

CHAPTER ONE

IMPERIALISM AND THE ORIGINS OF CONSTITUTIONS

INTRODUCTION

The late eighteenth century, between 1776 and 1795, is the period in which modern constitutionalism emerged. As mentioned in the Introduction, arrangements for political representation had existed before this period. However, it was in this period when constitutional texts matching the definition given in the Introduction were first written. Despite their great variations, constitutions of this time established the principle that citizens exercising political rights form the primary source of legitimate authority, so that laws require the collective recognition of citizens to manifest legitimacy. At this time, constitutions also began to identify citizens as bearers of protected rights. The core constitutional lineages of this time took shape in the USA, Poland and France.

The emergence of the first modern constitutions occurred in a broad context in which European imperialism was undergoing rapid transformation. The middle decades of the eighteenth century were an era, generally, in which imperial polities reorganized their relations with their colonies and overseas territories. This coincided with increases in the mobility of goods and labour between metropolitan and colonial regions, such that the fabrics of trade connecting different imperial regions became thicker.¹ At this time, in consequence, imperialism formed a broad constellation in which state-building and empire-building processes became less distinct. Institutions increasingly reached across the partitions

¹ See accounts of this in Steele (1986: 229) and Hancock (1995: 383–388).

between colonizing and colonized territories, tying subjects more directly to imperial centres and producing loyalties and conflicts that were uncertainly positioned between the external and the internal dimensions of different states. Through this intensification of imperialism, military units acquired new salience, often forming the main links between metropolitan and colonial regions. In some settings, military bodies dictated terms of membership and affiliation for inhabitants of all imperial domains.

Early constitutions were created in this changing imperial context. Constitutional law normally evolved in situations where empires had experienced protracted military concentration, and constitutions served to sustain political systems in settings marked by social and legal forms resulting from this. In such contexts, constitutions were formed on both sides of imperial systems, as colonizing and colonized regions reacted in parallel ways to the logic of imperial transformation. However, even where they supported new states, constitutions were formed *within empires*, and they were born from over-layered conflicts traversing different points in imperial systems and involving multiple actors with motivations shaped by empires. Moreover, early national constitutions reproduced and extended patterns of organization already devised in empires to stabilize imperial transformation. In particular, early constitutions promoted new ideas of citizenship to unify national societies, especially in the military dimension. Yet such principles were typically grafted onto normative structures already established in empires in order to unify imperial domains. In each respect, states utilized constitutions to adapt to realities configured by imperialism and, once organized in constitutional form, states were typically integrated into a system of inter-imperial relations. In primary cases, constitutionally ordered states retained core features of empires, and they used their constitutional support as a basis for outward expansion. In addition, early constitutions often emanated from armies and they created regimes in which military attachments shaped political order, often leading to intense social conflict. In each point, the uncertain distinction between the inside and the outside of society became a characteristic of constitutional states.

THREE LINES OF MODERN CONSTITUTIONALISM

1 USA

The first line of modern constitution making began in the British colonies in North America, which obtained independence and eventually created

a unified state in the revolutionary period of 1775–91. In this environment, the origins of constitutional law were defined by changes in imperial society.

The emergence of revolutionary constitutionalism in the British colonies was originally shaped by transformation in the British Empire. During its foundation, the British Empire in the North Atlantic was a loose agglomerate of territories possessing diverse legal relations to the English (later British) crown. Some colonies were founded through royal charters (Virginia, New Hampshire, Massachusetts); some were based in proprietary grants, close to personal fiefs (Pennsylvania, New Jersey, New York, the Carolinas, Maryland); others, such as Rhode Island and Connecticut, had corporate charters guaranteeing almost unlimited self-government. Generally, however, the relation between the colonies and the metropolitan power was determined by the fact that many colonies were established by individual ventures. Before the founding of Georgia in 1732, which was initially governed by trustees in London and became a royal colony in 1752, Jamaica was the only English colony created by direct royal intervention as it was transferred to the English crown by treaty.² Consequently, colonial relations to Britain were mainly mediated through attachments of a commercial nature. The military basis for imperial rule in the northern Atlantic was initially relatively weak, although surely not non-existent. Even in colonies administered by royal governors, British military presence was low.³ This was not unique to the North Atlantic. British expansion in the region now belonging to India was only loosely shaped by public institutions. The role of the British East India Company in consolidating British control in India was often compared to the acts of commercial organizations in creating colonies in America.⁴

By the middle of the eighteenth century, the British Atlantic colonies had begun to witness a solidification of imperialism. This

² Greene (1994: 15).

³ This view is expressed in Shy (1965: 39), Olson (1992: 108) and Shannon (2000: 13). This view has been challenged by Webb (1979: xviii), who argues that, by the 1670s, the British Empire rested on military force condensed in the authority of the governors-general. Webb's 1997: 2) view is that 'English colonial policy was as much military as it was commercial'. This view supports basic claims in this book. Yet, until the 1750s, empires were generally held together by small armies, and the British Empire was no exception. On one calculation, British forces in American colonies in the earlier years of the wars of independence amounted to about 50,000 (Collins 2010: 32).

⁴ See Pownall (1781: 8–9). See also the account of the 'company model of empire' (Burbank and Cooper 2011: 173).

solidification was shaped by intensifying conflicts between the British government and other states with colonial pretensions in the Atlantic region. Such conflicts culminated in the Seven Years' War, which was subdivided globally into numerous theatres of war. As mentioned, the primary hostility in this war, between Britain and France, resulted mainly from territorial disputes in backcountry Pennsylvania. Such disputes would have assumed limited importance before the thickening of imperial government. However, these disputes gave rise to substantial mobilization of troops at the imperial centre, eventually involving multiple military clashes between Britain and France across northern America. This solidification was also reflected in a series of institutional changes. Through the eighteenth century, the British colonies in the Atlantic were more closely assimilated to the imperial polity, whose legislative centre was in London. Military bodies played a central role in this transformation and military pressures drew the imperial polity together. This was partly a process of subordination, as British military bodies stationed in the colonies bound colonies and metropole together in military hierarchies. However, this process linked the empire and the colonies at a lateral level, and it conferred specific constitutional distinction on colonial citizens and on colonial institutions, which began to operate as organic parts of the empire. Intensified imperialism was not clearly distinct from extended state formation. It created the basis for a large, decentralized North Atlantic polity. Together, these factors created the constitutional conjuncture for the American Revolution.

First, during the Seven Years' War, the British army acquired greater prominence in the North Atlantic, frequently forming the most immediate contact between inhabitants of British colonies and the metropolitan government. Initially, the British army appeared in colonial America as an organization whose purpose was to defend British territory inhabited by British–American subjects against French troops. In many respects, such territorial defence was a joint endeavour. It involved common military mobilization in Britain and in the colonies in which colonial troops were often subject to British military articles, forming parts of the British army. With regional variations, the Seven Years' War saw extensive conscription in the American colonies, both in state militias and in quotas dispatched to the British army. In some areas, British colonial warfare induced unprecedented militarization in American society. Many colonies introduced draft and anti-desertion laws in the Seven Years' War, and members of colonial populations,

often residing in remote rural localities, were connected through military organizations.⁵ This process necessarily strengthened ideas of imperial citizenship; the shared discharge of military duties meant that colonists entered unprecedented immediacy to each other and to the imperial polity. Ultimately, the imperialist objectives of the British crown were successfully achieved and France was defeated in 1763. Through the latter stages of the war, the British Empire underwent great enlargement and British–American subjects jointly engaged in an expansionist war. The Treaty of Paris in 1763 then transformed the legal nature of lands Britain held in America. As mentioned, most American lands had initially been occupied by private enterprise or charter. From this point on, military conquest, coordinated by public institutions tied to the British crown and sanctioned by international treaty, formed the legal basis for British control in large parts of the empire.

At one level, the Seven Years' War connected Britain and its colonies in an increasingly dense system of institutional integration and shared citizenship. However, for many inhabitants of the American colonies, integration in the British polity had ambiguous implications and their position in the polity after 1763 was uncertain. Through the war, imperial subjects from Britain became visible in the colonies as a governing group that conducted rapid military expansion in former French parts of North America. Clearly, American residents participated fully in this process; as soldiers and settlers, they were centrally involved in territorial acquisition. However, this military enlargement altered the position of British government in American colonies, where, previously, most regions had experienced only light imperial rule. Indeed, the increased British military presence raised sensitive constitutional questions about the relation of the British army to American colonies and about the powers the British army could exercise. Above all, this placed inhabitants of the American colonies in a strained constitutional position as many of them had been deployed by an army for shared imperial protection, but this army then asserted external military authority in their domains, acting – in effect – as an occupation force in their society. Through this, British expansion in North America meant that inhabitants of British colonies were

⁵ Such laws were passed in Massachusetts (1754), Virginia (1755) and Pennsylvania (1756). On one account, during the Seven Years' War, Massachusetts drafted more than 30 per cent of eligible males (Higginbotham 1988: 28). One historian estimates that 51,000 provincial troops were mustered in the war (Ruddiman 2014: 19).

expected to act as colonizers and objects of colonization at the same time. The problems inherent in such experiences were reinforced by the fact that colonial inhabitants were not well treated by agents of the British army. Relations between military and civilian authorities in the Seven Years' War were often poor and protest about British requisitioning, impressment and quartering of troops was frequent.⁶ American soldiers were not highly regarded in the British army and colonial troops and state militias were often ridiculed. This was not improved by the fact that, at least in earlier initiatives, the British military leadership lacked competence.⁷

Ambiguities in this situation were greatly exacerbated by the fact that, after the end of the Seven Years' War, the British military presence was not withdrawn and a British standing army became a feature of colonial administration. Moreover, as the British army had been stationed to defend the boundaries of the British Empire in North America, the government in Westminster demanded that fiscal resources to support the army should be levied in the colonies. This created a situation in which the British empire became institutionally present both as an external military force and as a fiscal state. These processes were reflected initially in policies introduced by Grenville in 1763–5, in which the British government passed new laws to generate more tax and strengthen British control over the colonies.⁸ This culminated in the Stamp Act (1765) and the Townshend Acts (1767), which imposed new taxes on American colonial assemblies.

Second, during the Seven Years' War, powers exercised by colonial assemblies in North America were extended, as such legislatures assumed central roles in the war effort.⁹ Throughout the war, the lower houses of many state assemblies obtained increased responsibility for raising and provisioning troops, and the Westminster government widened the functions of such legislatures because it relied on them for resources and revenue.¹⁰ Through this process, elected members of colonial assemblies acquired new authority. In states subject directly to British government, such officials were able to assert powers originally exercised by royal governors, including some control of public spending, the framing of financial legislation and the regulation of

⁶ This is described in Rogers (1974: 79), Ward (2003: 82–86) and Ward (2006: 3).

⁷ On hostile perceptions of redcoats amongst American residents, see Anderson (1984: 111, 141).

⁸ See related analysis in Tucker and Hendrickson (1982: 3, 75).

⁹ For discussion of this process in Pennsylvania, see Pearl (2020: 83).

¹⁰ Different cases are discussed in Greene (1994: 168–179), Anderson (2000: 241), Ward (2003: 3) and Pearl (2020: 83).

militias.¹¹ By consequence, members of colonial legislatures consolidated their position as actors in a colonial constitution, claiming a distinct set of rights and obligations. One outcome of this was, naturally, that such legislatures, reinforced by colonial war, were reluctant to surrender their constitutional powers after 1763. After 1763, spokespersons for American liberties used this position to declare that 'rights granted to the British colonies' necessarily included 'equal freedom with the mother state'. This theory resulted in the claim that the British Empire 'consists of many separate governments' in which 'no single part' could impose its power on other parts.¹² Leading advocates of increased autonomy in the American colonies justified their opposition to Britain, not simply by denouncing the presence of British armies, but by condemning the methods used to finance imperial armies as violations of a transatlantic constitution. Critics of the empire advocated 'harmony between Great Britain and these colonies, ON A CONSTITUTIONAL FOUNDATION'.¹³

Together, these factors set in motion the tax revolt that eventually led to the wars of American independence.¹⁴ Through its military consolidation in the eighteenth century, the British Empire embarked on a paradoxical pattern of formation. The empire asserted greater control of its constituent parts, and, owing to warfare, imperial subjects were integrated in a shared set of loyalties and duties as imperial citizens. At the same time, citizenship remained asymmetrical and rights granted in warfare lost force outside military environments. This stimulated a deep constitutional conflict. In this conflict, British colonies, perceived by many of their inhabitants as parts of an extended imperial polity, were expected to finance an army, which some of their inhabitants perceived as part of an external occupation regime. This conflict occurred against a background in which, within the colonial states, legislative bodies had assumed augmented constitutional powers, amongst which the power to approve or reject fiscal extraction was jealously guarded. This conflict culminated in British military occupation of regions that were recalcitrant in complying with imperial levies, notably the port of Boston in 1768. In this event, the arrival of British troops to defend metropolitan claims against Bostonians visibly stirred

¹¹ See Greene (1963: 70–1).

¹² Hopkins (1765: 5, 19).

¹³ Dickinson (1774: 24).

¹⁴ See the contemporary response to the Stamp Act: 'It is an essential principle of the English Constitution, that the subject shall not be taxed without his Consent, which hath not been introduced by any particular Law' (Dulany 1766: 7).

memories of the arrival of British redcoats to defend imperial rights against the French only ten years previously. Hatred for the invasion was increased by the fact that, as heirs to the British Whig tradition, members of colonial elites despised standing armies, depicting the British military presence in North America as a tyrannical regime.¹⁵ In each respect, conflict was concentrated on the implementation of a constitutional order to support military occupation.

1(a): Imperial Civil War 1

By 1776, members of the colonial elites in British North America asserted independence from the British Empire, in which their constitutional self-understanding had originated. At one level, the constitutional situation that appeared around 1776 formed the template for modern nationalism, as it resulted, simply, in revolution by a colonial population against an empire. This was expressed in the constitutional diction of the revolutionary period, as citizens justified new laws by proclaiming that voluntary personal attachments were the only source of political duty. For example, the authors of the constitution of New York (1777) declared that their authority to write the constitution arose from the fact that all power had ‘reverted to the people’ because of the transgressions of the British king. Yet the American Revolution was not simply an expression of external, anti-colonial sentiment. The move towards independence in the British–American colonies was initially an intra-polity conflict concerning the authority of British political institutions and the obligations of colonial subjects towards them. As such, this event displayed the denser, interlocked implications of imperialism for societies of the eighteenth century. The American Revolution articulated the intricate linkage between nation-building and imperialism, and it contained antagonisms that fused elements of anti-imperial war, of civil war, of wars of national unification – and, ultimately, of imperial conquest.

By 1763, as discussed, the British imperial polity had been transformed by protracted warfare and its fiscal and military demands on its subjects had increased consonantly, both in metropolitan Britain and in its North American colonies. In this respect, Britain did not differ greatly from other European polities of the eighteenth century. On the contrary, the fact that the British imperial government became

¹⁵ The main protest in the Boston press referred to the fact that ‘quartering troops upon British Americans’ violated the Bill of Rights (Dickerson 1970: 74).

manifest in America as an organization that implanted new military bases in society and extracted revenue from traditionally privileged elites was a geographically enlarged example of a general institutional experience. This was the typical model of state formation in early modern Europe, and most polities were forced to find ways to manage regional dissent over growing fiscal burdens that accompanied this process. In this context, reactions to British state formation in the Atlantic also reflected a common hostility to governmental militarism.¹⁶ In the American setting, however, relatively weak integration between the centre and periphery of the polity created a series of constitutional disputes in which, unlike in much of Europe, regional elites were strong enough to obstruct military state-building. The American Revolution was distinctive in the fact that geographical conditions made it possible for regional notables to prevent the creation of a centralized military state (empire) and they were able to deploy for subversive purposes military institutions that the political (imperial) centre had created. To this degree, however, the American Revolution was not a nationalist or anti-colonial revolution, but a revolution within a common state-building process. The conflicts that ensued from this were not, or not exclusively, of an anti-imperial nature. On the contrary, these conflicts occurred within British institutions and reflected distinctive outcomes of a transnational process of societal militarization.

In its basic elements, the American Revolution originated in the British army, and it was rooted in organizational structures attached to the army. Clearly, military leaders in the American Revolution had acquired skills serving in the British army.¹⁷ Yet, at a deeper level, the American Revolution expressed controversies over military obligations and related ideas of citizenship. As mentioned, through the Seven Years' War, some American colonies had experienced deep domestic militarization with extensive engagement of citizens both in militias and in the British army. As in Europe, militias tended to recruit soldiers from more marginal social groups.¹⁸ After 1763, such militarization resulted in widespread disaffection as military performance was rewarded, not with strengthened citizenship rights, but with the

¹⁶ See pp. 64–5, 76–7. One historian has explained that Britain and the colonies formed an extended transatlantic polity involving flexible sharing of functions within a broad cultural-normative order (Bilder 2004: 5).

¹⁷ George Washington, Artemas Ward and Charles Lee had all served in the British army.

¹⁸ See analysis of such demographics in Anderson (1984: 41), Knoblauch (1997: 171) and Ward (2006: 15).

perceived curtailment of rights normally obtained through military roles. As a result, one potent impulse for revolutionary change around 1775 was that the British imperial polity had promoted social militarization: it used the army as an organ of social coordination, and it had established potential citizenship roles through this process. However, the expansion of citizenship came to a halt after 1763, leaving a legacy of uncompensated militarization.

