⁸

Prime Minister Yamagata held office for two years, passing significant reforms, some of which were intended to reduce the influence of future parliamentary majorities. For example, civil service reform was adopted in 1899, which reduced the politicization of the rapidly expanding bureaucracy (below the senior ranks appointed by the emperor) by requiring examinations and creating explicit qualifications for bureaucratic office. He also passed ordinances in 1900 that required ministers for the army to be selected from generals and lieutenant generals, and navy ministers from admirals and vice admirals, thus insulating the military from parliamentary control.

During Yamagata's term of office, former prime minister Ito attempted to form his own political party with its own electoral base of support. He believed that support in the directly elected chamber would be critical to legislative success and constitutional governance. He began forming a new party, the Rikken Seiyukai (Constitutional Political Friends Association), and managed attract many former Kenseito members, after the Okuma and Itagaki cabinet failed. Ito was known to be a well-placed, effective, relatively liberal leader. He had been the prime minister three times in the past,

³⁰⁸ Yamagata was one of Japan's most influential constitutional conservatives in this period. Yamagata Aritomo served as commander of the general staff in the 1870s and 1880s. Even earlier, he had been a staff officer in the military campaigns against the Tokugawa regime. After his term as prime minister, he held a variety of senior posts, including president of the emperor's privy council from 1909–22. (Yamagata died in 1922).

and had long been an influential member of the emperor's inner circle of advisors. The Kenseito party dissolved, and most of its members joined Ito's new party.

Ito's party won a majority in the elected chamber in 1900 (156 seats of 300), Yamagata resigned in October, and Ito was invited to organize a new cabinet. Ito's cabinet is often regarded as the first party government.³⁰⁹ (The Itagaki-Okuma cabinet had disintegrated before the parliament returned to session in 1898.) Ito's party-based government, however, was also short lived. It lasted only seven months. His "new" moderate liberal party, however, played a major role in Japanese politics for the next four decades (Uyahara 1910: 243–6; Akita 1967: 138–58; *HiCoJ* 1987: 29–30; Scalapino 1968: 283–84).

Ito's acceptance of the necessity of party government was not shared by many others in the emperor's inner circle, and cabinet appointments alternated between party-based and nonparty cabinets for the next 25 years. The prime ministers of both party and non-party based governments were chosen from nobles who had served on the Emperor's ministerial and advisory councils.

This pattern was broken in 1918 when Hara Takashi, a commoner who had become the leader of Ito's Party, was asked to form a government. Unlike previous prime ministers, he had never been part of the inner circle of the emperor's ministers and advisors. Prime Minister Hara's entire cabinet, except for the military posts, was staffed by party members. (Hara's term of office was ended by his assassination in 1921.) Another significant development occurred in 1924, when Kato Takaaki was appointed prime minister. Kato's term was followed by a series of party-based governments that alternated between the two major parties, the Seiyukai and Minseito, which routinely assembled majority coalitions in parliament during this period. During this period, party government can be said to have existed in Japan.

As in much of Europe, the necessity of parliamentary majorities to pass tax bills, as well as various palace intrigues, had gradually produced party governance without a formal constitutional reform (Uyahara 1910: 215–37, 244–6; Akita 1967: ch. 6; Scalapino 1968: 264–71; *HoCiJ* 1987: 32–6).

³⁰⁹ Ito was among the most influential constitutional liberals of the Meiji period. Ito served in senior posts in later governments, until he was assassinated in 1909 by a Korean nationalist, who objected to Japanese efforts to rule Korea. Ito's 1900-01 term was his fourth term as prime minister, but it was the only one in which he formed a party cabinet (Akita 1967: 130–34; 152–54; *HiCoJ* 1987: 29). (See also: *HoCiJ* 1987: 30; Scalapino 1968: 264–71).

Universal Male Suffrage

Members of the liberal and moderate parties often pressed for suffrage reform at the same time that they pressed for positions in the cabinet, bureaucracy, and regional governments. Proposals for suffrage reform were passed by majorities in the elected chambers of 1895 and 1899 that would have approximately quadrupled the electorate by lowering the tax threshold to five yen. However, both bills were vetoed by the noble chamber, in part, because they were opposed by the cabinet (Uyahara 1910: 174–78; Akita 1967: 144–50).³¹⁰

Support for suffrage reform was sufficiently broad that organized pro-suffrage groups were formed inside and outside of government. For example, after the censorship was reduced in 1898 with repeal of the Peace Preservation Law, a new suffrage reform organization was founded by urban business leaders in 1899 (the Shugiin Senkyoho Kaisei Kisei Domeikai). Several new political parties formed at about the same time, and many of them supported suffrage reform. Although the socialist parties were subsequently banned, the Social Democrats re-formed as the Commoner's Party in 1906, which consistently advocated universal suffrage.³¹¹ Pressure from pro-reform groups outside government tended to rise and fall as press and association laws were relaxed and tightened.

In early 1900 parliamentary bargaining produced a complex constitutional exchange that involved suffrage expansion, a change in electoral procedures and changes in the tax system. Suffrage was approximately doubled by reducing the tax threshold from 15 to 10 yen. A secret ballot was introduced. As a compromise with conservatives, single-member districts were replaced with multiple-member districts (generally with three to five members) elected under a single nontransferable vote. Tax reforms also increased the relative importance of income and excise taxes, especially beer and sake, although land taxes remained the largest source of state revenues. The royal council supported multiple-member electoral districts to increase the number of parties, which would tend to make coalitions more fragile and increase their ability to engineer majorities in the second chamber (Uyahara 1910: 219–29; Mitani 1988: 71; Minami 1994: 258; Wada 1996: 6).

³¹⁰ Suffrage reform was mentioned in the very first meeting of the parliament in 1890. This does not necessarily imply that liberals elected to parliament lacked institutionally induced interests in the status quo, but it does suggest that their base of support was more liberal than that of the nobles in the emperor's inner circle.

³¹¹ Most suffrage-reform groups were liberal ones in the sense used in this book, although other more radical groups also supported suffrage extension. As in Europe, most leaders of the labor and social democratic movements can be regarded as "left liberals," rather than Marxists or communists.

The new election laws caused older political parties to be reorganized, such as Ito's moderate party (Seiyukai), and new parties to be organized. A new Social Democratic party was founded in 1901 and new conservative parties in 1906 and 1913.

In 1919, during Prime Minister Hara's period of office, the electorate was doubled again by reducing the tax-vote threshold from 10 to 5 yen, as had been proposed in the 1890s, but previously blocked in the noble chamber (Uyahara 1910: 174–8; Mitani 1988). Hara's suffrage reforms were heavily criticized by proponents of universal suffrage, but bills introduced by others to obtain universal male suffrage had failed to obtain majority support.

During the next few years, petitions were submitted to the emperor's advisory committee, and thousands of newspaper articles were written in support of universal suffrage (Quigley 1932: 252–23). Finally, during the Kato administration in 1925, the tax-based threshold for suffrage was eliminated, which created essentially universal male suffrage. All Japanese male citizens of age 25 or older were entitled to vote, provided that they were not on poverty relief or bankrupt, and had not been convicted of a major crime (Lu 1997: 395, *Britannica* 1911: 144; Duun 1976: 170; Wada 1996: 7; Mason and Caiger 1997: 320, 331).³¹²

At this point, parliamentary democracy can be said to have emerged in Japan. Elections for the second chamber were based on universal male suffrage, and party cabinets were routinely appointed during the next several election cycles.

The Tide of Japanese Liberalism Retreats

The course of liberalization in late nineteenth and early twentieth century Japan was sufficiently well-known that liberals from more conservative states in eastern Asia, such as China and Korea, often sought refuge in the Japan during repressive periods at home. When east Asian countries became interested in Western theories and education, they normally sent their children to Japanese schools, rather than to Europe where entirely new character sets would have to be mastered. It was in this period, for example, that China sent thousands of students abroad for education and most went to Japan

³¹² As noted in the previous chapters, such restrictions were also common in other universal suffrage laws of that period. A proposal was entertained to include suffrage for women who were heads of households, but was not accepted. Women's suffrage movements were subsequently organized in the late 1920s and bills extending suffrage to women passed in the elective chamber in 1930 and 1931, but were vetoed by the noble chamber (Quigley 1932: 254–25). Suffrage was finally extended to women after World War II.

Nonetheless, in contrast to many of the European transitions, the relatively liberal Japanese system of governance failed to sustain sufficient political support for competitive national elections and party governments. In contrast to the German case, the de-liberalization of Japanese politics was a consequence of electoral competition, rather than constitutional coup, as conservatives won the policy debates inside and outside government. Emperor Meiji died in 1912 and was succeeded by Emperor Taisho who reigned until 1926, although he was in poor health for much of this time. Emperor Taisho was succeeded by Emperor Showa (Hirohito), who presided over Japan's militaristic period through World War II.³¹³

Although liberal reforms did not end with Emperor Taisho's death, the liberal tide began to weaken at that point, as royal authority passed to a more ambitious and healthier man. The conservative resurgence was also associated with new ideological trends and a good deal of domestic violence. Social Darwinism, nationalism, and military success on the continent had caused ancient military values and conservative theories of governance to return to prominence. The two major parties, which had begun as moderate-liberal alliances gradually became more conservative. By the 1930s both were led by senior military men.

Conservatives in parliament supported the divine right of kings (the divinity of the emperor), closure to the West, and the ancient warrior values—although few pushed for the end of industrialization. Censorship increased and tolerance for political debate diminished. Both liberal and socialist ideas were censored in parliament and increasingly restricted by law. Consider, for example, the censor of Tatsukichi Minobe, a member of the noble chamber, who was a constitutional scholar at the Imperial University of Tokyo and a leading advocate of relatively liberal interpretations of the Meiji constitution. Minobe's interpretations were severely criticized by conservatives.

A non-Japanese, **Blasphemous, European-worshipping ideology** which ignores our three thousand year old tradition and ideals is rife. **This liberalism which threatens to turn us into Western barbarians** is basic to Minobe's beliefs. (Attributed to one of the military reservist associations, Totman 2000: 368).

³¹³ Emperors in Japan have two names, a personal one under which they live and rule, and another honorary name created at the time of their death. The honorary name is used in the text, as customary, and is also normally used to describe the period of the emperor's term of office. Meiji's predeath name was Mutsuhito, and Taisho's predeath name was Yoshihito. Taisho's successor, Hirohito, is an exception for modern historians because of his long life and his regime's influence on world history during that period. Hirohito took office in 1926 and died in 1989, at which point he formally became Emperor Showa and his period of rule the Showa era.

Professor Minobe's work was censored after 1935 and his courses at three universities suspended, in part for stating that Japanese soldiers fought and died for *their country*, rather than *for their emperor*. This was regarded within conservative circles as very disrespectful of the emperor.

The electoral reforms of 1925 were not undone, nor was parliament entirely ignored, but the center of Japanese politics abandoned liberal economic and political ideas, and political authority shifted back to the emperor's cabinet and his military leaders. Conservative ideological trends were reinforced by the electorate's reaction to civil disorders and assassinations, including those of Prime Ministers Hara, Hamaguchi, and Inukai in 1921, 1931, and 1932. The conservative tide and the assassinations affected the leadership and electoral campaigns of the two leading political parties (Totman 2000: 362–73; Power 1942).³¹⁴ After 1932 all the prime ministers were active military men.

Broad popular support for Japan's military campaigns energized even more extreme military groups, who were responsible for many assassinations and assassination attempts, and repeatedly sought to overthrow the Meiji constitution. The last competitive national election was held in 1937. A few years later, in 1940, the two major parties and several minor parties merged to form a single pro-government party, the Imperial Rule Assistance Association.

In this manner, electoral pressures, domestic violence, and constitutional bargaining gradually ended parliamentary democracy. Although still formally grounded in the Meiji constitution, the government of Japan had become an illiberal one-party regime devoted to military values, activities, and objectives (Mason and Caiger 1997: 330–32; Scalapino 1968: 280–82; *HiCoJ* 1987: 35–38).

After World War II, it is sometimes said that the American General MacArthur imposed a new democratic constitution on Japan. It would be more accurate to say that MacArthur supported Japanese liberals in their efforts to reform the Meiji constitution. The preface was rewritten to ground the postwar constitution on popular sovereignty, rather than the divine right of kings. A new article 7 made the cabinet responsible to the parliament and eliminated the emperor's discretion to undertake a broad range of policies on his own account, as had been allowed by articles 7–16 of the Meiji constitution. Civil liberties were strengthened, women's suffrage was introduced, equality before the law was guaranteed, war was renounced, and academic freedom guaranteed. New

³¹⁴ The number of major liberal and moderate leaders who were assassinated over the years is striking, for example, Okubo in 1878, Hoshi in 1901, Ito in 1909, Hara in 1921, Hamaguchi in 1931, and Inukai in 1932. There were also attempted assassinations of Itagaki in 1882 and Okuma in 1889. Itagaki is reported to have said "Itagaki may die, but liberty forever!" as he fell after his attack, words that made him famous among liberals for years to come (*HiCoJ* 1987: 56–69; Uyahara 1910: 95).

elections were held, and the reforms were ratified by the new parliament of 1946, using the amendment procedures of the Meiji constitution (Lu 1997: ch. 15, Dean 2002: 193–94).³¹⁵

The contemporary Japanese state remains a constitutional monarchy with a bicameral parliament, although with a senate (House of Councilors), rather than a noble chamber. The post-war constitution includes the same chapter titles and many articles from the original Meiji text.

J. Conclusions: Ideas, Interests, and Reforms

Over the course of seventy years, Japan's medieval order was gradually replaced by a new constitutional framework with, more parliamentary authority, electoral competition, more open markets, and more equality before the law. The details of specific reforms, as in the European cases, reflected liberal theories of the state as well as the unique bargaining skills and tactics of those directly involved in negotiations and their supporters. Overall, the Japanese case clearly demonstrates that the bargaining model of constitutional reform can shed light on democratic transitions outside as well as inside Europe.

Japanese constitutional history is largely consistent with that developed in part I of the book. Constitutional reforms in both the Shogun and Meiji period were normally multidimensional, although there were two major series of reforms, most reforms were relatively moderate in scope. External shocks such as new technologies and ideas created new opportunities for constitutional reforms. Older institutions were rarely shed, but rather were gradually transformed into newer ones. In the late nineteenth century and early twentieth century, there were liberal trends in the constitutional reform adopted, which reflected the penetration of liberal ideas and support for industrialization. Parliament's power of the purse played a central role in the constitutional-fiscal bargains worked out. As predicted, the bargains were multidimensional and fine grained and reflected gains to trade as well as institutional conservatism.

