

# The Constitutional Bind

HOW AMERICANS CAME TO IDOLIZE  
A DOCUMENT THAT FAILS THEM

*Aziz Rana*

*The University of Chicago Press* Chicago and London

The University of Chicago Press, Chicago 60637

The University of Chicago Press, Ltd., London

© 2024 by The University of Chicago

All rights reserved. No part of this book may be used or reproduced in any manner whatsoever without written permission, except in the case of brief quotations in critical articles and reviews. For more information, contact the University of Chicago Press, 1427 E. 60th St., Chicago, IL 60637.

Published 2024

Printed in the United States of America

33 32 31 30 29 28 27 26 25 24 1 2 3 4 5

ISBN-13: 978-0-226-35072-1 (cloth)

ISBN-13: 978-0-226-35086-8 (e-book)

DOI: <https://doi.org/10.7208/chicago/9780226350868.001.0001>

#### Library of Congress Cataloging-in-Publication Data

Names: Rana, Aziz, author.

Title: The constitutional bind : how Americans came to idolize a document that fails them / Aziz Rana.

Description: Chicago : The University of Chicago Press, 2024. |

Includes bibliographical references and index.

Identifiers: LCCN 2023028636 | ISBN 9780226350721 (cloth) |

ISBN 9780226350868 (ebook)

Subjects: LCSH: Constitutional history—United States. |

Democracy—United States—History—20th century. | Political

culture—United States—History—20th century. | Social

movements—United States—History—20th century. | United

States—Politics and government—20th century.

Classification: LCC KF4541 .R357 2024 | DDC 342.7302/9—dc23/  
eng/20230710

LC record available at <https://lccn.loc.gov/2023028636>

© This paper meets the requirements of ANSI/NISO Z39.48-1992  
(Permanence of Paper).

*For Navaz and Taleb*



# CONTENTS

Preface: Three Centennials *ix*

1: The American Constitutional Romance *1*

## I: DISAGREEMENT AND EXPERIMENTATION IN THE GILDED AGE, 1887–1917

2: Settler Crisis and Constitutional Uncertainty *41*

3: Class Narratives and the High Tide of “Constitution Tinkering” *91*

4: The Socialist Constitutional Alternative *127*

5: Developing Universalist Empire in the Philippines *167*

## II: THE SPREAD OF A NEW CONSTITUTIONAL CITIZENSHIP, 1917–1945

6: World War I, the Security State, and Constitutional Loyalty *223*

7: Inclusion and Exclusion in Interwar Americanism *257*

8: Transformation and Preservation in the New Deal *305*

9: The Good War and Constitution Worship *353*

## III: CONSOLIDATING THE AMERICAN MODEL, 1945–1965

10: Launching the American Century *389*

11: Red Scare Constitutionalism *447*

12: Cold War Reform and the Reframing of American Identity 483

13: Constitutional Myths and the Victory of the Court 523

IV: ALTERNATIVE PATHS AND  
CONSTITUTIONAL ERASURE, 1965–1987

14: Left Resurgence and the Decolonial Project 567

15: The Rise of Originalist America 613

Conclusion: Constitutional Accounting 655

*Acknowledgments* 689 *Notes* 693

*Index* 777

PREFACE

THREE CENTENNIALS

The year 2087 will mark the third centennial of the drafters' signing of the United States Constitution in Philadelphia, Pennsylvania. What do Americans want to celebrate by that time? What type of society do we want to share, and what kind of world should we make for the future?

In 1887 and in 1987, the US celebrated the first and the second centennials. On the surface, those earlier anniversary events had much in common. They both faced initial funding setbacks but eventually featured patriotic festivities and even speeches by the sitting president. Yet, below the surface, the political climates were radically different, cutting against the idea that Americans' relationship to their Constitution never really changes.

The 1887 centennial faced significant organizing difficulties—problems finding speakers and a general lack of public interest, with events beyond Philadelphia largely faltering. This presaged a broader uncertainty about the Constitution that would define the subsequent decades. The country was still reeling from a brutal civil war, which raised basic questions about whether the existing constitutional system could effectively negotiate deep social cleavages. The consequences of industrialization only intensified these worries, and in the late nineteenth and early twentieth centuries the US suffered the most violent labor conflicts in the world.<sup>1</sup> In the 1920s and 1930s, domestic developments were part of the greatest global capitalist crisis in history.

All the while, legal-political institutions seemed incapable of responding. The constitutional structure's endless veto points made it nearly impossible for those less privileged to use elections to better their lot, while business elites wielded outsized power at virtually every level of government.

Wrestling with these problems, a wide array of early twentieth-

century reformers called for basic transformations to the constitutional system. They sought a new governing order in which poor and working people—rather than insulated judges and entrenched corporate and racial elites—could intervene continuously through elections and mass movements to create institutions and programs truly responsive to popular needs.

But by the 1987 bicentennial, virtually all those debates and reform ambitions had been forgotten. Americans were largely swept up in a celebratory wave, one expounding the exceptionalism of the national project and the unique genius of the eighteenth-century framers. Millions of people across the country participated in signing exercises, in which they reaffirmed their constitutional faith by affixing their names to copies of the text.

There were clear reasons for self-congratulation by 1987. The Constitution had proven more durable than many of its earlier critics had imagined. The early- to mid-twentieth-century grafting of a strong president atop the legal-political order eased aspects of the constitutional structure's inflexibility. Greater political respect for civil liberties and civil rights—embodied in Supreme Court decisions like *Brown v. Board of Education*—elevated the status of the judiciary and enhanced the overall legitimacy of governing institutions. And the twilight of the Cold War supercharged these triumphalist sentiments, with impending Soviet collapse offering seemingly undeniable proof of the near perfection of the American model.

By 1987, it appeared, America's romance with its founding document had been set in stone. The Constitution was no longer treated as just one political system among many possibilities. Instead, in the years between the centennials, the document gained a culturally exalted and near-sacrosanct position. Above all, it became fundamentally wrapped up with what Americans viewed as the country's singular characteristics and special global destiny.

Yet, for all the meaningful twentieth-century changes, the mythmaking that took hold around the text obscured how serious defects had never been addressed. And today such flaws have become virtually impossible to ignore. Above all, the Constitution remains deeply undemocratic. Americans have a system that profoundly distorts popular sentiment—through extreme over- and underrepresentation; veto points that allow corporate goals to quietly dictate policy; and unelected judges that, given a dysfunctional Congress, have significant rein to impose their



own worldviews, even when they diverge wildly from pervasive national values.

All of this has made it increasingly apparent that—rather than reflecting actual public demands or embodying the principle of one person, one vote—the constitutional order promotes paralysis, at best. At worst, as it did a century ago, it entrenches the interests of a wealthy and largely white minority coalition, which enjoys power well beyond its actual popular support.

But the persistence of a culture of constitutional veneration creates an upside-down world. For decades, Americans have been conditioned to uphold an increasingly dysfunctional system as an ideal-typical embodiment of democratic possibility and to seek to replicate it everywhere. At the same time, the central repositories of constitutional memory and knowledge—in universities and in public life—have, until very recently, spent surprisingly little time questioning the overall narratives or asking where they came from.

It is time, definitively, to turn the page—both on the story of American exceptionalism, and on the continuing romance around a broken legal and political framework. This requires a forthright confrontation with the constitutional culture forged during the American rise to global dominance. It also requires facing the reality that the US is not now and has never been a genuine democracy. The only pathway out of our current malaise is to reconstruct shared state and economic institutions—including the Constitution—on properly democratic terms.

Ours would not be the first generation to aim for such deeper transformation in the United States. This had been the goal of a long line of Americans—significant thinkers who are nonetheless often left out of narratives of the Constitution. Whether Crystal Eastman linking socialist feminism and democracy in the 1910s and 1920s, or W. E. B. Du Bois imagining an anti-colonial world especially from the 1930s to the 1960s, these predecessors argued against the twentieth-century tide of constitutional genuflection. For them and many others, the existing institutional arrangements failed to serve a collective project of equal and effective freedom.

But by the second centennial, these Americans—along with their constitutional politics and their counternarratives of nation and possibility—had been thoroughly marginalized in society. Indeed, they had been so marginalized that their political ideas were, if remembered,

effectively treated as foreign and outside the scope of acceptable American argument.

In this book, I aim to remedy—and also explain—that marginalization. I seek to understand how the country moved from open political debates over the basic structures of state and economy—discussions swirling in the years after the first centennial—to the rigid politics of Constitution worship that defined the second. In the process, I hope to demonstrate how long-ignored accounts of constitutional transformation, and even of rupture, provide tools in our own time to reach beyond the impasses of the present.

By 2087, we cannot remain haunted by and beholden to choices made during an increasingly distant past, returning yet again to the same forced reverence for mythic founders. It is long past time to develop new, richer practices of constitutional politics and memory. These practices would move the locus of constitutional politics away from the judges and legal experts that now dominate conversation and toward the more open demands and language that characterized previous movement activism. Perhaps, when the date of the third centennial passes, it will be a marker of all that has changed—of the extent to which Americans have come to build and rebuild institutions that are a genuine home for their own deepening democratic imaginations.

Aziz Fidel Kipngeno Rana

# The American Constitutional Romance

If you grew up in the United States around the turn of the twenty-first century, you might well have assumed that the American constitutional system stood at the apex of liberal-democratic ideals. Of course, disagreement marked American political life, and the two dominant political parties fought over reproductive rights, affirmative action, same-sex marriage, the size of the federal government, and many other issues. But on the significant matter of foundational institutions, essentially everyone with a meaningful political voice genuflected before the wisdom of the US Constitution.

The American public witnessed ubiquitous displays of almost religious devotion to the Constitution<sup>1</sup> in schools, on television, and at election time. There were bipartisan readings from the text to usher in new sessions of Congress,<sup>2</sup> ritualistic references to its genius during presidential addresses,<sup>3</sup> and even a national holiday celebrating Constitution Day.<sup>4</sup> Indeed, it seemed that one could not truly be “American,” or at least an American patriot, without also being a constitutional believer.

The rise of Donald Trump shifted this conversation. Although veneration of the Constitution remains pervasive, such esteem is hardly unchallenged. In fact, it has become increasingly routine both on the Center-Left and the Left to link Trump’s presidency, and the general direction of American politics, to anti-democratic structural flaws in the constitutional system.<sup>5</sup>

These flaws, from a “one person, one vote” perspective, can be almost too numerous to list: presidents elected with a minority of votes, a Senate that gives vastly more power to voters in Wyoming than in California, and a Supreme Court that repudiates abortion protections even as these protections enjoy vast popular support, among others. In fact,

commentators have long identified the American system with exaggerated checks on popular authority—from the blockages of the Senate to gerrymandering in the House of Representatives, from an impassable constitutional amendment route to widespread practices of voter disenfranchisement, and of course the high-stakes judicial appointments process and the dramatic power exercised over legal-political life by a tiny group of lifetime federal judges. All of this looks a lot more like the political dysfunctions that Americans typically juxtapose *against* their own idealized constitutional order.

In short, we have seen an increased willingness to distinguish between the *general* benefits of constitutional democracy and the quirks and perversions of *our* specific Constitution. All this highlights a remarkable gulf between the reality of system-wide flaws on the one hand, and the long-dominant culture of constitutional veneration on the other. Indeed, the growing elite and public concern with this disconnect sets our moment apart from any in recent collective memory.

Still, identifying the framework as flawed is not enough. The American constitutional system has always been defective, as critics and activists in decades (and even centuries) past fully recognized. We need to understand *why*, despite these defects, the Constitution has ruled the country for so long. And ruled not just with force but with the approbation and even the devotion of many of its subjects. If the Constitution's placement on a national pedestal undermines efforts at essential democratic reform, we need to ask how it ended up there to begin with—and how the pedestal came to look so appropriate that we lost sight of other alternatives. Otherwise, it will be harder to break the collective spell that has blocked past efforts, and that has deeply impacted American political culture more broadly, with costs that extend well beyond the realm of technical constitutional design alone.

This question—of how constitutional veneration became such a naturalized, unremarked-upon feature of collective life by the late twentieth century—stands at the core of this book. To develop an answer, I offer a large-scale historical reconstruction of the Constitution's role and meaning in American political experience. And through this reconstruction, the book engages with a number of essential and connected questions in contemporary American life: How should we think about the Constitution and its possible revision, and what might earlier generations offer to this discussion? Why has the country failed to enact much-needed reforms in the past, such that eventually those reforms appeared entirely off the table? And what broader elements of Ameri-

can collective life would have to shift to make real constitutional change possible?

This initial chapter lays the foundations for my historical reconstruction, and for the various argumentative strands embedded within it. I begin by briefly detailing the flaws of the constitutional system along with their possible institutional solutions, while pointing out that constitutional veneration itself creates a significant obstacle to improvements. I also suggest that reform is further challenged by a deep ambivalence among liberal voices, many of whom regard the Constitution as the country's salvation, even as they lament its flaws. And I contend that a large part of why Americans rarely raise broader constitutional change is because the text serves not solely as a legal-political system of governance. Instead, the Constitution is invested with an overarching story of national peoplehood, which makes it very difficult culturally to disconnect the document from other deeply embedded commitments.

I argue that this overarching myth of peoplehood—what I call *creedal constitutionalism*—combines commitment to the 1787 document with a conviction that the text manifested redemptive principles already existent at the country's founding. This narrative grounded an American form of constitutional patriotism that became the normative core of what the magazine magnate Henry Luce famously dubbed the "American Century," and a centerpiece of what the country held out to the world.

Received academic wisdom treats constitutional veneration as part of the American fabric since at least the early 1800s.<sup>6</sup> But I argue that this straightforward telling obscures as much as it reveals; that the type of constitutional support prevalent today is really a product of the twentieth century; and that the processes by which the Constitution rose as a dominant political and cultural force displaced alternative traditions of critique that are just as authentically a part of the American constitutional story.

In particular, I suggest that the entrenchment of today's pervasive vision was inextricably bound to the US's emergence as a global power, especially against the backdrop of European imperial collapse and decolonization across Asia and Africa. American elites eventually came to feature the Constitution in developing new national narratives that responded to the contours and conflicts of the shifting global context.

In uncovering this alternative history, the book offers a new cast of characters in American constitutional thought—figures generally

ignored in court-centric histories. But the arguments and eventual fates of these constitutional players can help make sense of our current constitutional bind. They also offer insight, and even inspiration, for institutional and ideological alternatives that could be relevant for the present day.

## The Constitution as Problem

It would be naïve to argue that the Constitution is all-powerful or fully to blame for the country's social dilemmas. But the way that American party politics intersects with constitutional institutions generates a series of profound political pathologies. And contemporary discussion has pushed these problems into public view, along with a series of potential corresponding solutions.

In particular, the federal Constitution has three clear institutional pathologies that feed off each other. First, the existing order makes it especially difficult for today's multiracial and largely urban majority coalition to implement widely backed policies in response to significant social problems. Given that this majority coalition currently tracks onto the Democratic Party, this means that unless the Democratic Party enjoys massive and historically exceptional supermajorities, it is essentially stymied in governing by legislative means—the central institution of modern mass democracies.

This is because the American state-based system assigns representation to *geography* rather than to actual people, and also because the overarching framework's extensive veto points fundamentally fragment the power of the vote. This fragmentation is achieved through the Electoral College, the Senate, the structure and appointments process of the federal judiciary (especially the Supreme Court), and the capacity of states to gerrymander districts, limit voting rights, or otherwise thwart popular national agendas. In addition, the formal constitutional amendment process is notoriously cumbersome, requiring two-thirds support in both houses of Congress and then ratification by three-fourths of the states—a process that social scientists consider perhaps the most difficult currently existing in the world.<sup>7</sup>

Thus, a second and even more troubling pathology lies in how the existing order, by disempowering majorities, fundamentally empowers rule by a minority coalition. The dependence on state-based decision-making and representation dramatically overrepresents small, rural, and disproportionately white communities when it comes to national

politics. These voting blocs, currently tied to the Republican Party, may not reflect the cultural and racial diversity of the American public. But Republicans nonetheless enjoy a basic institutional advantage across all the branches of government—the presidency, the federal courts, and the House and Senate.<sup>8</sup>

The result has been persistent cycles of crisis and popular disaffection. Majorities hold out hope that the political class can resolve key concerns, only to be disappointed, time and again, by gridlock and institutional paralysis. All of this can promote an outsized sense of the Democratic Party as feckless—a sense that can assist the Right in consolidating its base of support and even, on occasion, gaining numerical voting majorities.

With this power, the right-leaning minority can fill the federal judiciary with lifetime appointees, including to the Supreme Court. Even after the Republican Party's coalition effectively loses power, a small number of ideologically aligned judges would serve for decades, promoting broadly rejected political, cultural, and socioeconomic views. In practice, this fact has transformed every Supreme Court opening into a pitched battle over the government's ideological direction. And the extreme obstacles to any mass constitutional amendment process effectively funnel constitutional politics back into the Supreme Court and the federal bench—further emphasizing the importance of who controls the judiciary.

As support for the Right's underlying views slipped from its height during the Richard Nixon and Ronald Reagan years, Republican politicians faced two potential options. They could shift ideologically, responding to a new majority. Or they could invest in anti-democratic constitutional elements to maintain power, even as they lost the claim to represent an actual popular majority. They chose the latter, and the built-in structural advantages only further incentivized a conservative embrace of minority rule itself. In line with a long and very American history of white authoritarianism, exemplified by the defeat of Reconstruction and the segregation-era South, this results in a right-wing political apparatus that treats a true multiracial democracy as an almost existential threat.<sup>9</sup>

Even when conservative efforts at vote suppression descend into open violence, these constitutional incentive structures keep party elites wedded to the politics of minority rule in ways that excuse or even openly condone that violence. This is most recently embodied by both Trump's direct role in and the party's complicity in and later minimization of the January 2021 Capitol attack. Thus, echoing the years after the American

Civil War, white mob actions are both lawless *and* facilitated by the minoritarian tendencies of the constitutional order.

A third, related pathology involves the great twentieth-century workaround to the legal-political intractability of constitutional design: the rise of the modern presidency. For years, presidents have contended that expanding their power allows them to respond to problems at home and abroad while retaining the benefits of constitutional checks and balances. But today, presidential power, in the context of party polarization and a deadlocked Congress, has proven deeply limited for overcoming the anti-democratic flaws of the overall order.

The executive branch certainly excels at housing an expansive, coercive, and insulated security apparatus, capable of unilaterally projecting violence, whether through overseas strikes or a militarized approach to the border. Yet, for actually entrenching long-term social policies, executive leadership and lawmaking remain a weak alternative to legislative processes. In effect, the presidential workaround has proven adept at exercising discretionary authority and overturning civil libertarian constraints, but poor at implementing necessary and broadly supported public policies.