In some American colonies, militias assumed a significant role at the onset of the revolution. Militias were originally subject to the authority of royal governors and, as British citizens, their members were trained to defend British interests. However, in the 1770s, many militia members became actors in the revolution against Britain, so that the armed population was instrumental in shifting allegiance from Britain to the colonies. In some states, indicatively, British imposition of fiscal laws was unsuccessful because local militias refused to follow gubernatorial instructions to suppress the riots that such laws inflamed.¹⁹ In most states, the early revolutionary period saw the arming of state militias in support of independence and many states reinforced existing duties of militia service.²⁰ Moreover, such mobilization extended beyond the regional level. Although originally opposed to standing armies, the Continental Congress, which was formed in 1774, recruited quotas of soldiers from different states. As in most societies marked by forcible recruitment, militia drafts triggered conflicting reactions, and some states saw high desertion rates and anti-enlistment rebellions.²¹ Yet, in different ways, militia service formed an environment in which constitutional rights were established. In some states, the first constitutions, created during the break with Britain, were partly the work of state militias. In revolutionary Pennsylvania, broad military obligations were imposed on citizens after 1775 and militias formed the initial basis of state government. This meant that the army acquired an institutionalized political position and promoted a broad-based constitutional franchise.²² In Massachusetts, the Suffolk Resolves of 1774 provided an early premise for constitutional self-rule and created an independent militia to protect this status. The New York constitution of 1777 was

¹⁹ Mancke (2005: 94).

²⁰ One historian has estimated that in Virginia, more than half of all white men provided military service in the revolutionary wars (Kulikoff 1992: 163).

²¹ Virginia saw major anti-conscription riots in 1781.

²² See analyses of these points in Rosswurm (1987: 59, 66). One account claims that this period saw the 'convergence of military service and political activism' in Pennsylvania (Konouff 2004: 5).

introduced when the state was experiencing invasion, amidst a cluster of laws on militia service. It declared it the duty of every man who enjoys the protection of society to be prepared to defend it (Art. XL). Generally, in the early American Revolution, ideas of citizenship had been stimulated by military processes and attachment to militias played a key role in framing political expectations. This resulted in the creation of constitutions with relatively democratic electoral franchises, which assigned rights to citizens because of their military roles, so that soldiers or potential soldiers were endowed with political entitlements.

In these respects, the American Revolution centred around a conflict over citizenship, which was, in essence, a civil war converging with an intra-military split. Imperial war, finished in 1763, had formed the precondition for the intensification of citizenship. After this war, one part of the army turned against the regular army, demanding greater rights of citizenship, which resulted in revolutionary conflict. As such, this model anticipated many later civil wars. In other respects, further, wars waged by residents of British colonies were not clearly distinct from civil war; indeed, they included multiple civil wars. In strict terms, the essential conflict between elite actors in the American colonies and the British government was a simple case of civil war, reflecting rivalries caused by protracted military integration and divergent ideals of citizenship in the same polity.²³ The view that the revolutionary conflict was a civil war was widespread amongst Loyalist elites in the colonies and their Tory opponents used the concept of civil war unreservedly to describe the rebellion.²⁴ Of course, military actions of this time contained war, not only against the British, but between different factions inside the colonies, entailing violence between patriots (advocates of American independence) and subjects still loyal to the British crown. Moreover, advocates of independence in different states supported conflicting ideals of citizenship, and, beneath the shared commitment to sovereignty, different states displayed deep rivalry over their constitutional visions. For example, the first constitution of Pennsylvania

²³ One historian has observed simply: 'The American Revolution was a civil war. In proportion to population, almost as many Americans were engaged in fighting other Americans during the Revolution as did so during the Civil War' (Shy 1976: 183). For other accounts that classify the American Revolution as a 'civil war', see Nadelhaft (1981: 58), Tucker and Hendrickson (1982: 219–220), Marston (1987: 50), Higginbotham (1988: 124), Frey (1991: 45), Webb (1995: 270), McDonnell (2007: 13) and Horne (2014: x). One account describes the American Revolution as a 'triangular' sometimes 'quadrangular war' between rival groups (Neimeyer 1996: 161).

²⁴ Contemporary Loyalists described the American Revolution simply as 'the Civil War in America' (Stokes 1783: 16).

espoused a strong concept of civil participation. The constitution of Virginia was closer to a system of government by rural elites and it upheld existing electoral qualifications. Unsurprisingly, as in other regions, many states experienced draft rebellions amongst white citizens in the early revolutionary period. On each count, the independence wars were not simply wars directed against external enemies. They resembled multi-factional civil wars in which ideals of citizenship were contested by many military groups.

Also vital in this regard is the fact that parties in the American revolutionary wars were divided by attitudes towards slavery. The movement towards American independence was integrally determined by slavery and slavery partly defined colonial perceptions of British rule. On one hand, colonial elites, surrounded by the persons they enslaved, repeatedly used metaphors and images of slavery to describe British government in America.²⁵ However, one key reason for mobilization against the Westminster parliament was that, following the Seven Years' War, Britain was seen as increasingly hostile to slavery. The encroachment of the Westminster parliament on the civil freedoms of American citizens after 1763 was not restricted to new taxation regimes. Such encroachment was also felt in the threat that legislators in London might deprive American citizens of some of their most valued personal belongings – slaves. This danger became palpable in judicial rulings in England before the revolution. For example, in *Somerset v Stewart* (1772), it was declared that, unless authorized by a distinct statute, ownership of slaves was in breach of English law. This ruling induced alarm amongst slaveholders in America, and it was frequently seen both as heralding the statutory abolition of slavery and as intruding in essential personal interests of American citizens.²⁶ Partly for this reason, questions regarding slavery acquired both unifying and polarizing force during the revolutionary period in America and the revolutionary wars contained multiple conflicts over slavery.

At one level, controversies about parliamentary suppression of slavery motivated military hostility towards Britain and, among some factions, the war against Britain was conducted to uphold a system of common-law rights that authorized the possession of persons as chattels. Naturally, this meant that relations between Americans and slaves held in captivity were affected by the war and military loyalties were

²⁵ For analysis of how the sight of bodily thralldom amongst black inhabitants affected attitudes of white citizens towards Britain, see Holton (1999: 46) and Delbanco (2018: 49).

²⁶ See analysis in Wiecek (1977: 21).

partly conditioned by slavery. Moreover, this added a further front to the complex of civil wars in revolutionary America. This occurred because some slaves believed that the British army offered greater certainty of freedom than the American army.²⁷ In 1775, the governor of Virginia, Lord Dunmore, promised liberation to slaves who fought for Britain. As a result, the period of conflict witnessed the extensive flight of slaves into the ranks of the British army. One analysis argues that the British forces had access to an 'irregular "army" of refugees' because of Loyalist sympathies amongst black communities.²⁸ In states with large slave populations, the threat of slave revolt or conspiracy between slaves and the British army instilled heightened anxiety in the relations between slaves and their owners.²⁹ As a result, the volunteer tradition in American colonies was largely limited by racial lines and most American militias were not open to black inhabitants. Even in northern colonies, enlistment of black residents for state militias was banned at the onset of the revolution. Prohibition of military recruitment of black residents took place in New England in 1776. In New Jersey, black inhabitants were required to surrender their guns until the war was over. Through the pressures of enduring warfare, laws barring the recruitment of black Americans were sometimes relaxed and legislation allowing their mobilization was introduced in some states after 1777.³⁰ In some regions, however, the capacity of American colonies to mobilize militias and troops was restricted by the fact that militia members were required to discharge policing duties to prevent slave uprisings in support of the British.³¹ In such processes, black inhabitants of revolutionary America became objects of singular hostility in a multipolar civil war. This meant that black residents were much less strongly integrated in the civil-political culture that emerged from the revolution, and, in most states, black Americans did not acquire voting rights after 1776. The military path to citizenship meant that the early American Republic was already shaped as a racially divided democracy, or a partial democracy.

²⁷ See the claim that the 'vast majority of slaves who actively participated in the Revolution' viewed the British occupation as 'a liberating moment' (Frey 1991: 118).

²⁸ Olwell (1998: 251).

²⁹ See discussion in Quarles (1961: 14–20), Nadelhaft (1981: 5) and Frey (1991: 56).

³⁰ On these points, see the classic discussion in Quarles (1961: 16–17, 54–55).

³¹ Long before the American Revolution, some state militias had a duty to prevent slave insurrections (Higginbotham 1988: 116). See the account of related legislation in 1727 in Virginia in Hadden (2001: 30). The role of militias in policing slaves continued up to and beyond the revolution, and the deployment of militias against the British at times gave rise to slave rebellions.

In each respect, warfare in the American colonies after 1775 fluctuated between anti-colonial war and diffuse civil war in which military organizations in the British empire stirred multiple sites of violence in American society. These conflicts were not strictly distinct from hostilities in other state-building processes, and they centred on phenomena – especially unfree labour, taxation and military duties – that were contested in all contemporary lines of state formation. This was not a simple conflict between actors inside and actors outside national society; it was a war within an imperial nation, or an imperial civil war. In fact, in this context, the imperial state, Great Britain, promoted a more overarching construct of social membership than the polities that sought independence, so that, in some respects, the revolution formed a revolution against full national citizenship. The revolutionary wars left a conjuncture that reproduced many features of imperial society.

Alongside such conflicts, the revolutionary period gave rise to an additional mode of conflict in which American states reproduced more traditional aspects of imperialism. After the revolutionary wars, the newly independent American states soon began to act as expansionary polities. In fact, the revolutionary wars created military preconditions for the territorial enlargement of the former colonies and they consolidated identities and practices that directed the independent states onto an expansionary course.

Through the revolutionary period, the regions Americans inhabited grew dramatically in size. This growth began through British expansion before 1775. During the Seven Years' War, many British American citizens acquired land by violent expropriation as, alongside conflict with France, they engaged in conflict with different native populations.³² After 1763, vast territories taken from France were added to the British American colonies. Before the revolution, the states soon to become the USA were already in a process of accelerated enlargement as their residents migrated to remote regions recently annexed to the British Empire. These processes continued after 1775, during the wars against Great Britain. For example, the military struggles during the wars of independence were partly directed against the British army, but they also imposed a system of internal colonization on regions where the Americans were victorious in war.³³ The wars

³² See discussion in Ward (2003: 4).

³³ One historian states that the 'progress of the Revolution' was inextricably linked to 'the steadily mounting pressure on western lands' and Americans waged war against the British as part of a process of internal colonization (Hinderaker 1997: 199).

exacerbated fissures between settlers and native populations, expressed, for example, in war between Virginia militias and Cherokees in 1775–6.³⁴ These conflicts also brought a continued demographic shift, as residents of the original British colonies settled in new areas, leading to a significant increase in the territory inhabited by non-native Americans. One historian has explained that the independence wars were especially propitious for settlement and expansion as the decline of social order meant that land grabbing could be conducted in unchecked fashion.³⁵ One analysis also describes how, as in later European empires, such expansion was defined by particularly acute violence as peoples living in colonized regions were treated as inferior species.³⁶ The Seven Years' War was caused by conflicts over territorial claims in British colonies, and it ended as British Americans imposed colonization by force on a range of subjects. These conflicts were then perpetuated in a new form through the wars against Britain: Britain replaced France as the main adversary of the American colonies, and, in conflict with this new enemy, American colonial expansion continued in new domains. After 1776, British American subjects became American citizens, and, in this role, they immediately began to establish and populate an American empire, pushing back ethnic frontiers and subjugating prior population groups far more effectively than they had done while living under Westminster rule.³⁷

At the same time, during the Seven Years' War, the British colonies, previously only diffusely connected, were increasingly united by military pressures, and they assumed the skeletal form of a large state. Plans for greater cohesion between states had already been expressed before the war in the Albany Plan (1754), but increased linkage with the imperial armies intensified this process after 1756. Initiatives for greater union between the colonies were then accelerated as they were pressed together in conflict with Britain. Before the onset of the revolutionary wars, the Continental Congress obtained powers close to those of a huge polity. Once connected by war, the American states established a *de facto* imperial order. In the Treaty of Paris (1783), the territories subject to the Confederation Congress doubled in size and the Congress assimilated much new territory that was not claimed by a particular

³⁴ Neimeyer (1996: 101).

³⁵ Griffin (2007: 150).

³⁶ Gould (2012: 43).

³⁷ One seminal work explains how, after 1776, population groups subjugated by the British confronted a political system whose expansionary features were largely unchanged (White 1991: 366).

state. At this time, the Congress also engaged in territorial disputes with Spain and Britain and conducted military actions against native groups. As early as the 1780s, illustratively, leadership elites projected an expansionist future for a unified American state. For example, James Madison began plotting annexation of the Mississippi region before the American Republic had been formed.³⁸ In 1780, Thomas Jefferson declared that the new republic would form an *Empire of Liberty*.³⁹ Later, Alexander Hamilton announced in *Federalist* 22 that the planned federal constitution for the American people, based in popular sovereignty, would provide a legal order for an 'American empire'.⁴⁰ Such expansionism was emblematically reflected in the Northwest Ordinance (1787). The Northwest Ordinance established the principle as law that the national government, at this stage still the Confederation Congress, could absorb new territory as a sovereign entity – not through the separate acts of individual states. As such, it provided a basis for the integration of large territories, many populated by native Americans, to the west of the states represented in the Congress. In other words, the Northwest Ordinance mandated continental colonization before the American Republic had been legally formed; it served as a colonial charter drawing new territory under the control of a sovereign state.⁴¹

Historians have often argued that the early American Republic was not inclined to militarism.⁴² This claim may be substantiated by the fact that, unlike constitutionally ordered states in post-1789 Europe, the USA did not effectively impose conscription at the federal level. Conscription was notionally introduced in the Militia Acts of the 1790s, which gave the president powers to deploy state militias, but the national draft was not institutionalized until much later. However, once formed in 1787–9, the American Republic perpetuated earlier expansionist processes and from its origins it possessed attributes of a military empire.⁴³ This was clearly provided for in Article IV, Section 3, Clause 1 of the federal constitution (1789), which allowed Congress to integrate new states. The size of the nation doubled (peacefully) with the Louisiana Purchase in 1803, which secured trade through the Mississippi and would eventually create ten new states. By the 1820s, and then incontrovertibly by the 1840s, the

³⁸ Egnal (1988: 328).

³⁹ This expression is used in a letter to George Rogers Clark (December 25, 1780).

⁴⁰ Madison, Hamilton and Jay (1987: 184).

⁴¹ On the constitutional status of the Ordinance, see Onuf (1987: 73).

⁴² Conge (2000: 138).

⁴³ On the convergent formation of state and empire in this process, see Saler (2015: 17).

USA had become an elite member of the global association of empires. This was underlined in core declarations of foreign policy. Indicatively, the Monroe Doctrine, set out in 1823, implied that the USA had military primacy in the entire American continent.

In each respect, the constitutional revolution in the British colonies in North America reflects a complex, dialectical pattern of militarism. This revolution was both a war against an empire and a war within a nation, closely linked to the ongoing militarization of citizenship roles. Further, this revolution was a war that formed a nation whose policies were directed on a clearly imperialist trajectory and in which the formation of national citizenship was inseparable from trajectories of internal colonization. At the core of the republic was an uncertain distinction between nation and empire.

1(b): Imperial Civil War 2

On this basis, the American Revolution was a conflict between a range of factions, supporting diverse ideals of citizenship. Ultimately, in 1787–89, the American Republic was founded through a constitution that preserved an uncertain balance between divergent concepts of national membership, which reflected their origins in a fusion of national unification, civil war and imperialism. The constitution contained an awkwardly conflictual fusion of normative premises, combining ideas of citizenship based in the general expansion of rights and ideas of citizenship that privileged distinct groups, favouring coercive economic organization. Indeed, the governmental system of the USA was supported by two irreconcilable normative principles expressing two essentially different societies, so that, when constitutionally placed together, they gave rise to intense inter-societal conflicts.

As mentioned, the American Revolution possessed some features of a national revolutionary event and it expressed early democratic principles of equal and consensual citizenship, integrating all members of society in acts of political will formation. This can be seen in the political discourse surrounding constitutional organization in the revolutionary era. Before 1776, democratic principles were formulated by James Otis, who declared that supreme absolute power is '*originally and ultimately in the people*'.⁴⁴ Quintessentially, these principles were presented in the Virginia Declaration of Rights (1776), which announced that 'all power is vested in, and consequently derived from, the people'.

⁴⁴ Otis (1764: 12).

Later, these impulses became evident in the writing of the federal constitution itself. The federal constitution reposed on the primary idea that government extracts legitimacy from citizens who, compacted in a federal polity, are equally addressed by and implicated in the laws that sustain public authority. To support this, the founders of the constitution articulated a doctrine of constituent power and defined a constitution ‘established by the people and unalterable by the government’ as the source of all law.⁴⁵ As such, the constitution created a representative system with a relatively broad franchise, so that rights of political participation in the early American Republic substantially exceeded those guaranteed by previous representative systems. Many persons involved in writing and ratifying the constitution were little concerned with the extent to which such principles were applicable to slaves, and even the more egalitarian founders, such as Jefferson, clearly accepted slavery. Yet, in some regions, the longer revolutionary period witnessed the implementation of gradualist laws to abolish slavery and to consolidate minimal principles of legal autonomy for all inhabitants of American society. Initial plans to abolish slavery were proposed in Pennsylvania, New England, and New Jersey in the first years of independence. By the early 1800s, legislation eventually leading to abolition, albeit allowing for interstate repatriation of fugitives, was in place in the northern states.⁴⁶

At the same time, the defence of involuntary labour that was prominent in the American Revolution meant that the wars of independence brought intensified enslavement. As mentioned, one purpose that motivated many British Americans to take up arms against Britain was to perpetuate the most insidious outgrowth of European imperialism – that is, the slow genocide of personal servitude. One commentary on the American Revolution has noted, simply, that, in the revolution, ‘Americans bought their independence with slave labor’ (Morgan 2003: 5).⁴⁷ To this extent, the wars against Britain possessed a manifest counter-revolutionary nature. As discussed later in this chapter, in many empires of the later eighteenth century, the consolidation of colonial rule was linked to the partial eradication of coercive production systems, and, by the 1770s, some imperial regimes were supported by constructs of citizenship in which involuntary labour was legally limited, although not abolished. By contrast, the revolutionary wars in America resulted in the

⁴⁵ Madison, Hamilton and Jay (1987: 327).