As the ideological and economic interests represented in parliament and the royal council shifted away from liberal ones (partly as a consequence of assassinations), reforms shifted in illiberal directions, as predicted by the theory. The bargaining equilibria shifted toward rule by the emperor's council in large part because it was supported by electoral outcomes, rather than imposed by a quasi-constitutional coup d'état. The Meiji constitution remained in force and elections continued to

³¹⁵ Only six former members of parliament were reelected under the new constitution (Lu 1997: 481).

be held, during the period in which policymaking authority shifted back to the emperor and his military leaders.

Revolutionary threat theories of constitutional reform, such as those elaborated by Acemoglu and Robinson (2001), can account for relatively little of the emergence of parliamentary democracy or industrialization in Japan, and seem to predict the opposite of what happened as the liberal tide receded. In the 1920s and 1930s, the most credible threats of revolution were organized by arch-conservatives who wished to preserve or return to the old samurai ways, rather than democrats. Although assassinations by conservative groups in the 1920s and 1930s helped push the center of gravity in Japanese politics to the right, it did not end popular suffrage or cause major changes in constitutional procedures, although civil liberties were curtailed. The conservative revolt of the 1870s (the Satsuma rebellion) did not cause the trajectory of reform to shift in a conservative direction. Instead, the defeat of the samurai encouraged further liberalization.

Importance of Ideology in Constitutional Debates

The fact that European political theories played a role in Japan's transition to parliamentary governance sheds light on the manner in which they affect the course of constitutional reform and how they are adopted and applied. Although many politically active persons and scholars were influenced by texts and constitutional documents written by European authors, Japan did not become European. Rather various Japanese persons used a subset of European ideas and technologies to advance their own purposes. Many of their objectives were similar to those of Europeans in this period: many in Japan wanted greater access to political and economic opportunities, many favored equality before the law, many were interested in Japan's national security, most sought more materially comfortable lives.

It bears noting that many theories from the West did not make large inroads into Japanese culture during the nineteenth century. For example, there were no wholesale conversions to Christianity.³¹⁶ Ideas are portable, but they are “imported” only by persons who are either already sympathetic to the conclusions reached or who are looking for explanations of events and solutions to problems that “domestic” ideas cannot provide. Liberal theories from Europe took hold in Japan

³¹⁶ It is interesting to note that Christianity had made significant inroads in several of the southern duchies during the sixteenth century. Many thousands of Japanese, including a few of the daimyos on the losing side of Japan's civil war, had converted to Catholicism. Christian churches were demolished in the early shogunate period, although thousands continued to secretly practice the Kirishitan faith until the reforms of the late nineteenth century allowed open forms of Christian worship (Lu 1997: 173–74, 197–201; Higashibaba 2001: ch. 6).

for much the same reason that they took hold in Europe: they shed new light on problems of interest to Japanese businessmen, voters, and policymakers.

Liberal theories, in turn, lost ground to new conservative theories and older nationalistic ones that were better aligned with military objectives on the Asian mainland and with the steps that appeared necessary to preserve peace at home in the 1930s. Liberalism could not explain or solve the great macroeconomic problems of that period and it also failed to explain or cope with the domestic violence associated with the new anti-liberal theories of the far left and right. Moreover, liberalism's emphasis on rationality, civic equality, open markets, and universal rights did not provide much intellectual or moral support for empire, military campaigns, and national superiority—ideas that captured the imagination of a broad cross-section of the Japanese in the first half of the twentieth century. Social Darwinism, military mysticism, stoicism, and a subset of traditional values provided better support for such perspectives and policies.

After World War II was over, these ideas lost favor and liberal ideas regained support. This reflected losses during the war and broad interest in rebuilding (again). Moreover, it was not very difficult to reverse the conservative policies of the past decade or two, because the liberalization of Japan's economy and constitution during the late nineteenth and early twentieth centuries provided useful points of departure. Indeed, it could be said that parliamentary democracy was restored and improved after the war, rather than revolutionized. The present constitution has Meiji roots and is surprisingly similar to the most liberal of the constitutional proposals made by senior government officials in the 1880s.³¹⁷

³¹⁷ See Dean (2002: ch. 4) for an overview of contemporary constitutional law and constitutionalism in Japan.

Chapter 18: The United States, an Exception or Further Illustration?

A. Introduction: American Exceptions and Similarities

The last case to be analyzed is the American transition to constitutional democracy. As in the case of Japan, this case also involves another continent's culture. It also involves a somewhat different catalyst for constitutional exchange, the absence of an obvious "king," a war of independence, and differences in the timing and details of individual reforms. The emergence of liberal democracy in the United States of America is nonetheless consistent with the models of constitutional reform developed in part I.

Although the relevant British colonies did not win independence until 1783, their transition to liberal democracy began much earlier. The first more or less democratic constitution in North America was the third charter for the Virginia colony, which was drafted in London and implemented in Virginia between 1619 and 1622. It called for a bicameral legislature, with one appointed chamber (the chamber of state) and another directly elected chamber (the chamber of burgesses). Members of the second chamber were to be elected by the freemen of the colony. Initially, the second chamber was composed largely of English nobles who had made the trip to Virginia to look after their investments in the Virginia company. The second chamber is of greater interest for the purposes of this book and for constitutional history, because elections for that chamber were based on unusually broad suffrage by the standards of world history. European suffrage would not reach similar levels for more than two centuries.

This early start suggests that the path to democracy in the United States may have been quite different than in Europe, but this is less true than might have been expected. As in Europe, the normative theories and economic interests of political elites (i.e., those with the authority to adopt constitutional changes) were important determinants of constitutional developments. The power of the purse played an important role in the emergence of party governance and the accumulation of parliamentary authority. The path of reform was largely peaceful, gradual, and lawful. A series of constitutional negotiations and reforms gradually produced relatively liberal forms of state and national governance over the course of a century and a half. The fact that many new governments were formed also allows the relevance of the models of chapters 2–5 to be examined directly. It seems clear that exit options and best practices had important effects on town, county, and colonial governance.

The transition to adult suffrage, however, took two or three times longer in the United States than in the other case studies. The colonies that became the United States all had relatively broad male suffrage by 1700, but the United States did not adopt women's suffrage until 1920, about the same time as this was done in Europe's parliamentary democracies. The War of Independence had a smaller effect on the institutions of governance than often told to grammar school students, although it did affect constitutional developments, as discussed below.

B. Constitutional Innovation and Competition in the Colonial Period

Colonization of North America began nearly a century later than in South America, in large part because land, rather than gold, was the main source of profits for investors in the North American colonies. Land, unlike gold, is not portable. Land does not automatically produce income or wealth. It is not valuable, unless it is "improved" in some way. Farming requires clearing and tilling. Mining requires exploration, digging, and smelting. Forest products require lumberjacks, saws, and sawmills. To profit from land holdings requires labor and capital in addition to land. Consequently, those who received large land grants or purchased large tracts of land in North America had strong demands for labor and capital. Without those additional inputs, their large land holdings were essentially without economic value.

Formally, the English land grants were provided through charters of one kind or another from the English kings and queens, who had their own reasons for sponsoring development in the colonies. They were always interested in new tax revenues beyond the control of parliament and also interested in geopolitical power games. Wertemberger (1914: 32), for example, suggests that colonial enterprises were undertaken largely to escape from fiscal constraints.

The King [James II], who was always restive under the restraint placed upon him by the English Parliament had **no desire to see the liberal institutions** of the mother country transplanted ... **He wished, beyond doubt, to build a colonial empire which should be dependent upon himself for its government and which should add to the royal revenues.** In this way he would augment the power of the Sovereign and render **it less subject to the restraint of parliament.**

Investors in crown companies also tended to be motivated by economic interests, although a few may have had ideological or religious reasons to invest in international enterprises.

Credible Commitments and Other Contracting Problems

Property in the early commercial colonies, such as Virginia, was much like that within modern corporations, in which the firm's property is communal and those making use of the properties are

simply employees or partners with various use rights. Ownership was initially vested in the company and its shareholders, rather than the persons using corporate resources. As it became clear that selling land was more profitable than managing or leasing it, surveys and laws regarding ownership were developed.

The most common method of attracting skilled and unskilled labor to the colony were with loans made to workers to pay for their journey and land in the colonies. Shipping agents and other entrepreneurs provided transportation to the colonies in exchange for promises of several years of labor, and those promises (contracts) were sold by shipping companies to landowners needing labor. These indentured servant contracts also normally promised workers a substantial piece of farmland after their transport loan had been worked off. This gave the “servants” an interest in adhering to the contract and allowed them to become freemen after five to 10 years of hard work for their colonial masters. About half of the European emigrants to the colonies in the seventeenth and eighteenth centuries had their trips financed through such indentured servant contracts (Galenson 1986).

In some cases, however, promises were made and then new obligations required after the “servants” arrived in America, especially in the early days. In other cases, new laws were adopted that implicitly changed the terms of the contracts, by adding new obligations or constraints. Such problems can be thought of as commitment problems, although not all of them involved contracts per se. The rulemakers in the colonies had significant autonomy in the early days and could rewrite rules and contracts and enact new regulations at their pleasure, as owners of firms are often able to do within their own organizations.

The Divine, Moral and Martial Laws, as they were called, undoubtedly brought about good order in the colony, and aided in the establishment of prosperity, but they were ill suited for the government of free-born Englishmen. **They were in open violation of the rights guaranteed to the settlers in their charters, and caused bitter discontent and resentment.** (“Regarding Governance in Virginia in 1610,” Wertenbaker 1914: 23).

Even without problems of governance, indentured labor “contracts” were risky both for the indentured servant and the contract holder. Once in America, indentured servants could not afford to purchase a ticket back to Europe to sue for damages, if their master overstepped the bounds of the contract, reneged on his promise of land at the end of the contract period, or added new conditions to the terms of contract. Exit costs to other colonies were low, but not trivial in the early days, and in most places natural exit costs were reinforced by local laws. Conversely, masters might

have difficulty with “runaways” whether they overstepped the bounds of the contract or not, as transportation networks among the colonies emerged. In the early days, many servants and other immigrants also died from various diseases before paying off their debts. In the first two decades of the Virginia colony, there were many years in which new immigrants simply replaced previous arrivals who had died from disease and conflicts with Indians. Between 1619 and 1624, some 5,000 persons emigrated to Virginia, but the net gain in populations was only 200 (Wertenbaeker 1914: 12–6, 46–7).

Similar problems faced communities and plantations that attempted to attract tradesmen and the tradesmen who brought their skills or capital to the new colonies in exchange for promises of land or other support.

People would be more willing to emigrate if contract terms were reasonable and enforced, and if subsequent promises and accumulated wealth were not broken or expropriated. And, of course, more people would provide labor-backed loans, if they were likely to be repaid. To attract labor and capital to their colonies, landowners needed to assure labor, small businessmen, and other investors that they would be better off in their particular colony than at home.

In early seventeenth century America, this required establishing a reliable, credible method of enforcing land titles and contracts, and for assuring that new laws would not be adopted that would undermine those titles and contracts. In principle, such contracting and governance problems can be solved through self-enforcing contracts, a well-functioning court system, or a combination of the two. However, in the early days, court systems did not always exist, and those that did exist tended to be biased in favor of major shareholders and/or associates of the proprietors receiving major land grants. Designing self-enforcing contracts in circumstances in which time is an important element and courts are nonexistent or unreliable is clearly problematic. Indeed, the worst indentured contracts were such that they probably would not have been enforced in England, and the worst indentured contract owners (masters) might well have been punished for violating criminal law.

Large landholders had a significant economic interest in developing methods for securing property rights and enforcing contracts in the colonies. If economic and political risks could be reduced for skilled and unskilled labor and for large and small capital investors, their land would become much more valuable. As in the case of the medieval tax constitution, a system of governance that protected the landed gentry, capital owners, and labor from arbitrary treatment would advance the long-run interests of all.

Virginia's Constitutional Solution: Representative Political Institutions as a Means of Protecting Property Rights and Increasing Cooperation

The Virginia colony's first governing body was characterized by the First Charter of Virginia that was granted by James I in 1606. The first charter provided a land grant in North America. Access to that land was to be determined by a council consisting of major investors in the Virginia Company, many of whom were nobles who naturally remained in England.

And do therefore, for Us [James I], our Heirs, and Successors, GRANT and agree, that the said **Sir Thomas Gates, Sir George Somers, Richard Hackluit, and Edward-Maria Wingfield**, Adventurers of and for our City of London, and all such others, as are, or shall be, joined unto them of that Colony, shall be called **the first Colony**; And they shall and may begin their said first Plantation and Habitation, at any Place upon the said-Coast of Virginia or America, where they shall think fit and convenient, ... And that **no other of our Subjects shall be permitted, or suffered, to plant or inhabit behind, or on the Backside of them, towards the main Land, without the Express License or Consent of the Council of that Colony**, thereunto in Writing; first had and obtained.

A second charter of the Virginia company was granted in 1609, two years after the colony was founded. The second charter granted very extensive legislative authority to the company by the king for a period of 20 years, in exchange for promised payments to the sovereign. The company's ruling council, in turn, delegated much of its authority to an appointed governor who arrived in Virginia in 1610. A third charter was obtained in 1611, which gave the company additional legislative ability:

[The company] shall likewise have **full Power and Authority, to ordain and make such Laws and Ordinances, for the Good and Welfare of the said Plantation**, as to them from Time to Time, shall be thought requisite and meet: So always, as the same be not contrary to the Laws and Statutes of this our Realm of England; And shall, in like Manner, **have Power and Authority, to expel, disfranchise, and put out of and from their said Company and Society for ever**, all and every such Person and Persons.

Because the efforts of the company's appointed governor were not entirely successful, the company decided to revise its method of governing the colonies.³¹⁸

King James had granted the Virginia company the authority to create institutions of governance in their colony in the company's second and third charters, partly in exchange for a promise of additional revenues from the colony, although he evidently disapproved of the form finally chosen in 1619. In 1619–21, the Virginia company replaced its system of governance in the colonies with a

³¹⁸ See Salmon and Campbell (1994: ch. 1; Wertenbaker 1914: ch. 2) for an overview of Virginia's first authoritarian and king and council-based governments.

more representative one by adopting a system of governance based loosely on the English procedures. The new system of governance included a governor, an appointed chamber, and an elected chamber (the General Assembly).³¹⁹

THE one of which Councils, to be called THE COUNCIL OF STATE (and whose Office shall chiefly be assisting, with their Care, Advice, and Circumspection, to the said Governor) shall be chosen, nominated, placed and displaced, from time to time, by Us.