If these three overlapping pathologies were once hidden, Trump's ascent made them apparent. Like George W. Bush before him, Trump gained the presidency despite losing the popular vote. In office, he took advantage of the coercive tools of the executive to separate families at the border and crack down on immigrant communities. He intensified anti-democratic fearmongering over "election fraud," including by seeking to overthrow the 2020 presidential vote and by pursuing a state-level apparatus to subvert impartial vote counting. Moreover, Supreme Court appointments under Trump mean that, for the foreseeable future, a small coterie of extreme-right judges—with views well outside consolidated public opinion—enjoy generational control over central lawmaking questions, well after their party's minority coalition effectively loses power. And even after Trump the person inevitably exits the political stage, his example suggests how a virulent and authoritarian brand of American ethno-nationalism can nonetheless impose its will in the face of majority opposition.

Today, if these constitutional flaws have become familiar in popular debate, so too have various proposed solutions. In response to the excessive power of the courts, reformers have called for measures that reduce the authority of the bench and alleviate its intense politiciza-



tion.<sup>10</sup> For example, many countries have short judicial term limits of nine to twelve years, significantly larger constitutional courts (for instance, thirty-four members in India and sixteen in Germany), and in some cases supermajority rules for decisions. The United States is practically alone in rejecting all these constraints on judicial authority, a fact further underscored by the lack of any ethical oversight of the Supreme Court itself.

As for the blockages to the legislative process, commentators and Democratic lawmakers have circulated ideas that would defuse some of the worst anti-democratic effects of the constitutional structure and electoral system. These include campaign finance reforms, expanded voting rights, ending the Senate filibuster, eliminating the Electoral College, combating gerrymandering and partisan election interference, and adding Washington, DC, as a state. In addition, some in the Democratic Party have expressed interest in moving away from the single-member winner-take-all districts that replicate in the House the same unrepresentative features of the Senate. As the activists Waleed Shahid and Nelini Stamp write, the Fair Representation Act proposed in 2021 would “create large districts spanning urban and rural areas that would elect multiple members of Congress through ranked-choice voting. Such districts would make urban and rural votes count equally, and would reward all parties for competing everywhere.”<sup>11</sup>

All of these and more are worthy reforms, and a number might garner strong popular backing. Unfortunately, of course, they are largely off the table because of the very constitutional system they seek to remedy. As long as the Democratic Party cannot wield a supermajority so overwhelming as to overcome the electoral framework’s malapportionment, these ideas have a very narrow pathway to implementation.

Yet what remains most striking is the relatively limited nature of the current reform conversation—especially given the debilitating catch-22 that existing institutions impose on even fairly modest changes. To date, the discussion has largely centered on particular, if valuable, procedural adjustments:<sup>12</sup> Should there be an Electoral College? Should federal judges hold their offices for as long as they desire? This has left essential prior questions at the margins of popular discussion: Does the constitutional system as a whole provide an effective instrument for organizing a multiracial and genuinely democratic society? How else might Americans envision their basic institutions and rights—and how would we get from here to there? How can we encourage greater political openness to constitutional change? In a sense, we take our problematic sys-

tem as a given, and then struggle to patch especially egregious leaks. And even still, the technical procedural suggestions circulating today are met with real trepidation.

Unfortunately, this more limited approach may create its own catch-22. By staying modest, the conversation seems implicitly to yield to the broader inevitability, and perhaps even legitimacy, of the constitutional framework. And this seeming acceptance can undermine the critical energy that would give real reform a serious chance.

## The Constitution as Salvation

Of course, pragmatic concerns loom large in shaping public conversation. But deeper constitutional questions also remain suppressed because of a fundamental ambivalence among many liberal voices. For starters, there is a sense that the document's very longevity speaks to the need to hold firm to its text and structures. Depending on scholarly interpretation, either the US or San Marino has the oldest still active national constitution in the world. According to this sentiment, the document is our safety blanket. The fact that it has weathered incredible national storms—the Civil War, the Great Depression—means that we should be deeply hesitant to seek its basic overhaul. Without a shared acceptance of the text, whatever its flaws, perhaps even worse fates could befall us.

Today's divided liberal mind on the Constitution also results from ambivalence on the substance. On the one hand, commentators and politicians decry the anti-democratic features of the Constitution. But many also profess an abiding faith that the very same document and institutions will save Americans from authoritarian entrenchment. After Trump's 2016 election, for example, this tendency emerged in everything from the worshipful invocations of the Constitution when contesting the Muslim Ban to hopes that the Russia investigation and impeachment would provide an off-ramp from the conditions that produced Trump's rise in the first place.

One can see such abiding faith in President Barack Obama's Democratic National Convention speech in 2020, after several years away from a major national spotlight. Tellingly, Obama delivered the speech in Philadelphia, where the Constitution was drafted, in front of an exhibit at the Museum of the American Revolution that included a portrait of James Madison and, in large type, the words, "Writing the Constitution."<sup>13</sup> In a speech that aimed to underscore how "our very

democracy is at stake,”<sup>14</sup> Obama acknowledged that the Constitution may not have been a “perfect document,” but proclaimed that “embedded in this document was a North Star that would guide future generations; a system of representative government—a democracy—through which we could better realize our highest ideals.”<sup>15</sup>

Since that 2020 election, Biden administration officials and various commentators have also returned to the well of Constitution worship. When Trump called for the “termination”<sup>16</sup> of existing election rules, including in the Constitution, many liberal voices decried Trump’s authoritarianism by tying their critiques to unstinting devotion to the constitutional system—regardless of its role in perpetuating the dangers they condemned. Andrew Bates, the White House spokesperson, proclaimed that the Constitution as such was a “sacrosanct document” and that “attacking” it was “anathema to the soul of our nation.”<sup>17</sup> These defenses implicitly suggest that Americans can only effectively protect their bedrock liberties from demagogues by redoubling their commitment to the text.

But this retreat back into Constitution worship carries with it profound limitations. It ignores how today’s pathologies are not simply unintended and contingent consequences. Instead, these effects can be seen, at least in part, as a product of the framers’ own hostility toward real democracy. James Madison, Alexander Hamilton, and others riddled the constitutional order with veto points precisely to contain the central political tool that poorer citizens had to pursue their needs: the power of the vote. And, of course, these constitutive and undemocratic features also fit hand in glove with the long history of racial subordination: racial elites have benefited greatly from both state-based representation and the various checks embedded throughout the constitutional system, which create partisan incentives at the national level to avoid meaningful reform. The framers placed this constitutional system largely beyond popular revision through its incredibly elaborate amendment process. The result is a framework that systematically disadvantages those with the fewest resources, while allowing those with power to use a fragmented political system to quietly preserve their interests.

Thus, the call to remain true to Madison amounts to an invitation to hold firm to the very arrangements that have facilitated, both today and in the past, the authoritarian brand of politics that someone like Obama condemns as un-American. And it has the added effect of draining the reform energy that might exist—even around the more

specific technical fixes. If the constitutional system protects us from danger, why should politicians and publics engage in serious political struggle to push for revisions?

I will return to these questions about constitutional longevity and the risks and rewards of potential breaks in the book's conclusion. For now, we can note that in recent years—especially in the context of global decolonization in Asia, Africa, and Latin America—many countries around the world have reconstructed their governing documents without collapsing into authoritarian nightmares, and in ways that better fulfill the aspirations of their members.

## A Twentieth-Century Story of American Peoplehood

Still, I argue that the ambivalence about reform may come from something even deeper. Many Americans understand the Constitution not simply as a template for legal-political governance, which could be reworked if necessary. Instead, the document has become entangled in a broader account of American peoplehood.<sup>18</sup> This story has developed such a strong hold on the country that its constituent and sometimes conflicting strains have become difficult to unravel, both from each other and from the Constitution itself.

In 1944, the Swedish sociologist Gunnar Myrdal famously asserted that the United States had been committed, from the time of its founding, to the principle emblazoned in the Declaration of Independence: that “all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.”<sup>19</sup> He termed this historical narrative the “American Creed,” and argued that the unfolding national experience concretely manifested the narrative, concluding that “the main trend in [American] history is the gradual realization of the American Creed” and thus the fulfillment of the nation's founding promise.<sup>20</sup> Myrdal's phrase captured a way of thinking about the country—simultaneously a historical interpretation and a political ideology—which, since the mid-twentieth century, increasingly became ubiquitous and naturalized.<sup>21</sup>

The Constitution has no necessary relationship to this American creedal vision. Indeed, opinions about the Constitution on the one hand and a creed of equal liberty on the other can be mixed and matched in myriad ways, as demonstrated by the historical figures detailed in the coming chapters. For example, some radical anti-slavery figures in the mid-nineteenth century contended that one could not hold true to

the notion that all are created equal and simultaneously remain loyal to the 1787 text—essentially embodying an anti-Constitution creedalist position. Various white supremacist groups throughout American history have supported the document’s legal-political framework but resisted any Myrdallian narrative of unfolding equality, offering an anti-creedal constitutionalist option. And various dissident voices in American history—within labor politics, feminism, the Black radical tradition, and Indigenous movements—have rejected the creed, as well as the Constitution, for actually *failing* to address the ongoing structural consequences of the country’s colonial, capitalist, patriarchal, or racist foundations. One could almost make a two-by-two table—views of the Constitution on one axis and attachment to creedal nationalism on the other—to map a broad range of thinkers in the American political and legal tradition.

Given these manifold possibilities, it is striking that mainstream American politics has stayed in one box for so long: the one that combines nationalist faith in the creed with commitment to the Constitution. Throughout the book, I will refer to this fusing of constitutional devotion with the idea of the country as an unfolding project in equal liberty as *creedal constitutionalism*. In the words again of Obama, now from his famed 2008 campaign speech on race, according to this view, the Constitution always “had at its very core the ideal of equal citizenship under the law; a Constitution that promised its people liberty, and justice, and a union that could be and should be perfected over time.”<sup>22</sup> Indeed, this belief that the constitutional system is perhaps the defining and concrete instrument for the achievement of creedal ends goes to the center of the contemporary American “ethically constitutive story” of “peoplehood,” to use the political scientist Rogers Smith’s language.<sup>23</sup>

Although creedal constitutionalism’s two core elements are commitment to the document and belief in a national narrative of unfolding equality and liberty, variations on the theme have arisen at different moments, each incorporating additional layers and characteristics. The most important variant historically—and central to the arguments of this book—emerged over the course of the twentieth century. In this version, which solidified with the Cold War, creed and Constitution were further joined to a series of three ideological pillars: an anti-totalitarian account of individual liberty and market capitalism; an embrace of American checks and balances, with the Supreme Court at the forefront; and a commitment to US global leadership and primacy. Together, they provided an official narrative about why the Con-

stitution promoted a just political, economic, and social order and—eventually—why it should be replicated abroad. This Cold War variant became a formidable ideological behemoth, lasting largely intact to this day and providing a bulwark against serious efforts to revise the constitutional framework. When Obama stands before a picture of Madison to champion the Constitution, in many ways it is this interrelated set of commitments that he defends as the essence of American liberal nationalism.

This version's merging of additional elements into modern creedal constitutionalism has meant that the document today has become intertwined not only with narratives of equality but also with three other claims about the country. First, the Constitution is presented as tangibly distinguishing American political identity from the collectivizing extremes associated with totalitarian states like Nazi Germany and the Soviet Union. This is because the Constitution is imagined to be an individual charter of rights—particularly connected to its first ten amendments, commonly known as the Bill of Rights. These rights link together essential civil liberties with private property protections, implicitly asserting that free speech and a free market go together. The Constitution, so the argument goes, preserves the capacity of Americans to think and act—whether in politics or in the market—without fear of a dominating and all-powerful government.

Second, despite the criticisms today, the Constitution's hardwired checks and balances are presented as warding off both demagogues and tyrannical majorities. By limiting the power of any single political actor, these structures ensure that one does not need a "society of angels" for democracy to function. They do so both by blocking wild lurches to the right or left, and by slowing down political decision-making. This forces politicians and publics to think more seriously about change. If other, less mature societies engage in revolutionary breaks—with mass politics overwhelming institutional safeguards—or follow populist dictators, American life proceeds otherwise.

In the US, under this reading, change occurs through multiple and overlapping institutions, undergirded by a political culture that values moderation, discursive reflection, and steady improvements over time. A critical consequence of this focus on the Constitution's liberalizing discourse is the elevation of the judiciary—and especially the Supreme Court—as the archetype of such deliberative reason-giving. The Court may get outcomes wrong, even disastrously so, since it is ultimately

composed of fallible human beings. But, over the centuries, it preserves a shared American language of temperate self-reflection.

Third, all of this speaks to why the US is presumed worthy of a dominant global position. The Constitution offers concrete proof that the country has been grounded, from the very beginning, in universal principles of liberty and equality. This means that its interests are coterminous with the world's interests. Since what it promotes abroad is the same liberal constitutional model it instantiates at home, the US enjoys a legitimate right to serve as the global backstop and to exercise an international police power.

On the face of it, these are disparate ideas and ends—basic creedal nationalism, civil libertarian values, market capitalism, constrained representative government, American primacy—which need not go together and may well be in profound tension. But thanks in part to the story of the country that politicians and commentators have built around the Constitution, these ends have been combined into a unified and driving nationalist faith. This means that the text, with its associated narratives, does more than forge disparate commitments into a coherent whole. This augmented creedal constitutionalism also functions to bind together competing political elites and social constituencies under a shared banner and language of American exceptionalism.

### The Reformist Legacy of a National Ideology

At the beginning of the twenty-first century, this consensus linked the Center-Left to the Center-Right in what amounted to a romance about the national project. The eighteenth-century document had evolved beyond merely a set of rules for legal and political decision-making, which could be judged based on its comparative effectiveness and fundamentally changed if found wanting. Instead, for policymakers and academics alike, belief in the Constitution became wrapped up with an alluring set of propositions about the country's unique status: from the genius of its governing institutions to the inherently progressive direction of its unfolding history to the indispensability of its global role.

One great strength of this twentieth-century creedal constitutionalism was its political fluidity, which had important consequences for reform and social cohesion. Activists on both political sides could assert that they were speaking in the true language of the Constitution. And to the extent that governing elites justified their own authority in

creedal constitutional terms, more marginal voices could productively reappropriate the dominant framing to push for social change. Thus, during decisive periods of struggle, such as with 1950s and 1960s civil rights protests, many Black American activists—routinely treated as dissidents by state authorities—still claimed the mantle of both the creed and the Constitution. Such movement actors articulated extensive critiques of existing conditions, but they often did so from within the shared national narrative, accentuating particular elements and deemphasizing others. They thus deployed creedal constitutionalism as a powerful discursive tool for reform.

This very flexibility proved a clear strength in consolidating mid- to late-twentieth-century Cold War politics behind a particular version of American liberal nationalism. As a shared set of claims and arguments, creedal constitutionalism provided a discourse that could incorporate communities long marginalized in American history. It allowed members of many of those communities to see themselves as valued and respected within the dominant, often white, society. Moreover, creedal constitutionalism offered a framework for positing and internalizing the “un-Americanness” of explicit white supremacy, including for white national officials and political elites who built their own political self-conceptions in part around the principle of inclusion.

As highlighted by the civil rights movement’s achievements, this fusing of the creed and the Constitution was essential to the great American reform triumphs of the twentieth century. Indeed, generations of political leaders over time came to identify deeply and personally with this story. In a sense, they had worked and suffered for it, and it gave their lives a larger meaning. Despite the contemporary discontent, for periods in the recent past, many saw truth in exceptionalist premises about American life: legal-political institutions appeared to operate smoothly, economic processes generated wealth, excluded groups found a degree of inclusion, and threatening adversaries met with defeat.

Therefore, and not unrelatedly, the very pluralism inherent in twentieth-century creedal constitutionalism played a critical role in cohering Americans around a basic faith in the nation. An individual might have real opposition to specific US policies, at home or abroad, and might even be suspicious of one or more of the country’s essential ideological tenets—up to and including market capitalism or belief in the wisdom of the 1787 framers. But, for the most part, the various potential emphases associated with the creedal Constitution provided



both elites and popular constituencies with something to hold on to. Individuals could focus on a particular aspect for their personalized vision and simultaneously refuse to see themselves in other practices or ideological commitments that nonetheless exerted significant power under the shared creedal constitutional rubric.

This American ideology, and the social cohesion and reform possibilities it offers, has granted the Constitution significant immunity from challenge. As the lawyer and scholar Laurence Tribe reverentially declared in 2012, “‘We the People’ cannot simply bracket our Constitution . . . for that very notion presupposes a ‘we’ that exists outside the Constitution’s frame.” The Constitution could not possibly be “replaced by a temporary upgrade or substitute” because its “text and invisible structure are part of the nation’s beating heart.”<sup>24</sup> As a symbolic and institutional center of twentieth-century American nationalist faith, the Constitution was what officials promoted abroad as the basis of global prosperity and defended at home as the engine of the country’s exceptional gifts and freedoms. By this account, any serious effort to fundamentally transform the constitutional system would raise profound issues about what it means to be American in the first place.

## The Deeper Costs of Creedal Constitutionalism

Still, the reform benefits of creedal constitutionalism come with significant costs that have become more pronounced over time—political-cultural costs that extend beyond procedural, anti-democratic institutional damage alone. For instance, the narrative has rendered largely invisible the country’s own colonial infrastructure, and has even provided ideological space for ethno-nationalist politics. In addition, it has bolstered elitist suspicions of mass democracy, and—paradoxically—justified security excess through the language of constitutionalism itself.

To begin with, while many American reformers and activists productively used the creedal discourse to press for significant change, these interactions between reformers and the state nonetheless often operated through a type of bargain: challenges could be made to one feature of the society—for instance, by steadily uprooting formal legal discrimination on the basis of race, gender, or sexual orientation—but not to other elements of the national project, such as American international police power during the Cold War or the basic structural organization of the state and economy.

Indeed, as highlighted in the following chapters, many recent systematic critiques of the constitutional order first emerged as part of radical movements on behalf of workers, women, Black Americans, and Indigenous communities. Yet, over the course of the twentieth century, a combination of state negotiation and governmental violence and suppression resulted in the near disappearance of these appraisals from public consciousness. So while creedal constitutionalist language facilitated national solidarity and promoted change, key reformers also implicitly—and at times explicitly—acceded to a basic rhetorical exchange that refrained from threatening governing accounts about the country's exceptional status. While reformers may have sought to pick and choose among the elements of the broader narrative, at the end of the day it was often very difficult to do so: employing the language of constitutional veneration, especially in the Cold War context, could easily devolve into reproducing the driving logic of the American Century. In this way, alternative visions of constitutional order and meaning slipped away.

Furthermore, the political culture promoted by creedal constitutionalism, especially in its official twentieth-century form, carried additional consequences for collective life and national memory. In particular, it erased mainstream consciousness of the country's foundations as a settler society, in which the freedom, equality, and access to land of in-group members—largely, Anglo-European men of a certain background—depended on the exclusion and subjugation of Black Americans, Indigenous peoples, and women, among others.<sup>25</sup> For all the positives associated with the white national embrace of a vision of the country as free and equal from the founding, a clear problem thus remained: although oppressed groups eventually accessed greater legal protections, these changes ultimately occurred on ideological terms shaped principally by a white majority. Unlike colonized peoples abroad, Black people and Native Americans, among others, were never able to insist on a conscious moment of colonial accounting or, through this moment, a sustained national engagement with the persistent structural hierarchies bound to the country's settler roots.