⁴⁶ See analysis in Zilversmit (1967: 122–123) and Tise (1987: 34–35).

⁴⁷ Morgan (2003: 5).

obdurate deceleration of legal moves towards the abolition of slavery.⁴⁸ The American Republic acquired form as a political entity that, in some of its parts, was committed to a harshly exclusionary citizenship regime protecting local economies and variable constructs of legal personality.

These contradictory elements of citizenship can both be linked to genealogies of imperialism. The more nationalist, integrationist model reflected concepts of citizenship that evolved in many empires after 1750, often linked to the need to mobilize populations for war. The more localist model remained rooted in earlier patterns of imperialism in which landed elites, with autonomous authority in regional economies, played the leading role in securing territorial dominion.⁴⁹ To this degree, the American Revolution was, not only a fusion of imperial war, national-revolutionary war and civil war – it also expressed a conflict between two rival systems of territorial integration. The tensions between these constructs were temporarily obscured during the period of revolutionary nation-building. However, the conflict between these principles was manifest in the 1789 constitution, designed to create a unified nation.⁵⁰ The constitution clearly endorsed a construction of shared citizenship and equal legal obligation. It declared in Article IV, Section 4, that the ‘United States shall guarantee to every State in this Union a Republican Form of Government’. However, in Article IV, Section 2, the constitution preserved the institution of slavery. This was then given effect in the Fugitive Slave Act of 1793. This law made the federal government responsible for ensuring that some residents were barred from federal citizenship, so that one duty of the national government was to prevent the formation of a fully national society.

These divergent models of citizenship instilled two deeply conflictual dynamics at the heart of the American Republic. Clearly, these models endorsed different ideas of personal entitlement and national membership to support the constitution. However, these models projected different principles to sustain the territorial structure of the nation, and they reflected conflicting justifications for the acts of regional annexation that defined the early republic. Both models contained norms that, on divergent premises, determined the expansionary

⁴⁸ See Sinha (2000: 7); Horne (2014: 7).

⁴⁹ On the residues of feudalism in the southern states, see Olwell (1998: 3).

⁵⁰ In implicit agreement with this claim, see Kulikoff (1992: 124). One historian explains how, during its ratification, the federal constitution was presented, depending on the state, both as a pro-slavery and as an anti-slavery document (Fehrenbacher 2002: 37).

trajectory of the USA, and both instilled an imperialist impetus in the new polity.

First, the principles of republican citizenship proclaimed in the revolutionary period promoted a distinctive premise to underpin the imperial enlargement of the new republic. In its nationalist aspect, the constitutional essence of the American Revolution was expressed in an idea of republican membership in which deliberate affiliations between citizens replaced coerced integration to form the substructure of political institutions. At the core of this idea was a definition of citizenship that immediately supported territorial expansion. The republican ideal of American citizenship was promoted to integrate populations previously connected by imperialism, and it established a normative basis for a polity able to expand into new territories. In particular, the fact that the polity was anchored in a constitution legitimated by ideals of popular sovereignty meant that the polity could extend its laws, validated by constitutional principles, into new terrains, and acts of territorial assimilation and enlargement could be easily conducted and justified.⁵¹ One commentator has noted, tellingly, that the distinctive ‘empire of liberty’ imagined in the revolution built directly on pre-existing lines of British imperialism, and it ‘yoked imperialism with republicanism’.⁵² One observer has argued that the constitution of 1789 was a ‘*colonization constitution*’ in which the exercise of popular sovereignty established a norm that permitted the imposition of national law on new domains and facilitated the expropriation of land from original inhabitants.⁵³

Second, the early American polity reflected alternative ideals of imperialism, strongly marked by the rejection of uniform legal order and the protection of involuntary labour systems. Initially, in the longer revolutionary era, advocates of slavery supported less centralized political ideals than their nationalist counterparts, and their attitude to national constitutionalism was guarded. This was expressed, for example, by the Anti-Federalist Patrick Henry, who argued that ratification of the constitution would bring a form of government close to military occupation: it would create a ‘great and mighty empire’ implanting ‘garrisons’, ‘magazines’ and ‘arsenals’ in all the states and claim ‘power of manumission’ over treasured

⁵¹ Hietala (1985: 191).

⁵² Anderson (2000: 745–746). For closely related claims, see Marston (1987: 9). See similar analysis in Smith-Rosenberg (1992: 848), where it is argued that basic national-constitutional agency in revolutionary America was exercised by ‘simultaneously postcolonial and colonizing subjects’.

⁵³ Dahl (2018: 18).

goods (slaves).⁵⁴ The early years of the republic were largely defined, politically, by conflicts between factions demanding greater centralization and factions intent on preserving local autonomy, often involving obligatory guarantees for slavery. As discussed below, however, the pro-slavery faction did not retain its reservations about national integration and territorial expansion for long. Following the consolidation of the federal system, advocates of slavery soon developed an imperialist strategy which defined coerced labour as the basis for regional and international expansion.

As a result, the early American Republic established conflicting constitutional principles of citizenship, one based in uniform citizenship, and one based in involuntary labour. Naturally, the new republic approached its greatest crises at moments when these two concepts of citizenship became tangibly contradictory, as legislation brought these ideals into discursive conflict. Illuminatingly, such moments of internal crisis occurred – primarily – when the government of the USA promoted imperial enlargement. Constitutional antagonisms regarding slavery induced most volatile lateral hostility in periods when the national government integrated new regions, which meant that the preconditions of citizenship were exposed, nationally, to critical pressure. As the American Republic acquired the form of an empire, it was confronted with its ill-balanced constitutional foundations and its internal constituents were militarized by external expansion. In this process, imperialism and civil war became integrally intertwined and nation-building and imperial expansion converged to induce deeply violent social contestation. In essence, the defining constitutional and military conflicts of the USA in the nineteenth century were conflicts in which the USA appeared, simultaneously, as an empire and as a nation, with uncertain distinctions between functions of a national character and functions of an imperial nature. These conflicts became most intense when the legitimacy of the polity was disputed in both dimensions at the same time.

These constitutional antinomies first gained expression in 1787 in the Northwest Ordinance. As mentioned, this Ordinance allowed the Confederation Congress to incorporate new states. In passing this law, however, the Congress added the proviso that states admitted to the republic through the Ordinance would be states without slavery, fixing an effective frontier (the Ohio River) between slave states and free

⁵⁴ These speeches are printed in Carpenter (1815: 23–27, 248).

states.⁵⁵ This Ordinance was not intended to abolish slavery; it allowed for forcible repatriation of slaves escaping into the integrated territories.⁵⁶ Yet it implied that, prior to the passing of the constitution, some limits were imposed on slavery and the legitimacy of slavery was called into question: the Ordinance indicated that the American empire would be one in which slavery was not exported into new regions. Nonetheless, after this, the expansion of the republic implicitly elevated the legitimacy of slavery. Several states – notably, Kentucky (1792), Tennessee (1796) and Louisiana (1812) – were admitted to the union after 1789, and all were slave states. In these decades, although importation of slaves was formally forbidden in 1807/8, federal troops were used to support military actions against escaped slaves in the USA and at its borders. Slave ownership induced further constitutional division during the admission of Missouri to the republic. In the Missouri Compromise of 1820, Missouri was allowed to enter the republic as a slave state, but limits were placed on slavery in other regions likely to become parts of the republic. However, by this time, opposition to slavery was losing ground and the moral tenor of the debate on the subject had become indulgent.⁵⁷

Such controversies approached an apogee in the 1840s and 1850s. This was a period of intense imperialist expansion in the USA. In his inaugural address of 1853, indicatively, President Pierce stated that ‘it is not to be disguised that our attitude as a nation and our position on the globe render the acquisition of certain possessions not within our jurisdiction eminently important for our protection, if not in the future essential for the preservation of the rights of commerce and the peace of the world’. At this time, territories taken from Mexico, parts of Oregon, Texas (a slave state) and California entered or were brought by force of arms into the federal polity.⁵⁸ This was also a period in which slave ownership was profoundly consolidated and slaveholders exercised great political power and ideological influence.⁵⁹ In other words – the

⁵⁵ Article 6 stated: ‘There shall be neither slavery nor involuntary servitude in the said territory.’ It also stated: ‘That any person escaping into the same, from whom labor or service is lawfully claimed in any one of the original States, such fugitive may be lawfully reclaimed and conveyed to the person claiming his or her labor or service as aforesaid.’

⁵⁶ On this and other ambiguities, see Finkelman (1986: 368).

⁵⁷ One observer declares that after 1812, there was an explosive expansion of slave holding (Mason 2006: 130).

⁵⁸ It is estimated that the USA acquired nearly 800,000,000 acres of land during the presidencies of Tyler and Polk (Hietala 1985: 2).

⁵⁹ On this vision of slaveholding imperialism, see Morrison (1997: 14, 81) and Fehrenbacher (2002: 118, 126).

exponential growth of the American empire coincided materially with the growth of slavery.⁶⁰ In this period, the value of slave labour to the American economy increased sharply and imperial expansion was clearly driven by pro-slavery factions in the polity.⁶¹

In these occurrences, the USA evolved, both as an empire that favoured slavery within its own boundaries and as one that coercively imposed slavery as it extended outwards. Externally, slavery was exported to Texas through American colonization in the 1820s and 1830s.⁶² Former American slaves residing in Mexico were exposed to the terrifying threat of re-enslavement through American colonization in 1846.⁶³ Opposition to the imposition of slavery in former Mexican regions was set out in the Wilmot Proviso (1846). This Proviso was intended to protect the interests of northern states by making military conquest in Mexico conditional on the prohibition of slavery in incorporated areas. The Proviso formed a statement of constitutional principles based in an understanding of citizenship as a state of shared individual freedom.⁶⁴ However, this Proviso was not adopted. At this time, Albert Gallatin Brown, Governor of Mississippi, expressed the simple desire that, along with parts of Mexico, other regions such as Cuba and Central America should be annexed to the USA in order to promote 'the spread of slavery'.⁶⁵

Internally, attempts to limit slavery met with intractable resistance in the Fugitive Slave Act (1850). This law compelled federal agents to issue certificates of removal to slaves who had escaped into free states if their previous owners, residing in states that supported slavery, caught up with them.⁶⁶ This Act implied that residents of the USA could not be released from the terms of citizenship defined by the state in which they had originally lived, and federal expectations regarding citizenship could not prevail over categories of citizenship dictated at the state level. In effect, this Act rejected the principle that citizenship could be established at the federal level, denying the existence of the USA as a fully integrated nation. This Act also reinforced the horrifying

⁶⁰ On one estimate, the number of slaves increased from 400,000 to 4,000,000 between 1760 and 1860 (Hammond 2014: 264).

⁶¹ Karp (2016: 1, 9).

⁶² Campbell (1989: 32).

⁶³ Cornell (2013: 353).

⁶⁴ Morrison (1997: 54–6).

⁶⁵ This is quoted in May (1973: 9).

⁶⁶ This law is described as 'utterly one-sided, lending categorical federal protection to slavery while making no concession to the humanity of African Americans' (Fehrenbacher 2002: 232).

prospect for black Americans that they could not be free anywhere in the USA, and the fear of deportation into slave states (not always unfounded) became widespread. This Act even deprived suspected escapees from submitting evidence against certification of removal, and it subjected persons providing aid to escapees to criminal charges. Importantly, this Act meant that American territorial expansion could be advanced without dislodging the foundations of slavery, as slaves could not escape into newly incorporated states without fear of being forced into custody and returned to the states where they were born. This reality was reinforced by the *Dred Scott* decision of 1857. This decision denied the constitutional possibility of citizenship at the federal level, and it effectively sanctioned slavery as a national institution. This process was also strengthened by the Kansas–Nebraska Act of 1854, which weakened the provisions of the Missouri Compromise, effectively allowing slavery in newly integrated regions. In observing these phenomena, historians have noted that actions of the US government towards non-white population groups resembled those of a ‘stereotypical empire’.⁶⁷ However, the USA differed from other empires of this period as, until the 1860s, it imposed an acutely tiered citizenship regime on internal citizens. The US government took shape as a polity that deployed extreme imperialist violence against selected members of its own population within the metropolitan segment of imperial society.

Through these events, the American Republic was formed as a polity that was beset by deep conflicts resulting from its original colonial history. The American Republic was born, paradoxically, through an anti-colonial revolution against an empire and an elite revolution against a nation-building process, which fused to form a multidimensional civil war. This revolution was both a revolution in favour of unified citizenship and, in effect, a counter-revolution intended to protect harsh residues of imperialism (slavery) and curtailed citizenship. Both aspects of this revolution contained implications for territorial expansion, and they projected conflicting premises to support the continental enlargement of the post-1789 state. This meant – in essence – that the American Republic centred around a latent civil war: the republic contained two ideas of nationhood supported by insolubly opposed constructions of constitutional citizenship. But the republic also centred around an inter-imperial war. The republic contained two distinct

⁶⁷ Go (2011: 53).

empires, and the consolidation of the USA as an imperial nation required the displacement of one imperial vision by a rival vision through inter-imperial civil war. Tellingly, one interpreter has observed that the two factions that made up the USA, expressing opposed constitutional visions, emerged 'as de facto imperial rivals' during the expansion of the federal government up to the 1860s.⁶⁸ In this regard, the distinction between nation and empire was uncertain, and the construction of national society depended on wars with national and international dimensions that possessed both.

Ultimately, of course, the conflicts over slavery in the USA caused a real civil war in the 1860s. Indicatively, each side in this civil war saw the opposing side as an empire. As the Confederacy was formed, the *New York Times* declared simply: 'The new empire is at last fairly launched.'⁶⁹ In the south, the Republican Party, operating as the executive of the Union, was perceived as a colonizing organization treating southerners as 'subjugated and craven people'.⁷⁰ By 1865, northern victory resulted in a process of citizenship formation in which a common stratum of norms was imposed across national society by acts of military occupation. This was reflected in the civil war amendments to the 1789 constitution. The Thirteenth Amendment (1865) abolished slavery and the Fourteenth Amendment (1868) stipulated terms of equal citizenship for all residents in the USA. The Fifteenth Amendment (1869) extended democratic rights of citizenship to black Americans. The first of these Amendments was passed through President Lincoln's use of war powers. During Reconstruction, armies imposed these new constitutional norms across American territories. As in earlier settings, in fact, citizenship was partly enforced for military imperatives. For example, the Thirteenth Amendment was directly connected to military recruitment processes; it coincided with new militia laws, and it reflected increasing enlistment of black soldiers.⁷¹ During Reconstruction, northern occupation of the south after 1865 was partly conducted by black soldiers who had been released from slavery into citizenship, as Yankee armies needed more recruits to effectuate occupation plans. In each respect, the army was the basis for the recreation of the US Constitution in the 1860s, and military

⁶⁸ Hammond (2014: 287). For classic analysis of the ways in which territorial expansion uncovered the fault lines between pro- and anti-slavery groups and regions, see Graebner (1955: 185–187).

⁶⁹ *New York Times*, 'The New Confederacy' (11 February 1861).

⁷⁰ Fehrenbacher (2002: 296).

⁷¹ See Lang (2017: 139).

recruitment played a key role in imposing a revised system of national citizenship across society. In key respects, the US constitution first became reality for national society as an *occupation constitution* enforcing a citizenship regime in which national and imperial elements coalesced. This brought a transition to a more vertical social order partly reproducing aspects of military state-building, against which American revolutionaries had rebelled in the 1770s.

Of great long-term consequence is the fact that, in the 1860s, the civil war led to the international solidification of the USA as an imperial power. A fully uniform citizenship regime was not legally imposed in the USA until the 1960s, and it was only in the aftermath of World War II that a (still incomplete) system of equal constitutional rights took shape. However, the civil war created social and constitutional premises that consolidated the American nation state as an integrational structure, and the inner colonization of the south laid the bedrock for further territorial expansion. Most obviously, as in other emerging empires, the civil war brought (short-lived) conscription laws, so that the population was partly mobilized and more directly linked to central institutions. After 1865, then, military expansion did not end and American territorial expansion continued apace. One historian has noted, intuitively, that the civil war and Reconstruction have a central place in the longer history of America empire-building and they created a domestic apparatus that supported later occupation strategies: this period appears as ‘the dawning age of American wars of occupation’.⁷² Similarly, one historian has explained that the civil war was a ‘rite of passage’ in the acquisition of ‘great power status’ by the USA (Edling 2014: 181). After 1865, the overseas territories of the USA did not rival those held by major European powers. Yet the USA embarked on successful inter-imperial wars with Spain, also a democratizing empire, in the 1890s, and it expanded its influence in the Caribbean. In parallel, the integration of internal regions in the polity accelerated rapidly. By 1900, the US government was able to dictate constitutional terms, not only to its citizens, but to citizens of neighbouring countries, and it began to instil a system of occupation constitutionalism outside its borders polities. Indicatively, Cuba and Panama came into being as independent states after 1900 under the tutelage of the USA. The terms of Cuban independence from Spain were agreed after the Cuban government constitutionally incorporated

⁷² Lang (2017: 8).

the Platt Amendment (1901), which placed limits on its treaty powers and gave USA armed forces the right to intervene in Cuban politics. The USA occupied Cuba from 1906 to 1909. The 1904 constitution of Panama contained a clause (Art. 136) allowing occupation by the USA where this appeared necessary for American security interests linked to the Panama Canal.