[The other shall consist] of **two Burgesses out of every Town, Hundred, or other particular Plantation, to be respectively chosen by the Inhabitants:** Which Council shall be called THE GENERAL ASSEMBLY, wherein (as also in the said Council of State) **all Matters shall be decided, determined, and ordered, by the greater Part of the Voices then present;** reserving to the Governor always a Negative Voice. And this General Assembly shall have free Power to treat, consult, and conclude, as well of all emergent Occasions concerning **the Public Weal** of the said Colony and every Part thereof, as also to make, ordain, and **enact such general Laws and Orders, for the Behoof of the said Colony, and the good Government** thereof. (*Ordinances for Virginia*, July 24, 1621).

This template for governance solved many of the existing contracting and governance problems.

The Virginia model provided the sovereign company with considerable control over the office of governor and the membership of the first chamber, which consequently represented the interest of well-connected major landholders and merchants. The second chamber was elected by town and country property holders and therefore represented the interests of the middle class. Together, the veto power of the two chambers protected the middle class and economic elites from each other and provided similar protections for the proprietors. Changes in basic contract law, property rights, and other civil liberties could be adopted only if they advanced the interests (of majorities) of all three groups. The council and subsequently the assembly served as Virginia's highest court of appeal (Wertenbaker 1914: 2, 8–10, 34–7, 40, 54–5). The Virginia model thus provided fiscal and regulatory stability that was somewhat stronger than that noted by North and Weingast (1989) regarding England's parliament 70 years later (1689).³²⁰

It was the success of this institutional template together with the mobility of labor and the interests of large landowners that induced the emergence of relatively liberal forms of representative

³¹⁹ Copies of Virginia's three charters and the company's 1621 Ordinances for Virginia are available from Yale's Avalon Project (http://avalon.law.yale.edu/subject_menus/statech.asp).

³²⁰ The ordinances for Virginia adopted in 1621 describe the new bicameral representative government for the colony itself. See Wertenbaker (1914: chs. 2–4) for a detailed overview of how lawful governance gradually emerged under that new colonial constitution.

government in the North American colonies during the next century and a half. And, it is interesting to note that Virginia's 1621 constitution was written well before Hobbes, Locke, or Montesquieu put their pens to paper, and nearly two decades before the Levellers' contract.³²¹

Gradual Liberalization of Colonial Governments

Although the Virginia template gradually became the standard one for governance in the colonies, the other colonies also began with nondemocratic forms of government: often a governor and unelected council of advisors. Initial variation in colonial governance was partly caused by cultural, economic, and religious differences. For example, Plymouth was a religious colony founded by Puritans, New York was a commercial trading post founded by Dutch merchants, and Maryland was a proprietorship (a colony initially purchased by a single person) that encouraged Catholic immigration. The Plymouth (1620), New Amsterdam (1624), and Maryland (1632) colonies all began with unelected governments. This was also the case in West New Jersey, which was founded in 1664, and in North and South Carolina (initially a single colony) founded in 1664. Charter reforms were normally formally ratified in England in legal procedures initiated by colonial governors.³²²

Within a few decades of their colonies' foundings, the various colonial formateurs and their successors found it useful to add elected chambers with veto power over taxes and laws in response to labor mobility and yardstick competition among the colonies. For example, in 1636 the Plymouth colony adopted a cabinet form of government with a governor and seven-person council of assistants elected by freemen. This was modified by adding provisions for equal protection of the law in 1641 and a bicameral legislature in 1644 (Massachusetts). Maryland adopted an elected assembly in 1638, equality before the law in 1638, and religious tolerance for all Christians in 1649. West New Jersey adopted a democratic bicameral government in 1681. Its elected chamber was called the General Free Assembly. New Amsterdam was taken from the Dutch by England and renamed New York, but its religious liberties were continued and a new, relatively weak,

³²¹ The Virginia template for governance is often attributed to Sir Edwin Sandys, who had served as a member of England's House of Commons for many years and as the treasurer of the Virginia Company of London shortly before Virginia's ordinances for the new government were issued. Sandys had previously been involved in contesting royal grants of monopoly (mentioned in chapter 12) and debates on religious tolerance. He also had relations with the Leiden Puritans, many of whom migrated to Plymouth from the Netherlands in 1620 via the Mayflower. See Rabb (1998) for a biography of Sir Edwin and his roles in parliament and the Virginia company.

³²² See Lutz (1998) for a collection of early colonial charters and codes. Many other colonial charters and ordinances are also available at Yale Law School's Avalon Project: <http://www.yale.edu/lawweb/avalon/avalon.htm>.

representative assembly was adopted in 1683. (Similar assemblies had been proposed during the Dutch period, but not adopted.) Connecticut secured a charter that provided for an elected governor and bicameral legislature in 1698. By 1700 a good deal of the architecture for democratic governance had already been worked out and broadly adopted in the colonies.

The influence of early liberal political theories is evident in most of the charters. Consider, for example, these excerpts from the West New Jersey Charter of 1681 adopted a decade before Locke finished his influential treatise on government and several years before England's Glorious Revolution. The excerpts are from Lutz (1998):

We the Governor and Proprietors, freeholders and inhabitants of West New Jersey, by mutual consent and agreement, for the prevention of invasion and oppression, either upon us or our posterity, and for the preservation of the peace and tranquility of the same; and that all may be encourage to go on cheerfully in their several places: We do make and constitute these our agreements to be as fundamentals to us and our posterity, to be held inviolable, and that no person or persons whatsoever, shall or may make void or disanul the same upon any presence whatsoever.

(i.) There **shall be a free assembly of the people** for the Province aforesaid, yearly and every year at a day certain chosen by the said free people of said province, whereupon **all of the representatives of the free people of the said Province shall be summoned to appear** . . . to make and ordain such acts as shall be requisite for good government and prosperity of the free people of said province.

(ii.) The Governor of said province **shall not suspend or delay** the signing, sealing and confirming of such laws as the General Assembly shall make.

(iii.) That **it shall not be lawful for the Governor to make or enact any law or laws for said Province without the consent, act, and concurrence of the General Free Assembly.**

(iv.) That **it shall not be lawful for the Governor and council, or any of them, to levy taxes without the consent, act, and concurrence of the General Free Assembly.**

(v.) That **no General Free Assembly shall give to the Governor, his heirs, or successors any tax or custom for any time longer than one whole year.**

The West New Jersey charter of 1676 had previously provided for freedom of religion (chapter 16), for due process and jury trials (chs. 17–20), and public trials (ch. 23).

Although the North American colonies were often founded for profit and often run by chartered companies, they turned out to be great experimental laboratories of governance. Indeed,

the freedom to conduct constitutional experiments could be counted as one of the great unexpected consequences of the discovery of the New World, perhaps the greatest in the long run.

Independence of the English Colonies

That the North American colonies remained independently organized and governed, rather than centrally administered under the tight control of England's kings was partly a matter of luck. Seventeenth-century England was a place of political turmoil, involving a major civil war, Cromwell's dictatorship, a restoration, and a Glorious Revolution as discussed in chapter 12. It was not until shortly before the Glorious Revolution that an English monarch, James II, began to centralize governance in the colonies.

James II initiated a series of lawsuits to revoke colonial charters for violations of English law. His success in court allowed him to create the Dominion of New England in 1685, which eventually placed all of New England, New York, and New Jersey under a single central, more or less authoritarian, administration. James II appointed Governor Andros to rule the dominion. Andros, as evidently ordered, restricted local assemblies and reduced judicial independence by appointing new judges and suspending the Massachusetts General Court. New taxes were imposed, and existing land claims were challenged. Enforcement of the Navigation Acts was stepped up. Writs against the charters of Maryland, the Carolinas, Pennsylvania, and the Bahamas were pending in English courts. If successful, those suits together with the dominion would have greatly reduced political autonomy throughout the English colonies in North America (Taylor 2001: 276–77; Haffenden 1958; Osgood 1902).

This policy of centralization ended for several decades in 1689, when William III and the Dutch army induced James II to flee to France. William III reinstated the colonial charters (in some cases with minor revisions) and thereby restored decentralized governance in the colonies. It was not until George III that another English monarch made a serious attempt to centralize control over the colonies, which more or less directly led to the American War of Independence.

C. The Power of the Purse, Labor Mobility, and Constitutional Liberalization in the Colonial Period

Colonial governors and their governments were not as powerful in the North American colonies as in medieval Europe or as centralized as in the South American colonies. This was partly because the North American colonies were less profitable than colonies elsewhere and so were less

directly supported by well-organized European armies, courts, and police. With little or no standing tax revenues and with little support from English taxpayers or sovereign companies, the royal colonial governors depended on taxes and fees approved by their legislatures for revenues and often for their salaries. Governors needed reliable majorities in the colonial parliaments to secure the resources for governing, which made the governors dependent on their colonial legislatures (and also provided them with good reason to look for additional revenue from the British parliament). It also made the colonial parliaments among the most powerful representative assemblies in the world at that time in terms of their control of legislation and taxation.³²³

The power of colonial government was also constrained by the desire to attract new residents (i.e., the demand for labor) and the exit options of already in the colony. Migration to and among the colonies was constantly encouraged by the efforts of landowners and other formateurs in Europe and in the colonies. In the North, religious leaders organized groups to found new settlements to promote narrow religious practices. Differences in the political and religious theories within colonies and towns, in turn, often induced subsets of the colonists to exit and form new communities. Connecticut and Rhode Island, for example, were founded by unhappy colonists from Massachusetts in the 1630s. Similar emigration and immigration occurred within and among other colonies, as new towns were founded and persons left old towns for new ones.

The motivation for exit was often poor and/or intolerant government policies and economic opportunities, rather than ideology. Insofar as more liberal governments tended to be more tolerant and less likely to impose unpopular taxes and policies, they tended to attract labor and capital, and so tended to produce more prosperous communities. This aligned the interests of land owners and land speculators with liberal political institutions in a manner that was not common in other places. Without relatively liberal political institutions, a colony's landed gentry might have a bit more political power and "their" people might exhibit greater cultural uniformity, but they would have been less wealthy, because there would be fewer persons to farm, timber, mine, manage, purchase, and protect their land holdings.

Exit from poor or overly repressive colonies and communities also became increasingly easy in the seventeenth century. Colonial transport networks developed along rivers and bays, new towns were formed along those waterways, and the natives were gradually pushed out of the territory near the Atlantic seacoast. Many of the colonies were physically close together, because they were

³²³ The governor of the Connecticut and Rhode Island colonies were (indirectly) elected by the colonists. Other governors held office through royal appointment, appointment by colonial companies, or proprietors.

relatively small—as in the North with Massachusetts, Rhode Island, and Connecticut—and/or were linked together by common waterways—as with Maryland, Virginia, and Pennsylvania or New Jersey, Connecticut, and New York. Ships ran up and down the coast of North America, and the same rivers that allowed commerce to develop inland also allowed pioneers to move from town to town.

This is not to say that colonial governance was always routine, lawful, or liberal, but it is to say that competition for residents tended to make it so. Governments were often grounded on written documents, included representative assemblies, and relied upon relatively broad suffrage to select members of those assemblies. Colonial suffrage was very broad by world standards in the late seventeenth century, although various restrictions on suffrage existed in most colonies during the seventeenth and eighteenth centuries (McKinley 1905; Brown 1955; Steinfeld 1989).³²⁴ In the Southern colonies, which depended relatively more on slaves, wealth requirements for suffrage and office, for example, remained somewhat higher than in the north.³²⁵

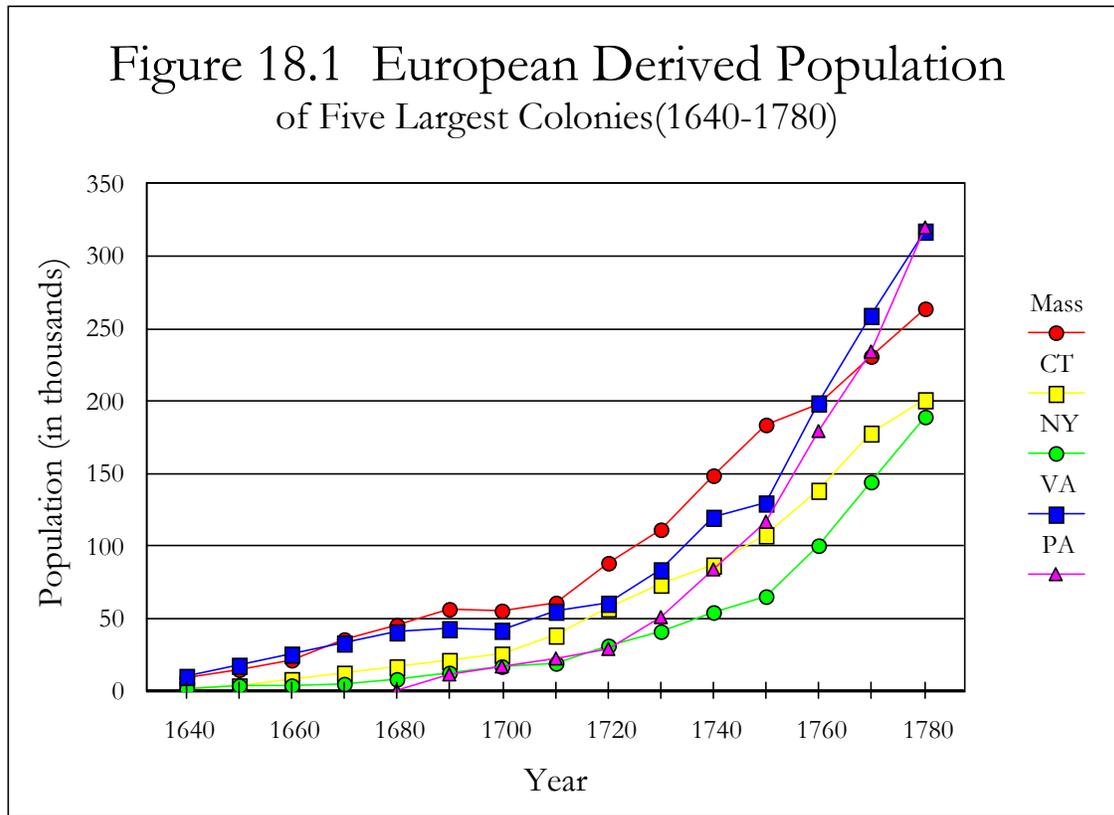
The success of the relatively liberal polities was evident in the emigration rates, land sales, use of new labor contracts, and economic growth. The south, although less liberal than the north, also had political and legal institutions that were liberal by historical standards. Population and economic development increased rapidly during the seventeenth century, and by century's end the larger colonies were comparable in size to the smaller European states and duchies in 1700. Major commercial centers emerged along the Eastern seaboard at Boston, New York, Philadelphia, and Charleston.