This failure to confront such settler foundations has meant that, perhaps counterintuitively, creedal constitutionalism has provided cultural space for the development of a modern American ethno-nationalist politics. As the twentieth century progressed, part of the appeal of the ideologically flexible creedal discourse, for some, lay in its openness to

racially exclusionary commitments. Critics of a multiracial political identity began to locate the founding's liberal essence and exceptionalism in the distinctive cultural attributes of a Euro-American experience. Figures from Woodrow Wilson in the early twentieth century to backers of Donald Trump more recently have argued that the creed emerged from that special cultural history, and that therefore, unless other communities assimilated into an essentially Euro-American identity, the country's founding ideals would be abandoned.

Thus, the bargain around creedal constitutionalism paired reform with an expectation that historically excluded communities should accept an unconditional attachment to the nation, its central domestic symbols, and its overarching projects abroad. Additionally, and perhaps more troublingly, it promoted a narrative of national innocence in which ethno-nationalist assertions about Euro-American exceptionalism could persist well after explicit defenses of white supremacy became politically unpalatable.

Furthermore, the focus on a specifically "American" mode of change—privileging the mediating institutions and interpretive traditions of the existing constitutional order—proved deeply elitist and sometimes violently coercive. For starters, it promoted a cultural genuflection before the Supreme Court specifically, with speeches and commentary presenting the judiciary as an educational seminar for the public, whatever the record of past court complicity in everything from slavery and segregation to Indigenous expropriation, the violent repression of labor, and the subjugation of women. Those with overweening economic and political power, oftentimes including the individuals sitting on the federal bench, frequently undermined essential rights and democratic values—legitimizing exercises of national security and police violence, not to mention voter disenfranchisement and crackdowns on workers. But, under the creedal constitutional narrative, threats to basic liberties almost always came from below; thus, unruly elements had to be contained by a wiser and more mature set of economic, political, and legal elites.

The result was a prevailing tendency to interpret almost any radical political intervention that sought to fundamentally revise the legal-political order and the basic terms of the state and the economy as a danger not just to the existing Constitution, but to constitutionalism *as such*. This sensibility not only evinced real suspicion of the capacity of ordinary Americans to shape collective life; it also operated in practice

to transform the dominant brand of creedal constitutionalism into the only possible way Americans could exercise their constitutional imagination and engage in constitutional politics.

Equally concerning, this elevation of the judiciary and other counter-majoritarian spaces obscured the historical conditions under which these institutional actors had gained such exalted status. Past publics did not simply accede to the dramatic narrowing of the boundaries of constitutional politics or to the elevation of federal courts as central articulators of constitutional meaning. As I detail in the following chapters, the first half of the twentieth century involved intense opposition both to a mythologizing of the judiciary and to virtually all the foundational elements of American ideology and statecraft—from the basic legitimacy of the Senate to the US assertion of an expansive and capitalist global authority.

Thus, although late-twentieth-century commentators routinely waxed poetic about the country's liberal self-reflectiveness, such praise systematically ignored the extent to which this self-reflection operated in a dramatically narrowed context—only *after* foundational questions about social ordering and design were largely removed from the table. Moreover, the pervasive and legal discourse-driven conversation around the Constitution effectively sustained that removal, since in practice it offered very little space for broader institutional assessments or competing argumentative languages and tools. All of this underscores how the deliberative practices of the overarching constitutional paradigm significantly circumscribed truly critical self-reflection—whatever the conventional wisdom.

In addition, encomiums to the liberalizing power of the American brand of constitutionalism ignored the extent to which these practices remained bound up with actual and persistent state violence against opponents. They failed to contend with the legitimating role the overall creedal constitutional paradigm played in acts of profound discretionary violence across the globe. Indeed, American governing elites cemented the twentieth-century ties between market capitalism, global primacy, and creedal constitutionalism in ways that often entailed real repression both at home and overseas.

Despite being framed in a constitutional register, then, the American version of liberal nationalism that solidified in the twentieth century shared many commonalities with other more explicitly aggressive and belligerent nationalist projects—projects that US officials were often at pains to distinguish as “un-American.” The consequence has been an

unavoidably tangled relationship in collective life between the liberal and the “illiberal” dimensions of the governing creedal consensus.

## Elements of a Reconstruction

Standing now on the other end of the politics espoused by promoters of the American Century, we can wonder whether the particular compact around creedal constitutionalism too hastily papered over real deficits in the governing order. In recent decades, not only has American political dysfunction become especially apparent; so too have the ways in which national mythologies—including those related to the Constitution—shielded ideological flaws from critical analysis and marginalized political alternatives.

This makes even more pressing the question of *how* we ended up bound by a narrow constitutional narrative, without even realizing how tightly we have been bound. It is not only an issue of identifying institutional problems and proposing appropriate technical solutions—though that analysis and activism are essential. The myths surrounding the Constitution constitute a block to significant reform, and also underpin an American political culture with consequences well beyond constitutional design.

The remainder of this book offers my analysis of how we arrived at the current moment. My historical reconstruction of the Constitution’s position in American political life weaves together several central elements. In particular, I emphasize that the Constitution’s venerable age hides wild discrepancies in constitutional meaning and support, such that the mythic status of creedal constitutionalism, and especially its twentieth-century variant, becomes a real puzzle that demands explanation. I also argue that any fully successful explanation must incorporate an understanding of America’s rise as a global power—and that this frame not only offers a historical corrective to existing explanations, but also sheds light on how American constitutionalism and imperialism may interact in unexpected ways.

### THE PUZZLE THAT LONGEVITY HIDES

There is real allure to an ideology of long vintage. And Americans tend to presume the longevity not just of the constitutional text but also of its veneration, roughly along the creedal lines familiar to us today. So one response, again, to the question of modern creedal constitutional-

ism may be that things have *always* been this way: that reverence for the Constitution, especially as an embodiment of unfolding American ideals of equality, has consistently formed the core of American identity.

As the following chapters make clear, that answer offers an unproductive historical compression. It is certainly true that notables and national elites in the first decades of the republic looked upon the document with real attachment, even treating the text with near-religious devotion. As the historian Jonathan Gienapp has compellingly argued, the decision made at the founding to add amendments to the *end* of an unchanged original text—rather than throughout the document and actually over the objection of James Madison—was critical to jump-starting a politics of veneration. Gienapp describes this choice as “among the most important milestones in the entire sweep of American constitutional history,” as it promoted a perception of the pre-amendment Constitution as fixed and “sacred” rather than as “an organic, evolving whole.”<sup>26</sup> Furthermore, this “idea of the archival Constitution”<sup>27</sup> fit with the political imagination of national elites in the generations immediately after the founding. It helped them to make sense of their specific relationship to the founding, underscoring their distinctive role as preservers of the great revolutionary generation’s central work.<sup>28</sup>

But even if bathed in quasi-religious language, the Constitution’s relationship to the broader American social fabric was very different. For most individuals throughout most of the nation’s early years, the federal government’s Constitution may have engendered general approval as a symbol of the country. But the driving activity of social cohesion in the nineteenth century was territorial settlement—a decentralized process of expansion that focused political and economic life at the local level. This created not a national constitutional culture, but instead what the historian Robert Wiebe famously called a “society of island communities.”<sup>29</sup> Unsurprisingly, throughout the nineteenth century, the Constitution was only haphazardly taught at any level of education. More surprisingly, even law schools of the time did not treat it as an important focus of study.<sup>30</sup> Indeed, while today most law scholars with significant public profiles are known for their analysis of the Constitution, this would not have been the case as late as World War II.<sup>31</sup>

In addition, nineteenth-century encomiums to the Constitution often went hand in hand with exclusionary narratives that contemporary creedal constitutionalists would not recognize—a fundamentally different ideology dressed in the same documentary garb. And those

initial creedal constitutionalists that we *would* recognize, largely Black and anti-slavery radicals during and after the Civil War, experienced real marginalization. To the vast majority of earlier Americans, the twentieth-century version of creedal constitutionalism—particularly combining racial equality with textual devotion—would have looked like a bizarre ideological jumble.

Thus, what early notables routinely embraced about the federal Constitution and what Americans today venerate is wildly different. As recently as 1900, only a small number of white Americans would have seen their own country in Myrdal's story about the American creed. The far more common national story, promoted by President Theodore Roosevelt and the famed historian Frederick Jackson Turner, revolved around Euro-American continental conquest and settlement, what Roosevelt titled his 1889 work: *The Winning of the West*.<sup>32</sup>

Nineteenth-century politicians presented the Constitution as enabling this ongoing conquest, including through a compromise on the matter of slavery. Northern elites like Massachusetts Senator Daniel Webster, who opposed the evils associated with slavery, nonetheless accepted the *détente* embodied by the document: under the Constitution, slavery should not extend into new territories but also was not, in Webster's words, "to be disturbed or interfered with by the new general government." Such compromise was permissible because it ensured the nation's existence: it embodied the necessary political cost of promoting union and with it the shared goals of prosperity, independence, and appropriate territorial growth—goals vital regardless of region.<sup>33</sup>

To further underscore the point, politicians and notables often defended the Constitution while explicitly *rejecting* universally egalitarian readings of the Declaration. Stephen Douglas, in his victorious 1858 Senate campaign against future president Abraham Lincoln, may have embraced the value of the Constitution. But he made clear that "this government was made on the white basis, by white men, and for the benefit of white men and their posterity forever."<sup>34</sup>

These understandings are entirely antithetical to current visions of the constitutional project and the American story. Even setting aside Douglas's framing, a national narrative built around accommodating slavery in order to facilitate the expropriation of Native lands would be deeply immoral today. But, in the early to mid-nineteenth century, the idea of the Constitution as fostering union and national growth through cross-sectional compromise circulated far more broadly across the parties and within elite Northern politics than something like

Obama's joining of creed and Constitution.<sup>35</sup> Glossing over these immense differences in constitutional meaning requires a real flattening of historical time and texture. But, of course, such flattening is enabled and encouraged by today's creedal constitutional ideology itself.

#### WHY EXISTING EXPLANATIONS ARE INCOMPLETE

Still, what of the Civil War and Reconstruction—a key earlier era that presages elements of twentieth-century creedal constitutionalism? And how about the success of the New Deal, including the ultimate acquiescence of the Supreme Court to more extensive regulation, which also engendered wider acceptance of the constitutional system?

It might be argued that these two major periods, together with internal institutional features, are sufficient to explain the cementing by the mid-twentieth century of our familiar brand of veneration. Perhaps these eras' reform achievements reinforced tendencies already embedded in the legal-political system. The very difficulty of formal amendment under Article V, alongside the cultural approach to the document as an "archival" text (to use Gienapp's phrase), promoted ideas of the Constitution as both fixed and near perfect to begin with. Thus, a natural response to Reconstruction and New Deal changes may have been to treat them—including even the amendments added after the Civil War—as essentially affirming what the Constitution had always stood for. They could be taken as yet further reason to venerate the system.

Although these explanations are certainly part of the story, I contend that they alone cannot account for the specific process by which creedal constitutional commitments spread. Internal arguments leave unexplained how creedal claims declined dramatically in the years after Reconstruction and then consolidated—through clear steps, each incorporating new features—during very particular moments in the twentieth century. If we maintain a direct domestic through line from the Civil War to the New Deal to the present—without considering international developments—the emergence and timing of these stages appear deceptively random.

It is true that, to the extent that scholars have explored how and why the Constitution became joined specifically to basic creedal nationalism, they focus especially on how anti-slavery ideas of equal liberty gained real political prominence during and after the Civil War.<sup>36</sup> For example, the journalist and historian Gary Wills points to Lincoln's 1863 Gettysburg Address—with its emphasis on reading American



identity and institutions through a universalistic interpretation of the Declaration of Independence—as the pivotal moment in the transformation of American constitutional meaning and the national project. In Wills’s words, the speech “changed the way people thought about the Constitution” and launched the country on an inclusive enterprise. “Because of it, we live in a different America.”<sup>37</sup>

I agree that creedal commitments emerged out of anti-slavery politics and enjoyed initial resonance in the context of Civil War experiences—becoming formally instantiated in the text through Reconstruction-era amendments. Yet, such histories face a profound problem. By the end of the nineteenth century, Reconstruction had collapsed. And these universalist readings of national identity, let alone specific efforts to fuse them with the Constitution, became associated primarily with the Black counter-public. They were largely dismissed within white society, and treated among most Euro-Americans as a threat to the bedrock racial identity of collective life.

In addition, by the 1910s, a driving conversation around the Constitution focused on how ill-equipped the text had become to serve as the governing framework of the republic—a republic that most Americans still assumed to be racially restrictive. The Civil War had underscored the explicit failures of the Constitution’s founding compromise. And the effects of industrialization and resulting class conflict now raised fundamental issues about the legitimacy of the prevailing order. The barriers to formal amendment—along with the system’s extensive veto points—hardly promoted reverence for a fixed text. If anything, they spoke to the sclerotic nature of American legal-political design. Individuals living at that time may well have imagined that the Constitution might need to be replaced with a new one in the coming years or decades. They likely would have been far more surprised to find a twenty-first-century America that deifies the very same document, but now as an embodiment of a universal and equal liberty inherent in the country’s founding.

What of the New Deal reforms of the 1930s, achieved without fundamentally rewriting the Constitution? This did create the potential for a broad settlement in favor of the established legal-political order. But New Dealers knew full well the difficulty of governing through a rigid and anti-democratic system. Their success in forcing economic accommodations, after much upheaval and institutional blockage, should hardly lead them to glorify the constitutional order as near ideal.

Crucially, major turning points in US international engagement

help explain the timing of key steps toward modern constitutional veneration—making each of these moments much more cognizable than they would be otherwise. For example, seemingly discarded anti-slavery arguments about creed and Constitution first returned with intensity to official white discourse in the context of overseas expansionism—particularly during the unexpected and brutal Philippine independence fight against US control at the turn of the twentieth century.

Why was this the case? I argue that the imperial setting provided the laboratory in which a new generation of political elites, even avowed white supremacists like Woodrow Wilson, were pressed into framing the American project in response to anti-colonial resistance. To do so, they melded an initially uneasy mix of creedalism, constitutional devotion, and US primacy into a cohesive framework.

Furthermore, it was far from random that Constitution Day was initially popularized as an annual and national day of commemoration in the context of World War I. Pro-war civic figures and politicians spearheaded unprecedented celebrations directly linking constitutional veneration and global assertiveness. At the same time, they also strongly associated in the public imagination socialist anti-Constitution sentiment with disloyalty. In this way, they burnished a pro-business linking of capitalism and the Constitution, giving a previously tarnished position renewed popular vitality.

Similarly, World War II and fears of totalitarian threat served as the explicit backdrop for the rediscovery and rolling celebration of the Bill of Rights between 1939 and 1941. Prior to this time, these amendments had been only haphazardly treated as a unified and defining “charter of individual rights.” But now, these amendments became central to wartime accounts of American civil libertarian peoplehood and constitutional meaning.

And again, after the war, the Freedom Train—a joint business-government enterprise that toured the country during the late 1940s, extolling the genius of the American project and the Constitution at its heart—responded directly to Cold War rivalry. In doing so, it was also culturally of a piece with a growing post-war embrace not just of the Constitution in general, but also of the Constitution’s institutional intricacy and counter-majoritarianism more particularly, with the Supreme Court at the apex. As the Cold War took shape, such counter-majoritarianism—from the Article V process to judicial review and the Senate—became re-presented: not as a roadblock to democracy, but rather as why the US had avoided the communist and fascist fates of

Europe. It was what separated American *liberal* democracy from a tyrannical Soviet people's democracy.

Perhaps one consequence of today's nationalist narratives of American exceptionalism is that explanations for any major change tend to be sought internally.<sup>38</sup> Again, this is not to say that internal explanations played no role in the consolidation of creed and Constitution. Instead, in order to appreciate *when* and *why* certain domestic legal and institutional features facilitated the entrenchment of creedal constitutionalism, we have to integrate those features with a global explanatory account.

#### A GLOBAL TAKE: FINDING NARRATIVES FOR A NEW WORLD

I submit that we cannot understand important shifts in the meaning and conversation around the Constitution without reckoning with the rise of the United States from a regional hegemon to the world's pre-eminent global power—another relatively recent development. This ascent is almost never discussed alongside the story of the Constitution. Perhaps, since the US is so distinctive, it is hard to imagine its evolution as a product of international processes and comparative practices.

To begin, the twentieth century witnessed two devastating world wars and the breakdown of the great European empires. This dissolution resulted in the emergence of formally independent nation-states across the world, and also amplified the US capacity to project global power. As US elites struggled with how to engage on the international arena—in organizing overseas colonies such as the Philippines and then in shaping the terms of Cold War conflict—they eventually converged on today's dominant language of constitutional meaning.

More specifically, as Asian and African independence gained force by the mid-twentieth century, this sustained anti-colonial struggle and non-white political assertiveness permanently transformed international and domestic discussions about inclusion and exclusion across racial and ethnic dimensions. As the great Black American activist, writer, and critic W. E. B. Du Bois declared of the times, “the problem of the twentieth century is the problem of the color-line,—the relation of the darker to the lighter races of men in Asia and Africa, in America and the islands of the sea.”<sup>39</sup>

Forced to contend with these changes, European states came to de-emphasize racial hegemony and ethno-racial solidarity as the explicit

bases of national greatness and ongoing international engagement, even though such visions had underpinned earlier imperial imaginations. Instead, large swathes of Europe steadily shifted toward official stories of civic or liberal nationalism, with political affiliation supposedly grounded on “equal, rights-bearing citizens, united in patriotic attachment to a shared set of political practices and values.”<sup>40</sup>

In this way, the United States was no different. The country had long been an outpost of Anglo-European rule in the non-European world. And when reflecting on the national experience, Theodore Roosevelt, for instance, famously viewed the US as most akin to other British ethno-racial colonies of settlement, places like South Africa and Australia. As I detail in a prior book, *The Two Faces of American Freedom*, for long periods of the collective past Roosevelt’s characterization of their nation would have made intuitive sense to most Americans.<sup>41</sup>

But for a country whose leaders increasingly sought both meaning in and influence over a decolonizing and largely non-European world, conceiving of the United States as “white man’s country”<sup>42</sup>—to use Teddy Roosevelt’s evocative phrase—became a non-starter. US officials needed to explain to themselves and to others how the United States actually represented a departure from the racial hegemony that marked the age of European empire. Furthermore, they aimed to explain why the United States should enjoy an essentially imperial right on the global stage—namely, the right to exercise tutelage over foreign, especially non-white, polities, and thus to assert an international police power to reconstruct those societies in keeping with domestic interests.

These interlinked requirements demanded a compelling account of national identity that did not repeat the European imperial racial presumptions. The new account must instead conceive of the country as a break from, rather than a continuation of, such rule. Indeed, these needs were further underscored by the fact that, particularly after World War II, the United States—despite its unparalleled economic and military power—did not stand alone on the world stage. It faced a genuine ideological competitor in the form of the Soviet Union—one with real anti-colonial credentials across Latin America, Asia, and Africa—and this fact drove home the challenge facing American officials hoping to win “hearts and minds.”