2 France

The origins of constitutionalism in France can be found in a similar constellation. The later eighteenth century saw a substantial power change in Europe resulting from the Seven Years' War. Through this change, Britain became the dominant imperial nation and France entered a period of financial crisis because of war debts accrued through unsuccessful imperial conflicts. Owing to its parlous fiscal position, the Bourbon monarchy in France was exposed to numerous reformist pressures in different spheres. After 1763, the monarchy began to examine methods for improving fiscal extraction, and this involved greater consultation with groups in society able to produce more revenue. This occurred against a background in which the existing methods for raising taxes were ineffective as they partly depended on the sale of public offices. This also occurred in a context in which royal control over society was patchy and members of the nobility still possessed far-reaching authority in their domains, especially in judicial and fiscal functions. Although serfdom was disappearing in France, feudalism still shaped the structure of society and unfree labour limited the ability of the monarchy to generate revenue. Remedies to the fiscal weakness of government were often proposed by physiocratic theorists who argued that such problems should be solved by increases in revenue raised directly on agrarian products. Such theorists advocated far-reaching agrarian reform, explaining that 'agricultural advances' were vital for the 'production of tax' and 'the subsistence of all classes of citizens'.⁷³

Monarchical weakness in France was strongly determined by problems of military administration, which also became the focus of reform policies. In the earlier eighteenth century, the French monarchy had avoided some problems experienced by other states with large armies as its dependence on entrepreneurs for supply of military personnel was limited. The French army developed a system of direct state commissioning from an early stage. This system did not avert problems of

⁷³ Quesnay (1768: 109).

military financing, but it reduced the external dependency of the monarch in military matters.⁷⁴ Nonetheless, the expenditures of the Seven Years' War challenged governmental capacity for raising troops in France. Further, through the eighteenth century, a militia system had been established that was extremely unpopular, creating hostility in society at a time when the government was fiscally vulnerable.⁷⁵ More specifically, the French officer corps, largely recruited from the nobility, was weak, partly because, like other offices, military commissions were transacted venally. For example, military captains typically purchased their commands and they were required to invest their own resources in maintaining their units. This often meant that captains limited their outlays in hiring soldiers, partly because they depended on expensive mercenaries, and the readiness of their troops for combat was questionable. The international power shift placed pressure on the French army, and the years after 1763 saw costly attempts at military reform. This was concentrated in policies enacted first by Étienne François de Choiseul and then by Claude-Louis Comte de Saint-Germain. These reforms entailed measures to subject military recruitment to stricter governmental oversight, to abolish private commands and to ensure adequate qualifications amongst ranking officers.⁷⁶ Central to these reforms was a decree of 1776 to prevent private acquisition of military office. However, such reforms had limited impact on the social structure of the army and, even in the 1780s, the status of the nobility as natural members of the officer class was not contested.⁷⁷

On each count, in the aftermath of 1763 in France, a crisis in military finance and performance led to, or at least accentuated, a more general crisis of state. This crisis was then expressed in a series of constitutional conflicts which ultimately culminated in the revolution of 1789. The first conflict occurred in 1787–8, in tensions about fiscal legislation between the monarchy and Paris *parlement*, a judicial body with duties for authorizing new taxes. This ended as the monarch suspended the *parlement* because it refused to support his taxation plans. In parallel the Assembly of Notables was called to discuss the fiscal conditions of the monarchy in 1787, and a meeting of representatives of all political

⁷⁴ Parrott (2001: 366).

⁷⁵ On the origins of the militia service and its unpopularity, see Girard (1921: 163, 255). One earlier commentary describes the *milices* as the 'remote origin of conscription' while also underlying the 'extreme unpopularity' of militia service (Vallée 1937: 2–3).

⁷⁶ See commentary in Léonard (1958: 163–190), Corvisier (1964: 147–251) and Blaufarb (2001: 237).

⁷⁷ This is contained in the Édit de Segur (1781).

classes, the General Estates, was then convened in 1789. This occurred against a background in which, through the eighteenth century, representative assemblies had not been convoked at the national level. Disputes in the General Estates led to the formation of the revolutionary National Assembly in 1789, which declared itself an autonomous constituent body comprising representatives of all parts of France, who decided, initially, to create a constitutional order to frame the powers of the monarchy.

In the National Assembly, delegates of different regions immediately addressed the question of military defence, and a military committee was created in 1789. Initially, owing to the unpopularity of militia service, proposals in the Assembly to create a conscripted army were rejected and the army was organized on a professional basis. Yet, from the outset, some revolutionaries had in mind a plan for military reform in which offices in the army would be separated from existing social hierarchies, and the sociopolitical basis of the army would be fully reconfigured. These ideas were partly reflected in the *Décret sur la constitution militaire* (February 1790) in which the allocation of military functions reflected a distinct constitutional vision of the polity. In this decree, access to military office was guaranteed for all citizens (Art. 5) and military budgets were subject to control by the legislature (Art. 4). However, this decree moved beyond traditional designs for a professional army and began to propose a new conception of the military. For example, in Art. 3, it prohibited the use of foreign armies in France, at least without express authorization by the legislature. This advanced an ideal of a national army in which mercenaries were perceived as politically dangerous. The connection between nationhood and army was more strongly declared in Art. 7, which stated that a soldier who had served for sixteen years should acquire *active citizenship*, which, under the emerging electoral law of the revolutionary polity, entailed the right to vote. At this early stage, military service was presented as a distinct pathway to citizenship and the military allowed access to political rights. This was also expressed (1790) in legislation that declared that all active citizens had a duty to serve as members of the National Guard. This law was supported by the argument that the 'right to bear arms is inherent in the quality of the active citizen'.⁷⁸ In provisional manner, these documents expressed the principle that citizens earned political rights through military duties,

⁷⁸ This was declared by Edmond Louis Alexis Dubois-Crancé (1790: 22), the main military reformer in the earlier revolution.

so that political and military interactions were closely connected. From an early stage in the revolution, full citizenship entailed certain military obligations.

Of course, these military reforms were not isolated phenomena and they formed part of a wider process of social transformation. However, most laws of the revolutionary period had some military implications. For example, the military reforms followed revolutionary laws to abolish the remnants of feudalism and to liberate agricultural labourers from serfdom. Such laws established guarantees for equal legal personality amongst the population, for the suspension of seigneurial jurisdiction and for the abolition of tithes and duties that impeded free labour. In each point, these laws contributed to improving government capacity for raising taxation and for weakening aristocratic authority, partly for military reasons. Soon after the first military reforms, the Le Chapelier Law (June 1791) abolished all corporations so that economic production was subject to uniform laws. The revolutionaries in France also devoted particular attention to producing general law codes, which they introduced to eradicate the privatistic structure of the *ancien régime*. In each respect, new laws reflected a process of internal colonization in which revolutionaries used uniform legal orders to extend the reach of government power, penetrating into social domains traditionally under familial jurisdiction. A penal code was passed in 1791, and early codes of civil law were also drafted in the 1790s. This meant that citizens acquired increased proximity to the state in both the economic and military domains.

These military forces were then articulated in the construction of constitutional law throughout the revolutionary period in France. By 1791, the first revolutionary constitution reflected the fiscal problems of the Bourbon government, and it established a representative government, forming a more robust, consensual basis for public authority, including taxation. This was expressed in provisions for an elected legislature with control over taxation matters, based in the assumption that national representation is the central point of the sovereign state. This commitment to popular sovereignty was also reflected in the fact that the legislature was elected by an extended, semi-democratic male franchise, so that citizenship, electoral rights and fiscal contribution were connected. In fact, the franchise was constructed on a tiered design, in which men who made lower fiscal contributions had the right to vote only in local, communal and primary elections.⁷⁹

⁷⁹ On one assessment, this group incorporated 60–70 per cent of men (Jones 1995: 224).

At a manifest level, the constitution of 1791 attached relatively marginal importance to military considerations. The constitution in its totality was shaped by a powerful anti-corporatist emphasis reflected in the declaration of rights attached to the constitution, which eliminated intermediary associations between the citizens and the state. This emphasis clearly implied hostility to the historical status of the military organizations as distinct corps, and it reflected anxiety about possible armed mobilization against the emerging constitutional polity. Indicatively, under the constitution, citizens were barred from exercising electoral rights if armed, and deployment of the army in France was subject to strict legislative approval. Any independent deployment of military force by the king was defined as treasonous, and, famously, it was declared that 'no armed body' could assume a legislative role (IV/12). On this basis, the constitution constructed the military as a public organization bound by public legal contracts, assuming an essentially subordinate position in the state. The constitution even dictated that the king's own guard had to be selected from soldiers who had already served in the regular army or from members of the National Guard. New laws on military discipline (1790) and a code of criminal law for the army (1791) were introduced in this period.

Despite this, the military assumed functions from 1791 that escaped such narrow constitutional demarcation. For example, the 1791 constitution contained public-order provisions allowing use of the army for suppressing domestic unrest. Indeed, the constitution was introduced at the same time as laws allowing declaration of the state of siege in France (July 1791). Military force was vital for the success of the revolution, and the constraints on its use were limited. As the 1791 constitution was enforced, then, the definition of the army was altered and the revolutionaries abandoned their initial objective of establishing a professional army. By late 1792, the revolutionary government, now organized in the elected Convention, revised its recruitment strategies and began to enlist more volunteers.⁸⁰ This reform coincided with the onset of war against different European monarchies, and it was partly caused by the simple need to extract more soldiers. As the revolutionary government confronted heightened military challenges, the fiscal system proved unequal to demands for military capacity and the government was forced to seek more recruits. However, this reform was partly

⁸⁰ One historian calculates that, in 1794, almost 50 per cent of officers had been recruited since 1791 (Lynn 1984: 48).

caused by the need to restructure the officer corps.⁸¹ By this point, the polity was exposed to unsettling internal military threats. The king had tried to flee the country in 1791 and the loyalty of the army was precarious, as many officers appointed under the *ancien régime* left France, some joining anti-revolutionary armies abroad. Rebellion amongst the officer class had begun in summer 1790 as officers were stripped of noble titles. Indicatively, a decree of June 1791 placed officers under greatly increased surveillance. In fact, Robespierre, by 1792 a leading figure in the Convention, was known for his reticence to declare war, and this shaped his controversies with his opponents amongst the Girondins. One reason for his reticence to engage in war was that he thought that warfare increased the authority of unelected leaders and heightened the risk of military usurpation. This scepticism culminated in April 1793 as Charles-François Dumouriez defected while leading the *armée du nord*. In response to this, Robespierre declared that the war in Belgium had been caused by the Girondins for treasonous reasons, to create 'false popularity' and to sabotage elected government. He argued that military resources should be concentrated on defence, vested in the 'défenseurs de la patrie', and that protection of internal liberty should be the main object of military force.⁸²

Military organization in the French polity changed further during Jacobin rule. This was intensified by the execution of the king in 1793, as the king had been designated head of the military in the 1791 constitution. From this point, the source of military obligation shifted discernibly towards the principle that military duties were rooted in national membership and the military was projected as the armed organ of the people. Under the Convention, new measures were implemented to increase the loyalty of the military and to reduce the autonomy of regional units, which were seen as potentially hostile to the revolution. Legislation of April 1793 established a system in which representatives of the people were sent to oversee armies and their leaders. This was partly designed to make sure that the armies were adequately supplied, but it also prevented treasonable behaviour. In May 1793, important legislation was introduced which established military tribunals for all armies. This law appointed a military prosecutor (*accusateur militaire*) to ensure the appropriate dispensation of military justice by judges. A new code of military penal law was also passed in 1793. At the same time,

⁸¹ See Blaufarb (2002: 104).

⁸² This is taken from Robespierre's *Discours contre Brissot et les Girondins* (1958: 383).

these measures were flanked by recruitment laws that modified the military basis of the polity. In February 1793, a large-scale recruitment drive was initiated. By August 1793, male citizens in certain age groups and social categories (bachelors, widowers with no children) were called up on a mandatory basis for military duties, initially for short periods of service in a *levée en masse*.⁸³

This increase in military conscription was flanked by a changing concept of citizenship which unfolded through the Jacobin period. At the beginning of the revolutionary experiment, the association of citizenship with the army was only implied. From 1793, this association became stronger and citizenship was strictly bound to combat duties, so that the *soldat-citoyen* became a basic political unit. This link was seen in electoral policies, as the *levée en masse* coincided with the drafting of a new constitution in which voting rights were significantly expanded. The 1793 constitution was in essence a wartime constitution in which the mobilization of the population played a central role. This was declared in Arts 107 and 109 of the constitution. By October 1793, it was decreed that constitutional government would be suspended for the duration of war with other European states. This meant that all ministerial functions were placed under the direct control of the Committee of Public Safety, which served as an emergency executive with fused civil and military powers. Despite the anxieties of Jacobin leaders about arbitrary rule, the Jacobin interlude was close to a military regime. At a more conceptual level, citizenship was observed as a condition of military identity or common national virtue in which members of society were bound by mortal commitments to the republic. One commentator even observed that death in combat was a fundamental expression of republican 'equality'.⁸⁴ In military practice, further, the growing reliance on conscripted soldiers brought important changes in strategy as it meant that the revolutionary government could recruit large armies and was less concerned about losing soldiers in battle than previous regimes. It has often been noted that, before the revolutionary era, military leaders mainly adopted defensive tactics and they were often prepared to settle for less than total victory.⁸⁵ This was partly because they were concerned about losing soldiers, who were difficult to

⁸³ On one account this expanded the size of the army from 650,000 to 1,200,000 soldiers (Godechot 1993: 124).

⁸⁴ Billaud-Varenne 1794: 31.

⁸⁵ This is explained in Léonard (1958: 27). One analysis explains that *ancien-régime* armies were unwieldy and generals were often reluctant to commence battle, partly for financial reasons (Cénat 2010: 302–308).

recruit and expensive to train for combat. In the 1790s, such concerns gave way to strategies that relied on larger, more offensive deployment of troops intended to annihilate the enemy, often with high collateral costs. In 1794, the revolutionary *Comité du salut publique* declared that the 'general rules' of war dictated that the army should 'attack as a massed body', and 'take every opportunity to engage in combat by bayonet and to pursue the enemy until he is completely destroyed'.⁸⁶ The emergence of constitutional rule created more violent armies whose goals were more singularly focused on destruction.

At the heart of these processes was a transformation of human labour. In 1789, many French subjects were released from unfree labour regimes through early revolutionary legislation passed by the National Assembly. By 1793, many of these same subjects were reintegrated into an unfree labour regime as former serfs were forced to serve in the army and military engagement lost its voluntary dimension. The legislation of the French Republic accelerated the core trajectory of modern European society: it transformed the serf into the soldier-citizen in four years. This development was flanked by the accelerated political marginalization of the nobility, many of whose members were put to death at the point where their former serfs were incorporated in the army. The long-term process in which national governments penetrated their societies to obtain military capacity, at the constitutional expense of the nobility, came to a rapid conclusion in these events. Conscription laws were soon followed by education laws (November 1794) creating schools in which pupils were taught to read and write, to recite the rights of man, and to memorize heroic actions and military songs.

In revolutionary France, as in revolutionary America, the division between war and civil war was frequently unclear. At one level, military government in the Jacobin period was caused by the fact that France was engaged in warfare with European monarchies, who promised the restoration of monarchy in France, finding many supporters amongst French elites. As such, France's military opponents were potential occupying powers able to mobilize support amongst military actors within France. In this constellation, France's wars of the earlier 1790s were external and internal at the same time, and they were fought on two fronts. As mentioned, Robespierre was less enthusiastic about war than his disciples and adversaries. But in 1792, he declared that his

⁸⁶ This is recorded in Savary (1825: 126).

priority was to eradicate '*ennemis intérieurs*', and he saw internal purification of the body politic as a precondition for suppressing '*ennemis étrangers*'.⁸⁷ Alongside this, the revolution caused intense inter-factional hostility between revolutionary groups, so that the prospect of an intra-governmental *coup d'état* was always present. Indicatively, the 1795 constitution contained a provision (Art. 69) that created a demilitarized zone around Paris to protect the government from insurgency. Moreover, the essential military form in which citizenship was imposed in French society induced intense resistance. The introduction of conscription in 1793 caused deep agrarian unrest, so that large parts of rural France entered a state of factual civil war. From 1793, conscription gave incendiary expression to the extended presence of the state and provoked numerous instances of dissent and insurrection. Such conflicts were conducted, in essence, by social groups who did not want to be citizens, and who did not want to be bound by direct obligations to the national government. In many settings, uprisings against the revolutionary government were also connected with religious controversies, as the revolution was strictly secularist, subjecting the church to a civil constitution as early as 1790.

In each respect, the French Revolution distilled an integrally militarized mode of citizenship. First, citizenship was intended to cement military attachments as the vertical premise for a new model of government allowing semi-democratic political rights for citizens but demanding high levels of obedience and duty. Second, this form of citizenship meant that lateral relations in society were charged with deep hostility and that the government, legitimated by the political will of its citizens, became an actor in a domestic war with multiple fronts. In both respects, citizenship was tied both to the deployment of external military force and to a process of intra-societal colonization in which the government used principles of citizenship to impose a single legal-political regime across society. National society was constructed around a thick set of norms that fused internal and external violence, and the fact that governments attached their power to citizens for external military ends also allowed them to regiment society internally. As mentioned, the early years of the revolution saw the intensified reconfiguration of all areas of law, including criminal law, agrarian law and civil law, and, in conjunction with military reforms, new legal orders were imposed by violent means. In fact, the writing of constitutions

⁸⁷ Robespierre (1954: 47).

itself was a process in which the national government dictated the preconditions of its authority, and it established the legal codification of citizenship by force of arms.