These colonial governments demonstrated that representative governance based on broad suffrage was a feasible arrangement for territorial governance. The policies chosen under their institutions did not yield wholesale redistribution from rich to poor or to the middle class. Instead, it

³²⁴ The possibility of exit must also have moderated the behavior of other colonial governments around the world with respect to their immigrants as well. But many were more profitable than the North American colonies and, thus, they were better policed and exit costs could be driven higher by local governments. European diseases had also greatly reduced the native “Indian” population, which simultaneously increased the demand for colonists and provided many more opportunities for resettlement (more open land) than in many other parts of the world.

³²⁵ European political institutions also evolved to increase the value of land, but in a situation in which labor was not often scarce, because of Malthusian labor supplies. There are several cases in which individual European monarchs encouraged immigration of relatively highly skilled groups that could produce services unavailable locally. Immigration was often encouraged with subsidies and by granting special civil and political liberties within specific communities or “free towns.” In general, however, competition for unskilled labor was less intense in Europe, because the supply of labor was relatively large and its marginal productivity was relatively low.

produced rule of law and relatively open trade, which contemporary research shows tends to increase economic growth. Wage rates in the colonies remained higher than those in Europe.³²⁶



Mid-Eighteenth Century Colonial Governments

The association between democratic bicameral forms of the “king and council” template and prosperity led essentially all of the North American colonies to adopt them during the late seventeenth and early eighteenth centuries. By the time of the Revolutionary War, only Pennsylvania had a unicameral legislature, although it too had briefly experimented with the Virginia model.

Eighteenth-century colonial governments typically included bicameral legislatures with one elected and one appointed chamber, each with veto power over new taxes and new laws. The upper

³²⁶ Smith (1776: I.8.22) notes that “The wages of labor, however, are much higher in North America than in any part of England. In the province of New York, common laborers earn 23 three shillings and sixpence currency, equal to two shillings sterling, a day; ship carpenters, ten shillings and sixpence currency, with a pint of rum worth sixpence sterling, equal in all to six shillings and sixpence sterling; house carpenters and bricklayers, eight shillings currency, equal to four shillings and sixpence sterling; journeymen tailors, five shillings currency, equal to about two shillings and ten pence sterling. These prices are all above the London price; and wages are said to be as high in the other colonies as in New York.”

chamber was often an elite chamber composed of senior government officials and major landholders, which was analogous to the noble chambers of European parliaments in that era, although membership was not entirely based on family bloodlines. Members of the second chamber were normally elected on the basis of much broader suffrage than in European parliaments.

The number of voters eligible to participate in elections for the lower chamber tended to increase as the number of freemen increased through time, although suffrage laws were occasionally tightened. (Racial, religious, and residency restrictions were often added during the eighteenth century.) Rather than 5 or 10 percent male suffrage, as was common in Europe until the nineteenth century, colonial suffrage was often greater than 50 percent and occasionally close to 100 percent of adult males, because so many families owned land and met minimum property requirements (Brown 1955, Brown and Brown 1964). Electoral politics, consequently, became mass marketing affairs in the North Atlantic colonies well before it did in Europe (as evidenced by local and regional newspapers and pamphlets).

The combination of parliamentary authority and broad suffrage implies that colonial governments were well on their way to becoming parliamentary democracies well before independence was declared in 1776.

This is not to say that the colonies were modern liberal states. Although more or less equal civil liberties were broadly in place, religious freedom in the northern colonies, for example, was often as limited as in Europe. In Massachusetts, for example, Catholic priests were subject to lifetime imprisonment. In the southern colonies, slavery was commonplace, and in many places it was becoming more rather than less difficult for slaves to earn their freedom. (In the northern colonies, there were already politically active groups lobbying for the abolition of slavery.) Even in relatively tolerant states, suffrage and the right to hold elective office were often limited by religion and race in addition to wealth (Fiske 1888: 76).

By the standards of world history, however, the power of the purse had allowed colonial parliaments to become relatively powerful, while liberal political ideology, mobility, and plentiful land had made suffrage broadly based. As evidence of the breadth of suffrage, consider this analysis of the effects of typical wealth rules for suffrage in Pennsylvania by Thomas Paine:

By a former law of Pennsylvania, prior to forming the Constitution, it was enjoined, that a **man is required**, should swear or affirm himself **worth fifty pounds currency** before he should be entitled to vote. The only end this answered was, that of tempting men to forswear themselves. **Every man** with a chest of tools, a few implements of husbandry, a few spare clothes, a bed and a few household utensils, a few articles for

sale in a window, or almost any thing else he could call or even think his own, **supposed himself within the pale of an oath**, and made no hesitation of taking it; and to serve the particular purposes of an **election day**. (Quoted in Brown 1963: 269)

D. 1776 and the “New” Constitutions of the Former Colonies

King George III’s efforts to centralize policymaking authority in the English colonies, the Declaration of Independence, and war to secede from the British Empire all provided new opportunities for constitutional bargaining, experimentation, and exchange in the 1770s and 1780s. There were new constitutional problems to address, and after independence was declared, important veto players disappeared from those negotiations. The resulting constitutional bargains created the first sizable polities in human history grounded entirely on broad suffrage.

The new state constitutions, however, were not invented whole cloth, as the story is sometimes told. They reflected a century and a half of experimentation, bargaining, and competition with the Virginia political template.³²⁷ The same can be said of the constitution for national governance adopted in 1789.

Independence and the Adoption of “New” State Constitutions

Negotiations with King George III and the British parliament regarding that government’s effort to centralize policymaking authority proved fruitless, and so in July of 1776, the colonial governments jointly declared their independence.

The Declaration of Independence had immediate and direct effects on the organization of the executive branch at the colony-state level. The royal and proprietary governors who had run the executive branch of government lost their offices. At this point, the colonial parliaments could have dispensed with the executive office, but organizational conservatism and the advantages of executive administration prevailed, and governors were replaced, rather than eliminated. Two alternative procedures for selecting governors attracted attention, and both were adopted by subsets of the new sovereign state governments. The choice was between what would later be termed “prime ministerial” and “presidential” systems. Governors could be selected by elected state legislatures, or governors could be directly elected by state electorates.

³²⁷ Two colonies, Connecticut (1662) and Rhode Island (1663), already had charters that provided for elected governors; so their constitutions required only minor reforms to be serviceable. Connecticut continued to be governed under its colonial charter until 1818. Rhode Island continued to use its colonial charter as its state constitution until 1843.

Parliamentary appointment is consistent with an institutionally-induced interest theory of constitutional reform, because this procedure maximizes the parliament's control over the executive, and thereby, public policy. However, institutional interests were not the only ones pursued by members of the colonial parliaments. For example, the direct election of governors could advance partisan interests and ideological interests. Colonial leaders who expected to win elections for governor had reason to favor directly elected governors, because it would provide them with a more powerful office than that of prime minister. Direct election of governors was also consistent with liberal theories of governance that were widely accepted within the colonies. It also believed to reduce problems associated with unified governance, what Thomas Paine termed the "vices of government." In the next few years, finely grained constitutional bargains were negotiated and accepted by the colonial, now state, legislatures.

Most of the new states initially chose to create a prime ministerial system of governance.³²⁸ In only three cases did a majority of the legislature initially favor direct election of governors.

This is not to say that ideological considerations affected only a few of the new state constitutions. Most state constitutions, for example, were explicitly grounded on popular sovereignty. Most of the new state constitutions also included lists of rights. Most also included provisions for broad male suffrage, subject to wealth or tax constraints, although in some cases, suffrage was also limited by race and religion. Only two states explicitly forbid voting by free blacks (Georgia and South Carolina). Complete freedom of religious conscience was assured by the state constitutions of Georgia, Massachusetts, New Jersey, New York, Pennsylvania, Virginia, and Vermont. Delaware's constitution explicitly rules out the establishment of a state church. A few constitutions protected open worship by only Protestants (North and South Carolina) and others by all Christians (Maryland). A few state constitutions also explicitly forbade clergy from holding state offices. No new state constitution mentions a state-supported church.

³²⁸ In subsequent rounds of constitutional reform, several state constitutions were modified to include independently elected governors. New Hampshire did so in 1783, Pennsylvania in 1790, and Delaware in 1792 (Fiske 1888: 67–68).

**Table 1: Characteristics of State Constitutions
Adopted Immediately after the Declaration of Independence**

	Date	Election of Governor	Legislative Form	Suffrage Qualifications ¹⁰	List of Rights	Supreme court	State church
Delaware	1776	Legislature	Bicameral	Retained	yes	yes	no
Georgia	1777	Legislature	Unicameral ³	10 pounds ⁴	yes	yes	no
Maryland	1776	Legislature	Bicameral	50 acres	yes	yes	no ¹
Massachusetts	1780	Freemen	Bicameral	60 pounds	yes	no	no
New Hampshire	1776	Legislature	Unicameral ³	Retained	no	no	no
New Jersey	1776	Legislature	Bicameral	50 pounds ²	yes	yes	no
New York	1777	Freemen	Bicameral	100 pounds ⁸	yes	yes	no
North Carolina	1776	Legislature	Bicameral	50 acres ⁵	yes	yes	no
Pennsylvania	1776	Legislature	Unicameral ³	Paid taxes	yes	yes	no
South Carolina	1778	Legislature	Bicameral	50 acres ⁶	yes	no	no ⁹
Vermont ⁷	1777	Freemen	Bicameral	All men	yes	yes	no
Virginia	1776	Legislature	Bicameral	Retained	yes	yes	no

¹ Article 33 allows the possibility of supporting Christian churches using tax revenue.

² Article 4 says that “**all inhabitants** of this Colony, of full age, who are worth fifty pounds proclamation money” may vote. This gave independent **women** the right to vote until the wording was changed two decades later (Keyssar 2000: 54).

³ An unelected second chamber (an executive council or cabinet) is chosen by the first (the assembly).

⁴ Article 9 states that “All **male, white inhabitants** ... of the age of twenty-one years and possessed in his own right of ten pounds value ... shall have a right to vote at all elections.”

⁵ Articles 7 and 8 characterize different rules for House and Senate electors; one can vote for the House if one has paid public taxes.

⁶ In addition, the right to vote is limited by race and religion: “free white man, and ...who acknowledges the being of a God, and believes in a future state of rewards and punishments.”

⁷ Vermont was created as a new state from land originally part of New York in 1786, a few years after its constitution was written. It was, however, not admitted to the union until 1791.

⁸ Rules differ for the Senate and Assembly. Article 7 allows freeholders with more than 20 pounds of assets and renters to vote for members of the Assembly if they have “rented a tenement therein of the yearly value of forty shillings.” Article 10 restricts votes for Senate to freeholders with wealth greater than 100 pounds.

⁹ Article 38 of the South Carolina constitution includes a characterization of acceptable Protestant religious beliefs.

¹⁰ When different suffrage rules apply to the chambers of government, rules for the most stringent is listed.

Source: *State Constitutional Documents*, Thorpe (1909). Also available on the web from Yale University’s Avalon Project.

National Governance and State Sovereignty

Before independence, a loose alliance of the colony-states was formed to coordinate and share the cost of lobbying the British sovereign and parliament. When these negotiations failed to yield the hoped for results, independence was declared, and new constitutional gains to exchange emerged at the national level. There were public service areas in which economies of scale could be realized through national governance, especially national defense, and other policy areas in which a central authority could reduce unproductive conflict among the states.³²⁹

The new national government had to be acceptable to all member states and consequently the result was, as in those cases, a relatively weak central government. The resulting Articles of Confederation were analogous to those of the old Dutch Republic or the contemporary European Union. The states delegated significant policymaking authority to the central government and allowed a variety of decisions to be made with less than unanimous agreement, but the new national government had no authority to impose taxes or other laws on its members. The states retained all police authority. Article I adopts the name “United States of America” for the new confederation.

Articles two and three suggest that the new confederation preserved state sovereignty, while pursuing common ends:

(II) **Each state retains its sovereignty, freedom, and independence, and every power, jurisdiction, and right, which is not by this Confederation expressly delegated** to the United States, in Congress assembled.

(III) The said States hereby severally enter into a **firm league of friendship with each other, for their common defense, the security of their liberties, and their mutual and general welfare**, binding themselves to assist each other, against all force offered to, or attacks made on them, or any of them, on account of religion, sovereignty, trade, or any other pretense whatever.

Article 13, however, suggests that at least some at the bargaining table intended to create a national organization that was more powerful and durable than the usual treaty organization:

(XIII) **Every State shall abide by the determination of the United States in Congress assembled**, on all questions which by this confederation are submitted to them. And the Articles of this Confederation shall be inviolably observed by every State, and **the Union shall be perpetual; nor shall any alteration at any time hereafter be made in any of them; unless such alteration be agreed to in a**

³²⁹ See Congleton (2004b) and Congleton, Kyriacou, and Bacaria (2003) for rational choice–based theories of centralization produced through voluntary associations of state governments.

Congress of the United States, and be afterwards confirmed by the legislatures of every State.

The remainder of the articles define policy areas in which the national government would have jurisdiction and procedures for adopting public policy and settling interstate disputes.

It also provided the architecture for a council dominated form of the king and council template. Article 5 specified that each state delegation would consist of two or more delegates and that “each state shall have one vote.” It specifies three-year term limits for the delegates to the national congress and assures freedom of speech in the congress and immunity of delegates from arrest during sessions of congress. Article 6 delegated all international relations to the confederal government. Article 8 specifies that state tax obligations for the “common defense” and “general welfare” are determined by the relative value of land holdings in the various states and are to be levied by the state legislatures. Article 9 creates a cabinet with a “president” (prime minister) to be chosen by the Congress. The president could hold office for only one year out of every three. It also provides for a national army and gives the central government exclusive power over war and peace. The central government also has the authority to regulate the minting of coins, regulate international trade, and serve as the highest court of appeal in disputes among states.