Against this backdrop, US policymakers and commentators—soul-searching on behalf of the country but also responding to these external realities—steadily embraced creedalism as the core story of Amer-

ican peoplehood over the first half of the twentieth century. Along the Myrdallian lines noted above, this constitutive narrative presented the United States not as principally an extension of European racial empire or as an experiment in settler colonization. Instead, it conceived of the country as committed, from its founding, to the principle that “all men are created equal” — while acknowledging that this unfolding commitment had, at points along its journey, been undercut by racist prejudices and inegalitarian tendencies.

Part of the power of this creedal vision, both at home and abroad, was how the acknowledgment of previous excess was already written into a narrative about an essentially redemptive national project. Officials were able to admit to a racist past while nonetheless rejecting the long-standing and previously acknowledged link between American settlement and Anglo-European empire — indeed, to the point of largely erasing it from collective consciousness.

Such an account allowed political elites in the United States to assert that American civic nationalism was fundamentally distinct from the varieties emerging in mid- to late-twentieth-century Europe. Those countries had been absolutist monarchies and imperial orders, promoting racial hegemony in their overseas colonies. They were latecomers to liberal nationalism, and even worse, their internecine rivalries had left the European continent destroyed and the world in tatters.

By contrast, the United States interpreted itself as an ethically worthy global power because it had never been either a feudal or an imperial society, marked by extensive colonies. Whatever the past sins of slavery and Indigenous mistreatment, the country’s core essence, so the narrative went, already fit with the new historical times. According to these arguments, the American nation — like an expanding share of the world’s countries — emerged from an anti-imperial fight for independence against the British Empire. And, as the Declaration of Independence highlighted, the US from its genesis was committed to the same universally egalitarian values that increasingly shaped the international system. If anything, the United States stood as nothing less than the first truly universal and liberal nation — and thus a legitimate model for the globe.

#### THE ALLURE OF CONSTITUTION-WRITING IN THE INTERNATIONAL IMAGINATION

How did the Constitution come to feature so centrally in this emerging narrative, in which American governing elites fused a liberatory creedal

vision with a specific defense of the 1787 document? And how did that document lose its conspicuous association with the country's compromise with slavery—an institutional history so obviously and deeply at odds with the emerging anti-colonial global ethic?

In this brave new world, both formerly colonized peoples and Western governments needed to reconstruct their national stories and positions. Emerging states sought to develop identities and institutions that were domestically politically coherent and also legible at the international level. Similarly, given the global struggle for influence and moral authority, the US and the European imperial powers had to recast their country's narratives in ways that resonated both internally and externally in these unfamiliar times.

In this context, the Constitution gained a central position in both the US's inward-facing self-representations and its outward-facing ideology. In particular, a US claim to constitution-writing itself became central to this transformation. To an important degree, constitution-writing—conceived of as a foundational activity in the initial construction of a self-controlling and self-representing polity—had attained a symbolic status in American life. When the United States adopted its federal Constitution in the late eighteenth century, projects of explicit constitution-writing were historical anomalies. In a global order shaped by European empires, very few polities boasted such formally implemented documents. Of the sovereign states that existed before 1789 (the year the US Constitution went into effect) and that persist today, half would go over three hundred years from their initial founding before eventually writing their own texts.<sup>43</sup>

Even more important than the US Constitution, the process by which American territories acceded to statehood critically involved the drafting and formal adoption of a constitution. The transformation of Indigenous land into a state began with the demographic removal of Native peoples and settlement by Anglo-Europeans, after which settlers would write a new constitution and seek admission to statehood. In this way, constitution-writing became a key marker in the process of westward expansion and the accepted precondition for recognition as equal, self-governing “sister” states. By the mid-nineteenth century, it had spread as a defining political experience in American life.

During the same period, especially in the wake of the European revolutionary upheavals of 1848, constitution-writing also increasingly amounted to an almost automatic political act for new countries.<sup>44</sup> It then proliferated globally precisely through the slow disintegration

of the imperial model and with the emergence of newly independent nation-states. Indeed, constitution-writing occurred especially during particular “global waves”:<sup>45</sup> those aforementioned 1848 revolutions, the two world wars, mid-twentieth-century decolonization, and then after the fall of the Soviet Union.<sup>46</sup>

Throughout these eras, nationalist elites sought both to establish independence from past imperial rulers and to assert the equal and sovereign status of their polities vis-à-vis other major powers and state formations. Therefore, written constitutions emerged as a key institutional and symbolic mechanism serving multiple related ends: For domestic audiences, the documents codified both political rupture with the old empire and the principles of the new polity. On the international stage, they allowed nationalist leaders, especially in the decolonizing Global South, to assert equal sovereign statehood and to illustrate to European audiences the genuinely “modern” nature of their political projects.

In a world in which the challenges and needs of new polities moved to the forefront of global discussions, American elites came to understand and to position the US as the original constitutional, anti-imperial paradigm—the first among equals, both temporally and substantively. In joining creedal ideals with veneration specifically for the 1787 Constitution, governing elites developed a uniquely American account of liberal nationalism—one attuned to the ideological needs of global primacy in an age of decolonization and rising non-white political power.

In the process, politicians and commentators distinguished the US from Europe generally, but also specifically the legitimacy of twentieth-century American global dominance from the illegitimacy of the old imperial orders. Officials explained their presence on the world stage as a projection of the basic values and ideals of constitutionalism itself, rather than in service of ends such as extraction and conquest. American international police power was justified because the country’s organizing principles centered on independence and constitutional democracy, as framed through its governing text.

The US Constitution came to serve as tangible evidence of this fact—as a document that preserved freedoms at home, with principles that could be exported abroad for stable and prosperous development overseas. In this way, whenever the country intervened militarily abroad or asserted its economic and political might, it did so in order to create a stable and self-governing world of liberal constitutional states. Constitutionalism provided both an ideological basis for international arrangements under American supervision and the model for how foreign

states should themselves be domestically structured. For this reason, it was inappropriate to compare the US to other empires; instead, its interests were effectively the same as the world's interests.

Of course, many countries have embedded their global projections of power in narratives of singular destiny. The American language of its own exceptionalism vis-à-vis other empires placed US foreign policymakers in a long line of past European imperial officials. European powers had also justified their nations' global authority with claims of special historic destiny and of the unusual gifts that they alone could offer the world.

But the unique American fusion of this narrative with creedal constitutionalism had real resonance globally. It was shaped by the particular international discourses and political contingencies of the early to mid-twentieth century and bolstered by reform successes at home. Thus, the US emphasis on constitutionalism as a hallmark of national identity and national power had ideological strength and significant political ramifications both internally and externally.

None of this is to say that political elites approached their treatment of the Constitution instrumentally, reaching for venerative arguments simply as a veil to justify assertions of power. Rather, policymakers and commentators came to believe deeply and authentically in both a specific vision of US constitutionalism and the necessity of the American Century. This profound emotional investment is a large part of what made the culture that eventually emerged around the Constitution one of romance.

Furthermore, creedal constitutionalism and global primacy, as ideological commitments circulating in American life, had distinct intellectual roots. As becomes clearer in the chapters that follow, one logic did not necessarily cause the other, and the two developed from a variety of cultural and political sources. Nonetheless, as the twentieth century unfolded, they fed off each other and spread in tandem, with creedal constitutionalism and growing assertions of US international authority mutually constituting and reinforcing one another.

The eventual result was a quintessentially American worldview in which it became increasingly difficult to imagine the country without either its Constitution or its global dominance. Therefore, the breakdown in recent years of faith in *both* the existing constitutional system *and* the legitimacy of the country's role abroad (if not much of a reduction in its actual power) should perhaps come as no shock. The legal



scholars David Law and Mila Versteeg note a sharp “decline of American constitutional leadership.” Outside of the US, societies engaged in drafting and reform exercises have tended to avoid the Constitution’s limited rights provisions, let alone its approach to federalism, presidentialism, and judicial review. Simply put, the “content of the U.S. Constitution is becoming increasingly atypical by global standards.”<sup>47</sup> In some ways, the effective collapse of the American constitutional system as a model of export may offer one indicator of the intensifying questions about broader American global authority. Just as both were fused together, their mutually entangled limitations now simultaneously face real scrutiny.

#### IMPERIAL CONSTITUTIONALISM AND AVOIDING CONCEPTUAL PITFALLS

It is not surprising that the conditions that gave birth to the American Century—especially the global backdrop—are rarely explored in work on the country’s constitutional culture and politics. I would argue that, in many ways, most American writing about the Constitution has been a product of these same developments. And it can be difficult to recognize the historical contingency and the positionality of one’s own analytical framework—a difficulty I struggle with myself.

But the general failure of much of the existing literature to put the Constitution in conversation with key international structural dynamics, and with American global assertiveness, leads to a series of potential political traps. It promotes a conventional treatment of constitutionalism and American primacy as opposed domains, viewing constitutional rights and discourse as principally a constraint on American interventionist excesses or potential geostrategic overreach. In fairness, in some instances the assumed oppositional dynamic holds.

Yet this conceptual framework, which juxtaposes constitutionalism against empire, ignores how the construction and maintenance of American international police power—in service of market dictates and related state security objectives—became invested with moral legitimacy precisely through a constitutional register. Such creedal constitutionalism, therefore, was not antithetical to global dominance. Instead, reverence for the Constitution stood as the ethical core of the modern American imperial imagination. In other words, US global primacy was ideologically grounded in what amounted to a form of imperial constitutionalism.

Focusing too narrowly on domestic explanations can undermine critical distance from that broader twentieth-century mythmaking about US political identity. In assuming creedal constitutionalism's own anti-imperial narrative, it can also implicitly reaffirm, rather than interrogate, the very thing in need of explanation: the genuflection before an eighteenth-century constitutional document often regarded by external observers—and now even by many Americans—as outdated. In this way, bringing to light the international frame not only provides a historical corrective; it also offers one way to contest an exceptionalist—and thus preservationist—approach to American constitutional culture.

### An Alternative Historical Approach and a New Cast of Characters

As should be clear from the foregoing arguments, although the following pages proceed through a historical narrative about American constitutional culture, this is not a traditional work of history.<sup>48</sup> Rather, I see this project as a form of social criticism, in which history is presented in service of today's problems as well as tomorrow's latent possibilities. My focus on the historical past is ultimately instrumental; it seeks to illuminate how the American experience itself holds the normative tools for grappling with the current moment and for imagining emancipatory alternatives.<sup>49</sup>

This means that the book does not aim to be comprehensive, despite its length. It does not cover every significant mass political effort related to the Constitution. But it does endeavor to do two related things: First, I try to make sense of how ideas and institutions have fit together over the course of the twentieth century to create durable structures of constitutional meaning and power, with significant ramifications for the organization of state and economy. These structures provided the backdrop against which American activists struggled to reshape their world. Second, and relatedly, I attempt to provide an expansive engagement with the truly wide variety of constitutional experiments pursued by earlier generations of Americans—freedom activists who became constitutional thinkers in their own right.

This book therefore introduces a new cast of characters—largely ignored in mainstream constitutional reflections—who sought to fundamentally transform the constitutional order on grounds of genuine democracy. In part for this reason, the following pages do not primarily focus on the usual substance of constitutional scholarship: discussions

oriented toward the courts over how to interpret particular textual clauses. In fact, even what counts in the scholarship as “popular constitutionalism” has tended to study how movement activists participate in court-centered interpretive debates. Critically, however, these debates are largely mediated through the language and assumptions of legal experts and have taken for granted key parameters of the established constitutional order.

This book instead seeks to build an alternative archive of constitutional actors and possibilities—beyond the familiar judges, lawyers, and presidents and what they viewed as worthy of discussion. Thus, it focuses on how this new cast of characters conceived of a very different American institutional landscape. At times this required their engagement with matters of textual interpretation. But frequently it entailed grappling with how to create better institutional and cultural conditions for legal, political, and economic decision-making. So while the following chapters spend time with lawyers and judges and discuss Supreme Court cases, my protagonists often operated well outside the domains of court-centered politics. So too does this book.

These figures though were not simply channels for mass sentiment or public opinion—which is a notoriously tricky thing to capture, even during periods of popular awareness of and interest in the Constitution. Rather, they were elites of a sort.<sup>50</sup> They often formulated and presented culturally salient views—views that tapped into underlying social bases and that enjoyed support from and influence on meaningful stakeholders. But largely because their ideas spilled beyond the consolidated terms of the creedal Constitution, they rarely appear in conventional constitutional writing.

Still, I argue that these characters, familiar and unfamiliar, should be named and understood as important constitutional thinkers—Eugene Debs, Emma Goldman, Crystal Eastman, Hubert Harrison, Laura Cornelius Kellogg, W. E. B. Du Bois, Harry Haywood, Paul Robeson, Norman Thomas, Vito Marcantonio, Martin Luther King Jr., Grace Lee Boggs and James Boggs, Afeni Shakur, Beulah Sanders, Vine Deloria Jr., and Hank Adams, to name just a few. These activists confronted the constraining structures of their times with their own novel and evolving constitutional diagnoses and strategies, many of which remain relevant today.

In important ways, such figures generated deeply American analyses and solutions. This is not to say that they were nationalists. Indeed, many were not, and they were often explicitly *anti*-nationalists. They

refused to elevate solidaristic attachments to fellow citizens above those to fellow workers, colonized peoples, or women. But they struggled with how to create new arrangements responsive to the particularities of the American collective predicament. And they all treated the Constitution as a necessary site of mass-movement intervention in a way that, in their successes and failures, provides valuable insights as well as cautionary lessons.

While most accounts of important constitutional actors, and of the Constitution's role in American life, start at the founding, this book does not. Indeed, my argument is that the constitutional culture we live under is a profoundly twentieth-century product. Imagining that the world of James Madison or Alexander Hamilton will tell us why Americans connect the Constitution to creedal equality or to civil libertarianism engages in the same historical flattening that defined Cold War American exceptionalism. It reads back into the eighteenth century an account of American meaning that was the product of later developments, and that only became dominant under twentieth-century international and domestic conditions.

Instead, the story I tell unfolds in four parts, focused especially on those decisive years between the first and the second centennial, 1887 to 1987. Part I, "Disagreement and Experimentation in the Gilded Age, 1887–1917," returns us to the unfamiliar world before the permanent fusing of creed and Constitution, and well before their durable connection to global primacy, market capitalism, civil libertarian commitments, and Supreme Court reverence. It engages with the profound social uncertainty that marked these years as well as the striking experiments, presented especially by socialist and labor reformers, in how to reimagine the constitutional order. It ultimately concludes by focusing on how one such experiment—that of American global expansionism—emerged out of the thicket.

Part II, "The Spread of a New Constitutional Citizenship, 1917–1945," then explores how America's rising global power and the two world wars, along with domestic struggles during the Great Depression, disseminated creedal constitutionalism across the American public. These years witnessed the elevation of such claims about peoplehood from a marginal position in white society to the most common way white Americans spoke to each other about the country. It also explores the last significant moment in which mass publics seriously debated altering the constitutional system root and branch: the mid-1930s

period before eventual conservative Supreme Court capitulation to the New Deal.

Part III, “Consolidating the American Model, 1945–1965,” engages with how, against the backdrop of the Cold War, officials began both systematically reconceiving the international system in an American constitutional image and entrenching an increasingly rigid model at home. These chapters also explore the rise of the Supreme Court and of the constitutional lawyer as the definitive guardians of constitutional meaning and possibility. They juxtapose these developments against those remaining sites of domestic dissent, as well as the contesting views of overseas independence leaders engaged in economic and political decolonization.

Part IV, “Alternative Paths and Constitutional Erasure, 1965–1987,” concludes the historical narrative by exploring how the war in Vietnam generated the last movement politics of constitutional re-founding, however quixotic. This episode centered around Black radical ideas, especially associated with the Black Panther Party, of a non-imperial and decolonized United States, in keeping with those events in Asia and Africa. It then explores how, after the collapse of Left activism, politicians and commentators increasingly distinguished the “bad” 1960s of Left disintegration and violent excess from the “good” 1960s of a nonviolent civil rights movement grounded in creedal constitutional language. In the process, political figures across the spectrum steadily embraced a return to American origins, one that conservatives in particular transformed into a powerful ideology of restoration. By the second centennial, the result was a mainstream public culture that appeared to im-bibe, unquestioningly, Constitution worship.

At the end of this historical arc, Americans have effectively found themselves in a trap of their own making. Our constitutional climate, which looks reverentially over a collective shoulder to the past, certainly enabled supremely important successes, including for the rights of women, racial and ethnic minorities, and LGBTQ+ groups, among others. But such reverence also helped to create ideological space for the emergence of a growing political and legal project wary of, and even hostile to, the very real changes wrought by the preceding decades.

This traditionalist paradigm—originalism—is framed around a return to those eighteenth-century founders and a commitment to implementing their perceived original will across the contemporary social, economic, and political landscape. The official version of creedal con-

stitutionalism, which extols the genius of the founders and proclaims the country's inherent liberal egalitarianism, set the stage for this interpretive move. Our constitutional culture thus means that legal and ideological contests already take place on an uneven playing field. It also pushes certain arguments and proposals off the table, making it harder for reformers today to access the broader array of political and institutional claims available to activists of previous generations.

## Toward a Constitutional Politics of Change

If the process of constitution-writing has been central to US claims about its exceptional status, the country is no longer at the forefront of such experiments. Since the 1789 implementation of the US Constitution, 220 countries have appeared on the global stage, and between them they have produced a remarkable 900 written constitutions, many marked by genuinely innovative features.<sup>51</sup>

The sheer numbers are telling for another reason as well: for the most part, societies treat their constitutions instrumentally. Commentators often conceive of a constitution as embodying the enduring values of a polity, which suggests a degree of solidity and cultural permanence.<sup>52</sup> But, at the same time, constitutional texts also establish a governing structure aimed at resolving collective problems, negotiating internal conflicts, and securing essential rights. When these legal-political orders break down or social upheaval brings new elites and alliances to power, old documents may well be jettisoned and new ones written. Societies rarely treat their written constitutions as being at the core of national purpose or "peoplehood."

What defines French political identity, for example, has little to do with the Fifth Republic's 1958 constitution, and far more to do with a shared republican project rooted in earlier revolutionary traditions. For most states in modern history, a constitutional document's time horizon is hardly unlimited; its text provides one of many options that may work well or fail to serve social ends, depending on the circumstances. Indeed, many outside the US have found deeply puzzling the American commitment to their clearly dysfunctional document.

The time has come to reconsider the value of US constitutional exceptionalism, including the continued embrace of an order that has proven ill-suited for a collective American project aimed at equal and effective freedom. Today's brand of creedal constitutionalism is a real hindrance

to serious discussion of institutional and social change. It promotes a persistent retreat into a politics of constitutional veneration, which has had the effect of naturalizing a fundamentally undemocratic order.