At the same time, the consolidation of citizenship norms in France did not only have implications for social integration and social obligations in domestic society. On the contrary, the revolutionary design of the French polity had profound international consequences. Advocates of republican citizenship during the revolution promised, initially, that the French polity would only engage peacefully with other states. Robespierre expressed this at an early stage, declaring in the assembly in May 1790 that 'the French nation, happy to be free, does not want to be involved in any wars and wants to live in that fraternity that nature has ordained'.⁸⁸ Related ideas were present in the 1791 constitution. This constitution contained a declaratory statement that the French nation would never act 'with a view to making conquests' and – perhaps ambiguously – it would 'never use its forces against the liberty of any people' (Title VI). In essence, this meant that, from its construction, the French republic symbolically renounced imperialism. These ideas were also linked to legislation (May 1791 and March 1792), which established legal equality for freeborn citizens with non-white skin colour.

Yet, from an early stage, the revolutionary government engaged in non-defensive war with essentially imperialist objectives. As mentioned, in April 1792, the republic entered war against hostile monarchies which involved territorial aggrandizement. This war was declared in anti-militarist diction; it was presented as a war for freedom conducted for the 'just defence of a free people'. However, such anti-militarism was not shared by all revolutionaries. Some Girondins identified war as a necessary precondition for government based in popular sovereignty. For example, Jacques-Pierre Brissot argued that war was a necessary baptism for a 'people that has conquered its liberty', claiming that a war for liberty was needed to regenerate the nation; he added to this the qualification that 'war whose goal is to conquer' was execrable.⁸⁹ At the same time, the revolutionary state integrated other territories. In the first instance, this took place through a sequence of reunions in which regions at the French borders were absorbed within France. By 1792, France had incorporated the papal domain of Avignon as well as Savoy.

⁸⁸ Robespierre (1950: 359).

⁸⁹ Brissot (1792: 3, 15).

By late 1792, France had imposed a revolutionary administration in some regions to the west of the Rhine. Such cases differed from conventional colonization as occupied territories were directly united with France and a general legal regime was enforced in all areas within the revolutionary state.

As early as 1790, legal thinkers close to the revolution suggested a constitutional doctrine to support revolutionary annexation. At this point, it was claimed in the Assembly that France could legitimately integrate external territories by showing that, in these territories, governments were not based in the sovereign power of the people, and they were not recognized by treaties established by self-legislating nations.⁹⁰ These theories acquired reality as the status of neighbouring territories was discussed in 1790–1, in reports concerning the reunion with Avignon. Here, military leaders argued that the revolution created a ‘constitutional pact’ that united all France and this legitimated the incorporation of territories that had not been at liberty to join the revolution.⁹¹ From this moment, in effect, constitutional citizenship became an instrument for removing foreign governments. In December 1792, the Convention passed a decree to establish principles for the French administration of annexed regions, especially regions with strong attachments to France. Illustratively, the first article of this decree stated that annexation should be conducted by military generals. It stated that generals possessed the legitimate power to abolish all ‘established authorities’, all ‘existing taxes and contributions’, all ‘fixed feudal rights’ and the ‘nobility and all privileges in general’. The generals should justify such acts by declaring to the conquered people that they were bringing ‘peace, assistance, fraternity freedom, equality’. Such annexation was to be conducted ‘in the name of the French nation’ and for the ‘sovereignty of the people’, and generals effecting annexation should immediately convene representative bodies – ‘primary or communal assemblies’ – to express and vindicate their sovereignty. This decree was presented and explained in a report delivered by Pierre-Joseph Cambon to advise military leaders about their actions in conquered territories. Cambon declared that annexation was justified by the fact that, in incorporated regions, ‘the people did not have the experience necessary to re-establish their rights’. Accordingly, the invading army

⁹⁰ This is the essential implication of a speech by Merlin de Douai in October 1790.

⁹¹ Menou (1791: 32).

should declare itself a ‘revolutionary power [*pouvoir révolutionnaire*]’, and it obtained legitimacy as it brought rights to conquered peoples, who might otherwise struggle to achieve such rights. He declared: ‘if we are the revolutionary power, everything that exists that is contrary to the rights of the people must be destroyed the minute we enter the country’.⁹² Slightly later, Cambon argued that, as bearers of the *pouvoir révolutionnaire*, French military leaders had the authority to suspend all existing modes of administration in regions which they entered.⁹³ The *pouvoir révolutionnaire* was construed as an irresistible extra-territorial constituent power, creating the precondition for all law and all political sovereignty in annexed regions.

In such processes, the principles of citizenship that were used to unify France as a nation state were transposed outwards to integrate other domains into its structure. By the mid-1790s, leading figures in the revolutionary regime accepted an idea of France as a visibly demarcated territory lying between the Pyrenees and the Rhine, and they saw expansion within these limits as geographically justified. In 1793, Danton famously announced that the extension of the republic was legitimated by limits set by nature. However, the aforementioned decree of December 1792 implied that popular sovereignty itself formed an effective basis for imperialism, with some parallels to concurrent developments in the USA. That is, in this decree, the idea that government was legitimated by its direct attachment to the popular will was constructed to justify territorial colonization, and the claim of the government to draw legitimacy from the shared will of citizens allowed it to enforce order in new domains. Indicatively, where representative assemblies were established in annexed regions, the outcomes of elections were predetermined, as only voters who declared fidelity to revolutionary ideals were allowed to participate.⁹⁴

Through these developments, the formation of citizenship in revolutionary France followed a deeply paradoxical course. The revolution was based in legal techniques to position citizens as holders of sovereign force in society and to form a strong accountable sovereign state on this foundation. However, revolutionary citizenship authorized external war. In its external effects, the revolution engendered multiple patterns of militarization in which ideals of citizenship used to unify France were employed to overthrow other social orders so that internal and external

⁹² These quotations are taken from Cambon (1793a: 7–8).

⁹³ Cambon (1793b: 14–15).

⁹⁴ Godechot (1992: 73); Lignereux (2023: 31).

integration appeared as parts of the same process. In annexed regions, the revolutionary army directly imposed French administration so that new domains were simply assimilated into France on the basis of generalized models of citizenship. In so doing, the revolutionary army enforced external occupation regimes in which resistance to French administration could be dismissed as reactionary subterfuge. Once created, revolutionary regimes outside France were usually marked by deep civil conflict, as revolutionary laws brought internal antagonisms to the surface of society in integrated regions.⁹⁵ In each respect, the revolution created a transnational military system in which revolutionary ideals of citizenship traversed the boundaries between the inside and the outside of different societies. The principle of popular sovereignty, used to found a constitutionally ordered nation, became the premise for the creation of an imperial nation and, both inside and outside France, nationalism and imperialism had closely related effects.

These tendencies continued under the more conservative regime led by the five-member *Directoire*, under the constitution of 1795. By 1795, the revolutionary constitutional order was centred on a model of citizenship designed to control the extremes of Jacobin terror. On one hand, government under the *Directoire* was based in a limited, indirect electoral franchise and the legislature had weaker functions. Alongside this, however, the constitution made citizenship contingent on military duties both in external and in internal military actions, so that political integration and military integration remained closely linked (Art. 279). The expansionist tendencies of revolutionary government also increased substantially under the *Directoire*. The Thermidorean regime that passed the 1795 constitution was already consolidating a more robust hold on territories outside France as the constitution assumed force. In late 1794, French armies passed through Belgium, reached Aachen and Cologne and crossed the Pyrenees. Holland was subject to French occupation at the same time. By 1795, therefore, the writing of the constitution was not easily separable from acts of external expansion, and the clauses it contained were at least partly focused on securing the internal preconditions of external enlargement. By a law of 1798, conscription quotas were imposed annually and on a permanent basis on single French men, so that the *levée en masse* became a fixed feature of the polity. This law was passed at a point of great imperial strength. It followed the Treaty of Campo Formio (1797) in which France's extended frontiers were

⁹⁵ See pp. 84–5.

internationally accepted and French dominance in much of Italy was cemented. This law was very different in motivation from the emergency levies approved in 1793; it was a conscription law clearly intended to serve concerted annexation. By this time, constitutional law explicitly sustained the internal and the external consolidation of government.

The military initiatives of the *Directoire* also brought Napoleon to prominence. In 1799, Napoleon used his military position to launch a *coup d'état*, and, from this point, the military construction of citizenship in France became integral to social order. In 1799, a constitution was passed that placed far-reaching powers in the hands of three Consuls, and – in particular – of the First Consul (Napoleon). This constitution tangibly weakened democratic commitments in earlier constitutions. However, under this constitution, government remained centred in a mixed system in which the power of the Consuls was partly limited by a legislature authorized to check and discuss legislative proposals. The constitution provided for a representative order, in which popular delegates were nominated by lists (Arts 7–8) and appointed by the Senate (Art. 20). It was the duty of the First Consul to promulgate laws (Art. 41), and the Consuls together formed the government with responsibility for proposing legislation and regulating fiscal policies (Arts 44–45), conducting foreign policy (Arts 49–50) and maintaining internal security (Art. 47). In key respects, the 1799 constitution formed a military constitution attaching citizens immediately to state organs for military purposes. It subordinated the army to civil power (Art. 84). However, it conferred special privileges (including pensions) on soldiers and it refined provisions for conscription; in March 1800, the conditions for conscription were specified, allowing some conscripts to use proxies and, in 1802, recruitment councils were established. In parallel, it initiated the formalization of administrative law, which became a defining feature of French law. It created a right of petition (Art. 83) and provided for the creation of the supreme Council of State (Conseil d'État, Art. 52) to edit draft laws and to 'resolve difficulties that may arise in administrative matters'. In this regard, the constitution illustrated the deep connection between individualization and militarization in modern society, as it was intended to regulate state institutions in their interactions with single persons while also binding citizens to the state in a security constitution, as soldiers. The development of administrative law progressed further as, by 1806, the functions of the Conseil d'État in matters of administrative law became more specialized. This constitution was then revised in 1802, as Napoleon

became First Consul for life. By 1804, after the expiration of the Treaty of Amiens, which interrupted the long continuum of war, the constitution was replaced with an imperial constitution. This constitution retained the legislature and the Conseil d'État, but it abolished the Consuls, creating instead a Grand Council (Art. 36) and a Senate presided over by the emperor (Art. 37), which had important functions in military recruitment.

The Napoleonic regime retained some continuity with post-1789 constitutional ideals. Although curtailing political rights, the government Napoleon established was based in constitutional texts that established immediate channels of communication between government and citizens. For instance, the 1802 constitution introduced primary elections in different regional units which were convened to send representatives to electoral colleges. These colleges were initially based in broad suffrage, operating as organizational hinges between government and citizens, although their functions were limited to the nomination of candidates for legislative and executive roles.⁹⁶ Moreover, the Napoleonic regime continued to deploy models of national citizenship created in the revolutionary period to attach territories to the French empire. This was evident outside the strict domain of constitutional law. In 1804, the Code Civile passed by Napoleon formed a legal order that dictated principles of individual legal equality for all persons subject to it, and it was predicated on ideas of legal equality that gained appeal during the revolution. This Code was transplanted by Napoleon across Europe, and, wherever it was enforced, it induced far-reaching agrarian reform, capitalization of land and increased emancipation of serfs. In regions Napoleon had conquered, further constitutions were created that supported annexation, and, in many regions of Europe, Napoleon imposed the first modern constitutions as part of an imperialist occupation system. In most instances, these constitutions allowed the direct exercise of electoral rights by residents of annexed regions, so that submission to Napoleon brought many people closer to citizenship.

Napoleonic annexation took place in different ways, and Napoleonic constitutions acquired different functions and created different political entities. In some cases, Napoleon overthrew existing states. In northern Italy, Piedmont was invaded in 1796, became a satellite republic in 1800, and was re-annexed in 1802. However, many Napoleonic conquests were closer to inter-imperial capture, and they

⁹⁶ See the discussion in Coppolani (1980: 68, 110) and Crook and Dunne (2014: 665–666).

involved the absorption of regions that did not possess independent sovereignty. Outside Piedmont, parts of northern Italy conquered by Napoleon had been controlled by the Habsburg government in Vienna before Napoleon arrived. When placed under Napoleonic control, Italian regions were first formed as separate republics with distinct constitutional orders. For example, before Napoleon became First Consul, the Cispadane Republic was created in 1796, which was integrated in the Cisalpine Republic in 1797 with its capital in Milan. This gave way to the republic of Italy in 1802, also administered from Milan, acting as a semi-autonomous polity under French military control. This republic acquired a constitution that established Napoleon as president and contained a class-based electoral system in which different social groups were represented in different colleges. Then, the kingdom of Italy was formed in 1805, in which Napoleon was proclaimed king, so that much of Italy was placed in personal union with France. Other parts of Italy were formally assimilated in France at different points, and Italian regions eventually formed fourteen French departments. For example, Tuscany became part of France in 1808; the Papal States were incorporated in 1809–10. In Italy, unlike other regions, Napoleon created many states without clear historical foundations, and he imposed citizenship in warfare as the first step in national state-building. In parallel, the Polish region around Warsaw was occupied by Napoleon in 1806/7 following war with Prussia, which had colonized Warsaw only eleven years earlier. In this setting, Napoleonic rule was imposed with greater social support. In other areas – for example, Westphalia – new states were created by aggregating previously unconnected territories. The formation of Westphalia was, strictly, also the result of inter-imperial capture, as it was established after Napoleon dissolved the Holy Roman Empire. The 1807 constitution of the Kingdom of Westphalia established equality before law as constitutional norm (Art. 10) and it abolished legal privileges (Art. 12) and made serfdom illegal (Art. 13). It created an equivalent to the French Conseil d'État, whose function was both to resolve administrative disputes (Art. 21) and to produce draft legislation to be considered in final form by representative estates (Art. 25). As in France, the Conseil d'État initiated the development of administrative law, as it was charged with deciding when administrative officials should be subject to legal proceedings (Art. 27).

Across the Napoleonic empire, constitutions took root partly as instruments of state-building and partly as instruments of colonization,

and they integrated emerging societies in a complex fusion of internal lawmaking and external violence. At this juncture, empire-building and national construction were essentially convergent phenomena. In each setting, the constitutions introduced in territories subject to Napoleonic rule were designed to extract military conscripts (mainly peasants recently liberated from serfdom) from subject populations. In most regions, the primary provisions of Napoleonic constitutions were concentrated on the mobilization of military personnel, and mechanisms facilitating political representation and legal inclusion were designed to enhance military capacity.

In the original borders of France, conscription increased and became more strictly regulated after 1804. Over time, a large administrative machine was put in place to enumerate young men liable for service, to draw up local lists of recruits, and to prevent evasion. This process was closely connected to the organization of elections under Napoleonic constitutional law. In January 1806, a decree was passed in France that established a civil register, and inscription on the register was obligatory for those wishing to vote for cantonal assemblies. This decree meant that local administrators were able to use electoral lists to identify potential soldiers in their region, so that political representation became a tool to augment military force. Through these structures, the Napoleonic system extracted soldiers much more effectively than the revolutionary armies. It is often noted that, to motivate recruits, the Napoleonic army adopted a technique for rewarding soldiers that reduced the importance of patriotism and republican virtue as sources of military loyalty, and it partly reverted to the distribution of honours and distinctions that typified armies before 1789.⁹⁷ However, conscription under Napoleon still relied on revolutionary ideas of military citizenship, and the convergence between legal and political status and military obligations was reinforced through this period.

This extractive function of constitutions was prominent in Napoleon's satellite states. These regions reproduced the revolutionary patterns of legal reform in which subjects were integrated into a system of citizenship rights and then directly relocated in the army. This aspect of Napoleonic government in Poland is discussed more fully below. In the different Italian states, conscription was imposed in different waves, alongside laws promoting legal equality and economic freedom. In the Italian republic under Napoleon, deep conscription was enforced from

⁹⁷ See discussion of this idea in Lynn (1989) and Forrest (2006: 98–99).

1802.⁹⁸ In Westphalia, the 1807 constitution dictated that conscription was a basic law of state (Art. 53) and recruitment of salaried soldiers was illegal; this coincided with the introduction of French civil law. The Confederation of the Rhine (1806) was formed through a treaty that secured many soldiers from confederated states. In each case, the Napoleonic system promulgated constitutions to establish parity before the law for all persons, in order, in part, to integrate persons into the army. In turn, integration into the army formed a crucial method of political socialization. Indicatively, in Piedmont, which was subject directly to French constitutional law, Napoleon reflected that it was only through conscription that the country could become French.⁹⁹

Such enforcement of citizenship for stabilizing imperialism had deep implications for societal organization and in regions occupied by Napoleon. In fact, the strategy of military integration promoted by Napoleon gave sharp expression to the divergent implications of constitutional law, and it created societal orders that were militarized in two dimensions, vertically and horizontally.

On one hand, the societies where Napoleonic regimes were formed were subject to a vertically constructed military system. Manifestly, in regions governed by Napoleon, the extractive powers of government were dramatically extended and the army increased in size, largely due to conscription techniques. Moreover, military roles and offices became more central to the interaction between citizens and state, and military attachments to government remained powerful even after soldiers had completed military service. For example, the 1804 constitution made formal provision for military pensions. At the same time, the imperial government created after 1802 attached its legitimacy to outcomes of war, and the regime maintained its momentum as it was successful in military combat. In France, this meant that national integration, expressed through the abolition of privileges and the construction of a general legal order, occurred as the domestic effect of war.

In conjunction, however, Napoleonic governments instilled other military pressures in European society. Distinctively, Napoleonic armies were marked by a sharp distinction between their legitimational

⁹⁸ On one account, for much of the period 1802–14, conscription in Italy exceeded that in France by about 400 per cent (Zaghi 1986: 554). One observer comments that, using conscription, the French pursued ‘the militarization of an entire society, a social and cultural transformation of Italian life’ (Broers 2001: 252).