Supermajorities (9 of 13 votes) are required for most policy decisions. Article 9 also provided for establishing national courts to hear disputes among states and for establishing a standing committee with a president (limited to one-year terms) to govern while Congress is not in session. The Congress was to meet at least once every six months. Article 4 established free mobility among the states and assured persons migrating of the same rights as other citizens of the states in which they entered. It also provided for the extradition of criminals fleeing from state to state.

This design for a national government, completed in 1778, was used for the next two decades, although it was not ratified by all the member states until 1781. The tension between articles 2 and 13 would play a role in many of the constitutional controversies that took place in the next two centuries.

Governance under the Articles of Confederation proved adequate for a time of war, and the national Congress was able to pass significant legislation, such as the Northwest Ordinance governing the admission of new states. However, it was widely regarded to be too weak to advance national interests during the time of peace after the war was won in 1783. States ignored requests for contributions to the central government, trade barriers were being erected among the states, conflicts about the location of state boundaries were left unresolved, and national defense was

poorly financed and orchestrated. Secession from the confederation was being discussed in several states.

A prominent group of state and national politicians believed that a stronger central government would be necessary if the United States was to defend itself in the long run (Fiske 1888: ch. 4). Negotiations for a stronger central government took place in assemblies of appointed state representatives in Annapolis and Philadelphia, many of whom had recently participated in drafting their state constitutions.

The architecture for a new central government was negotiated in Philadelphia, accepted by the assembled representatives and submitted to the national congress for consideration.³³⁰ The national congress accepted the proposed reforms of the Articles of Confederation without comment, and the proposal was sent to state legislatures for ratification or rejection in 1787, as required under article 13. After much public debate and some further negotiation regarding the addition of a bill of rights, the proposed constitution was approved by all of the member states in 1790.³³¹ In this manner, the national government of the United States was peacefully and formally transformed into a more centralized one through negotiation and compromise.

In most respects, the new architecture for national governance was very similar to that already used by the member states. Those drafting the constitution sought a practical structure for governance and naturally looked to the governments with which they were familiar. The new constitution, however, substantially modified the architecture of the existing national parliament of the states by adding a directly elected chamber. It also strengthened the office of president and the supreme court.

The new congress was bicameral. One chamber, the Senate, essentially preserved the original Congress of state representatives, which helped obtain the approval of the smaller states. Each

³³⁰ At the close of the Philadelphia assembly on September 17, 1787, it was agreed that everyone would destroy their notes or turn them over to the president of the assembly (George Washington). Fortunately for historians, a few of the delegates violated this rule. Madison's notes are by far the most complete, and reveal both sophisticated bargaining and analysis of constitutional consequences throughout the meetings of the assembly.

³³¹ Several of the state assemblies and state constitutional conventions approved the constitution, subject to the addition of a "bill of rights" that more clearly characterized the bounds of central government authority, as already found in most state constitutions. Twelve amendments were subsequently adopted in rapid succession by the Congress to satisfy this part of the constitutional bargain. Ten amendments (the Bill of Rights) were approved by Congress, the president, and the requisite number of state legislatures on December 15, 1791. (Two of the original 12 amendments passed by Congress did not receive sufficient state support to be adopted.) The first 10 amendments thus are essentially part of the original constitution.

member-state government was entitled to appoint representatives to the Senate. To this council of state governments, a new directly elected chamber was added, the House of Representatives. Its members were directly elected by voters in single-member districts (based on state population). The directly elected chamber had essentially the same policy authority as the Senate. It could veto and propose taxes and legislation.

The rotating presidency of the old Congress (essentially a prime minister) was replaced by a new, more powerful, indirectly elected president. The president would stand for elections every four years and could veto legislation from the Congress (although Congress could override that veto). He would be responsible for executing the laws approved by both assemblies and serve as commander-in-chief in times of war.

Majority rule was used for most decisions, including those that previously required supermajorities. Direct taxes were to be based on population, rather than land holdings (slaves were counted as two-thirds of a person). Senators and representatives were guaranteed free speech in Congress. Bills for raising revenues were to originate in the House of Representatives. Senators, representatives, and the president would receive a salary. Congress was to meet once a year and the three-year term limits were eliminated, although national elections for members of the House of Representatives would be held every two years. Section 9 forbids the granting of noble titles.

Bargaining and constitutional conservatism were evident at every step in the drafting and ratification process. For example, the list of areas of central government authority included in article 1, sections 8–10, of the new constitution consists largely of the same ones listed in the Articles of Confederation. The general architecture of the revised national constitution also followed closely the pattern of state constitutions, particularly those with elected governors, which, in turn, closely followed the architecture of the colonial governments that had evolved in the century before independence was declared.

Relevance for Constitutional Developments Elsewhere

Liberal political theory was significantly advanced by the debates and negotiations that produced the new U. S. constitutions. Although liberal ideas had previously affected governance in the Dutch Republic, the colonies, and in Great Britain, they were less clearly stated and less evident in written constitutional documents than in the United States. Significant intellectual progress is also evident when one compares Montesquieu's chapters on federalism and divided powers in his *Spirit of the Laws* with the far more sophisticated discussions included in Madison, Hamilton, and Jay's

Federalist Papers.³³² Those drafting the national constitution sought an encompassing legitimizing authority, but as had been done at the state level, drew that authority from the “self-evident” rights of man and contractarian justifications for the state, rather than biblical citations, as might have been expected from the representatives of a deeply religious society.³³³ The constitution of the United States begins with the words “We the people in order to form a more perfect Union.”

That such a conception of the state preceded the French Revolution by a few years is unsurprising; Franklin, Adams, Jefferson, and Madison had all spent time in France before the new constitution was drafted, and they were all familiar with contractarian theories of the state that had been worked out in Europe during the past century. That similar language had already been in use in colonial charters for more than a century is, however, often overlooked by modern constitutional scholars and in contemporary tales about the founding of the United States.

Although it was not a radical experiment, the new national constitution was a significant event in the history of western democracy. It created the first government of a large territory that was completely grounded in elections with broad suffrage. Although not all senior officials were elected directly, those that were not were ultimately appointed (or elected) by directly elected officials. It included a bill of rights that would be supported by an independent Supreme Court. Its federal structure was scalable and was subsequently extended to govern a far larger territory simply by creating and adding new states. During its first decades, the broadly elected governments of the United States demonstrated that rule of law could be implemented by popular government and that more or less moderate policies could be adopted by governments based on relatively broad suffrage. Wealth was not taken from the rich, huge deficits were not run, and law and order was not completely undermined by officials directly or indirectly selected by common persons.

The success of this relatively democratic national government supported nineteenth-century arguments in Europe about the feasibility of popular government. Such governments had previously been intangible speculations of political philosophers or rare forms of city government studied by political historians. If the liberal political institutions of the United States functioned reasonably well, perhaps the political ideas of the English Levelers, Locke, Montesquieu, and Rousseau were not impossible pipe dreams of idealists and scholars. Perhaps, such ideas could provide the intellectual foundations for practical alternatives to existing arrangements in Europe.

³³² Part of this difference, of course, may be the result of French censorship and treason laws at the time that Montesquieu wrote.

³³³ See Miller (1991) for a discussion of the shift from traditionalist and religious theories of democracy and community to liberal ones in eighteenth-century America.

E. Constitutional Reforms Before and After the Civil War, 1792–1870

Constitutional bargaining in the United States did not end in 1789, nor was it confined to national reforms. The reforms of the nineteenth and early twentieth centuries gradually transformed a relatively liberal representative system into a more completely democratic one. The national constitution was formally amended nine times in that period and informally amended many more times. State constitutional and quasi-constitutional reforms were more commonplace and just as important in a highly decentralized federal system.³³⁴ Consistent with the models of constitutional reform previously developed, the bargains struck reflected changing economic interests, ideological refinements, and preexisting institutions.

At the national level, the veto authority of the Supreme Court was extended to include constitutional review of national legislation and executive actions early in the nineteenth century, albeit largely through its own decisions (Rehnquist 2001: ch. 1). The balance of policymaking authority within the central government and between the central government and the states was also continually debated and adjusted at the margin. New territories were acquired, organized, and admitted as states to the Union.

Other significant constitutional and quasi-constitutional reforms were adopted by state governments. For example, governors became independently elected offices with broader powers in the late eighteenth and early nineteenth centuries (Benjamin 1985, Fiske 1888). Suffrage remained a state matter after the new national government was reformed, and was gradually expanded in the early nineteenth century as the definition of “freeholder” was liberalized and wealth requirements were reduced one state at a time. This was partly a result of interstate competition for labor, as the new states generally had more liberal rules than the original colonies. It was also partly a consequence of changing norms, expanding public education, and political competition, as in late nineteenth-century Europe.

³³⁴ It is easy to exaggerate how centralized the new national government really was. For the next century and a half, the main source of government services remained local (town and counties) rather than federal. It was not until about 1935, after the progressive amendments (see below) that federal expenditures exceeded state and local expenditures. See *Historical Statistics of the United States* Volume 5, 2006: Table Ea-A, pp. 5–6.

In some cases, however, new restrictions were adopted at more or less the same time as wealth or tax thresholds were reduced; for example black suffrage was reduced, rather than expanded in many states in the early nineteenth century.³³⁵ Even with slavery and other new restrictions taken into account, suffrage remained substantially broader than in Europe and many northern and new states approached universal male suffrage. The paper ballot was gradually introduced and reformed.³³⁶

Slavery, State Sovereignty, and the Perpetual Union

Unfortunately, in addition to the political effects of early liberal ideology, industrialization, and interstate competition for labor and capital, a problem postponed during the constitutional deliberations of 1787 led to a constitutional crisis and another war of secession in the middle of the nineteenth century. In this case, those attempting to secede lost the war, although at great cost to both sides.

Under the constitution, slavery was a state regulatory issue. Support and opposition to this ancient institution varied by region, because of variation in ideological and economic interests. In the northern states, where slavery was economically unimportant, abolitionists pressed for its elimination, and slavery was gradually abolished beginning with Delaware in 1776, Vermont in 1777, Pennsylvania in 1780, and Massachusetts in 1780. In the South, where slavery was economically important for tobacco, rice, indigo, and subsequently cotton production; slavery was retained despite the efforts of southern abolitionists.

Abolition of slavery throughout the United States became an increasingly important ideological issue in northern elections during the first half of the nineteenth century as support for civic equality increased. At the national level, this was most obvious within the House of Representatives where representation was determined by state population. After the elections of 1860, the southern “slave” states feared that the national government would adopt new more liberal laws on slavery and other

³³⁵ Black suffrage was reduced or eliminated in several states as in Delaware (1792), Maryland (1809), Connecticut (1818), New Jersey (1820), and Pennsylvania (1838) (Grimes 1987: 32).

³³⁶ Ballot design, perhaps surprisingly, continues to be controversial in the United States today. After the 2000 election for President, many significant changes in ballot design and counting were suggested, and a few were implemented. See, for example, Agresti and Presnell (2002) for a careful analysis of the effects on ballot design on the distribution of votes in Palm Beach County Florida. The “Help America Vote Act” was passed by Congress and accepted by the president in 2002.

laws (chiefly tariffs) that would substantially reduce their wealth. Neither were very likely in the short run, given the balance in the Senate.

Nonetheless, the southern states attempted to secede from the union to avoid these economic calamities in the long run and to preserve their political autonomy. The Civil War took place from 1861–1865, and ended with a victory for the North. It was by far the deadliest war in U. S. history.³³⁷

The constitutionality of secession had been much debated in the period leading up to the war (Farber 2003: chs. 4–5). Articles 2 and 3 of the Articles of Confederation had explicitly guaranteed state sovereignty on all matters not transferred to the Congress, although article 13 had committed signatory states to a “perpetual union.” The legal and philosophical tension between perpetual union and state sovereignty, however, could no longer be peacefully resolved through constitutional bargaining and compromise. Rather, the perpetual union agreed to under article 13 was preserved by force of arms in a bloody civil war (1861–65). According to President Lincoln’s interpretation of the constitution, sovereign states did not have the right to secede from a perpetual union.³³⁸

Suffrage and Citizenship after the Civil War

Amendments of the U. S. Constitution require two-thirds majorities in both chambers of the legislature and approval by the legislatures of two-thirds of the states.

The secession of the southern states changed the balance of interests represented in Congress and, thus, provided new opportunities for constitutional bargaining by reducing the number of states opposed to amendments with respect to slavery and race. As a consequence, three liberal reforms of the constitution were adopted by the northern Republicans after the war was won. The thirteenth amendment (1865) made slavery illegal; the fourteenth amendment (1868) defined citizenship in inclusive terms (all persons born or naturalized in the United States) and guaranteed equal protection of the law to all citizens; and the fifteenth amendment (1870) forbade state laws that used race or

³³⁷ The seceding states listed their reasons in secession documents adopted by the state governments. For example, South Carolina’s states that: “On the 4th day of March next, this party [President Lincoln and northern abolitionists] will take possession of the Government. It has announced that . . . a war must be waged against slavery until it shall cease throughout the United States. The guaranties of the Constitution will then no longer exist; the equal rights of the States will be lost. The slave-holding States will no longer have the power of self-government, or self-protection, and the Federal Government will have become their enemy.” It bears noting that the “war” against slavery refers to the long political campaign undertaken by the northern liberals against slavery, rather than a military effort.

³³⁸ The army of the north was (and is) therefore called the union army. The army of the south was (and is) known as the confederate army, in honor of the new confederal constitution devised by the seceding states in 1861.

color as a condition of suffrage, which changed suffrage laws in the North and West, as well as in the South.

These civil liberty reforms were largely motivated by liberal ideological interests (the civic equality of all citizens), although they also advanced the short-term political interests of the Republican Party, for whom the newly enfranchised were expected to vote. (The post-war governments in the South were often Republican governments.)