Still, the history of creedal constitutionalism's emergence is also the history of how Americans long thought that things could be otherwise. The following pages aim to present a new, more complete, and more complex national story that brings back the broad-ranging constitutional debates that once circulated among labor leaders, socialists, Black activists, feminists, Indigenous leaders, and immigrants. These debates went to the heart of topics that have become so critical today: which rights to defend; how legal, representative, and economic institutions could be designed otherwise; the extent to which the country should address its colonial and racial foundations; and what all this means for both global power and the structures of the national security state. At a time when Americans are confronting the limits of the path we have taken, revisiting past constitutional alternatives offers a set of guideposts and possibilities for confronting the dilemmas of the present.

Importantly, though, these guideposts should not be understood as applying only to a narrow set of legal-constitutional elites. Truly changing American constitutional culture would require the emergence of a dynamic and coalitional mass movement—one that integrates a constitutional politics within movement efforts aimed at overcoming the vast array of today's hierarchies.

And it would require investing existing movement spaces with a much more expansive understanding of what is, and what has been, constitutionally possible in the United States. Movement activists today certainly organize around specific Supreme Court cases. And policymakers have started to debate procedural corrections to the electoral and judicial structures. But at a deep level, the nature of these engagements highlights the extent to which the Constitution as a whole is more or less treated as a matter for experts, especially lawyers, who serve as intermediaries between publics and governing institutions.

By contrast, our moment requires genuine popular control over the memory, terms, and ambitions of constitutional politics. Ultimately, the Constitution must be removed from its national pedestal. This could begin to unwind some of the more problematic consequences of creedal constitutionalism, even beyond resistance to technical fixes alone. At the very least, it would allow us to start disaggregating the components of today's thick account of creedal constitutionalism, and to ask which of these components are actually worth defending. And it

could push us to appreciate how removing the roadblocks imposed by the constitutional system may well require us to challenge other pillars of contemporary American nationalism.

The obstacles to any transformative change are numerous. But a present-day movement culture equipped with a richer constitutional memory could begin to think through these questions in a serious way. Backed by a historically informed understanding of our predicament, and of possible alternatives, we would be positioned to contest the existing apparatus on meaningfully stronger grounds.



# Left Resurgence and the Decolonial Project

In late August 1968, Americans watched on their television screens as protesters faced an intense crackdown from police in the streets of downtown Chicago. The setting was the Democratic National Convention, and the conflict was over what to do about the war in Vietnam. Outside the convention hall, officers “lined up platoon style, shouting ‘Kill, Kill, Kill’ with clubs raised.” In the end, “more than 1000 people, including 192 police, were injured and 662 were arrested. One young man was shot to death by the police.”<sup>1</sup>

Inside the convention, the Democratic Party leadership was closing ranks to suppress opposition to the war. Americans had by then turned against the conflict, with opinion polls showing a majority opposed to having troops remain in Vietnam. As for the presidential election, 80 percent of Democratic primary voters supported candidates “critical” of the war, and a large majority backed Robert Kennedy or Eugene McCarthy, both anti-war figures. But through the arcane nomination system, party bosses used their control over non-primary delegates to push through Vice President Hubert Humphrey, who had not even participated in the primaries, as the party’s nominee. The platform committee similarly ensured that the party maintained a pro-war position.<sup>2</sup>

For those in the streets, the events both inside and outside the Convention appeared of a piece. It did not seem a coincidence that just as Chicago Mayor Richard Daley was brutally disrupting protests—unleashing what anti-war Democratic Senator Abraham Ribicoff called “the Gestapo in the streets of Chicago”<sup>3</sup>—he also took advantage of his role as party boss to push delegates to Humphrey’s side, regardless of whom voters had actually selected. All of this suggested a breakdown in the representative capacity and democratic legitimacy of American legal-political institutions. No matter who won the November presiden-

tial election, Humphrey or Richard Nixon, both parties—irrespective of mass discontent—had seemingly signed on to the conflict along with the broader Cold War security project. Reflecting on the moment, Eldridge Cleaver, the Black Panther Party for Self-Defense's (BPP) Minister of Information, declared in a statement, issued in conjunction with one by white anti-war activists Abbie Hoffman, Jerry Rubin, and Stewart Albert, "it is very clear that there is no way left for us to offer any opposition through the traditional political machinery."<sup>4</sup>

The Cold War may have consolidated and firmly entrenched an official politics of constitutional veneration. But in many ways it also gave rise to perhaps the last significant moment—at least before our own—of sustained constitutional skepticism. For a short window in the late 1960s and early 1970s, the Vietnam War shattered the collective certainty that an American liberal constitutionalist compact was either successfully proliferating abroad or resolving social disputes at home.

In particular, the war made hollow the underlying claims of the post-war American project, especially the assumption of a basic antithesis between old-style European empire and US leadership in the world's interest. The Pentagon Papers, published by the *New York Times* in 1971, highlighted the false pretenses under which US officials had initiated and then systematically extended the war, including through secret bombing campaigns in Cambodia and Laos. And such practices were hardly exceptional during the period. In 1975, the Senate Church Committee, named after Idaho Democrat Frank Church, investigated assassination plots and coup attempts against various foreign leaders—in Latin America, Asia, and Africa—not to mention numerous covert operations aimed at destabilizing governments abroad. American troops had ostensibly entered places like Vietnam to halt the spread of Soviet-style authoritarianism and promote free self-government. But US actions appeared to do just the opposite: they resulted in mass death and directly conflicted with anti-colonial self-determination.

Within the US, the war also raised profound questions about the democratic legitimacy of American leaders and institutions. In the late 1960s, over 225,000 young men were drafted each year to fight in an increasingly unpopular conflict. Yet the governing class continued to invest in a security politics impervious to growing opposition. Or, as with the Democratic Convention in Chicago, they explicitly ignored what actual voters preferred. Further underscoring this broadening sense of disenfranchisement among young people, many of those drafted had not yet reached the age of twenty-one, a common voting age at the time.

This meant that large numbers were often sent to fight and die even as they were denied the ballot.

And if those young people engaged in mass protest—seemingly the only tool left available—fierce state violence resulted. Through programs like the FBI’s COINTELPRO and the CIA’s “Operation Chaos,” security personnel systematically spied on, infiltrated, and sabotaged anti-war and civil rights organizations. Black political groups, such as the Black Panther Party, faced the most extreme acts of repression. As the scholar Nikhil Pal Singh writes, “by the end of [the 1960s] at least twenty-four Panthers had been killed by police, with untold numbers dead from internecine violence stoked by the FBI’s covert operations, and hundreds jailed in the nationwide campaign to destroy the Party.”<sup>5</sup>

All of these actions radicalized an expanding base of young people, especially students, and regardless of race. In the context of events in Chicago, membership in the anti-war student group, Students for a Democratic Society (SDS), more than doubled in just six months, up to eighty thousand people by the November 1968 general elections. One 1970 John D. Rockefeller Foundation “survey of U.S. college students” found “79 percent of respondents strongly or partially agreed that ‘the war in Vietnam is pure imperialism.’”<sup>6</sup> For many flooding into groups like the SDS, the Cold War idea of the US as a near perfect distillation of liberal democracy—with a legal-political model that should be replicated everywhere—had become fundamentally untenable.

Critically, this wider radicalization occurred at precisely the moment when a Black Left internationalism experienced a profound revival within African American life. By the mid-1960s, Congress had passed landmark bills in keeping with long-standing civil rights movement aspirations: the Civil Rights Act (1964) and the Voting Rights Act (1965), as well as the Hart-Cellar Act (1965), which, in line with Kennedy’s “nation of immigrants” language, finally abolished explicit racial restrictions in immigration policy. These bills were all steeped in creedal constitutional rhetoric and heralded a new era in American life, which now banned legal segregation and formal Jim Crow practices. Recall that, twenty years earlier, the sociologist and economist Gunnar Myrdal had seen just these potential civil rights victories as the country’s “greatest opportunity for the future.”<sup>7</sup> By committing itself to equality under the law, the United States would fulfill its own liberal promise and truly have the moral authority to guide a largely non-white world.

Yet such historic achievements did not, in the short term, alleviate domestic conflicts over race. Rather, the disconnect between the end

of legally enforced segregation and the ongoing and patent injustice of Black life, especially in urban centers, only fed young Black discontent. Beginning in 1964, American cities were convulsed by waves of civic unrest and rebellion. These peaked in the wake of Martin Luther King Jr.'s assassination, also in 1968, which, according to the political theorist Brandon Terry, “unleashed the most widespread explosion of domestic violence in any day since the Civil War.”<sup>8</sup> This unrest constituted a spontaneous response to a daily Black reality of poverty and police brutality, all of which persisted regardless of the new bills passed.

Although marginalized and repressed during the Red Scare, Black socialist and internationalist ideas returned to center stage among a new generation of African American activists increasingly skeptical of the Cold War civil rights bargain. Like earlier generations including Hubert Harrison, W. E. B. Du Bois, Harry Haywood, and Claudia Jones, these younger activists too rejected the Cold War creedal view of the country as intrinsically—if incompletely—liberal. And they argued that ideas of the US as the “first new nation” or as simply a nation of immigrants undermined the ability of most Americans—including Black people themselves—to appreciate the extent to which their society was a continuation of European projects of empire.

New movement voices thus contended that the mainstream politics of civic inclusion truncated the dilemma of race in the United States, deemphasizing both the links to global structures of inequality and the need for more thoroughgoing socioeconomic changes. The activist goal was not just US civil rights, but *decolonization*. Among those who gravitated to the Black Panthers, this colonial framing entailed skepticism too about the Constitution itself, given the document's cultural centrality in sustaining narratives of American exceptionalism. And just as in the Global South, genuine transformation might require the overcoming of existing constitutional structures, and even the wholesale rewriting of governing texts.

During this window of time, the BPP enjoyed a striking popular appeal and cultural salience. The political scientist Michael Dawson reminds us that, in one 1969 Harris Poll, Black respondents identified the Panthers as “being likely the most important black organization of the future.”<sup>9</sup> Joshua Bloom and Waldo Martin Jr., in their essential history of the group, *Black Against Empire*, further write that “by 1970, [the party] had opened offices in sixty-eight cities. That year, the *New York Times* published 1217 articles on [them]. . . . The Party's annual bud-

get reached 1.2 million dollars (in 1970 dollars). And circulation of the Party's newspaper, the *Black Panther*, reached 150,000."<sup>10</sup>

Perhaps most significantly, the war context made the Panthers' colonial reading of US domestic institutions and global primacy compelling to many of the era's non-Black Left organizations, like the SDS. These organizations increasingly looked to Black radicalism and to the Panthers specifically for direction and leadership. When Eldridge Cleaver contended that the electoral mechanisms of American institutions had failed, his words resonated with a multiracial, anti-war, and activist base. As an SDS resolution declared on the 1969 anniversary of Martin Luther King Jr.'s assassination, "the Black Panther Party is not fighting black people's struggles only, but is in fact the vanguard in our common struggles against capitalism and imperialism."<sup>11</sup> Such Black politics had become the movement home for a broad collection of groups that embraced its anti-colonial and socialist internationalism.

As I detail in the following pages, this political radicalization revived in public conversation—for the first time truly since the Great Depression—calls for revolutionary change, and with them calls for a new constitution. The chapter focuses especially on the BPP and its effort—through the Revolutionary People's Constitutional Convention (RPCC)—to replace the federal Constitution with a properly decolonial legal-political order. In many ways, that project was the last twentieth-century coalitional and mass political attempt to break explicitly from the established constitutional system. The Convention therefore also provides a window for assessing the political alliances and tensions among the vast array of burgeoning Left groups—anti-war, feminist, Indigenous, and Black freedom activists—as well as the specific challenges Left organizations faced in building cross-racial political support.

In exploring the Convention, this chapter seeks to fill a genuine lacuna in constitutional scholarship and memory. That entire episode is almost completely ignored today in the public recollection of the period. One reason directly concerns how Cold War dynamics transformed the nature of constitutional study, focusing teaching and writing around court-based jurisprudence and politics, as discussed in chapter 13. Given that "constitutionalism" narrowed to a concern with judicially managed debates about legal reform or textual interpretation, these radical activists disappeared from view. Indeed, despite their searching interrogation of the overarching constitutional system, such

actors by and large are treated by mainstream scholarship as *not* having a meaningful constitutional vision or politics.

This connects to the second key reason why Black radical constitutional thinking from the era has been essentially written out of the legal scholarship. As establishment elites systematically contained socialist and internationalist activism in the 1970s, a caricature of the era's Left politics took hold in much of mainstream discussion. For those like the famed philosopher Richard Rorty, Black radicals—along with the white students they convinced—simply refused to “share in a national hope” and instead embraced a violent and rejectionist worldview that courted marginality and veered between “self-disgust” and “self-mockery.”<sup>12</sup> According to this framing, the Black decolonial agenda was best thought of as sloganeering, and their militant posture best conceived of as emblematic of the destructiveness of the period.

By contrast, I argue that such an approach flattens the complexities of the Left, especially Black Left internationalist engagements with the legal-political order. It ignores these activists' efforts to build broad coalitional alliances—across gender and racial divides—behind a concrete and transformative agenda relevant for all. And it erases the actual constitutional vision embraced by some of the era's most significant voices and groups.

The Panthers in particular, in ways that mirrored earlier Socialist Party and Industrial Workers of the World (IWW) activists, invested deeply in the language of constitutional rights. They considered constitutionalism, broadly understood, a means to hold an armed state publicly accountable *and* to imagine a liberatory horizon beyond the limited terms of the 1787 text. If anything, engaging with their constitutional politics suggests pathways that were not pursued, but that remain relevant for today's debates about ongoing hierarchy and social crisis. Furthermore, reflecting on what actually produced the collapse of BPP multiracial coalitional efforts, including the Revolutionary People's Constitutional Convention, helps to make better sense of the post-1960s containment of Left activism. It also sheds light on the persistent challenges that racial minorities continue to face in convincing a broader majority of the need for structural change.

## From Civil Rights to Decolonization

As the 1960s progressed, Black political debate became defined by a growing activist sentiment that the traditional civil rights frame—

focused on ending formalized inequality—was insufficient for providing substantive freedom. Against a backdrop of global independence movements, the growing watchword became decolonization, rather than just civil rights. Yet, if the idea of decolonization began to resonate, especially among young Black people, deep questions persisted of both means and ends: What, concretely, did such a project entail in the United States—rather than in an Asian or African context? And how could a subordinated Black minority spearhead change in this direction, given the permanent reality of majority white control?

#### KING TRANSCENDS THE CREEDAL CONSTITUTION

Perhaps more than anyone else, Martin Luther King Jr. underscored these shifting tides and wrestled seriously with the promise and peril embedded in pushing beyond the boundaries of American nationalist assumptions. King had been a preeminent articulator of the creedal Constitution, including the Cold War Manichaeic divide between totalitarianism and an exceptional American liberalism. But in the overlapping contexts of Black urban immiseration and extreme US violence in Vietnam, King began to contend that simply completing the creedal national project would not be enough to generate liberation for Black and oppressed people, both within the country and across the world.

Domestically, he argued that the African American condition was one of “educational castration and economic exploitation”: experiences rooted in how institutions had been organized and power structured since the earliest days of collective life. The result was a sustained non-white reality of “poverty amid plenty,” which fundamentally contradicted the national mythology of an essentially liberal polity only requiring racial ameliorism. Instead, King declared that the country needed nothing less than “a radical restructuring of the architecture of American society.”<sup>13</sup>

As for the world stage, he abandoned that established “Cold War civil rights” approach, which attempted to leverage Black support for American global primacy to achieve steady internal progress on race. At the NAACP’s 1966 convention, Whitney Young, the head of the more moderate Urban League, had warned activists that the League would denounce any African American groups that tied issues of “domestic civil rights with the Vietnam Conflict.”<sup>14</sup> Despite these admonitions, as well as the blowback from establishment Black figures like Ralph Bunche, King felt he could no longer refrain from voicing opposition to

the war effort. He famously declared in 1967 that the time had come to “break the silence,” and stated that the Vietnamese “must see Americans as strange liberators.” The US had “vigorously supported the French in their abortive effort to recolonize Vietnam,” and now was brutally imposing its own economic and security ends on a local population seeking its independence.<sup>15</sup>

What was most striking about King’s evolving position is that he refused to argue against the war from within the terms of Cold War nationalism. The standard anti-war position was to critique the conflict as inconsistent with the country’s moral fabric—as the isolated folly of an otherwise just creedal nation. By contrast, over the last year of his life, King repeatedly asserted that Vietnam was emblematic of the general structure of US institutions—institutions that reproduced everywhere “the giant triplets of racism, materialism, and militarism.”<sup>16</sup>

As a result, the security prerogatives that the state projected abroad could be understood as extensions of domestic racial and class hierarchies. For that reason, not only was the war in Vietnam unjust. It was also now no longer acceptable for Americans, including Black people, to accede to the “smooth patriotism” of such Cold War imperatives and to avoid the “mandates of conscience.”<sup>17</sup> At a time when “all over the globe men are revolting against old systems of exploitation and oppression,”<sup>18</sup> Cold War anti-communism placed this “smooth patriotism” ahead of meaningful solidarities between poor and excluded peoples.

In this way, King constructed his own brand of Black internationalism, which had clear historical resonances with the pre-Cold War radical tradition. He called on Black and poor communities within the United States to reject nationalist strictures, and instead to support solidaristic alliances of shared interest and commitment among oppressed peoples everywhere—regardless of one’s location in Cold War rivalries. He saw this anti-nationalist shift in identification as part of “a genuine revolution of values” that would make political “loyalties . . . ecumenical rather than sectional.”<sup>19</sup>

At home, this required reimagining the civil rights movement as a Poor People’s Campaign—incorporating Black people, working-class and impoverished whites, Indigenous groups, and immigrant communities—with the goal of abolishing poverty and overcoming capitalism. And with respect to Vietnam, it led King to embrace the growing anti-war focus on opposing the draft. He argued that no one of good conscience could participate in the conflict, and that individu-



als drafted should explicitly seek conscientious objector status—even if they might be able to claim other exemptions.<sup>20</sup>

King's approach thus increasingly challenged all the basic Cold War assumptions of American politics, and it did not leave the Constitution untouched. The need to move beyond classic civil rights demands raised real questions about the extent to which the constitutional system would be an aid or a hindrance going forward. On the one hand, in speaking about desegregation victories, with the *Brown* decision clearly front and center, King noted the role of the Supreme Court. He wrote in 1967, "so far, we have had constitutional backing for most of our demands for change, and this has made our work easier, since we could be sure of legal support from the federal courts."<sup>21</sup>

Still, King doubted that the "radical restructuring" he had in mind could be achieved on the existing terms of Cold War constitutional politics. He continued, "the Constitution assured the right to vote, but there is no such assurance of the right to adequate housing, or the right to an adequate income." Even if the 1787 text could be interpreted to include these commitments, King's broader worry was that the legal-political infrastructure was built to contain the transformative power of those most oppressed in society—or, at the very least, that genuine freedom required "approaching areas where the voice of the Constitution is not clear."<sup>22</sup>

#### THE RISE OF BLACK POWER AND THE DECOLONIAL PROJECT

In many ways, King's substantive critique of American society began to dovetail with the era's Black Power politics, even as he disagreed strenuously with aspects of that developing perspective. The term "Black Power" itself emerged from a dramatic 1966 Mississippi speech given by Stokely Carmichael, then chairman of the Student Nonviolent Coordinating Committee (SNCC), in which he decried police brutality and harassment: "This is the 27th time I have been arrested—I ain't going to jail no more! . . . We want Black Power! . . . That's right. . . . It's time we stand up and take over."<sup>23</sup> Not unlike the latter-day King, Carmichael too contended that the traditional civil rights narrative, grounded in nationalist rhetoric about the American creed, concealed more than it illuminated.