⁹⁹ This is discussed in Lignereux (2023: 155–157), who portrays conscription as the ‘cement of the empire’.

claim and their actual nature. Initially, Napoleon's armies were based on the principle of national service in which military obligations flowed from social membership, rooted in revolutionary ideals of the *soldat-citoyen*. However, after 1802, Napoleonic armies began to resemble the diffusely assembled armies of the seventeenth century as they comprised multinational corps recruited from annexed territories. By the time the Grande Armée prepared for the invasion of Russia in 1812, less than half of Napoleon's soldiers were French, and many were pressed into service from Austrian, Prussian and Italian armies that Napoleon had previously defeated. Napoleon partly reversed the regulated nationalization of armies that began around 1700 and was placed on new footing during the French Revolution. Given the size of the imperial armies, further, soldiers usually survived by feeding off the land and by plundering, mirroring earlier military corporations.¹⁰⁰ More importantly, in many territories, Napoleonic occupation incited large-scale counter-mobilization in different forms. Most regions subject to Napoleonic control saw violent reactions against conscription such that military force was widely used against internal resistance to secure military capacity.¹⁰¹ Occupied societies also devised distinct military techniques to combat Napoleonic occupation. Some states that had experienced defeat by Napoleon began to emulate military reforms introduced in revolutionary France to create a military apparatus able to instil national loyalty in soldiers, providing them with strong motivations to resist Napoleonic rule. Reforms of this kind were prominent in Prussia after 1806; conquest by France brought deep structural adjustments to the polity. Equally, some societies began to organize unregulated uprisings against Napoleonic rule. For example, some type of *levée en masse*, promoted in France in 1793, became an important mechanism for mobilizing societies against Napoleon, and the proliferation of small wars against France became frequent. This occurred in Tyrol and – most famously – in Spain, where spontaneously formed military units shaped the structure of government after Napoleonic invasion.¹⁰² Even in Prussia, the possibility of mass uprising against Napoleon was considered in 1808. In such contexts, Napoleon's presence induced complex societal militarization,

¹⁰⁰ See the classical description in Morvan (1904: 23).

¹⁰¹ On one account, conscription triggered a 'two-front war' in Napoleonic domains (Woloch 1986: 2011). Anti-conscription riots were frequent phenomena in Napoleon's territories, including large outbreaks in different parts of Italy.

¹⁰² See pp. 115–6.

including regimented militarization for war and lateral mobilization for civil war. Such scenarios engendered types of guerrilla warfare more typical of the conflicts encountered by European empires at their peripheries.¹⁰³ In each respect, the Napoleonic military system brought a deep socialization of warfare, and the effects of war cut deep into regional societies and profoundly altered social structures. Over a longer period, the revolutionary militarization of society that served French expansion became a structural principle in societies occupied by France, so that some pattern of collective military mobilization became an experience on which nationhood and national citizenship were built. These outcomes of Napoleonic rule had ambiguous consequences which proved vital to the development of constitutional law, and indeed to the basic form of state sovereignty.

Through this diffuse militarization of European society, many states began to interact with their citizens with new intensity and vertical immediacy, and they were forced to entrust citizens with roles that would not have been imaginable before Napoleon. In particular, states that experienced conflict with Napoleon began to arm their populations, as new patterns of military mobilization were required to drive out occupying armies. In most contexts, this meant that states fighting Napoleon reproduced the convergence of agrarian reform, constitutional reordering and military conscription that had been pioneered in revolutionary France. During Napoleonic occupation, Bavaria, Prussia, Spain and Austria entered reform processes that led either to the drafting of a representative constitution or at least to the deep transformation of the state. In most cases, conflicts with Napoleon led to the liberation of subjects working in agrarian economies, as throughout Europe laws were introduced to abolish tied labour. Serfdom was abolished in Prussia in 1807, in Bavaria in 1808 and in other German-speaking states in these years same or shortly afterwards, although such legislation had limited effect in some Habsburg regions. In each case, the elevation of subjects into legally defined citizenship roles coincided with the imposition of conscription. Conscription was imposed in Bavaria in 1804–5, in Württemberg in 1806, in Austria in 1808 and in Prussia in 1813–14. In each respect, the military proximity Napoleon imposed between state and society led rapidly to generalized definitions of citizenship, and French legal forms of imperialism galvanized national reactions against Napoleon.

¹⁰³ Indicatively, General Bugeaud, responsible for French colonization of Algeria in the 1830s and 1840s, experienced anti-partisan warfare in Spain.

In many settings, however, the mobilization of populations against Napoleonic rule brought substantial internal risks, and the arming of populations was inherently perilous. Some regions, such as the Rhineland and parts of Italy, contained substantial groups that had sympathized with the revolutionary ideals announced in 1789. In some territories, support for Napoleon was strong and some elites drew clear benefit from Napoleonic government. Many states mobilized their populations for war against Napoleon after 1812, although their armies had fought for him after 1807. In such contexts, military loyalties were necessarily precarious. Overall, the construction of military citizenship against Napoleonic occupation had contradictory outcomes. Although it imposed unifying structure on national societies, it instilled acute potentials for civil conflict at the core of the nations it began to engender. The creation of national armies was a highly sensitive technique for promoting national integration, and it constructed national societies in a form with some similarities to external war.

In each point, the first mass transformation of subjects into citizens in Europe was inseparable from imperialism and military violence, and this had distinctive implications for political organization. In this context, states were required to initiate constitutional construction and enfranchisement in a military environment marked by cross-cutting pressures, and they began to extract legitimacy and sovereignty from citizens in volatile circumstances. Indeed, many states entered a situation in which they relied on their subjects for military purposes, to assert sovereignty, but the loyalty of these subjects, on which state sovereignty depended, was not guaranteed. This distilled the basic paradox of early constitutionalism: states accorded rights to citizens to stabilize their sovereignty, but citizens unsettled the sovereign form of the state that gave them rights. One consequence of this was that states began to deploy additional means to assure themselves of the loyalty of their citizens and to stabilize their sovereignty on reliable premises. In some cases, indicatively, states that promoted a *levée en masse* against Napoleonic occupation soon implemented regulated conscription laws, so that the spontaneous dimension of military enlistment was reduced. This had already occurred in France in 1793 and 1798, but the conversion of spontaneously armed troops into regimented armies remained a defining challenge for many states after Napoleon.¹⁰⁴ One further consequence of this was that, from the

¹⁰⁴ See pp. 128–9.

outset, governments took steps to control the national sentiments and loyalties that motivated citizens to join armies. As discussed in Chapter 2, nationalism was officially discouraged in most of Europe after 1815. Over time, however, memories of mobilization against Napoleon were frequently reconfigured to form the focus of reactionary political identities with a strong anti-revolutionary dimension. The fact that collective mobilization had been directed against France meant, from the outset, that other European societies were integrated by conservative national affinities. In some German settings, the wars of liberation slowly assumed a central role in national imaginaries, and gradualist ideas of organic nationhood moved to the centre of constitutional thinking. In reflecting on the relation between France and Germany, the great historian Ranke concluded that terror of the French Revolution was an example of the metaphysical strife that occurs when people are 'chained to ideas', allowing 'rational' constructions to prescribe the coercive form of 'legality'.¹⁰⁵ Many parts of Europe developed a reactionary brand of nationalism after 1815 which was framed, partly retrospectively, by hostility to Napoleon.

In each point, further, the Napoleonic period raised simple questions about the distinction between nations and empires, and it constructed models of citizenship that crossed the boundaries between these two political forms. In France, Napoleonic government imposed a dense, clearly national form on society as it extended outwards, and direct attachments between citizens and the state were intensified through external colonization. In this process, vitally, military constructs of citizenship deployed to integrate people in France were also used to absorb foreign territories, so that the empire was partly convergent in its internal and external dimensions. In fact, the actions of the imperial government towards persons resident outside France and to inhabitants of France were shaped by convergent motivations as military mobilization formed the core nexus between citizen and state in both domains. By 1812, following defeat in Russia, conscription increased rapidly in all Napoleonic territories. Indicatively, citizenship instilled parallel resentment in both the internal and the external parts of the empire. This process stimulated intense resistance outside France, and, inside France, Napoleonic rule was accompanied by common signs of hostility to military citizenship.¹⁰⁶ In both parts of the empire, citizenship was

¹⁰⁵ Ranke (1832: 86).

¹⁰⁶ For statistics on desertion and self-mutilation amongst French soldiers who did not wish to be citizens, see Pigeard (2003: 126).

often observed as an oppressive, partly annexationist regime. Consequently, France was formed internally as a nation by imperialism, but nation-building was also experienced as internal colonization. In occupied regions, conversely, Napoleonic imperialism acquired nation-building force, and it radically accelerated the lines of inner social construction that, more latently, had defined eighteenth-century Europe. Across Europe and Latin America, the impetus towards the realization of national citizenship resulted from Napoleonic administrative techniques, and most nations approached nationhood because, at least temporarily, they became parts of an empire. This meant that, from this point, empires formed a model for nation-building, and nations were configured through the construction of citizenship in semi-imperial fashion. This also meant that legal categories used to established nations could be made serviceable for empires, and empires increasingly patterned themselves on nations. After circa 1806, most empires began to organize their interactions with society through principles of citizenship borrowed from the French Revolution. In each dimension, further, the Napoleonic era had the outcome that states engaged with their citizens, primarily, as potential soldiers, and they relied for their sovereignty on citizens that constituted a threat to their essential sovereign form. As discussed in Chapter 2, the immediate reaction of most states to this condition became visible in the Congress of Vienna, when the link between national militarism and sovereignty was denied.

A distinct variant on the pattern of military constitutionalism appeared in the main example of anti-Napoleonic uprising outside Europe – in Haiti. In Haiti, originally a French colony with embedded slavery, the construction of national citizenship depended on complex interactions between the locus of citizenship, Haiti, and the imperial power, France, and it was driven by diffusely convergent military pressures. Large uprisings amongst slaves in Haiti began in 1791, caused both by local slaveholder repression and by revolutionary events in France. This mobilization acquired the form of an anti-imperial war and a civil war, as slaves directed their primary hostility towards local plantation owners. The uprising was partly successful because it coincided with war between the French Convention and Spain and Britain in the Caribbean. At this point, the colonial government on the island lacked military personnel to deploy French troops to campaign against rival empires in the Caribbean, and it was unable to suppress the anti-slavery protests in Haiti. As a result, a series of decrees were introduced

to free Haitian slaves. This was partly intended to pacify the revolts in Haiti, but it also served broader military purposes. Some insurgent slaves had formed alliances with Spain, and emancipation was intended to separate Haitian slaves from the Spanish army and to promote their recruitment for France. By August 1793, the French commissioners abolished slavery in the north of the island, albeit with caveats and restrictions, and, by 1794, the Convention in Paris abolished slavery in all French territories. This meant that the revolts in Haiti stimulated general emancipation throughout the French Empire.

This conflict acquired a different character under Napoleon. By the onset of Napoleonic rule, military forces in Haiti were led by Toussaint Louverture, whose armies had a stronger focus on the assertion of independent sovereignty. Although a primary force beyond the abolition of serfdom in Europe, Napoleon's approach to involuntary labour outside Europe was less certain. The 1799 constitution placed French colonies under separate laws, and, by 1802, Napoleon sanctioned slavery in some colonial regions and legalized the slave trade again. He also reduced other liberties of black subjects. Such actions gave rise to the perception that Napoleon was intent on reimposing slavery in Haiti, which naturally affected attitudes towards France. These factors resulted first in the promulgation of a separate constitution for the colony, in 1801. Like other constitutions of the period, the constitution had a strong military inflection. The constitution permanently abolished slavery (Art. 3), but it placed supreme power in the hands of Louverture, who was authorized to use the army for public order purposes and to appoint his successor. It was also flanked by measures to impose military discipline on the rural production, so that labour and militarism remained connected.¹⁰⁷ Against this background, Napoleon sent an expeditionary force to restore order in the island, which brought brutal multi-polar warfare. After the deportation of Louverture, the Haitian armed forces were led by Jean-Jacques Dessalines, who oversaw an intensified militarization of society with large-scale mobilization of guerrillas, resulting in the independence constitution of 1805. This constitution declared Dessalines the emperor of Haiti and placed the island under government by military divisions, with strong military control over civil and judicial functions. The constitution was supported by far-reaching conscription provisions. In key respects, the mobilization of society against French imperialism imprinted a persistent bias towards military hierarchy in Haitian society,

¹⁰⁷ This is documented in Dubois (2004: 239).

which was replicated both in government and in social organization. In fact, through and after the revolutionary period, military structures became embedded in economic practices, and strongly regimented production regimes were imposed on agricultural workers.¹⁰⁸

3 Poland

A third line of constitutional formation in the late eighteenth century developed in Poland. This line acquired expression in several reforms, but it culminated in the short-lived constitution of 1791. This constitution was designed to reorganize the Polish body politic in order to prevent the occupation of Poland by rising dynastic empires based in Berlin, Vienna and St Petersburg, which commenced (formally) in the early 1770s. The constitution was shaped by a background in which Poland's sovereignty had been progressively reduced over a long period. This process in fact originated in the later seventeenth century, at which time Russia's international position was reinforced and the sovereignty of Brandenburg–Prussia, a marginal principality until 1648, was tangibly hardened, notably in the Peace of Oliva (1660). The 1791 constitution formed the central point in a long sequence of endeavours to strengthen the Polish polity, and imperialism, with strongly dialectical outcomes, was a defining impetus in these events.

Poland stands out in European history as a polity that was pervasively structured by different patterns of international expansion. In the early modern era, Poland itself was an expansionary state, and, following union with Lithuania in 1569, it incorporated large territories to the north and east of its original location. At this time, Poland was constructed as a Commonwealth, which, although centred around an elective monarchy, possessed strong republican features and was constitutionally committed to representative government and equal rights under law for all full citizens. The Polish Commonwealth was weakly centralized, and it was supported by an estate-based constitution, whose central organ was the bicameral parliament (*Sejm*), to whose sittings members were elected by a highly selective franchise. This constitution had an anti-absolutist emphasis. It originally expressed a balance between the interests of several social groups, notably of large magnates and the lesser nobility, and it protected their privileges by upholding regional administrations based in

¹⁰⁸ One important commentary argues that, by 1800, the military apparatus was engaged in enforcing agricultural laws, which limited the rights of freed slaves (Fick 2007: 410–411). See related comment on the implications of the *Loi concernant la culture* (1812) in Fatton (2007: 90–91).

patronage and serfdom. Individual regions in Poland possessed smaller representative parliaments (*Sejmiki*), whose delegates influenced legislation in the *Sejm*. The position of the *Sejmiki* was defined by the expansionary form of the polity. The *Sejmiki* were first established as representative instruments to link newly integrated regions as Polish rule spread in the north and east. Originally, they performed defensive functions in raising troops and upholding Polish rule in colonized borderlands. By the late seventeenth century, the *Sejmiki* had assumed far-reaching autonomy, especially in fiscal matters. Their role in providing military resources also increased greatly, so that they clearly checked the centralizing pull of the monarchy and the *Sejm*. By the eighteenth century, powerful magnate families acquired dominance in the constitutional order, using the regional *Sejmiki* to exercise control of government.¹⁰⁹ As a result, the Polish state was marked by low internal consolidation of governmental sovereignty. It acted in essence as a loose parliamentary confederation of regional power centres, partly dominated by large family oligarchies.

The powers of the Polish government were further restricted by a traditional constitutional provision – the *liberum veto*, which prescribed unanimity amongst delegates in the *Sejm* as a precondition for vital legislation. This meant that parliaments were often inconclusive and influential regional groups attached to *Sejmiki* could control legislation at the national level. The force of this provision was limited in 1764, after repeated plans to revise it. However, 1768 saw the publication of a corpus of laws defined as *cardinal laws*. This collection was very close to a modern constitution, written as the polity experienced internal war and was exposed to extreme external pressure. This collection set out norms concerning political representation and procedures for legislation, and it included the stipulation (Art. 17) that the *liberum veto* should be retained with full effect. Unsurprisingly, neighbouring states drew great benefit from the *liberum veto*, as it weakened the legislative power of the Polish polity and created internal dissent that provided pretexts for external acts of pacification.¹¹⁰ Its retention in the cardinal laws of 1768 owed much to the influence of Catherine II in St Petersburg.

¹⁰⁹ On the increased authority of the magnates and the *Sejmiki* by circa 1700, see Olszewski (2002: 86, 117) and Stojnowski (2005: 319). One excellent analysis explains that the magnates assumed dominance between 1650 and 1700 because the lower gentry lost their wealth during the wars with Sweden. The magnates gained influence over other groups by distributing wealth and favours (clientelism) (Kłaczewski 1993: 8).

¹¹⁰ Zielińska (2012: 592); Dukwicz (2015: 82).

One primary feature of the traditional Polish constitution was that it did not establish a strong fiscal system, not lastly because magnates viewed increased fiscal extraction as a pretext for military absolutism. In consequence, the military apparatus was not effectively centralized and regents routinely struggled to recruit and pay armies. Unlike many European states, Poland was only marginally affected by the Thirty Years' War, and the military system was not substantially reformed in the decades after 1648.¹¹¹ Moreover, Poland experienced protracted warfare between 1648 and 1720, both in and outside Polish territory, causing extreme devastation, territorial depredation and demographic depletion. At this time, Polish military resources were greatly stretched in wars with the Ottoman Empire, often conducted far from Poland. Like other states, Poland saw increasing professionalization of the officer corps in the eighteenth century. Yet the techniques promoted in other European countries to stabilize military funding and ensure official regimentation of armies were not permanently implemented.¹¹²

Through this time, Polish governments were dependent on different armies for military capacity. The army at the disposal of the monarch had multiple foundations, and Commonwealth armies, militia armies provided by the noble estates, and a range of mercenary units combined to form the total military force.¹¹³ The composite nature of the army was partly a result of the size of the territories in the Commonwealth, which made concerted military mobilization difficult. However, it meant that the command structure of the army was complex and fractious. Poland and Lithuania had separate armies, each of which was led by military officials with high constitutional status (the *Hetmans*). The *Hetman* was a vital figure in the Commonwealth, possessing extensive duties in military and fiscal governance. However, the position of the *Hetman* was not defined in clear constitutional terms, and it varied over time. The *Hetman* was expected to raise and organize the army, but he controlled the army through webs of patronage, so that the Commonwealth army was partly recruited as a large entourage of the *Hetman*, reflecting older patterns of military recruitment through affinity.¹¹⁴ Historically, the *Hetman* protected the interests of the high nobility, and the loyalty of the *Hetman* to the

¹¹¹ On the lack of standing armies in Poland, see Ciesieski (2009: 569).