After the war was won, the southern states were administered by the U. S. government and the northern army for a few years. Provisional state governors were initially appointed for each of the southern states. Elections for state constitutional conventions were held in 1866 to revamp Southern state governments. These and other state elections initially used existing state suffrage rules, although senior members of the southern army and government, and wealthy plantation owners were not permitted to vote. The new state governments extended many civil liberties to former slaves (and blacks who had not been slaves), but in no case were blacks given the right to vote in elections, to serve as witnesses in criminal cases, or to serve on juries. Violence against freedman (former slaves in this case) increased, state parliaments refused to cooperate with their provisional governors, and new discriminatory “black codes” were promulgated.

In 1867 the U. S. Congress replaced the provisional civilian governments with military governments, and new elections were held for another round of constitutional conventions, in which blacks and previously unenfranchised whites were allowed to vote. This time the result was 11 more liberal state constitutions, with broad suffrage and substantial equality before the law. In some cases, remaining wealth qualifications for high state office were also eliminated. New state elections were held, which elected a number of blacks to high state offices. To regain complete self-governance, each southern state had to ratify the Civil War amendments to the U. S. Constitution. This was easily accomplished by the governments elected under the new suffrage laws. Georgia was the last of the “reconstructed” governments to ratify the Civil War amendments (in July 15, 1870). In this somewhat irregular manner, slavery was ended in the South and freed slaves became eligible to vote in federal elections (Morison 1965: 711-17).³³⁹

After control of public policy was returned to southern state governments, however, suffrage laws gradually became more restrictive, as various literacy tests and fees (poll taxes) for voters were introduced to exclude former slaves and many other poor persons from voting (Keyssar 2000).

³³⁹ Several southern states were among the ratifiers of the thirteenth amendment in 1865, including South Carolina, Alabama, North Carolina, and Georgia. The politics of the thirteenth amendment is discussed in Grimes (1987: 31-39).

Race per se could no longer be used as a criteria for suffrage, but many other criteria were allowed that had similar effects, and many of these criteria (informally) were unequally applied among the races. There was clearly no slippery slope to universal male suffrage in the southeastern United States.³⁴⁰

F. A Digression on Parallels and Contrasts with Europe in the Nineteenth Century

There was no equivalent to the Civil War in Europe, but economic and political developments in the United States nonetheless parallel developments in Europe in many respects. For example, slavery had been eliminated in most of Europe several decades earlier, albeit peacefully, as it had been in the northern states. As in Europe, many of the political trends of nineteenth-century America were consequences of improved farming, industrialization, urbanization, and shifts in political ideology. Support for the expansion of public education, modest economic regulation, and social insurance increased during the century, as did support for women's suffrage.

Ideological changes were somewhat less obvious in the United States than in Europe, because there were very few "true" conservatives in the European sense. Although there were many who favored preserving past American traditions, there were few supporters of hereditary monarchs, privileged families, and a national church. The center of gravity of American political theories had been liberal since the middle of the seventeenth century in the sense used here, well before the term was first applied to politics.³⁴¹ Consequently, most policy and constitutional debates took place between left- and right-of-center liberals, who accepted the principles of constitutional governance,

³⁴⁰ Poll taxes were used in eight states. Literacy tests were also used to reduce the electorate among both black and working class communities, in some cases with much tougher questions for blacks than whites. The Ku Klux Klan's illegal (but tolerated) campaign of terrorism against politically active blacks and southern liberals clearly reduced open support among southern liberals for the elimination of such policies.

(As a consequence of the interests represented in government and war damage, the south industrialized far more slowly than the north and had slower income and population growth. After suffrage was expanded in the late 1860s, per capita income in the southern states began catching up with the rest of the country. Southern slave owners were not compensated for their capital losses as they were in many European countries, nor were losses reduced by phasing out slavery as it had been done in some of the Northern states. Slaves accounted for about half of southern wealth in 1860.)

³⁴¹ See Miller (1991) for a discussion of the gradual spread of liberal political theory in eighteenth- and nineteenth-century America. Miller argues that liberalism gradually replaced earlier traditional (communitarian) and Puritan (Calvinist) political theories. The American version of liberalism, however, was influenced by these early theories and local traditions of direct democracy, as was true in some parts of Europe (Lutz 1983).

broad suffrage, open markets, and civic equality, although they did not always at the margin or uniformly apply those principles to all races or to women. With respect to the latter, it seems clear that support for civic equality gradually increased during the nineteenth century, as developed below.³⁴²

Economic Development: Industrialization and Urbanization

As in Europe, day-to-day life in North America was undergoing a major transformation. Specialization in economic production increased, and with it, life and livelihood changed for a majority of families.

The relatively open internal and external markets of the United States allowed new technologies with economies of scale in production to be applied. Steam engines, for example, were rapidly applied to manufacturing, mining, and transport. New larger commercial enterprises were founded to organize the necessary teams and resources to create the new machines and networks. Other smaller organizations were created to provide new inputs and services to those industrial enterprises. Technological change, with support from state and national governments, also produced rapid improvements in transportation and communication networks, which increased the effective size of the domestic market by reducing transactions costs and allowing inputs and outputs to reach farms and factories further inland. Additional specialization and opportunities were induced by late nineteenth-century innovations in electricity and chemistry, and liability and corporate law (Taylor 1951, Nye 1990, Gordon 1999, Wallis 2000).³⁴³

Population growth continued throughout the nineteenth century, reflecting increases in arable land and improved farming technologies, and the success of the new political institutions. Family sizes continued to be large, and there was substantial (net) immigration from Europe and Asia. For the most part, these were economic emigrants, who sought the opportunities that relatively open markets and abundant undeveloped land produced, although broader civil liberties also played a role at the margin during much of the nineteenth century. Emigrant neighborhoods emerged in larger cities, and entire regions of states were often dominated by particular immigrant groups.

Newspapers were published in dozens of languages. New cities and towns emerged in the west, and

³⁴² Keyssar (2000: 168–69), argues that support for universal suffrage had waned somewhat toward the end of the century, although it seems clear that support for women’s suffrage increased.

³⁴³ Some economic historians debate the extent to which improved transport networks contributed to economic growth (Fogel 1962; Fremdling 1977). However, it seems clear that reduced transport costs, improved information, and increased specialization tend to increase economic output (Gordon 1999; Buchanan and Yoon 1994).

older ones expanded in the east. Immigration was completely open during this period, and new immigrants could often vote before they were citizens, in that the former was a matter of local and the latter national regulations (passports did not yet exist).

The territory of the United States also increased during the nineteenth century through the purchase of Louisiana (1803) and Alaska (1867).³⁴⁴ Other territories in the Southwest were won from Mexico during 1846–48.

As in Europe, the rural landscape was transformed through a combination of legal reform and subsequent economic development. Most of this land was initially held by the central government. To promote development, methods for transferring ownership of large blocks of government land to individual families were devised and implemented, as with various “homestead” acts. The homestead acts had effects that were similar to those involved in the European enclosure acts, as new deeds were devised, roads and fences were built, and lands converted from commons to private pasture and cropland.³⁴⁵ Agricultural technologies improved substantially during the nineteenth century with the introduction of better seeds and plows, mechanization of planting and harvesting, and chemical fertilizers. These techniques together with rising demand from nonfarmers allowed larger, less fertile areas to be profitably cultivated, and farmland increased throughout the century.

Nonetheless, as in Europe, an increasing fraction of economic output (value added) was nonagricultural. Urban populations thus expanded more rapidly than did rural populations. People would not, of course, choose towns over farms unless real incomes and/or other conditions were preferable to those in the countryside. Urban life was systematically improving, as new technologies were applied and wages rose. Urban sanitation and transportation improved. Central heating was introduced, followed by electricity, and telephones. Farm employment in the United States fell from 74.4 percent of total employment in 1800 to 55.8 percent of total employment in 1860, to about 30.7 percent of total employment in 1910.³⁴⁶

³⁴⁴ Several of the original 13 states had previously “privatized” land that had been in the control of the royal governors and proprietors after independence was declared (Fiske 1888: 71).

³⁴⁵ The various homestead acts, with their very favorable terms for land sales demonstrate that urbanization was voluntary in the United States, rather than the result of a shortage of farmland. In Europe, urbanization in the early nineteenth century is sometimes argued to be a consequence of privatization that evicted the landless, which induced them to move to cities as a last resort. (Involuntary urbanization can occur as medieval rights to commons disappear.) However, as noted above, research suggests that European enclosures often increased demand for rural labor to create new pasture from wastelands, drain swamps, and build new roads and fences.

³⁴⁶ See *Historical Statistics of the United States* (2006: vol. 2, tables **Ba-A**, pp. 2–18). During the same period, clerical and manufacturing employment rose from negligible levels to about 34.9 percent of employment.

The urbanization associated with the expansion of commerce and manufacturing also generated new demands for public services and regulation. Demand for public services in cities increased as median income increased, because government services tend to be normal goods. Demand also increased as some services became relatively more valuable or less expensive (public water and sanitation) and partly because new services became available (steel rails and mass transit). Public education expanded as returns to literacy and support for equal opportunity increased. A broad range of local public school and state university systems were created and enlarged during the nineteenth century.

Infrastructure and education were subsidized by all three levels of government, although state and local governments were more important sources of services in the nineteenth century. For example, the Morrill Acts of 1862 and 1890 transferred lands from the central government to the states as a method of funding new public universities for the advancement of science, engineering, agriculture, and military science. National and state government grants of rights of way and other subsidies helped private turnpike, canal, and railroad companies create a more complete, rapid, and efficient transport network.

Increases in specialization, capital accumulation, and technological advance caused per capita (average) income to rise throughout the late nineteenth and early twentieth centuries. From 1870 through 1920, real per capita income more than doubled, as population tripled.³⁴⁷ Expenditures on local public services per capita increased sevenfold (Wallis 2000).

Contrasts with Europe in the Nineteenth Century

Although much was similar in Europe and the United States, there were significant differences in the constitutional issues of the day during the nineteenth century. Relatively liberal political and economic constitutions had already been adopted in the United States gave its national politics a different cast than that in Europe. Male suffrage was already essentially universal (except for retrenchment in the south). International trade was less important for the United States, because of

³⁴⁷ Rising per capita income tends to be somewhat biased upward in this period. First, it bears noting that income has to be estimated, as the GDP surveys were not undertaken until the 1930s, which implies that the historical data series are less accurate than contemporary ones. Second, the substitution of trade for household production implies that both tax and flow of goods estimates tend to exaggerate national income, because these approaches neglect reductions in home production. The decision to use “store-bought” cloth and clothing implies that a net improvement in living standards occurred, but not that homespun cloth and homemade clothing was without value.

its larger domestic markets and because free trade across state boundaries was guaranteed by the constitution.³⁴⁸ Political speech was constitutionally protected. This contrasts with much of Europe, where increased male suffrage, equality before the law remained prominent constitutional issues for most of the nineteenth century. With smaller domestic markets, tariff reduction also remained a central policy issue for economic liberals and many industrialists for much of the nineteenth century.

Towards the end of the nineteenth century, the reform agendas began to converge as European parliamentary systems became based on relatively broad male suffrage and equality of the law could be largely taken for granted. Women's suffrage and the unelected basis of the first chamber (the Senate) became constitutional issues for liberals on both sides of the Atlantic.³⁴⁹

In Europe, the liberal constitutional reform agenda often induced left-of-center, moderates, and right-of-center liberals to cooperate in their persuasive campaigns and electoral strategies. This sort of cooperation was less common in the United States than in Europe, because liberals already dominated the major political parties.

Day-to-day policy disagreements among liberals, rather than agreements, tended to dominate American political campaigns, rather than constitutional issues. These policy differences were sufficiently systematic that political parties representing right-of-center, moderate, and left-of-center liberals emerged in the United States. For much of the nineteenth century, the Republican Party represented left-of-center liberals and the Democratic Party right-of-center liberals, although this changed in the early twentieth century. Moderates floated between the two major parties as issues, interests, party personalities, and scandals varied at the margins of local, state, and national politics.

As in Europe, it could be argued that liberals tended to become more "radical" during the nineteenth century. For example, in the late nineteenth and early twentieth centuries, a "progressive" movement emerged in the United States. The short-lived political party with that name can be thought of as the American equivalent of the Social Democratic Party in Europe. American progressives were not generally opposed to private property or markets, but were interested in improving market outcomes for middle-class and blue-collar workers through institutional and

³⁴⁸ As in Europe, tariffs fell during the first half of the century in the United States, in spite of the fact that it was a major source of the national government's revenues. Tariffs rose in the second half of the nineteenth century, in part to pay off bonds issued to finance the civil war, but also because free-trade groups around the world were losing ground in this period.

³⁴⁹ The term "liberal" was not widely used in the United States during the nineteenth century to describe political positions, although it was occasionally used. The terms civil liberty, political liberty, and economic liberty were, however, widely used. Ross (1919) provides an account of American politicians who explicitly regarded themselves to be "liberals," most of whom were Republicans.

regulatory reforms. For the most part, they sought reforms that would give those groups greater bargaining power within governments and firms. In the terminology used in this book, most Progressives were “left-of-center” or “radical” liberals, rather than “socialists,” as was also true of moderate Social Democrats in Europe.³⁵⁰

It is interesting to note that the “left-of-center” liberals (the Progressives) retained the name “liberal” in the United States in the twentieth century, whereas in Europe the “right-of-center” liberals kept that political label.

Politically Active Interest Groups of the Nineteenth Century

A wide variety of politically active interest groups in the United States were organized in the late nineteenth century. Most groups had fairly narrow policy agendas, although many such groups had overlapping memberships. Economic interest groups included regional and national business associations, trusts, labor unions, and farmer cooperatives that pressed for reforms that would improve the economic well-being of their members (profits, wage rates, and working conditions). Other interest groups had explicitly ideological and political agendas, such as the temperance and women’s suffrage movements. Still other groups had both economic and ideological agendas, as with many free-trade and labor organizations. Technological advance and urbanization had reduced organizational costs at the same time that policy problems began to span state borders and personal income and free time increased.