But if he and King both underscored the persistence of structural

racial injustice, Carmichael gave this reality a specific name: internal colonialism. In his seminal book *Black Power* (1967), coauthored with Charles Hamilton, Carmichael explicitly rejected Gunnar Myrdal's famous vision of an internal American contest between its grand national principles and local prejudices: "There is no 'American dilemma' because black people in this country form a colony, and it is not in the interest of the colonial power to liberate them. Black people are legal citizens of the United States with, for the most part, the same *legal* rights as other citizens. Yet they stand as colonial subjects in relation to the white society. This institutional racism has another name: colonialism."<sup>24</sup>

For Carmichael and Hamilton, race relations in the United States mirrored those in colonized societies across Asia and Africa. The United States too was divided between racially privileged insiders and non-white peoples, whose land and labor served as the basis for elite wealth and power. Carmichael and Hamilton argued that, akin to "South Africa and Rhodesia," this created a lived experience of "black and white inhabit[ing] the same land [but] blacks subordinated to whites."<sup>25</sup> It also meant that Black liberation would require more than civil rights and inclusion in the existing social order. It would require decolonization: a full-scale transformation of the country, on terms of real material equality for those subordinated.

As discussed through previous chapters, some version of anti-colonialism had long been a defining political commitment across the Black ideological spectrum. This held for figures critical of the Cold War project, like W. E. B. Du Bois, and those more supportive, like Ralph Bunche and Thurgood Marshall. Furthermore, the specific framing of the United States as a colonial enterprise, thus analogizing the Black condition to that of colonized peoples abroad, had been commonplace on the African American Left for decades. Du Bois—in language virtually equivalent to that of Carmichael and Hamilton—remarked to an audience in Haiti in 1944 that colonial circumstances were not only those in which one "country belong[ed] to another country." They also encompassed "groups, like the Negroes of the United States, who do not form a separate nation and yet who resemble in their economic and political condition a distinctly colonial status."<sup>26</sup>

All of this meant that the discourse of decolonization tapped into an established wellspring of Black sentiment. But it enjoyed a special prominence during these years because of the global historical moment—one of rippling non-white victories over oppressive European rule, in which new independent nations called for basic changes to the inter-

national economic and political order. These dynamics instilled within more and more African American activists a sense of globally shared non-white political destiny, as well as a belief that an anti-imperial and anti-capitalist future genuinely might be within reach.

The times thus promoted a Black interest in looking overseas for guidance on both political means and ends. Eldridge Cleaver began referring to the psychoanalyst and anti-colonial revolutionary Frantz Fanon's *The Wretched of the Earth* (1960) as "the Black Bible,"<sup>27</sup> due to its exploration of the violent structures shaping relations between colonizer and colonized. And Carmichael and Hamilton presented African Americans as above all members of the "Third World" rather than primarily US citizens: "Black Power means that black people see themselves as part of a new force, sometimes called the 'Third World': that we see our struggle as closely related to liberation struggles around the world."<sup>28</sup>

Black Power activists asserted the need for this alternative political identity in part because of the sense that the interests of the Black community—as an oppressed population within the United States—critically opposed those of the country's security apparatus. As such, in opposition to Black Cold Warriors, they called for a truly independent Black foreign policy, one committed to resisting the security state.

Nothing spoke more directly to the importance of an independent approach to international affairs than the US's active role in supporting the white apartheid government in South Africa. When the American foreign policy establishment faced a tension between egalitarian values and economic investments, they seemed to readily sacrifice the former. Focusing on the apartheid example, Carmichael and Hamilton wrote, "it seems inevitable that this nation would move to protect its financial interests in South Africa, which means protecting white rule in South Africa. Black people in this country then have the responsibility to oppose, at least to neutralize, that effort by white America."<sup>29</sup>

In keeping with their oppositional and internationalist stance, the Black Panther Party famously used organizational leadership titles that mirrored the government offices of the nation-state, including by designating party co-founder Huey Newton the Minister of Defense. The Party also engaged in direct outreach with overseas national liberation movements, newly independent governments in Asia and Africa, and even North Vietnam.<sup>30</sup> As a whole, the BPP offered a clear alternative to the accommodationist and domestically focused politics of Cold War civil rights—an alternative that became increasingly compelling to a broader range of left and anti-war activists.

## CHALLENGES FOR THE COLONIAL METAPHOR

Still, if such Black activists conceived of themselves as part of the Third World rather than an American “we the people,” this emerging politics of decolonization faced a twofold challenge. First, what concrete political agenda did it entail? In Asia and Africa, decolonization invoked a relatively clear set of objectives. These included the connected goals of overthrowing imperial political rulers, asserting local economic and political self-determination, and ensuring genuine formal and substantive nation-state equality on the international stage. But, as Du Bois had noted, African Americans did not form a “separate nation”—a fact that underscored the need to adapt the colonial metaphor for the particularities of the American condition.

In addition, there existed a second basic predicament: how to push past the terms of the American Cold War compact to this decolonized future? Huey Newton famously argued that the defining feature of American life had been “majority freedom and minority oppression”: “While the majority group achieved their basic rights, the minorities achieved alienation from the lands of their fathers and slavery.”<sup>31</sup> Implicit in these words was the unavoidable reality that African Americans, unlike Black people in South Africa, constituted only a small percentage of the overall US population. The country was a majority white society in which it had taken truly heroic struggle to end slavery in the nineteenth century and to generate civil rights achievements in the twentieth. To the extent that decolonization required something akin to King’s “radical restructuring,” what pathway existed for such a change?

Much of King’s critique of Black Power politics had to do with this latter question of a viable strategic pathway. In particular, he was deeply suspicious of how one strain of Black Power activism romanticized armed struggle by making a connection between anti-colonial resistance abroad and potentially similar resistance at home.

One key impetus behind the creation of the BPP had been profound outrage at the impunity with which state officials and private white citizens were able to perpetrate daily acts of violence against African Americans. Party founders like Newton argued that, under conditions in which the state refused to protect Black people from threat—and indeed behaved lawlessly to sustain white rule—it was appropriate for African Americans to arm themselves as a matter of self-defense (hence the original full name of the party, the Black Panther Party for Self-

Defense). But over time, some members also began to argue that a guerrilla uprising could be an instrument for either overcoming the American state or establishing local autonomous and self-determining Black political zones. Such ideas were spurred by the success of guerrilla tactics in anti-colonial struggles abroad, especially in Cuba and Algeria.

Recognizing that in the United States there existed extreme asymmetries in power between the Cold War security apparatus and small bands of dissidents, Newton referred to this uprising as “revolutionary suicide.”<sup>32</sup> As Brandon Terry notes, the driving argument was a version of “mutually assured destruction.”<sup>33</sup> Such Black Power activists appreciated that armed struggle would produce extreme and indiscriminate violence from a US state already engaged in brutal crackdowns against any Black activist perceived to be radical. But defenders of guerrilla tactics imagined that white national elites would ultimately reach a *détente* with insurgents, given likely global pressure, creating the conditions for Black self-determination in their communities. These activists also hoped that some whites, particularly in the anti-war movement, might become sufficiently radicalized to participate in armed struggle, strengthening the overall prospects. Barring that, newly independent Third World states perhaps could also be brought in as military and political allies against the American security state.

None of these strategic defenses of armed struggle seemed remotely plausible for King.<sup>34</sup> For starters, he argued that the likely effect of Black guerrilla violence would be to galvanize white support behind even more extreme state repression. Precisely because of the American history of white supremacy, and the ever-lurking framing of Black political agency as a threatening fifth column, the resort to arms would end in brutal one-sided defeat and spur reactionary tendencies within white society. Underscoring the difference between the US and Third World Cuba or Algeria, King wrote, “it is perfectly clear that a violent revolution on the part of American blacks would find no sympathy and support from the white population and very little from the majority of the Negroes themselves.”<sup>35</sup>

The hope that newly independent states in Asia and Africa might assist local activists in armed struggle ignored the power disparities that existed on the global stage—not to mention the likely unwillingness of Third World nations to be dragged into a losing fight with the world’s preeminent superpower. Ultimately, King concluded that assistance from abroad offered no viable solution. Instead, the best way to truly achieve substantive self-determination for Asian, African, and Latin

American countries—along with Black freedom—involved changes internal to the American state: “The hard cold facts today indicate that the hope of the people of color in the world may rest on the American Negro and his ability to reform the structure of racist imperialism from within.”<sup>36</sup>

These concerns, voiced by King and others, also suggested pitfalls with the Panthers’ promotion of a “UN-supervised plebiscite,” a non-violent alternative pathway to decolonization, added to their ten-point program in 1968.<sup>37</sup> This plebiscite amounted to a democratic vote “held throughout the black colony in which only black colonial subjects will be allowed to participate, for the purpose of determining the will of black people as to their national destiny.”<sup>38</sup> Such a proposal offered a direct repudiation of any nationalist attachment to an American “we the people,” let alone to the creedal Constitution, and also clearly invoked the CPUSA’s earlier “Black belt” thesis.

As discussed in chapter 7, in the 1930s and 1940s Black Communist activists like Harry Haywood had worked imaginatively to craft an account of what Black self-determination might mean as a matter of concrete governance within the inevitable context of a dominant American polity. Haywood had argued for the breaking up of states in the South to create new constitutional structures that did not facilitate white minority rule and that ensured Black voting power and political authority. Of course, one clear effect of the intervening decades’ Cold War suppression was that younger and radicalized Black activists may have taken on the overarching Black radical sentiment. But they were often disconnected from the details of how those earlier discussions concretely conceived of reshaping domestic constitutional structures.

As exemplified by the plebiscite call, the BPP’s relevant imaginative model tended to be the post-war process by which African colonies abroad gained formal independence, including through the use of local referenda. But the problem of transposing such referenda to the American context was, as Terry summarizes, that “there was never . . . a careful working through of the democratic dilemmas that come from designing such a plebiscite and the legitimacy of its various possible outcomes (who would participate, whether such a vote entails territorial separatism, what happens to blacks who want to stay, and so on).”<sup>39</sup>

Indeed, these issues were apparent in the most sustained effort to pursue territorial separation as a method of decolonization: the creation of the Republic of New Afrika (RNA) by some of Malcolm X’s supporters after his assassination. Founded in Detroit and then relocated

to Mississippi, the RNA sought to decolonize Black people by creating a territorial nation-state in the South through an internationally backed plebiscite. Such independence would also go hand in hand with a push in international forums to impose reparations on the American state for slavery and coerced Black labor. This was to be paid to the RNA as part of its efforts to develop internal economic self-sufficiency.<sup>40</sup> “The main job of the Black government,” RNA leader Imari Obadele declared of the focus on territorial control, “is to free the land.”<sup>41</sup>

The RNA took very seriously this desire to gain formal recognition as a sovereign state. Members wrote their own constitution, known as the Code of Umoja (“unity” in Swahili). This code laid out the terms of citizenship, created a governing legislative body in the People’s Center Council, and established a court system along with a related criminal law. When faced with FBI raids and local police repression, the RNA leaders persistently invoked their status as officials of a foreign government, and they sought formal recognition for the state from countries in the Third World.<sup>42</sup>

From the start, the effort to entrench the RNA faced a variety of internal conceptual dilemmas alongside the broader political implausibility. Territorial independence, even if one day achievable, appeared to replicate on American soil the profound imbalance in wealth and power between postcolonial states and their past imperial rulers. The RNA emphasis on territoriality effectively ignored the neocolonial dynamics that troubled Third World figures like Kwame Nkrumah and Oginga Odinga. As the historian Sam Klug writes of the disconnect between RNA arguments and the developing Third World analysis, the postcolonial reality was one in which formal territorial sovereignty did *not* necessarily entail substantive economic and political self-determination. After all, the “imperial power no longer depended as much on the control of physical space.”<sup>43</sup>

Furthermore, the focus on land itself embodied a significant political limitation with respect to Indigenous peoples. Indeed, this limitation had existed in earlier invocations of African American separatism or colonization plans, whether in the Black belt, Kansas, or Liberia. As such, while those in the RNA, alongside other Black Power activists, may have strongly invoked Native expropriation as a foundational aspect of American colonialism, their own relationship to this expropriated territory could often fall prey to settlerist assumptions.

In general, the era’s Indigenous activists—who gravitated to the framework of Red Power and to organizations like the American Indian

Movement (AIM)—viewed positively the shift in Black political emphasis from civil rights to decolonization. For the scholar and activist Vine Deloria Jr., a central intellectual figure in Red Power politics, the problem of the traditional civil rights movement was that the creedal and constitutional language of inclusion for African Americans seemed premised on the erasure of the country’s settler past. It implicitly rejected the right of distinct peoples subject to the US state’s sovereign control—including Indigenous nations—to be autonomous and self-determining polities. As Deloria wrote in his seminal 1969 book, *Custer Died for Your Sins*, “conflicts are created when Indians feel they are being defined out of existence by the other groups.”<sup>44</sup> In this way, the embrace of decolonization by the period’s Black radicals embodied a rubric within which Indigenous self-determination could be fully articulated.

At the same time, projects like the RNA never properly confronted what it meant that the territory they claimed for a new Black nation was still expropriated Indigenous land. Their territorial focus thus unwittingly reproduced the Euro-American drive for settlement. This version of Black decolonization, Klug explains, ignored “the possibility that [Indigenous peoples] might have a continuing interest in the land.”<sup>45</sup>

Ultimately, though, the goal of a separate Black territorial nation-state—including through the RNA—foundered on two realities: the intensity of sustained federal and local police crackdowns against proponents, and the general lack of meaningful Black political support. This lack of support meant that territoriality failed both as the substantive agenda for decolonization and as an organizing strategy for the African American community. And the broader problems with either armed struggle or an internationally approved plebiscite challenged the basic utility of the colonial metaphor for the Black experience in the United States.

## Decolonization through Constitutional Transformation

In the face of these profound dilemmas, radical African American activists could have simply abandoned the colonial conceptual framework. But by the end of the 1960s, activists in the Black Panther Party began to conceive of decolonization in a way that addressed their distinctly American conditions, and that accepted the inevitability of Black political embeddedness within the US project.

In particular, Party voices imagined decolonization as involving a re-founding of the American polity, but on terms that distributed sover-



eign authority to communities long denied real material and political power. And they focused strategically on building a genuinely multiracial coalition committed to such change—not unlike that which King had sought to organize into a Poor People’s Campaign before his assassination. As part of this coalition-building, the BPP even imagined collaboratively developing, alongside non-Black Left allies, a new constitutional document that could pave the way to a truly liberated society.

#### THE POLITICS OF BLACK LIBERATION AND AMERICAN REVOLUTION

Within the BPP, there had certainly been an awareness of how transforming the Black condition would necessarily involve accompanying changes in the larger society. In 1968, Eldridge Cleaver had evocatively summarized this linkage in his call for “Revolution in the White Mother Country and National Liberation in the Black Colony.”<sup>46</sup> But at that time, Cleaver’s framing centered on a fairly conventional version of the colonial analogy, which more or less directly grafted Third World politics onto the United States. In invoking Black liberation and American revolution, he referred to the “Black Plebiscite” as the party’s “major political objective,”<sup>47</sup> especially given plans that July for a push on behalf of the initiative in the United Nations, alongside SNCC leaders.<sup>48</sup>

Yet as the plebiscite idea lost steam and activists connected to the party moved beyond it, they focused more explicitly on how Black liberation might fit within a vision of dramatic American political and economic transformation. James Boggs, once a colleague of C. L. R. James, was one key Black socialist voice. A longtime worker in the Detroit Chrysler plant and an influential figure for 1960s Black radical labor organizing, such as the Dodge Revolutionary Union Movement (DRUM), Boggs played a central role in sustaining Black socialist and internationalist politics even under Cold War strictures. On the relationship between Black people and the broader society, Boggs wrote in 1970, “the Black Power movement must recognize that if this society is ever going to be changed to meet the needs of black people, then Black Power will have to resolve the problems of the society as a whole and not just those of black people.”<sup>49</sup>

In a sense, Boggs critiqued both a conventional internal colonialism narrative and a traditional civil rights one. The standard grafting of Third Worldism tended to treat the projects of Black freedom and

of change in majority white society as on related but separate tracks. In Boggs's view, this continued to miss King's essential insight: that Black and white society were permanently and mutually entangled.

At the same time, formal equality clearly had failed to provide an adequate emancipatory horizon for African Americans, let alone for the society generally. This was demonstrated by the failures of the traditional civil rights frame to address the interpenetration of racial subordination with structural class domination. For Blacks to be free in the United States, all the existing corporate and governmental hierarchies would have to be dislodged. This was because such hierarchies denied most individuals—regardless of race—economic independence and daily control over their lives. As Boggs concluded, with clear echoes of King's call for a "radical restructuring," "Black Power cannot evade tackling all the problems of this society, because at the root of all the problems of black people is the same structure and the same system which is at the root of all the problems of all people."<sup>50</sup>

As the decade closed, the Black Panther Party systematically engaged with the implications of these arguments. Indeed, Bloom and Martin note that, from the party's founding, it had always diverged from "many black nationalists" in "ma[king] common cause" with non-Black entities on shared anti-war, anti-capitalist, and anti-imperialist grounds.<sup>51</sup> This had already involved work alongside the SDS in organizing around draft resistance.<sup>52</sup> It also included the party's close ties to San Francisco State University's Third World Liberation Front (TWLF), which brought Black, Latinx, and Asian American students together under the banner of "educational self-determination." The TWLF call for new ethnic studies programs reflective of non-European experiences and infused with anti-imperial values reverberated across California, leading to numerous student strikes and protest actions.<sup>53</sup>

As non-Black Left groups increasingly looked to the Panthers for leadership, including in the wake of the Chicago Democratic Convention, the Panthers turned even more aggressively to stitching together a broad-based social movement—one grounded in viewing Black freedom and American transformation as a unified project. New Left formations proliferated during the era, alongside the SDS and TWLF, including everything from Puerto Rican, Native American, Asian American, and Mexican American groups to emergent radical feminist, gay rights, and poor white collectives. The BPP thus reached out to these activists to create shared institutions and organizational homes for jointly developing insurgent projects.

By 1969, these movement-building efforts in Chicago developed into a “Rainbow Coalition,” pursued by the Illinois party chairman, Fred Hampton, as an internationalist and multiracial political movement.<sup>54</sup> Figures like Hampton sought to develop solidarities with white communities despite racial divides by focusing on class-based and socialist organizing, which emphasized shared identities as fellow workers and as individuals economically exploited by capitalist elites. The goal was to build institutional power among oppressed groups outside the established sites of economic and political authority. Such coalitional alliance would create something akin to what various radical organizers in the first half of the twentieth century had sought: a permanently mobilized base of support that could effectively embody a government behind the government. This mass entity could continuously intervene in labor or political disputes, whenever the interests of the underlying communities were at stake.