¹¹² See Janas (1998: 16); Wimmer (2019: 20).

¹¹³ On the composite nature of traditional Polish armies, see Łopatecki (2013: 579) and Wimmer (2019: 121).

¹¹⁴ See important discussion of the private and personal patterns of military recruitment by the *Hetman* in Augustyniak (2004: 34, 179, 259).

crown was frequently uncertain. However, leading noble families were often hostile to the *Hetman*, whose powers they saw as draining monetary resources for commitments inimical to their own.¹¹⁵ The *Hetman* was able to station armies in noble domains, often with devastating material results for the owner.

The reliance of the Polish crown on multiple armies weakened the inner structure of the state, and it meant that leading families could act at a high level of political independence. In fact, at crucial junctures, families and other regional groups formed confederations which performed significant military, legislative and judicial functions, even developing autonomous fiscal systems. Such confederations were sometimes established to provide institutional order and domestic security in periods in which other political institutions were depleted.¹¹⁶ For example, confederations acquired influence by performing state-supporting functions and guaranteeing military supply during interregna. By the eighteenth century, such confederations had become fundamental to the political system. They were formally recognized in constitutional doctrine as organs of the polity, separate from military associations or informal factions.¹¹⁷ One account describes confederations as the ‘dominant political form’ in the eighteenth-century Polish constitution.¹¹⁸ However, confederations provided an intrinsically uncertain basis for public order. At times, confederations acted as parts of government, appearing as formal organizations in parliaments and steering legislative initiatives in parliamentary assemblies. In parallel, confederations often pursued military objectives that were opposed to other organs of the polity, and they conflicted with the government. This had the result that the organic composition of the Polish state was informal and associational, and actors within the polity moved variably between systemic and subversive functions.¹¹⁹ Periodically, the highest organs of state – including the *Sejm* itself – saw their functions usurped by confederations, and, in such contexts, parliaments acted, not as internal organs of state, but as conferences between rival military organizations.

For these reasons, the Polish constitutional system showed a repeated tendency to degenerate into civil war between internal groups.

¹¹⁵ Rostworowski (1957: 28); Gawron (2010: 248–52).

¹¹⁶ See Kriegseisen (1989: 118–119).

¹¹⁷ In a leading eighteenth-century discourse, confederations were clearly distinguished from noble insurrections (see Lengnich 1746: 394–395).

¹¹⁸ Stanek (1991: 226).

¹¹⁹ This follows analysis in Stanek (1991: 183–199).

Conflicts recognizable as partial or full civil wars occurred frequently, notably in 1606–7, 1665–6, 1704–6, 1715, 1733–5 and 1768–72. In these periods, it was common for parts of different armies to form rebel confederations or several confederations at once. Fatefully, civil wars often coincided with external wars in which some domestic factions attached themselves to foreign powers. The loose territorial order of Poland meant that civil wars easily acquired an international dimension and fused with interstate wars as domestic unrest brought external actors into Poland. For example, the late 1760s saw *de facto* civil war between confederations with opposed international objectives, partly organized to resist Russian intervention. In such conflicts, nobles frequently formed alliances to oppose the monarchy, at times treating the monarchy as an alien military power. In fact, actions of the Polish nobility towards the monarchy often mirrored anti-imperial uprisings. For example, from the 1690s, Poland was intermittently ruled by the Saxon royal family. During this time, the Saxon monarchy stationed its army in Poland with implicit Prussian support, and it extracted fiscal contributions from the Polish estates much like a foreign occupying force.¹²⁰ Resultant opposition amongst the noble estates to the Saxon dynasty was expressed through military actions that formed a hybrid between civil war and interstate war. In such settings, noble confederations also operated in a form close to occupying regimes, and they extracted contributions from domains where they were stationed.¹²¹ In different ways, government was rooted in violent contest over territorial occupancy, in which distinctions between national and external rule were unclear and the perceived legitimacy of central authority was low.

By 1720, the sovereignty of the Polish state was discernibly restricted and external powers had obtained a powerful hold on the political system. A key milestone on this process was a set of agreements reached by the *Sejm* in 1717. These agreements were partly engineered by Russia (officially declared an empire in 1721) after the *Sejm* had encouraged Peter I to intervene to control violence caused by noble uprisings on Polish territory. These agreements included (ineffective) reforms to prohibit confederations and to limit the number of soldiers in the army. These reforms curtailed the powers of the *Hetman* and restricted

¹²⁰ See Gierowski (1953: 39–40); Kriegseisen (1989: 19–22).

¹²¹ One account explains how anti-partition confederations in the late 1760s created a legalized system of extraction, combining regular taxation and informal contributions (Szczygielski 1970: 178–181).

his involvement in domestic disputes, although they were also intended to weaken the military authority of the monarch. Importantly, this *Sejm* reduced the role of regional assemblies in providing revenue for armies; it coincided with provisions for regular payment of the Commonwealth's army.¹²² By this time, however, Poland had relinquished vital attributes of sovereignty and it relied on external intervention to maintain internal order. From this time, elections were subject to Russian influence, with Russian troops often stationed in Poland or at the Polish borders. Russian soldiers and other armies travelled through Poland freely, repeatedly intervening in Polish conflicts and living off rural contributions. A perennial problem was that foreign armies used Poland as a recruitment region, meaning that Polish territories were subject to undeclared occupation and Polish soldiers were often integrated into armies of states arrayed against the Commonwealth.¹²³ This created an enduring role for Poland as a military supplier for foreign armies, visibly displaying that its government had limited monopoly over core political functions. By the 1740s, further, Russian engagement in Polish politics was accompanied by an increased threat from the western borders. Through the 1730s, Prussia intensified its system of military conscription, and it was able to mobilize armies of a magnitude disproportionate to its economic capacity. The annexation of Silesia by Prussia in 1740–1 brought long and brutal war between Prussia and Austria, with some Russian involvement, and it meant that Polish territorial integrity was imperilled on several fronts. By this time, the Prussian monarchy actively undermined attempts by the Polish government to reinforce its institutions through the implementation of new fiscal measures.¹²⁴ Further, as primary theatres of the Seven Years' War were close to the Polish borders, Poland became an access route to war for foreign troops at this time. One cause of the first partition of Poland was that other countries had concentrated military force around Poland between 1756 and 1763, and foreign troops stayed in Poland when the war was over.¹²⁵

By the 1760s, Poland was close to becoming a vassal state. By this time, both Russia and Prussia actively intervened in Polish fiscal decisions, strategically obstructing planned reforms to the Polish constitution.¹²⁶ Poland had introduced a portfolio of indirect taxes in the seventeenth and

¹²² Olszewski (2002: 390).

¹²³ On this crucial point, see Szymborski (2020: 26).

¹²⁴ See Zielińska (2012: 338).

¹²⁵ One classic account calculates that in the war about 60,000 Russian troops were stationed in Poland, financed by the Polish state (Szczygielski 1970: 36).

¹²⁶ See Hoensch (1970: 360, 370).

early eighteenth centuries.¹²⁷ However, the Polish state lacked the independent fiscal instruments other early modern states used to stabilize their sovereignty. This meant that reduction of military spending, rather than increased taxation, was the only expedient response to fiscal shortcomings, and fiscal weakness was directly reflected in continued military debility.

Overall, a distinct pathology characterized the early modern Polish polity. The decentralized, loosely integrated structure of the state meant that it suffered from fiscal and military weakness. It was vulnerable to internal fracture as private armies were able to assert authority in some regions. In turn, this made it acutely susceptible to external depredation. Moreover, the depletion of state authority was exacerbated by the constitution, notably by the rights granted to the nobility represented in national and regional parliaments. The Polish nobility was numerically very large in proportion to the country's population size, and many of its members were not wealthy, so they were unwilling to sanction fiscal-military or agrarian reforms that threatened their material standing. The nobility defended the decentralized constitution for strict economic imperatives, to protect rural economies based in serfdom. These features of the Polish state were particularly damaging because, by the earlier eighteenth century, many other states, notably Prussia, had recovered from earlier religious and dynastic wars. Such states were rapidly expanding their armies. They owed their rise, internally, to the increased political regimentation of the nobility and the qualified restriction of serfdom. Externally, however, they broadly supported the anti-centralistic interests that unified large parts of the Polish nobility.

Ultimately, between 1772 and 1795, Poland was partitioned between Russia, Prussia and the Habsburg government in Vienna, and the Polish state lost full sovereignty until 1918. The final conditions of the Polish partition were cemented in the Congress of Vienna (1815) under international treaties between occupying powers. During the partition, some vestiges of statehood and self-government were upheld in Poland. However, Poland was the major victim of early continental imperialism in Europe.

(3a): Citizenship and Colonial Law

From 1772, occupying powers in Poland conducted a process of colonization, which initiated a new pattern of empire-building. For Russia,

¹²⁷ Nycz (2016: 56, 70).

indicatively, the partition of Poland was part of a wider course of imperial enlargement, forming one move in a sequence in which Russia challenged Ottoman dominance in South-East Europe. In this context, Poland was a victim of its own military success and expansionary actions. In 1683, the Polish king had helped defeat the Ottoman Empire in warfare, and this created a space for the growth of Russian power, which collaterally affected Poland.¹²⁸ The partition of Poland was central to a deep inter-imperial shift in which Poland and the Ottoman Empire, two essentially premodern empires, lost power to more systematically structured empires with more robustly organized armies and harsher recruitment systems.

Colonization in Poland was also marked by the distinctive fact that the process of partition brought reforms in Poland that enhanced the citizenship status of many persons living in regions exposed to colonization. Theories of national citizenship were already widespread in Poland before partition.¹²⁹ Practically, however, legally inclusive constructs of citizenship did not assume reality in Poland until it was exposed to external depredation. In key respects, the military annexation of Poland created an impetus for national constitutional formation and citizenship construction, and some normative designs used to secure foreign imperial authority in Poland served, equally, to fertilize national constitutional ideals. As in the USA, the development of constitutional rule in Poland was deeply embedded in experiences of colonization.

Before partition, Polish constitutional law was attached to a concept of political citizenship in which legally designated citizens were allowed to exercise political rights by electing delegates to the *Sejm* and the *Sejmiki*. However, the legal structure of Polish society was largely based in a patchwork condition of citizenship. Owing to the diffuse form of the polity, different regions possessed distinct legal structures. Legal and political privileges for the nobility were extensive and included important judicial immunities and personal powers over peasants. As a result, a variable citizenship regime was at the core of pre-1772 Polish society, and members of the nobility jealously protected their powers to sustain this regime. In some regions, peasants lacked formal legal protection and personality, and they were often not allowed legal representation independently of seigneurial lords. In this context, the first phase of

¹²⁸ See on this point Davies (2016: 243).

¹²⁹ See p. 100.

Polish partition led to the rapid extension of citizenship rights for many Poles, especially amongst the peasantry. At the onset of partition, some occupying powers had introduced or were introducing legislation in their traditional domains that promoted greater uniformity in citizenship rights, according increased legal protection to serfs. After partition, these laws were transferred to parts of Poland as part of a strategy for imperial occupation. The military encroachment of foreign states in Poland was reflected in the parallel incursion of new principles of citizenship into Polish terrain: imperialism and rudimentary concepts of citizenship formed a joint legal bloc imposed in Poland to sustain external military rule.

This was visible in Polish territories placed under Prussian occupation. By the 1730s, the Prussian monarchy had implemented reforms inside Prussia to increase military conscription, and these reforms were flanked by laws to limit serfdom. Through these measures, serfs were given increasing legal protection by the state and expectations of military service were intensified. As mentioned, serfdom was not fully prohibited in Prussia until 1807, and, within limits, it retained formal recognition in the great Prussian law code (*Landrecht*) of 1794. However, some measures to curtail the effects of serfdom were passed in different Prussian regions in the 1740s and 1770s. Naturally, some actors experienced such processes as a domestic invasion in which new principles of citizenship were used to hollow out noble institutions, especially in rural localities.¹³⁰ As Prussia occupied Habsburg Silesia in the 1740s, similar structures were progressively imposed in the colonized regions. Prussian military invasion of Silesia was followed in late 1748 by reforms to reduce the arbitrary aspects of feudalism, to improve the legal position of serfs and to enforce conscription.¹³¹ Before the annexation of Poland after 1772, therefore, Prussia had a tradition of combining colonization, citizenship and military recruitment. Prussian colonization of Polish regions after 1772 also saw the gradual implementation of rudimentary citizenship laws, leading to the eventual abolition of servitude.¹³²

More significantly, in the parts of southern Poland added to the Habsburg lands in the 1770s and the 1790s, reforms were introduced that significantly changed the legal position of peasants, extending

¹³⁰ See Gneist (1966: 120).

¹³¹ One historian states that the imposition of the Prussian cantonal system in post-1740 Silesia caused an 'enormous increase' in its military force (Baumgart 1984: 104).

¹³² See p. 123.

a wider citizenship regime across society. Habsburg colonization of parts of South Poland, later termed Galicia, in the 1770s involved coercive territorial settlement by German speakers and state-coordinated acquisition of land. In this respect, Habsburg partition of Poland was a simple act of violent annexation. Yet Habsburg occupation was flanked by legal policies in which many inhabitants – although not, in the first instance, the large Jewish population of Galicia – were integrated in a system of extended citizenship rights. This process began under Maria Theresia in 1772 as legislation was implemented to weaken the feudal dependency of peasants. These reforms led to a raft of laws to transform the legal position of the nobility, to reduce noble control of the law courts and to strip the nobility of fiscal freedoms and immunities. By the 1780s, Joseph II introduced a series of edicts (not fully enforced) that changed the relation between lord and serf in all Habsburg domains, including regions annexed from Poland. Notable amongst such legislation was the Serfdom Patent of 1781, applied in Galicia slightly later, which formally abolished serfdom in many Habsburg territories. This legislation was followed, in 1786, by legislation to regulate feudal duties; in 1787, by further restrictions on noble exercise of private jurisdiction; and in 1789, by laws to systematize agrarian taxation. These laws were largely driven by the goal of increasing fiscal revenue in the Habsburg Empire, following military defeats against Prussia. They were accompanied by educational reforms, reforms imposing religious tolerance, and by new currency and taxation laws, as the liberation of the serfs was intended to free productive labour on the land, to improve government finances. As a result, Habsburg occupation of southern Poland formed a process of territorial expansion in which heightened legal personality was conferred on Polish serfs, whose freedoms had historically been severely curtailed under the Polish social order.

The legal emancipation of serfs in the Habsburg domains was directly linked to laws regarding military recruitment, and, in the period 1770–81, intensified conscription laws were introduced through the Habsburg regions. In the years immediately after colonization, military recruitment in Galicia was limited, but it increased in the War of Bavarian Succession (1778–9). During this war, Prussia and the Habsburg Empire, although joined in the partitioning of Poland, were briefly in conflict once more. This meant that the demand for soldiers amongst partitioning powers was high, especially in Vienna.¹³³ Within two

¹³³ See on these points Michalski (1964: 19).

decades, the Habsburg government was able to penetrate Galician society to enlist soldiers, and Galicia became an important recruitment region.¹³⁴

In these developments, the colonization of Poland was an early manifestation of the wider dynamic of military citizenship formation, which, by the 1790s, became fundamental to European society. No claim here implies that the partition of Poland was a benign occurrence. The partition reflected classical depredatory practices of imperialism. Each partitioning power enforced military expropriation of resources and state-sponsored occupation of lands under Polish rule. By the 1790s, Polish territories in Prussia were officially designated *colonies* and the Prussian monarchy adopted formal policies for colonial settlement, at times utilizing non-Prussian farmers to settle Polish lands. Moreover, many people experienced colonization as an intensely punitive condition. In Galicia during the early partition period, many peasants reacted to their new-found rights of citizenship by deserting the army, by hiding in the woods, by emigrating or by inflicting injuries on themselves to avoid military recruitment.¹³⁵ Despite this, however, Polish partition was also an event in which early constructs of generalized citizenship were imposed in Polish society. Foreign powers used these constructs to supplant the feudal institutions that Polish nobles and magnates deployed to underpin their socio-constitutional position.

On this basis, the external partition of Poland had two, rather contradictory results. First, this process eradicated the ancient constitution, originally based in selectively privileged citizenship. Second, it promoted new elements of citizenship and it instilled norms in Polish society more typically linked to nation-building constitutionalism than to colonization. Imperialism and national integration became dialectically interdependent, and imperialism began to promote patterns of individualization, legal autonomy and legal equality usually associated with nations. In a telling manner, then, the early period of partition stimulated new constitutional movements in Poland, which emulated some features of the regimes imposed by the occupying powers. By the 1770s, a number of Polish reformist groups became active, whose objective was to impede partition by promoting policies to reinforce the state and solidify its control in society. During partition, these reformers attached their plans for national reform, in part, to legal designs and models of citizenship that had been

¹³⁴ See Baczkowski (2017: 33).

¹³⁵ An outstanding discussion is found in Jewuła, Kargol and Ślusarek (2015: 271, 287–288, 293).

coercively enforced by colonizing powers. Norms used to support imperialism were transformed into the constitutional premise for anti-imperial polity formation.