Labor and progressive groups often joined forces in the United States, as did industrialists and laissez-faire liberals. In late nineteenth century Europe such coalitions often led to the formation of new political parties. The former often formed new labor-Social Democratic political parties and the latter new liberal and/or conservative parties. However, this did not happen in the United States because of its political system. In a polity with competitive elections based on broad suffrage in single-member districts, interest group activities tend to affect the platforms of existing major political parties, rather than induce the formation of new parties. The campaigns of progressives

³⁵⁰ Prasch (1999) notes that: “What distinguished the economists associated with the Progressive movement from their forebears in the liberal tradition was not their concern for rules per se, rather it was their belief that a free market could be the locus of systematic economic power. They thought that the proximate cause of this power was unequal bargaining power between employers and individual laborers. It was their observation that labor was typically constrained by a lack of wealth. This simple fact, operating in conjunction with the need to feed oneself and one’s family, placed a distinct limit on the length of time that labor could ‘hold out’ for a better wage bargain.” Nonetheless, Progressives did include persons favoring broad public ownership of major industries, such as the railroads.

induced the two major parties (Democrats and Republicans) to adopt more progressive positions on many issues. The Progressive Party did poorly in national elections.³⁵¹

G. Changes in the Economic and Political Constitutions of the United States

1870–1910

Although the Civil War, like the Revolutionary War, attracts considerable attention among historians and plays an important role in American political mythology, it was by no means the only significant period of constitutional reform in the nineteenth and early twentieth centuries. Indeed, the war itself and its three associated amendments can be said to have had a smaller effect on peacetime national governance and public policy than quasi-constitutional reforms adopted between 1870 and 1910, and constitutional amendments adopted between 1910 and 1920 in what is often called the progressive era. The Civil War amendments were civil-equality amendments, rather than procedural ones.

For example, during the late nineteenth century, there were several changes in what might be called the economic constitution of the United States, many of which paralleled those of the industrializing countries of Europe. The increase in population densities and the size of firms, together with persuasive campaigns led by progressives helped increase electoral support for increased regulation of economic organizations. As a consequence, many states and cities adopted new laws to regulate firms and labor contracts, including antitrust laws and child-labor laws. By 1900 most northern states had rules governing work days and work weeks for children and women, and similar laws were being adopted in the South in the period immediately after 1900 (Hindman 2002:

³⁵¹ A national Progressive Party was founded in 1912 by former Republican president Theodore Roosevelt, partly because he had failed to secure the Republican party's nomination as their candidate for president (on a more or less progressive platform).

Many of its proposed policies were similar to those of the early Social Democratic Parties in Scandinavia, and the party did best in states where Scandinavian emigrants were large constituencies. In Minnesota, for example, the party received more votes than either of the mainstream parties. It ran second to the Democrats in the nation as a whole on a platform calling for a six-day work week, and eight-hour day in manufacturing, prohibition of child labor at ages below 16 years, and women's suffrage. See Youngman (1913) for the 1912 Roosevelt platform and Davis (1964) for an analysis of the Progressive party's base of support.

A People's Independent Party had previously been founded in 1892, which represented somewhat similar groups and interests and also drew much of its support from radical Republicans. See, for example, Webb (1993) for a discussion of relationships among populists, progressives, and progressive Republicans. The progressive movement's base of support consisted largely of progressive Republicans and independents.

58-64). A variety of adjustments were also made to the rules that determined what is owned and how what is owned may be used without legal (or political) interference. Many of these adjustments were made shortly after independence was declared (Fiske 1888: 71), but many more were made in the second half of the nineteenth century as, for example, tort law and corporate law were revised. Property rights concerning physical goods and services became individualized and alienable, at the same time that use rights were narrowed to take account of externalities and monopoly power.³⁵²

Centralization of Economic Regulation

However, not all problems of interest to progressives could be addressed by state and local governments, because they were regional or national in scope. Partly because of such interstate problems, there was a significant increase in interest group and electoral support for shifting some regulatory responsibilities from states to the national government. The persuasive campaigns undertaken by progressives, together with support from economically aligned interest groups, gradually produced a series of new national laws that attempted to regulate large firms and transactions.³⁵³ Examples include the Interstate Commerce Act, which regulated railroads (1887); the Sherman Antitrust laws, which regulated monopolies and other conspiracies to restrict open markets (1890); the Pure Food and Drug Act (1906), which created the Food and Drug Administration and provided for federal inspections of meat products and forbade poisonous patent medicines; the Federal Trade Commission Act (1914), which regulated “unfair methods of competition in or affecting commerce, and unfair or deceptive acts or practices . . .”; and the Clayton Antitrust Act (1914), which strengthened the Sherman Act and exempted nonprofit institutions and organized labor from antitrust proceedings.

Arguments about the proper extent of governmental regulation of market activities and the constitutionality of such “ideal” regulations among right- and left-of-center liberals were evident in newspapers, political campaigns, scholarly books, and in the courts. Such debates occurred at every

³⁵² Changes in property law were more obvious in Europe and Japan where medieval family-based privileges for particular occupations, products, and services finally disappeared as matters of law during the nineteenth century. Debts often became individual, rather than family based, and land became freely bought and sold. However, it is clear that property and tort law changed in the United States as well. See, for example, Posner 2007.

³⁵³ Many voters were skeptical of the ethics and tactics of the new industrialists. A significant subset of the new industrialists were referred to as “robber barons,” although the new millionaires rarely resorted to obviously illegal behavior. (Many of the new industrial millionaires—Carnegie, Rockefeller, Morgan, Edison, and Ford—established large charitable foundations with large endowments partly to undermine such labels. See, for example, Johnson 1997: 536–60.)

level of society. The main lines of arguments are nicely summarized in the Supreme Court's *Lockner* decision and dissent of 1905. The majority opinion includes the "right-of-center" liberal argument favoring complete freedom of contract, although this was not directly at issue in the case:

The general right to make a contract in relation to his business is part of the liberty protected by the Fourteenth Amendment, and this includes the right to purchase and sell labor, except as controlled by the State in the legitimate exercise of its police power.

Liberty of contract relating to labor includes both parties to it; the one has as much right to purchase as the other to sell labor. There is no reasonable ground, on the score of health, for interfering with the liberty of the person or the right of free contract, by determining the hours of labor, in the occupation of a baker. Nor can a law limiting such hours be justified as a health law to safeguard the public health, or the health of the individuals following that occupation.

It is also urged, pursuing the same line of argument, that it is to the interest of the state that its population should be strong and robust, and therefore any legislation which may be said to tend to make people healthy must be valid as health laws, enacted under the police power. If this be a valid argument and a justification for this kind of legislation, it follows that the protection of the Federal Constitution from undue interference with liberty of person and freedom of contract is visionary, wherever the law is sought to be justified as a valid exercise of the police power. Scarcely any law but might find shelter under such assumptions, and conduct, properly so called, as well as contract, would come under the restrictive sway of the legislature.

The minority dissent by Oliver Wendall Holmes includes the "progressive" argument, which supported government regulation of some contracts and gradually became the dominant opinion on the Supreme Court.³⁵⁴

This case is decided upon an economic theory which a large part of the country does not entertain. If it were a question whether I agreed with that theory, I should desire to study it further and long before making up my mind. But I do not conceive that to be my duty, because I strongly believe that my agreement or disagreement has nothing to do with the right of a majority to embody their opinions in law. It is settled by various decisions of this court that state constitutions and state laws may regulate life in many ways which we as legislators might think as injudicious, or if you like as tyrannical, as this, and which, equally with this, interfere with the liberty to contract.

Sunday laws and usury laws are ancient examples. A more modern one is the prohibition of lotteries. The liberty of the citizen to do as he likes so long as he does not interfere with the liberty of others to do the same, which has been a shibboleth for some well-known writers, is interfered with by school laws, by the post office, by every

³⁵⁴ See, for example, Rehnquist (2001: 107), who argues that *Lockner* was wrongly decided. The point of the quotes, however, is to demonstrate that liberal ideas and arguments were present at the highest levels of government, rather than to analyze the *Lockner* decision per se.

state or municipal institution which takes his money for purposes thought desirable, whether he likes it or not. The 14th Amendment does not enact Mr. Herbert Spencer's Social Statics.

Although the final Lockner decision was far narrower than the arguments applied, the opinions clearly demonstrate that the split between right- and left-of-center liberals occurred in the highest policy circles, as well as among politically active interest groups, political theorists, and editorial writers.³⁵⁵

Debates between liberals and progressives became significant factors in American policy and constitutional debates at about the same time that similar debates between moderate liberals and Social Democrats emerged in Europe, although the debate on adult male suffrage in the United State was essentially over (outside the south) by this point.

The Constitutional Agenda of America's Left-of-Center Liberals

At the same time that progressives lobbied for changes in the economic constitution, they also successfully lobbied for reforms of political constitutions at the state and national levels. As a consequence, a number of significant procedural changes occurred during the "progressive period," many of which also parallel those of Europe during this time.

For example, various forms of the secret ballot were adopted by individual states beginning with Massachusetts in 1888. Ballots were placed in official envelopes before being placed in ballot boxes, which allowed votes to be cast without fear of rebuke by their neighbors, landlords, and employers.³⁵⁶ Nineteen states also added (or included)³⁵⁷ direct referenda and recall provisions to their constitutions, which allowed voters to decide specific issues, avoiding agency problems associated with representative systems of government.³⁵⁷

³⁵⁵ Rehnquist (2001: 113–14) provides a short summary of "anti-progressive" Supreme Court decisions.

³⁵⁶ Secret ballots were also known as the "Australian ballot," because the rules and ballots were heavily influenced by Australian electoral reforms of the previous decade. The new ballots included a list of all candidates, rather than favored candidates. Standard ballots were printed by government and distributed at voting places, although several exceptions existed (Ludington 1909). Heckelman (1995) notes that voter turnout fell as the secret ballot was adopted, which suggests that vote buying was diminished by the new voting rules.

Paper ballots had previously been used in several states. New York and Vermont had used paper ballots since independence.

³⁵⁷ Provisions for referenda were mostly adopted by new states in the West that received statehood after the Civil War, but several other states amended their state constitutions to allow such referenda. Direct democracy continued to be used in some New England towns throughout this period, although it had not previously played a significant role in state governance.

Bureaucracy was reformed to reduce political influence over the bureaucracy (although in the U. S. this was done to reduce incumbent advantage and corruption, rather than to reduce royal influence). The Pendleton Act (1883) established the U. S. Civil Service Commission, which placed most federal employees on a “merit system,” greatly reducing the extent to which political parties could determine jobs within the bureaucracy. After the Pendleton Act, only holders of the senior-most jobs in the U. S. bureaucracy were appointed by the president.

Such “civil service” reforms improve efficiency by increasing continuity and institutional memory. To the extent that job-related skills are not highly correlated with partisan loyalty, merit-based hiring also tends to increase competence and productivity of the persons employed at the same time that the incumbent’s ability to use the bureaucracy in political campaigns for reelection is reduced. The latter tends to increase political competition (by reducing incumbent advantage) and reduce corruption.

The Suffrage and Temperance Movements

Prior to the Civil War there were broad American suffrage movements that attempted to expand suffrage for men and women. As in Europe, the American suffrage debates focused on qualifications for casting independent, meaningful votes. The suffrage movement initially attempted to reduce remaining property and residency qualifications for suffrage and subsequently to eliminate religion, race, and sex as qualifications for suffrage. The early male-suffrage movements were quite successful and property qualifications for men’s suffrage were largely eliminated in the early nineteenth century, although other qualifications were sometimes added. These early successes did not entirely end men’s suffrage campaigns, although they clearly became smaller and less effective. As they began to focus on suffrage expansion for smaller groups such as southern blacks and native Americans.

A women’s suffrage movement emerged in the early nineteenth century at about the same time that property restrictions for men’s suffrage disappeared in most of the U. S.. Their influence is evident in the Fourteenth Amendment (which guaranteed “due process of law” and “equal protection of the laws” to *all* citizens). And, supporters of women’s suffrage had almost been able to add the word “sex” to the Fifteenth Amendment, which ruled out legal discrimination on the basis of race (see Keyssar 2000: 178–79). The fourteenth amendment was subsequently used in legal challenges of state suffrage laws that discriminated against women. These challenges were unsuccessful, however, in part because the legislative history of the fifteenth amendment was well

known and in part because the fourteenth amendment itself included provisions based on the sex of voters.³⁵⁸

After the civil war, organized support of women's suffrage and women's equality before the law, was by far the most active and best known of the American suffrage movements.³⁵⁹ The women's suffrage movement gained support in the late nineteenth century and it began to have significant effects on public policy in the twentieth century. For example, several states adopted women's suffrage laws in the early twentieth century (Keyssar 2000: 203–12).³⁶⁰

During the roughly the same period, another long-standing movement gained in strength and began to influence public policy and induce constitutional reforms at the state and local level. The “temperance” movement opposed alcohol abuse and lobbied for new laws restricting alcohol access, production, and consumption. Temperance movements in the United States and in many parts of northern Europe gained membership and political support throughout the nineteenth century. For example, the American Temperance Society was organized in 1826. Some of these organizations were international in scope, as with the “Independent Order of Good Templars”; others simply paid attention to the efforts of other similar groups in other places, copying their best practices.³⁶¹

Support for temperance laws increased toward the end of the twentieth century partly a consequence of the new urban lifestyles based on wages, where many men were reputed to “drink up” a significant fraction of their week's wages on the way home to their families after pay days. Temperance had also long appealed to the Puritan strand of American thought, which had long opposed “demon rum.” As a consequence of lobbying campaigns by a broad cross section of

³⁵⁸ The fourteenth amendment distinguishes between equality before the law in general and political equality. Seats in the House of Representatives after 1868 were allocated to among states in proportion to the number of men qualified to vote, rather than state population. This provided states with a strong incentive to eliminate their remaining restrictions on male suffrage. The fifteenth amendment prevents the use of race as a qualification for suffrage.

³⁵⁹ Evidence of this can be easily obtained. For example, typing in the words “suffrage movement” into the search engine Google returns only woman's suffrage movement links.

³⁶⁰ Qualified women had been granted suffrage in some colonies and in the state of New Jersey from 1776 through 1807. Idaho adopted women's suffrage in 1896, Washington in 1910, California in 1911, and Kansas in 1912 (Keyssar 2000). A useful timeline of the U. S. women's suffrage movement and women's suffrage is available at <http://dpsinfo.com/women/history/timeline.html>.

³⁶¹ Temperance societies were founded in Ireland in 1829, in Sweden in 1837, in Denmark in 1840, and in Norway in 1845. Energetic temperance movements also emerged in Germany and England. The temperance and women's suffrage movements in Europe are less studied, because they operated in the political shadow of various men's suffrage movements. See Johnson (1997) and the *Catholic Encyclopedia* for overviews of European temperance movements.

anti-alcohol groups, many towns, counties, and a few states tightened their regulations for alcohol production, sale, and consumption. Pressures to do so at the national level intensified in the early twentieth century.³⁶²

Both the success of woman's suffrage and temperance movements are consistent with the suffrage reform model of chapter 7 and 8. A majority of male voters had gradually been persuaded that women were qualified to cast their own independent votes and that alcohol was undermining the quality of life and the productivity of a broad cross section of the American labor force.