Hampton and other Panther leaders believed the BPP was perhaps uniquely situated to serve as the connective tissue binding a new transformative alliance. This was the case even though the Panthers were always a relatively small organization, certainly by comparison with something like the 1930s CIO—a previous insurgent and class-conscious movement. As noted in chapters 8 and 11, the CIO’s presence across the industrial economy meant that it had the ability—through strike actions at the point of production—to essentially shut down critical economic infrastructure, not to mention to bring out countless workers on election day. Any practical power the Panthers enjoyed paled before such past labor radicalism, let alone relative to the extreme might of the American state. As Nikhil Pal Singh writes, “with only a few shotguns and only a handful of members in many Party chapters across the country, the Panthers were not a ‘real’ threat to the organized violence of the state.”<sup>55</sup> But the war in Vietnam had created a cultural opening for their vision of a unified global and domestic struggle against empire, and an American Left political environment in which the BPP enjoyed elevated status.

The Panthers’ largest and most sustained national attempt to expand on projects like Chicago’s “Rainbow Coalition” was its summer of 1969 “Revolutionary Conference for a United Front against Fascism.” As the party declared in its conference announcement, this event aimed to bring together all the relevant formations on the political Left, so as to develop in common a full political agenda for “poor, black, oppressed workers and people of America.” That conference led to the creation

across the country of various National Committees to Combat Fascism (NCCFs): multiracial groups that would work in parallel with Panther chapters. “By April 1970,” Bloom and Martin tell us, “NCCFs were opened and operating in at least eighteen cities around the country.”<sup>56</sup> Thus, through the NCCF project and beyond, the party continued to experiment with multiracial and radical coalition-building with a view to broader national transformation.

#### DEVELOPING A PANTHER CONSTITUTIONAL POLITICS

Most significantly for the purposes of this book, Panther activists attempted to write—collaboratively with non-Black Left organizations—a comprehensive policy framework for a revolutionary society, beyond the BPP’s own specific ten-point program. In 1970 this joint undertaking took the form of the party’s drafting of a new constitution for the United States.

The Panthers’ interest in constitutional politics as a register for presenting the combined objectives of Black liberation and American revolution did not materialize out of nowhere. Not unlike the Socialist Party or the IWW before them, party members often held together two arguments about the existing constitutional system. On the one hand, activists rejected any identification with a creedal nationalist project and instead asserted their own primary and internationalist political affiliation with oppressed peoples everywhere. For this reason, the ten-point program, initially distributed in 1967, had gone even further than King’s call for individuals to declare conscientious objector status when drafted for Vietnam. The platform contended that all African Americans, as a colonized people, should be exempted permanently from any military service: “We will not fight and kill other people of color in the world who, like black people, are victimized by the white racist government of America.”<sup>57</sup>

As the governing document of this colonial order, the Constitution was therefore often depicted as a symbolic and institutional embodiment of an unjust system. As one Panther member, James Mott, explained: “The Constitution is the ideological foundation of the American way of life.” The text perpetuated a myth of liberal equality, while in practice facilitating a legal-political order that subordinated Black people. Referencing the presumptive creedal connection between the Declaration of Independence and the federal Constitution, Mott continued, “it is supposed to stand for life, liberty and the pursuit of

happiness,” but has instead “become a symbol of political oppression, economic exploitation and social degradation of a people who have suffered 400 years of humility.”<sup>58</sup>

On the other hand, from their very genesis the Panthers had invoked their rights under the Constitution as a way of highlighting their own lawfulness as well as the violent impunity with which the state and private white vigilantes oppressed Black people. The initial ten-point program included repeated calls for American officials simply to make good on the constitutional rights they presumptively guaranteed to all, especially with respect to the carceral and security apparatus of the state.<sup>59</sup>

Focusing especially on police brutality in Black neighborhoods, Panthers also maintained that they had the Second Amendment constitutional right to carry weapons in community patrols of the police, so as to protect individuals against the everyday violation of Black rights. Reminiscent of early-twentieth-century socialists defending their speech rights against the police, Panthers who took part in such patrols even brought with them copies of the Bill of Rights. Like those past radical activists, Panthers too would reference the text in hand when collecting information about inappropriate police behavior.<sup>60</sup>

In keeping with a long history of dissident constitutional argument, activists invoked the text to undermine official narratives around the government’s fidelity to the law. Community patrols of the police had been not Black extremism and violence but instead self-defense: a law-abiding and constitutionally protected method of ensuring that the actual source of collective violence, the armed state, could be held to public account. Underscoring this point, the legal scholar Bridgette Baldwin writes that Panther activists “required” those on community patrol “to stay within legal bounds—refrain from cursing, keep guns always visible, and read the law.”<sup>61</sup>

This focus on lawfulness even extended to armed confrontations. If police employed violence against Black people and party members in their communities, the BPP’s constitutional discourse suggested that defensive responses were legally grounded. As one BPP member contended, “the Constitution”—with the Bill of Rights front and center—was “based upon the idea of the power of the people to enjoy certain ‘inalienable rights.’” Given that the existing government systematically denied such rights to Black people, in violation of its own Constitution, “the police . . . as arms of this type of government have no right in our communities.” By implication, Panthers asserted an embedded right of resistance within the text when police initiated these attacks. Law-

less state security personnel failed to “liv[e] up to . . . the Constitution, and . . . [were] therefore illegitimate bodies in our society.” Under those circumstances, Black self-defense was consistent with the Declaration of Independence and even the Constitution.<sup>62</sup>

In this way, constitutional discourse served two connected functions for the Panther activists—it allowed them to articulate *both* a project of radical institutional rupture *and* one of respect for legality. Constitutional claims could even potentially extend to legal defenses of armed struggle. Still, one should note that, for various Panther activists, an additional benefit of constitutional argument was that it offered a potential off-ramp from violent confrontation with the state.<sup>63</sup> There were voices within the Party that were more skeptical of armed struggle’s viability as a genuine pathway to change, for many of the reasons King had highlighted. Moreover, unlike groups such as the RNA, leading Panther members wanted to develop a project capable of including all oppressed Americans. Thus, they sought to imagine nonviolent mechanisms for building movement power and for transforming existing institutions.

As a consequence, constitution-writing in particular became a way to potentially reach a broader multiracial audience: the language of constitutionalism maintained contact with the norms and traditions of the majority white society, while still suggesting an irruptive politics. As a shared enterprise in re-founding, constitution-writing was culturally American. And yet, such writing nonetheless provided space for radical activists to proclaim a revolutionary agenda that reconceived prevailing arrangements root and branch.

Perhaps no one better articulated these interconnected qualities of Panther constitutionalism than the party member Afeni Shakur. Writing in the *Black Panther*, the party’s newspaper, she asserted that it was long past time to replace “the outdated document of two centuries ago” and to forge genuinely equal and effective freedom for all, regardless of race. She emphasized the extent to which constitution-writing, though a fundamentally transformative enterprise, should be understood as a nonviolent alternative to armed struggle and “revolutionary suicide.” As she concluded, “we cannot afford not to rewrite this document! We must attempt this last straw at National Salvation under this present system, for we must exhaust all legal means. We know that there can be no peace until there is land, bread, housing, education, clothing, justice and blessed liberty!”<sup>64</sup>

In addition to being both nonviolent and revolutionary, the constitution-writing exercise also emphasized the decolonial and coali-

tional nature of the Panther project. For starters, the symbolic action of writing a new governing document to replace the 1787 Constitution offered a concrete way of thinking through the specific meaning of decolonization in the American context. Alongside lowering old European flags and raising new Asian and African ones, the writing of new constitutions abroad had become a defining act of colonial rupture and Third World independence. It expressed the extent to which sovereign power was now transferred from imperial rulers to a local and self-determining people. By engaging in a similar form of symbolic break, the Panthers emphasized their own decolonial ambition: they aimed to move sovereign power from wealthy white governing elites—effectively the ideological descendants of the 1787 framers—to a broad coalition of those historically oppressed.

Since this document was meant to be written in collaboration with various non-Black political formations, the exercise also underscored the differences between national liberation in parts of Asia and Africa and Black liberation in the United States. Pushing beyond the idea of a plebiscite, the new document would re-found American society in ways that transcended its colonial infrastructure, while respecting the mutually entangled nature of white and Black communities, among many others. Moreover, such a collaboratively generated text could also articulate demands that had no direct relation to race and colonialism, thus expressing the will of all marginalized Americans regardless of background or identity.

Therefore, the Panther desire to write a new constitution also implicitly served an interest in movement-building activity for this united front. Working together on a common agenda embodied a concrete way of developing solidarity across constituencies, and of seeing how one's own freedom connected to overcoming the oppression faced by other communities. Thus, members like Afeni Shakur spent a significant amount of time in 1970 going to meetings, protests, and events organized by other Left groups, and also personally inviting them to participate in the Panthers' constitutional convening.

In line with the era's radicalized climate, these years witnessed a rebirth in feminist politics as well as the emergence of a self-assertive new gay rights movement. Such organizations often felt alienated by how various male Panther members embraced a militaristic and traditionalist posturing around gender norms and roles. Given these dynamics, Shakur in particular reached out to organizations like the Radicalesbians and the Gay Liberation Front to ask that they take part in planning

meetings for the Panthers' constitutional convening, to ensure that their agendas would be adequately represented.<sup>65</sup> In a sense, Shakur and others, as with earlier BPP efforts around draft resistance or student strikes, explicitly sought a politics that could integrate Black liberation with the struggles facing other subordinated groups—without losing the distinctiveness or particularity of each community's history and experience.

#### THE REVOLUTIONARY PEOPLE'S CONSTITUTIONAL CONVENTION

The Panther experiment in constitution-writing culminated with the September 1970 staging in Philadelphia of a Revolutionary People's Constitutional Convention, perhaps the country's last culturally resonant moment of mass constitutional rejectionism. Indeed, the location and date embodied a large-scale counter-convention, in opposition to the by then routine anniversary celebrations of the 1787 text and its framers.<sup>66</sup>

As summarized in the *Black Panther* newspaper, keynote speeches like those by the party member Cetawayo (Michael) Tabor aimed to demonstrate how the existing constitutional order had, from the beginning, been designed to subordinate “240,000 [white] indentured servants, 800,000 black slaves, 300,000 Indians, and all women, to say nothing of sexual minorities.”<sup>67</sup> This counter-convention therefore aspired to reclaim sovereign power for everyone oppressed—regardless of race, gender, or sexual orientation—who would now finally articulate, in their own terms, the substance of their liberation.

In the lead-up to the event, organizers faced intense police repression. Frank Rizzo, the Philadelphia police commissioner at the time and the city's future Democratic mayor, was a well-known opponent of desegregation and was absolutely committed to using the full force of the police against any and all Black activism. In 1971 Rizzo would infamously declare that all Panther members should be “strung up” and that combating them should be viewed as “actual warfare.”<sup>68</sup> In the lead-up to the Convention, Rizzo's police department systematically attempted to shut down Panther offices and arrest Panther members. This came to a head the week before the actual event, when Rizzo used the pretense of an unrelated police killing to raid three BPP offices, arresting and stripping members naked at gunpoint—images captured in photographs that circulated across the country and overseas.<sup>69</sup>

But despite the police violence, the event itself went off peacefully



and with strikingly large numbers given the climate of ever-present state repression. Participant estimates ranged from 12,000 to 15,000 people, with 5,000 to 6,000 attending the plenary sessions at Temple University as well as Huey Newton's opening speech (his first major event since his own release from prison). Thousands more stood outside the doors but could not get seats.

The actual delegates to the Convention, as one participant, George Katsiaficas, recalled later, came "from an array of organizations" besides the Panthers, speaking to the success of coalition-building efforts. Alongside the already mentioned Gay Liberation Front and Radicalesbians, these entities included "the American Indian Movement" and the Chicano activist group the Brown Berets, as well as "the Young Lords, I wor Keun (an Asian-American group), Students for a Democratic Society . . . and many feminist groups." Katsiaficas added that mingling in the crowds were also "representatives from African liberation movements, Palestine, Germany, Colombia, and Brazil."<sup>70</sup> Magazine reports at the time noted the presence of high-profile activists and celebrities, from Abbie Hoffman, Jerry Rubin, Tom Hayden, and William Kunstler to Muhammad Ali himself.<sup>71</sup>

Ultimately, the most remarkable aspect of the Convention was neither the collection of keynote speeches nor the general pageantry. Instead, what stood out was the actual substantive text the delegates produced.

Alongside plenary sessions, participants broke out into specific workshops in which delegates from across the various organizations developed constitutional reports framed around issue areas. These included (1) "internationalism and relations with liberation struggles around the world"; (2) "self-determination of street people"; (3) "self-determination of women"; (4) "demands from the male representatives of national gay liberation"; (5) "the family and the rights of children"; (6) "control and use of the legal system and political prisoners of war"; (7) "control and use of the educational system"; (8) "control and use of the military and police"; (9) "health"; and (10) "revolutionary art."<sup>72</sup>

Furthermore, the medium-term Panther ambition was for a "continuance committee" that would distribute these reports nationally to party chapters and coalitional partners. The reports would form the basis for further discussion in advance of a second conference. That subsequent conference would then ratify a new single constitutional document, fusing together the reports, and would also strategize how to pursue its political implementation.<sup>73</sup>

Taken together, these reports clearly constituted a continuation of the socialist and internationalist politics already expressed in the initial BPP ten-point program, with its earlier calls for a basic right to food, health, housing, clothing, and education as well as military exemption, full employment, and a guaranteed income.<sup>74</sup> Yet, as George Katsiaficas has noted,<sup>75</sup> the documents went significantly further than the spring 1967 platform in spelling out the details of a transformative agenda.

For starters, the substance of this agenda pushed away from a simplistic analogy between the United States and many newly independent Third World states, in which decolonization could partly revolve around simply eliminating a relatively thin layer of imperial administrators. Although the documents never used the phrase *settler* colonial, they nonetheless grappled with the reality that European colonists—in wresting political supremacy and land from Native peoples—had built a majority white society in a corner of the non-white world. Moreover, the different social position of groups such as African Americans (with their history of enslavement), Native peoples (with their experience of expropriation and extermination), Mexican Americans (given a related history of conquest and ongoing discrimination and dependent labor status), or Puerto Ricans (legal subjects of an imperial state) spoke to the real complexities of overcoming the American brand of colonialism. Each of these oppressed groups, while all caught up in the same overarching structures of colonial power, was located in collective life in profoundly distinct ways, with necessarily different implications for the meaning of freedom.

Thus, under the rubric of writing a new constitution, participants across the workshops stitched together a variety of proposals aimed at a specifically American, rather than Asian or African, decolonization. First, this meant constitutionally entrenching the sovereign right of all colonized peoples, including Puerto Ricans and Indigenous nations, to determine—once and for all—their future political status, as well as what legal relationship (if any) they wished to have with a reconstructed United States.<sup>76</sup>

Second, the reports called for material restitution for “any oppressed people throughout the world” harmed by American imperial power. Participants essentially took the idea of reparations, more commonly invoked for Black enslavement or Native expropriation, and transformed it into a global platform to contest all the extractive and violent effects of US statecraft. Such activists contended that the country’s wealth had been built on colonial expropriation, at home and abroad.

Consequently, the United States had a responsibility to “take the wealth of the country and make it available as reparations” for Black Americans, Indigenous peoples, and colonized territories like Puerto Rico, as well as for nations including Vietnam that had been subjected to mass Cold War violence.<sup>77</sup> Rather than linking assistance to Cold War alignments or to accounts of American moral largesse—such as the Marshall Plan and other existing aid efforts—participants imagined a genuinely global and inclusive project of economic solidarity.

Third, within the country, the state had to engage in systematic resource redistribution. This was in part because some colonized groups, such as Black and Mexican American communities, would inevitably remain bound to a majority white society. Resource redistribution ensured that any such persons, along with poor whites, would nonetheless enjoy economic security, as well as control over the basic decisions shaping their material and workplace lives. The reports thus repeated many of the ten-point program’s earlier material demands, and called for “full, equal, and non-exploitative employment,” a “guaranteed adequate income for all,” and the right to “health care, housing, food, clothing, transportation and education.”<sup>78</sup>

Fourth, participants demanded basic changes to the representative scheme of the federal government, such that all communities gained equal participation in political decision-making. According to activists, the long history of extreme disenfranchisement meant that the governing class continued to be composed almost exclusively of the same gendered and racial elite. For this reason, “Black and third world people,” as well as “women,” had to be “guaranteed proportional representation in the administration of [governing] institutions.”<sup>79</sup>

Fifth, decolonization required a basic shift in the cultural self-understanding of the overall society. In response, Convention participants called not just for a constitutional right to universal education, from preschool to higher education or “advanced study.”<sup>80</sup> They also declared the need for what the earlier ten-point program described as “education that teaches us our true history and our role in the present-day society.”<sup>81</sup>

For BPP activists, creedal nationalism was only the latest iteration of long-standing national mythologies grounded in white innocence and political heroism. In contrast to all these mythologies, Convention participants argued that many Black and brown communities experienced living in the United States as a form of internal exile. This meant that accepting the dominant cultural accounts forced oppressed groups

to essentially celebrate their exile and to suppress their own deep estrangement. Tales of white frontier valor told Native peoples that, as a requirement for gaining minimal respect (not even actual sovereignty and political autonomy), they must first agree to their own expropriation as the natural order of things. Similarly, reading the 1787 framers as proto-liberal egalitarians required Black communities to deny that their sustained experience of enslavement and subordination embodied an essential truth about the nation's character.

At root, then, was the goal of reconstructing the country's shared historical memory, and of creating a broader public consciousness in which marginalized groups could speak the existential truths of their lives and articulate grievances in their own language. This was also why the Convention included an entire workshop on "revolutionary art." In anti-colonial struggles abroad, such art had been central to marking cultural breaks with the imperial past and to shifting collective accounts of community, including through new flags, symbols, institutional names, and iconography, as well as literary and other art forms.