After circa 1750, some Polish elites began to devise reform policies to consolidate the Polish commonwealth as a robust nation state. The middle decades of the eighteenth century saw (partly successful) reform policies in Poland. Central to this process was the reformist *Sejm*, convened in 1764 amidst civil conflict and Russian military presence, which elected Stanisław August Poniatowski king. This *Sejm* initiated reforms to the electoral system, and it was followed by legislation in 1767/8 that prescribed a procedure for organizing representation in the *Sejm*.¹³⁶ As mentioned, the armoury of taxes available to the government was curtailed because of external supervision. Nonetheless, important fiscal reforms were introduced at this point, including the creation of a new treasury commission in 1764, which brought an increase in fiscal revenue.¹³⁷ After 1717, controls of public expenditure were tightened, and by 1768, the Polish government had established an apparatus for planning and checking yearly national budgets. The reforms of the 1760s had limited effect, as they were drafted amidst civil war. At the same time, the background threat and then onset of external occupation triggered military reforms closely connected to taxation policies. In 1717, as mentioned, the reformist *Sejm* had greatly reduced Poland's military capacity. By the late 1730s, however, policies were tentatively envisaged to expand the size of the army. In 1764, a military commission was created, and military laws were introduced in 1775 to bring the army more fully under official control.¹³⁸ Government organs were then reformed through the establishment of the Permanent Council (1775–6), which survived until 1789. This Council included a specialized military department which performed executive and judicial responsibilities. The numerical depletion of the army remained a systemic problem despite these innovations. However, this Council assumed central authority for the military apparatus, and it was intended to separate military organs from traditional conflicts between monarch, *Hetman* and magnates.¹³⁹ In each point, a stricter institutional order was imposed on Poland through the onset of colonization.

¹³⁶ This was part of a longer process of electoral reform, which included further legislation in 1788–91 (Ilski 2022: 226–235).

¹³⁷ For analysis, see Hoensch (1970: 366) and Wóznicki (2014).

¹³⁸ On this process, see Organiściak (2002: 50) and Szczygielski (2009: 65–66).

¹³⁹ See excellent analysis in Bucholc-Srogosz (2007: 52–53).

This centralizing reaction to external imperial pressure was opposed by some domestic factions, for different reasons. In particular, the Permanent Council was perceived as an executive institution that conferred constitutional autonomy on the monarchy, and it caused great polarization, giving rise to conditions close to civil war. The Permanent Council met with hostility amongst the conservative nobility, whose members wished to preserve their privileges and resented the erosion of traditional military institutions, especially those attached to the *Hetman*. Yet the creation of the Council also drew strictures from progressive reformers, who supported state reform but proposed a stronger parliamentary model of centralization. Such opposition was stimulated, not lastly, by the fact that the Permanent Council was susceptible to Russian influence, and different opposition groups argued that it weakened the national army.¹⁴⁰

Ultimately, Polish reformers of more progressive persuasion began to propose national military mobilization as a strategy to reinforce the state. In the longer wake of 1772, leading reformers argued that the creation of a national army was the most effective way to resolve systemic crisis without creating conditions favourable to absolutism. For example, Hugo Kołłątaj, who later drafted the 1791 constitution, emphasized the need to create a people's army committed to the public interests of the state.¹⁴¹ Kołłątaj also favoured the creation of local militias to improve the military spirit of the nation. In fact, Polish reformists anticipated techniques for mass recruitment deployed in other European countries some decades later.¹⁴² In Poland, the experience of colonization pre-empted the military construction of the citizen that was later intensified by revolution.

On one hand, military ideas of citizenship in Poland built on long-standing traditions. Polish peasants were not noted for military enthusiasm, and, by the eighteenth century, their unwillingness to sacrifice themselves for the commonwealth was almost proverbial.¹⁴³ However, partly owing to the fragmented basis of the army, the ancient tradition of popular recruitment in the face of invasion had disappeared more slowly than in other European counties. In the seventeenth century, obligatory popular conscription, both national and regional, remained

¹⁴⁰ For analysis of these rival opposition camps, see Strojnowski (2005: 35–55) and Piegzik (2016: 14).

¹⁴¹ Kołłątaj (1954: 247).

¹⁴² See discussion in Grynwaser (1951: 206) and Strojnowski (2005: 280).

¹⁴³ See analysis of reasons for this in Ratajczyk (1975: 105) and Łotys (2005: 115).

an important (although dubiously effective) recruitment technique. Even after 1648, substantial armies were raised through this method.¹⁴⁴ At the same time, progressive plans for popular military recruitment reflected broader doctrines of agrarian reform and peasant emancipation which had already been implemented by colonizing powers, especially in the Habsburg regions. As in other countries, exponents of physiocratic theories gained influence in partition-era Poland, and ideas for agrarian transformation shaped many discussions in the *Sejm*. Physiocrats declared at this time that the peasants formed the basic ‘foundation of the population’ whose ‘liberation from recent oppression’ was vital for the nation and its economic basis.¹⁴⁵ Such observers argued – first – that agrarian reform, including legal protections for peasants, was needed to increase tax revenues on markets for agrarian produce. Yet, importantly, observers endorsing physiocratic views claimed that the abolition of serfdom would strengthen the national army. Advocates of reform before the 1790s argued that peasants who performed military service should be emancipated from serfdom.¹⁴⁶ Such ideas met with strong opposition, and many nobles were prepared to accept partition in order to preserve their social position and privileges, which depended on involuntary labour. Indicatively, before 1791, some reform projects remained unimplemented because of noble opposition, on grounds that such reforms increased the legal standing and protection of peasants.¹⁴⁷ During the final stages of annexation, Polish nobles in Galicia even approached the rulers in Vienna with a plan for a new constitution, the *Charta Leopoldina* (1790), intended to preserve noble rights in a state under Habsburg sovereignty. In different regions, factions that supported serfdom played a complex, multifaceted role in the decline of Poland as a sovereign state. However, by the 1770s, agrarian reform was clearly perceived as a pathway to military reinforcement and the link between enhanced citizenship and military recruitment was publicly established.

In this context, experiences of imperialism in Poland began to promote an ideal of citizenship in which the emancipation of social

¹⁴⁴ There is illuminating discussion of this in Łotys (2005: 6–7), Wierzbicki (2011: 349) and Wimmer (2019: 22–27).

¹⁴⁵ This is the classical principle in physiocratic thought in Poland, expressed in the work of Popławski (1774: 47–48). Popławski stated that literacy and education were vital for the improvement of ‘peasant citizens’ (123).

¹⁴⁶ This is expressed in a speech by Andrzej Zamoyski in 1764, published in Michalski (1954: 77).

¹⁴⁷ In 1776, a legal code was drawn up by Andrzej Zamoyski, the *Kodeks Zamoyskiego*, which gave peasants some rights of legal personality. The code was not implemented.

agents from bonded labour formed the cornerstone of the national polity. This ideal was partly borrowed from partitioning powers, but it was intended to obviate further imperial incursion in Polish territory. Concepts arising in this context were articulated in the sessions of the Great Parliament (Sejm Wielki), convened in 1788. This parliament was convoked to reinforce plans for fiscal reform, and it aimed to expand the army through new recruitment strategies, including mandatory military conscription.¹⁴⁸

These designs shaped the writing of the 1791 constitution. The constitution of 1791 was largely the work of reformist factions. However, it reflected a broad social compromise and it combined monarchical and parliamentary visions of political reform. It created a bicameral legislature with one elected chamber (Art. VI). It included provisions for a strong executive branch, concentrated in the person of the monarch (Art. VII), enacting the decisions of a sovereign parliament and bound by the will of parliament. It retained protections for the nobility (Art. II). It also contained provisions for popular military service, and it foresaw the creation of an army of citizens drawn ‘from the general strength of the nation’ (Art. XL), not based in mercenaries. This predated the first imposition of a *levée en masse* in revolutionary France by two years. In parallel, the drafters of the constitution advocated the restriction of serfdom, basing their arguments on notions of natural rights. While formulating the constitution, Kołłątaj set out principles of public order in Poland, supporting abolition of serfdom and declaring that persons in Poland were ‘subjects of the law alone’, not beholden to private holders of privilege.¹⁴⁹ However, although it reinforced the legal position of serfs (Art. IV), the constitution did not abolish serfdom for the majority of peasants, and it defended some core interests of the traditional nobility.

The 1791 constitution was accepted across a spectrum of social and regional groups.¹⁵⁰ However, it provoked violent opposition amongst some elites, and it was often decried as a military ordinance.¹⁵¹ Within

¹⁴⁸ On these points, see Życiński (1992: 9, 21), Łotys (2005: 140, 156) and Drozdowski (2017: 158). In December 1788, the Sejm commissioned a new military budget to expand military recruitment. Historians argue that mandatory conscription was planned because fiscal income was inadequate for recruitment goals (Herbst 1983: 413–414; Bucholc-Srogosz 2007: 104).

¹⁴⁹ This view is expressed in Hugo Kołłątaj’s treatise *Prawo polityczne narodu polskiego* (1790: folio 115).

¹⁵⁰ The constitution was subject to approval by regional parliaments and roughly 50 per cent accepted it (Szczygielski 1994: 362).

¹⁵¹ Historians have described it as an effective *coup d’état* (Ratajczyk 1975: 53; Maciejak 2014: 104).

a year, more conservative groups in the Polish nobility took up arms to overthrow the constitution, and it caused a multipolar war combining elements of civil and interstate war. This culminated in the formation of a reactionary confederation, the *Konfederacja Targowicka*, in 1792. This was a league of nobles, who, in close alliance with Russia, mobilized against the constitution and advocated a reversion to earlier fiscal and military structures. This league briefly became the ruling national executive, and it was joined by the king himself. Subsequently, a rival military league, led by Tadeusz Kościuszko, was formed in 1794 to defend the constitution against the colonizing powers. This army was partly recruited through mass levy and it was proclaimed an army of national liberation. In the final throes of partition, military opposition to the occupying forces relied – in part – on the mobilization of a conscript army. Leaders of the reformist league showed greater support for uniform citizenship than was expressed in the 1791 constitution, and, in 1794, they issued a proclamation (unenforced) that partly abolished serfdom, tying liberation to discharge of military service in the national cause.¹⁵² Even in this final attempt to mobilize troops, the nobility shied away from offering peasants full emancipation, although serfs serving as soldiers were released from duties while performing military service. Unsurprisingly, appeals for mass military support for the constitution often fell on deaf ears amongst Polish serfs and the endeavour to raise a national, anti-imperial army had limited success.¹⁵³ The transformation from serf into soldier-citizen that lay at the core of these reforms was often not accepted.¹⁵⁴ Indicatively, although the 1791 constitution provided for national military recruitment, popular militias were not used to suppress the noble revolt in 1792.¹⁵⁵ The fate of Poland was sealed in 1794, when military formations created to defend the constitutional state, based in mass military recruitment, were defeated.

The case of Poland throws clear light on the fact that, in its origins, constitutionalism formed a system of social organization that moved diffusely between national and imperial dimensions. In Poland, constitutional reforms were essentially promoted to prevent external occupation. However, they were partly rooted in patterns of citizenship

¹⁵² This is expressed in the *Uniwersał polaniecki* (1794), printed in Inglot (1952: 227–228).

¹⁵³ See the analysis in Kowecki (1963: 193, 278) and Jewuła, Kargol and Ślusarek (2015: 136). One historian reflects that, during the 1794 uprising, many peasants decided not to fight for national independence. Instead, they ‘drifted off to their homes’ (Łotys 2005: 239).

¹⁵⁴ See p. 100.

¹⁵⁵ See Łojek (1986: 308).

construction devised by partitioning powers, which had been enforced to support colonial rule. Moreover, many groups in Polish society perceived such reforms as policies that imposed colonialism in revised form. Nation-building reforms expressed through constitutional rule engendered unmanageable lateral conflicts, culminating in civil war, which benefited external actors. The partition process occurred, broadly, as a combined experience of external annexation, internal colonization and hybrid civil–interstate warfare, splitting the military apparatus into openly hostile groups. The emergence of constitutional ideas in Poland was largely induced by imperialist pressures on the military system. From the outset, definitions of citizenship expressed deep rivalry between different ideas of military duty and different opinions concerning the social role of the army. Ultimately, however, Poland formed a constitutional context in which experiences of imperialism created patterns of intra-societal conflict that prevented the formation of a stable national constitutional order based in shared citizenship norms. The attempt at constitutional formation in 1791 reflected the fusion of imperialism and nation-building found in other settings, but the ability of the government to impose a robust national citizenship regime, anchored in nation-building through military recruitment, was too weak to support constitutional rule. The structural weaknesses that had earlier caused Poland's decline as an empire ultimately caused its disappearance as a nation.

The deep connection between imperialism, civil war and constitutionalism persisted in Poland after 1795. Indeed, the structure of Polish society remained profoundly shaped by the military emphasis of constitutionalism. In the longer wake of partition, the relation between constitutional formation and demands for military recruits again became visible during the Napoleonic interlude, when French armies occupied parts of Poland, mainly those already colonized by Prussia. Napoleon's defeat of Prussia brought the imposition of a constitution (1807) in the Duchy of Warsaw. This document introduced characteristic elements of Napoleonic legal order. It created a limited monarchy, connecting Poland to the royal house of Saxony and, with subsequent laws, it abolished some aspects of serfdom (Art. 4) and enfranchised some peasant farmers. In Art. 69, it imposed Napoleonic civil law and promoted the integration of citizens at the level of private interaction, a process that again met with resentment amongst the nobility.¹⁵⁶ This

¹⁵⁶ Grynwaser (1951: 54, 55, 73).

was flanked by legislation of May 1808, which imposed military duties on Polish citizens of the Duchy, and this ultimately produced a large army for Napoleon, maintaining the tradition of foreign military extraction in Poland. By 1812–13, the Duchy had moved towards independence as Polish leaders formed a general confederation during the war between France and Russia, which assumed some constitutional powers. This coincided with intense military mobilization and high military taxation. Nonetheless, the Congress of Vienna reinforced Polish partition and confirmed Russian, Prussian and Habsburg dominion in different regions. In 1815, the treaties drawn up in Vienna transferred the regions around Warsaw from Napoleonic to Russian rule, to form the Kingdom of Poland, and, in the manner of an inter-imperial accord, they placed powers of military, fiscal and constitutional sovereignty in the hands of the Russian tsar. As in previous experiences, this colonial polity was rooted in extended citizenship. It obtained a constitution largely written by Poles, which reflected earlier centralizing policies of the reform era.¹⁵⁷ This constitution created a complex system of national representation in which electoral rights were variably allocated to different groups of citizens (Arts 125–133). The polity was centred in a bicameral *Sejm* (Art. 86), but the constitution established chambers at different social levels. However, citizenship was closely correlated with political rights, and the proportion of citizens entitled to exercise political rights exceeded that in fully sovereign European countries. This constitution also imposed military recruitment for the Russian army on Polish citizens, and it created a regular army and supplementary militias (Art. 153). It allowed Polish soldiers to wear national uniforms, so that military roles were linked to national citizenship (Art. 156). After the anti-Russian uprising of 1830/1, constitutional rights of Poles were greatly diminished. In an imposed constitutional document of 1832, a new system was established, which was more fully subject to Russian rule, and the *Sejm* was dissolved – although local representation continued. The Polish army was fused with the imperial army, and, after 1832, military conscription continued in intensified form.¹⁵⁸ As analysed below, in regions controlled by Prussia after 1815, Poles were assimilated into the citizenship regime applied to Prussians. They also acquired electoral rights in Prussia after 1848 and again after 1871. Similar processes occurred in

¹⁵⁷ On the sources for this, see Gałędek (2017: 467–468).

¹⁵⁸ Caban (2001: 53).

the Habsburg regions. The region of Galicia, stretching from near Kraków to the Russian borders acquired some consultative organs after partition, with a reinforced representative assembly in Lwów (now L'viv) from 1861.

The fact that the occupying powers imposed conscription in Poland meant that many Poles acquired military experience, and the army opened professional opportunities for many Poles. Indeed, colonizing armies became important organizations for coordinating opposition to colonization in which Polish citizenship ideals could be articulated. Throughout the nineteenth century, Polish political culture remained characterized by informal confederations in which military bodies formed conspiratorial networks that mobilized against partition. This culture of conspiracy culminated in the first uprising in 1830–1, in which members of the officer corps established irregular units. During partition, the ideal of the partisan soldier, acting outside or alongside the regular army as an informal liberation fighter, became almost a cliché of Polish military and political diction. The linkage between citizenship and the army acquired greatest significance through the fact, discussed below, that the eventual acquisition of independent citizenship in by Poland was partly crafted by military agents whose formative experiences had been gained in imperial armies.

CONCLUSION

In these early cases of constitutional formation, constitutional law was strongly shaped by the pressures of imperialism on emerging national societies, exposed to imperial violence in different ways. Crucially, in each case, constitutions were designed to produce legitimacy for government in terms that facilitated military recruitment and stabilized the military apparatus in the state. In each case, constitutions articulated models of citizenship to link citizens to the state that originated in military organizations, so that national citizenship partly transferred affiliations already formed in armies to the governmental level. At the same time, armies were usually unable to stabilize a premise for a national constitutional system, and the militarization of the vertical relation between citizens and state was usually mirrored in complex patterns of lateral militarism, so that most constitutions engendered civil war, or many civil wars. Moreover, in most cases, the fact that constitutions imposed militarized definitions of citizenship on society induced a propensity for external expansion in government

in which states reproduced techniques deployed to gain control of their own societies in their external actions. In these different respects, early national constitutions shaped societies in which social formation had a strong international dimension, and the spaces of integration within national, society were not clearly separated from the interstate domain.