In no case was the women's or temperance movement a serious revolutionary threat.

H. Progressive Reforms of the National Constitution 1910–20

A number of progressive amendments were proposed at the national level in the late nineteenth and early twentieth centuries. Only four eventually generated sufficient support to pass with the required supermajorities in the Congress and be ratified by three-quarters of the states. (In the United States, the executive branch does not have veto power over amendments, so negotiations take place within and among the chambers of the national and state legislatures.) Two of the progressive amendments were similar in spirit to those adopted in Europe at about the same time, insofar as they further democratized American governance. One of the amendments addressed tax reform issues that were normally addressed with ordinary legislation in Europe. The last addressed a public health and morality issue using constitutional amendment procedures, whereas in Europe such reforms were normally adopted through ordinary legislation.

Changing the U. S. Tax Constitution: the Income Tax and Prohibition

The federal government had relied entirely on excise taxes and tariffs for its revenues before 1913 (with a short exception during the Civil War), because the constitution forbade direct federal taxes—taxes borne directly by individuals. In this, the federal government had a standing tax constitution that proscribed a tax base analogous to that of the medieval kings of Europe, during times of peace. The use of tariffs and excise taxes limited the range of services that could be

³⁶² For a contemporary overview of the pro- and anti- “prohibition” campaigns in the U.S., see the *New York Times*, July 16, 1911, “Prohibition the Issue of 1911.” (Some states and counties had long been “dry” states, as for example Maine had been so since the mid-nineteenth century.)

centrally provided, which helped assure that governance in the United States would remain a decentralized federal system.³⁶³

As demands for central government services increased and confidence in the central government's ability to provide those services increased, it became clear that old tax rates would have to be increased or new tax rates lowered. Those most affected by existing tariffs and excise taxes, of course, generally preferred that a new tax be introduced that would shift the burden of taxation to others. There were also ideological arguments in support of income taxation. For example, proponents such as Edwin Seligman argued that the income tax was a fairer tax, because the burden of excise taxes and tariffs tended to be disproportionately borne by middle-class and poor persons.³⁶⁴ The Democratic Party proposed a national income tax in their 1896 platform, and a series of income tax proposals were introduced in Congress, but voted down during the next decade.

However, economic growth, electoral pressures, and expenditure pressures, including those associated with national security, increasingly favored the income taxation in the early twentieth century (Brownlee 2004: ch. 1). Congress passed the sixteenth amendment allowing income taxes on July 2, 1909, which was ratified by the required number of state legislatures on February 3, 1913.

The first income tax was incorporated into a tariff reduction bill in 1913. Tariffs were reduced as the income tax was implemented, which suggests that fiscal exchange had played a role in the amendment process.³⁶⁵ The income tax was subsequently expanded during World War I, because the war caused tariff revenues to fall at the same time that American participation in the war caused federal expenditures to increase. The importance of income taxes as sources of revenue was further increased when the eighteenth amendment (prohibition of alcohol sales) was adopted in 1919.

The temperance movement, as noted above, had long lobbied for laws that limited alcohol consumption. There were state and national campaigns to reduce and/or eliminate alcohol

³⁶³ Neither the colonial governments nor the state governments were similarly restricted. Colonies had used taxes similar to income taxes as early as the seventeenth century. States had used income taxes throughout the nineteenth century, beginning with Virginia in 1843 (Comstock 1921). The federal government's occasional use of an income tax had been ruled unconstitutional by the Supreme Court in 1895.

³⁶⁴ Seligman was an economist at Columbia university who had written widely on the effects of an income tax. He testified before Congress on May 20 1911 in support of the amendment (*New York Times*, May 21, 1911).

³⁶⁵ Although tariff rates were reduced, tariff revenues initially increased as a consequence of the Underwood Simmons Tariff Act of 1913. The new national income tax was somewhat progressive. It included a one percent tax on personal and corporate income with above \$3000 and a six percent rate on incomes above \$20,000. About 98 percent of U.S. taxpayers paid no income tax (Brownlee 2004: 56–57).

consumption in most states in most of the nineteenth century. As a consequence, many cities, counties, and states adopt rules prohibiting alcohol consumption, especially in the early twentieth century.

By 1913 a majority of persons in the United States lived in places in which alcohol consumption was prohibited, and the temperance movement turned its attention to a national program. Representatives from these congressional districts and states pressed for similar rules for the nation as a whole (Cherrington 1920: 323–30). However, a constitutional amendment was necessary, because at that time regulations of alcohol was an area of state, rather than national, policy. An anti-alcohol amendment was passed by Congress on December 18, 1917, and ratified by the required number of state legislatures on January 16, 1919. (The eighteenth amendment was subsequently repealed by the twenty-first amendment in 1933.) This amendment combined ideological and public health aspects, although concerns about the latter were partly ideological in nature. Prohibition, in contrast to the income tax amendment, reduced national, state, and local tax revenues from excise taxes on alcohol products.³⁶⁶

Reforming the Selection Process for Members of Congress

The two other Progressive amendments were similar in spirit to those adopted in Europe in the early twentieth century. The seventeenth amendment placed the American first chamber—the Senate—on an electoral basis. The nineteenth amendment expanded suffrage by eliminating sex as a criteria for suffrage. As in Europe, support for these reforms reflected a mixture of pragmatic, partisan, and ideological interests.

The Senate was initially designed to represent the interests of state governments, so its members were appointed by state legislatures. This gave its members somewhat different institutional interests than members of the House of Representatives. Support for reform of the Senate was based partly on a number of scandals in the late nineteenth century, including procedural ones in which state legislatures were unable to select a senator for months at a time, leaving their state unrepresented. There were stories about senators who received their seats through campaign contributions to state parties. Critics began to refer to the Senate as a “millionaire’s club.”

³⁶⁶ Equally effective temperance movements were also active in Scandinavia during this same time period, and the result was also often “prohibition.” For example: Norway, Finland, Iceland, and Russia experienced periods of prohibition at about the same time as the United States. The Swedes transferred all sales to state stores and regulated consumption through a coupon system.

Progressives and left liberals in the United States, as elsewhere, favored direct elections over indirect ones and pressed for reforms, largely because they thought that representative assemblies produced better public policies than appointed ones. A consensus for reform of the Senate became evident in 1893, when two-thirds of the House of Representatives voted to place the Senate on a directly elected basis. The Senate, however, vetoed the proposed amendment, and similar proposals for the next 18 years.

As a method of getting around the constitutional provision that Senators be appointed by state legislatures without amending the constitution, reformers encouraged states to conduct “non-binding” elections for senators and encouraged state legislators to promise to vote according to those electoral outcomes. This and other shifts in state politics gradually changed the institutional interest of the senators in the Senate.

Ten senators who voted against reform of the Senate lost their reelection campaigns in 1910 and were replaced with progressives favoring reform. Thirty-one state legislatures formally announced their support for the direct election of senators (Zelizer 2004: 356–62). Negotiations between the Senate and House of Representatives finally produced a compromise amendment early in 1912. The seventeenth amendment providing for the direct election of senators was passed by Congress on May 13, 1912, and ratified by the required number of state legislatures (many of which already used this procedure) on April 8, 1913.

Woman’s suffrage also reflected the effects of long persuasive campaigns on the men who were entitled to adopt the reforms, as suggested by the models of chapter 8. American’s left liberals (reform Republicans) and progressives supported suffrage extension, while moderates and conservatives initially opposed it. The Progressive political party supported a constitutional amendment for women’s suffrage in 1912 and the Republicans did so in 1916 (Zelizer 2004: 370–77).

Democrats opposed a constitutional amendment and argued that women’s suffrage should be adopted one state at a time. A compromise on amendment language was worked out between the House and Senate in 1919 and accepted by the required supermajorities in the two chambers on June 4, 1919. It was ratified by the three quarters of states on August 18, 1920. The nineteenth amendment, as was true of women’s suffrage laws in Europe, extended the logic of “qualified voters” to women. What is unusual about the U. S. case is the long gap between the last major male suffrage reforms (1869) and women’s suffrage (1920). Support among male voters increased very gradually in the United States.

Voting patterns within the Congress for all four of the progressive amendments reflected ideological and economic interests of the states and voters represented. Berman's (1987) empirical work based on voting patterns in western states and McDonagh and Price's (1985) analysis of voting patterns in mid-western states and California support the hypothesis that ideological considerations played a significant role in male support for women's enfranchisement (support for the amendments rose with votes for the Progressive party and fell with votes for Democrats). Support for women's suffrage among male voters was also linked to other policy agendas—in particular prohibition—which is consistent with the ideological model of suffrage reform developed in chapter 8. Holcombe and Lacombe (1998) provide statistical evidence that relatively low-income states favored the income tax, and states that had already adopted “direct” election of senators favored the new method of selecting senators.

Consequences of the Progressive Amendments

The individual progressive amendments were modest relative to the constitutional reforms adopted in Europe at this time, but they also significantly altered the procedures and resources of the national government. By changing the electoral basis of the Senate, the central government became a less “federal” system of government. No longer were state government interests in preserving state authority directly represented in the national government. The possibility of an income tax implied that national revenues were no longer limited to excise taxes and tariffs.

These were significant reforms. Indeed, some legal scholars argue that the progressive reforms were the first truly fundamental reforms of American political procedures and constraints since the ratification of the Bill of Rights amendments in 1791 (Epstein 2006).

Together, the sixteenth, seventeenth, and nineteenth amendments removed earlier constitutional constraints on the size of the central government and increased the demand for and supply of central government services.³⁶⁷ State and local governments had been the main sources of public services in the years before the progressive amendments, but after 1913, state expenditures grew more slowly than federal ones. The income tax rapidly became the most important revenue source for the federal government, and federal programs for international security and social insurance expanded steadily for several decades.

³⁶⁷ There is evidence that women's suffrage produced a new median voter with a higher demand for social insurance than the previous one (see Lott and Kenny 1999).

I. Conclusion: the Government of the United States Emerged from a Long Series of Constitutional Negotiations and Compromise

With the adoption of women's suffrage, the United States can be said to have completed a 300-year-long transition to constitutional democracy. The foundations of governance had been electoral since 1776, but the members of the America's parliament were more directly elected in 1920 than they had been in the past.³⁶⁸ Equal protection of the law was guaranteed by the fourteenth amendment. Race and sex were no longer allowed to be used as qualification for suffrage under the fifteenth and nineteenth amendment. Suffrage was essentially universal among adults, except in the South, where other qualifications for suffrage were still in place.³⁶⁹

The two of the most important periods of reform reflected changes in the participants in constitutional negotiations. This demonstrates that the standing procedures for amendment were significant constraints on the possibilities for constitutional reform throughout U. S. history, rather than simply imposed by revolutionary leaders. The historical record includes a good deal of direct evidence of negotiations and compromises that were necessary to obtain the necessary support under the amendment procedures. Commercial and interests, mobility, and ideology played central roles in the colonial deliberations of the seventeenth and eighteenth centuries. Similar interests, augmented by politically active interest groups and industrialization, helped induced additional reforms in the nineteenth and twentieth centuries.

³⁶⁸ Elections for the President are still indirect. Votes are tabulated at the level of states, and state "electors" cast their votes for the president. The number of electors in each state is equal to the sum of their senators and their representatives. With very minor exceptions, the electors have always voted in the manner recommended by the majority of their state's voters.

It bears noting that the chief executive in prime ministerial systems is also indirectly elected, which suggests that the electoral system adopted in 1787 was compromise between those favoring selection of presidents by both chambers of congress and those favoring direct elections. (Madison's notes for August 6 and September 4, 1787, regarding section 1 of article X of the draft constitution are not clear on this point, although suggestive.)

³⁶⁹ Suffrage was not extended to poor whites or most blacks in the south until the late 1960s, although both groups had briefly been free to vote in national and state elections after the Civil War.

Suffrage among adults in most European countries in most cases excluded minorities in 1925, as noted above. Citizenship for native-born "foreign workers" was often difficult to obtain until after World War II. Persons on welfare were also generally ineligible to vote even after "universal" adult suffrage was achieved, as, for example, in Denmark, Japan, Sweden, and the United Kingdom.

As predicted by the models of part I, the rise of parliament and the broadening of suffrage were largely independent of one another. The rise of parliament occurred for the most part in the colonial period well before independence and well before universal suffrage was adopted. The advantages associated with sharing policymaking authority in the colonial context that were analogous to those analyzed in chapters 5 and 6. Labor and capital were mobile and formateurs and their successors wanted to attract them to their territories. The balance of authority that emerged between colonial governors and parliaments reflected colonial institutions and circumstances that generally favored the colonial parliaments.

Suffrage in the United States began at relatively high levels during its colonial period, because it helped assure free labor that their interests would be represented in government. In spite of this early relatively broad suffrage, the transition to universal suffrage took nearly 300 years (350 if suffrage restraints in the southeastern United States are taken into account). Male suffrage was gradually extended, as property, religion, educational, and racial qualifications were eliminated, although there were periods in the eighteenth and nineteenth centuries in which suffrage contracted. In the nineteenth and twentieth centuries, constitutional amendments extend suffrage to former slaves, native Americans, and women.

The United States was affected by liberal and technological tides in the nineteenth century that were broadly similar to Europe. For example, ballot and bureaucratic reforms and women's suffrage were adopted in Europe and the United States at about the same time. With respect to the women's suffrage, it seems clear that suffrage norms had changed on both sides of the Atlantic during the nineteenth century in a manner consistent with the models of chapter 8. Woman's suffrage was clearly not the product of strikes or revolutionary threats. Although industrial strikes did occur in the United States during this period, it was largely men that conducted the strikes.

The non-revolutionary basis of the contemporary constitution of the United States of America is clearly suggested by its architecture for governance. The Virginia template of 1619 remains evident, although significant reforms were adopted during the course of three centuries of constitutional negotiation, conflict, and compromise. A revolution (war of secession) did lead to the drafting of new state and national constitutions in 1776, but the "new" state and national constitutions adopted at that time reflected a century and a half of constitutional negotiations and experimentation by colonial governments.