The last decolonial demand involved the abolition of the existing security apparatus of the state. It was perhaps the most extensively articulated element in the reports, and clearly resonated with independence politics in Asia and Africa, where military and police personnel were long used to repress anti-colonial activism. With respect to the US military, the documents therefore asserted an end to the draft and a constitutional mandate constraining "U. S. aggression and interference in the internal affairs of [foreign] nations."<sup>82</sup> They also called for a demobilization of the standing army, "since historically a standing army has been used for offensive actions against the people of the United States and around the world."<sup>83</sup>

The reports demanded a similar demobilization with respect to both policing and the prison system. Given the inherent racial and class injustice of the prison system, all incarcerated individuals were entitled to new trials.<sup>84</sup> And for those convicted in these new trials, "jails would be replaced by a community rehabilitation program."<sup>85</sup> As for existing police forces, the reports detailed the creation of new civilian agencies, in which there was "no distinction between the people and the police because of their function." In other words, rather than armed, often white security personnel patrolling streets, new civilian entities would consist of community members skilled in resolving local social problems. Such agencies would replace not only municipal and state police departments, but also the FBI and its "national body of police." They would

be organized through locally and democratically controlled oversight boards and would ban outright the ubiquitous use of “secret” security officials, informants, and “un-uniformed police.”<sup>86</sup>

These reports did not include every decolonial element that circulated in the mid-twentieth century, some of which have since gained global currency. For starters, the reports may have mirrored Congressperson Vito Marcantonio’s 1930s call to combine the end of colonial rule in Puerto Rico and elsewhere with genuine material restitution. But unlike Marcantonio, they did not really explore how post-independence migration policy could be a mode of decolonization.<sup>87</sup> They also did not specifically mention land return to Native American communities. Nor did they discuss truth commissions to create an established public record of past colonial crimes, or actual judicial proceedings to hold state officials accountable. And, of course, the BPP calls had their own internal complexities and clear challenges for implementation.

Nonetheless, the reports constituted a remarkable effort to address the specific dynamics of the American experience, rather than merely impose a Third World frame. One illustration of this was the extent to which many of these demands were universal in application. Whether concerning wealth redistribution or an end to the security state, these proposals may have addressed racial domination. But they did so in ways, following arguments from James Boggs or Martin Luther King Jr., that transformed the social experience for all, regardless of race, including for marginalized and poor white communities.

The workshops on gay and women’s liberation perhaps best reflected the Convention’s desire to create a comprehensive agenda. Rather than forcing all claims into a single narrative register—and thus reproducing one of the cultural critiques Black radicals made of mainstream white creedalist society—the Convention aimed to ensure that LGBTQ+ and feminist activists could articulate their agenda in their own language, which might not be decolonial. Thus, reports included the constitutional “right to be gay anytime, anyplace,” guarantees that “all modes of human sexual self-expression deserve protection of the law and social sanction,” and full LGBTQ+ “represent[ation] in all governmental and community institutions.” They also demanded extensive rights for transgender persons, from “the right to free physiological change and modification of sex” to greater linguistic respect for all gender-nonconforming individuals, for instance by ensuring that “language be modified so that no gender takes priority.”<sup>88</sup>

Finally, “The Workshop on the Self-Determination of Women,”

facilitated by Afeni Shakur, articulated a striking synthesis of Black and socialist feminism. It argued that “women in a class society have been continuously exploited, through their work, both in their home and outside their home.” This was because the functioning of existing capitalist relations rested fundamentally on the often unpaid, privatized, and hidden provision of reproductive and caring work, structurally consigned to women. Within this context, women of color often found themselves doubly exploited. Their care work within their own families enjoyed limited support and recognition from state and public resources; and they were also routinely the poorly paid caregivers for other middle-class and affluent families.

For this reason, the report highlighted the specific intersection of race and class within this gendered division of labor. It called for “an end to the sexism which forces women into the lowest paying service jobs and the racism that insures that third world women will be the lowest paid of all.” It then detailed specific policies that should be established as emancipatory alternatives to the “patriarchal family.” These included—alongside a restatement of the need for universal full employment, a guaranteed income, and other basic socioeconomic protections—the “socialization of housework and child care with the sharing of work by men and women,” extensive reproductive rights (“there should be free and safe birth control, including abortion, available on demand”), and constitutionally “guaranteed paid maternity leave.”<sup>89</sup>

Unfortunately, these reports embodied the high-water mark for the Panthers’ efforts at collaboratively articulating a concrete vision of a decolonial and revolutionary alternative. Plans for participants to reconvene in Washington, DC, in November 1970 to hold a massive ratification of the new constitution more or less collapsed. Thousands of activists arrived in DC on the appointed dates—Katsiaficas reports the number as 7,500 people—but no second convention was actually held. Instead, Newton told an assembled audience that they would have a “rain check” for another constitution-writing exercise, once the actual revolution came.<sup>90</sup>

## Blocked Pathways and Systematic Political Defeat

By late 1970, the Black Panther Party was already being consumed by problems that, over the next year, would lead to a profound splintering of the movement. Following the analysis of the Panther scholars Bloom and Martin, I describe how a combination of state repression and state

accommodation steadily isolated the BPP from a broader base of support, and also helped to sow deep internal divisions. The constitutional project, along with the wider organizing around a united front, ultimately fell victim to these developments. At the same time, party activists were never able to connect means and ends—including with respect to their constitutional vision—in ways that effectively imagined a step-by-step process for structural transformation.

THE COMBINED CHALLENGE OF STATE  
REPRESSION AND STATE ACCOMMODATION

While in August 1968 Eldridge Cleaver contended (and many Americans concurred) that the existing legal-political system could not address collective demands, just three years later fewer white and even Black Americans would have agreed. The war may have radicalized a striking number of young people, but much of this radicalization was pegged to the particular dynamics of the conflict. Bloom and Martin note how a variety of “concessions” sapped anti-war and activist interest in more wholesale structural changes.<sup>91</sup> As both major political parties moved to contain the war after the 1968 election, this dampened revolutionary energy and also reaffirmed faith in the ameliorative potential of the wider system.

President Richard Nixon’s “Vietnamization” approach meant a steady decline in US troops on the ground in Vietnam, from 540,000 at the start of his first term to 160,000 at the end of 1971. Just as significant as the reduction in troops and related casualty numbers, fewer Americans found themselves drafted—down to less than 95,000 by 1971.<sup>92</sup> That same year, Congress proposed (with a unanimous vote in the Senate) the Twenty-Sixth Amendment, reducing the voting age to eighteen, and the states ratified it soon after. The constitutional amendment responded to anti-war and student activist claims about youth disenfranchisement. And it even suggested that—despite the massive supermajorities needed for formal textual alteration—the process could, in exceptional circumstances, still function. After his 1972 reelection, Nixon finally ended the draft entirely.

In this context, with Democratic leadership shifting gears and defending an end to the war, and with even Nixon pursuing a drawdown, anti-war sentiment became thoroughly mainstreamed. Yet, crucially, it also became disconnected from the larger anti-imperial and anti-capitalist vision the Panthers espoused. One could, with far less internal

tension, oppose the war *and* be a resolute Cold Warrior—and someone who believed deeply in the American liberal constitutional model. For many white Americans, including more and more young people, whereas the war once suggested the limits of US institutions, by 1972 it could be treated as a deviation from national principle. Reinforcing this sense was the fact that the existing governing framework seemed able, in the final analysis, to incorporate anti-war demands.

Within Black life, insurgent energy similarly declined. This was due not only to the US drawdown in Vietnam, but also to a slow but meaningful incorporation of Black Americans into economic and political life. Lyndon Johnson's "Great Society" social programs began to alleviate some of the worst extremes of immiseration. At the same time, another key response of the Democratic Party to the 1968 Convention—besides shifting positions on the war—was to become a far more racially diverse elected body. Bloom and Martin write that between 1969 and 1975, "the number" of "Black people" in "political offices across the United States" "more than tripled to 3,499."<sup>93</sup>

These officeholders overwhelmingly espoused views that aligned far more with traditional civil rights positions than with Black radical internationalism. But for many African Americans, the dramatic rise in electoral representation—especially in cities with large Black populations—could be concretely experienced as a victory for the idea of Black Power. And these state accommodations cooled the pressure cooker that had become American politics, and that fed the mass appeal of groups like the Black Panthers.

The carrot of accommodations also went hand in hand with the stick of a sustained state assault on the Panthers' organizational infrastructure and leadership.<sup>94</sup> During these years, Nixon made good on his 1968 "law and order" campaign, initiating an intense crackdown on Left entities, especially those with any Black leadership. Indeed, groups such as the Panthers did not simply recede in the face of a moderating anti-war and activist base. White officials confronted them by force, through systematic infiltration and intense violence, leaving their movements decimated and engulfed in internal recrimination.

The constitution-writing project was a clear victim of these secret federal police efforts at sabotage. Huey Newton had been personally disappointed with the lack of enthusiasm that greeted his keynote speech at the Revolutionary People's Constitutional Convention and, in part for that reason, seemed to have soured on the drafting experiment. He began associating it with Eldridge Cleaver, whom he viewed as a threat



to his position in the party, and so did not mind when the overall effort began to fade. Critically, these interpersonal conflicts had been stoked by the state. The FBI worked assiduously to sow discord, for instance by circulating disinformation to pit Newton and Cleaver against one another. In fact, after the September 1970 Convention's success as a mass event, the bureau's Los Angeles office recommended the following to various covert operatives and informants within the Panthers: "Each division which had individuals attend [the RPCC] write numerous letters to Cleaver criticizing Newton for his lack of leadership . . . [in order to] create dissension that later could be more fully exploited."<sup>95</sup>

Such secret police actions went much further than psychological operations. Even before the RPCC, Fred Hampton—a central figure in developing the united front strategy—had been assassinated by a Cook County tactical unit in a raid coordinated with the FBI and the Chicago Police Department.<sup>96</sup> Then, just two days after the end of the Convention, which Afeni Shakur played such a pivotal role in promoting and organizing, she too stood trial in New York with a number of New York BPP members on bombing conspiracy charges. The group became known as the New York 21 and included RPCC plenary speaker Cetawayo Tabor among those indicted.

Shakur would eventually be acquitted, in part due to extensive evidence of the role that three paid police informants played in generating various plots in order to subvert the organization and jail its leaders.<sup>97</sup> Nonetheless, Shakur would spend substantial time, over a year, in prison. And, like many Black people subjected to the carceral state, she would then face real personal hardship and poverty on release. Indeed, today she is far better remembered as the mother of the late musician and actor Tupac Shakur—with her post-prison difficulties memorialized in his lyrics—than as a leading young Black activist in the 1960s. That history, when she was almost identical in age to Fred Hampton and, not unlike him, brutalized by the state, has been largely forgotten. Under circumstances like these, with members murdered, imprisoned, or forced into exile, it was nearly impossible for the Panthers to sustain mass mobilization.

The crackdowns also exacerbated a fissure in the movement over the near-term viability of armed struggle. Perhaps unsurprisingly, given their experience of extreme government repression, the New York 21 argued in 1971, in an open letter drafted by nine of Shakur's codefendants, that any gradualist approach to change had become untenable. The letter contended that activists had to take up arms immediately against

the US state. But for the national leadership, the coalitional inroads the party had made—along with the increasingly de-radicalized dynamics of American politics—meant that such armed struggle was doomed. And this ideological debate occurred in the cauldron of systemic state sabotage, pitting party members against each other, and promoted distrust and paranoia. It ultimately led to the expulsion from the party of most of the New York 21 Panthers, along with Eldridge Cleaver.<sup>98</sup>

All of this spoke to the success of the government's two-pronged strategy of repression and accommodation. State violence pushed elements within the party toward championing ever more extreme means and rhetoric, just as ameliorative reforms made that rhetoric appear increasingly irresponsible and dangerous to potentially sympathetic white and even Black citizens. The split that resulted effectively ended the era of the BPP as the epicenter of a truly national and multiracial mass political movement. Indeed, by the end of 1972, the party had largely retrenched back to its early base in Oakland, California, with most nationwide chapters shuttered.<sup>99</sup>

#### THE COLD WAR LIMITS OF THE PANTHERS' CONSTITUTIONAL IMAGINATION

If external factors drove the decline of the BPP, the collapse of united front efforts like the Revolutionary People's Constitutional Convention also spoke to internal limitations and tensions that activists were never able to resolve. For starters, the September 1970 RPCC had not been without its own interorganizational conflicts, especially over gender politics. Some feminist activists at the event continued to experience the Black Panther Party as deeply infused with a destructive masculinist sensibility. Although one of the Convention keynote speakers, Audrea Jones, was an African American woman and a Panther member, her talk did not specifically focus on women's oppression. In fact, much to the chagrin of many feminists attending, beyond general references to sexism none of the keynote speeches engaged meaningfully with issues of patriarchy.

As for the workshop on women's self-determination, the document no doubt distilled key aspects of Black and socialist feminism. But it excluded some of the more radical lesbian feminist demands, such as, according to the historian Alice Echols, "an end to the sexual programming of children, the destruction of the nuclear family . . . the establishment of communal child-care facilities under the control of 'woman-

identified women,”<sup>100</sup> and an affirmative commitment to strengthening same-sex female relationships instead of simply protecting “homosexual” or “bisexual” identity.<sup>101</sup>

Moreover, dynamics in the workshop again reinforced concerns about Panther gender politics. Some women delegates believed that male Panther members were attempting to delay or even cancel the workshop, given their uneasiness with potential demands. When the workshop finally took place, these feminist participants were uncomfortable with the presence, supposedly as protection, of male Panther guards in the room. All of this led to a partial walkout of the Convention by members of the group Radicalesbians, and to their writing a separate unofficial report. Such actions dramatized, in miniature, the profound difficulties of bridging coalitional divides.<sup>102</sup>

Beyond these difficulties, the Panthers’ constitutional vision was strikingly limited in thinking concretely about the relationship between institutional process and transformative outcome. With the steady incorporation of Black people into electoral politics in the late 1960s and early 1970s, BPP activists never fully articulated why the Black achievement of the formal right to vote—in the context of an unaltered representative framework—did not complete American democracy.

For instance, unlike earlier Black socialists, BPP voices did not systematically engage with how poor and minority voting strength was profoundly diluted across gerrymandered single-member districts and state units in ways that constrained the radical potential of the ballot. Their main electoral constitutional suggestion entailed a general defense of proportional representation on race and gender grounds. Such an idea was no doubt innovative, seeking the meaningful political inclusion of women and minorities into traditionally exclusionary institutions and spaces. It certainly presaged future global trends, as today 120 countries have some version specifically of legislative gender quotas—with African polities leading the way.<sup>103</sup> And it may have helped, given that governing bodies remained disproportionately dominated by historically empowered elites—though, in the American context, legislative and other institutional quotas ultimately proved a bridge too far for white national politicians.

Still, from the beginning of the 1970s, more women and minorities were clearly being elected, appointed, and broadly incorporated into positions of power. To the extent that the principal RPCC demand regarding the electoral process was for increased racial and gender diversity in officeholders, the existing system appeared capable of meet-

ing these goals. Just as significantly, if Panther activists sought an anti-capitalist and anti-imperial future, diversifying the composition of the political class over the 1970s actually seemed to have the opposite effect—only buttressing the legitimacy of Cold War creedalism.

Tellingly, the Panther constitutional framework entailed very few of the types of procedural demands Socialist Party activists had pressed for half a century earlier. The 1912 SPA platform included a comprehensive set of institutional reforms to the operation of government that could be implemented through popular codification, either by congressional legislation or by formal amendments. These reforms spoke to how the existing representative system failed as an embodiment of mass democracy. And they reconstructed the actual mechanisms of the 1787 Constitution, imagining that, by creating a broad enough working-class popular base, majoritarian voting could overcome—and eventually replace—the established legal-political order.

By contrast, the Panther Convention documents largely avoided the intricacies of what mode of government would concretely substitute for the 1787 Madisonian framework. In fact, the reports as a whole do not look like what we traditionally associate with a written constitution—organized as articles elaborating the specific powers of various branches of government. Although the documents offer some discussion of constitutional structure and constitutional rights, they far more closely resemble an expansive party agenda.

Part of the reason for this disconnect from conventional constitutionalism has to do with the distinct goals party activists associated with their brand of constitutional politics, and with their desire to frame the demands of their liberation agenda as a new American constitution. Again, the use of the word “constitution” was meant to underscore the symbolic importance of claiming sovereign authority for peoples historically marginalized—groups who had been able to gain partial inclusion only by first acceding to the ideological narratives and reform horizons governing elites deemed acceptable. Referring to their agenda as *constitutional* highlighted the fact that Black people and other oppressed groups had never been able to impose, within the United States, an actual conscious moment of decolonial rupture and accounting, in which they too could claim genuine self-determination and power.

Still, the lack of specificity about what exactly should replace the 1787 institutions implicitly left unchallenged the federal model as the defining account of representative democracy. And it indicated the degree to which many movement activists were on the other side of a Cold

War historical divide: one that truly separated them from Debs, Du Bois, or Harry Haywood. The intervening Cold War years may not have been enough to extinguish Black revolutionary politics, especially against the backdrop of Third World liberation struggles. But those preceding decades had largely erased from public consciousness, including within the Black counter-public, the extensive early-twentieth-century debates directly on constitutional structure. Those discussions—what to do with the states, whether or not to have a Senate, how to organize the federal judiciary—had been part of the drinking water of pre-Cold War Left politics. But limited memory of them existed to inform and sustain a subsequent generation.

#### THE BOGGSES AND THE POSSIBILITIES OF THE CITY

It was revealing that the Black socialist figure during these years that maintained an interest in the intricacies of constitutional design was none other than James Boggs, a person who spanned the Cold War divide and offered a Left intellectual link between distinct eras. Boggs thought seriously about how to update Communist Black belt ideas of self-determination for 1960s and 1970s American life. In particular, he argued that urban centers—rather than the rural South—had become the heart of Black cultural and political experience. As he and his spouse, Grace Lee Boggs, the Chinese American socialist author and activist, announced in their coauthored 1966 essay for the *Monthly Review*, “The City Is the Black Man’s Land.”

The Boggesses hoped to mobilize poor and working-class African American constituents to claim power over key cities, with the aim of reorganizing local economies and institutions “around the concrete grievances of the masses.”<sup>104</sup> Their ideas actually connect to recent 2010s efforts in Jackson, Mississippi by mayors Chokwe Lumumba (once himself a member of the Republic of New Afrika) and his son Chokwe Antar Lumumba to create, in the words of the latter, the “most radical city on the planet.”<sup>105</sup>

But notably, the Boggesses argued that the transformative capacity of Black city control—its potential to serve as revolutionary “beachheads”—would be hamstrung without structural changes to the federal constitutional system. In ways that followed 1930s and 1940s analyses by Du Bois and Haywood, they noted how state-based representation was the holdover of “an agricultural era.”<sup>106</sup> And, in the present, it gave disproportionate power to demographically white and

geographically rural and suburban spaces. The result was that national policy—a product of these institutional mechanisms—deemphasized the needs of Black poor and working classes living in cities, including by undermining their access to the broad provision of necessary goods as a basic public right.

In fact, starting in the 1970s, just these background realities would feed the electoral viability of establishment figures—including an emerging generation of Black politicians—who could work with business and national white elites to divide a limited municipal pie, on terms often dictated by corporate interests. Rather than promoting cities as radical beachheads, these politicians would largely replace one party machine with another.

Partially foreseeing these developments, the Boggsses contended that it was essential for a “black revolutionary organization . . . to formulate a new Constitution that establishes a new relationship of government to people and to property, as well as new relationships between the national government, the states, and the cities.” Four years before the RPCC, they too argued that radical groups should write a new constitution, which—as movement energy expanded—could become a galvanizing basis for a broad “call to a Constitutional Convention.” For the Boggsses, any such initiative would require activists to establish a clear account of institutional design—one that they could then promote in public debate. This way, as Black electoral coalitions gained control over cities, urban mass movements had a practical agenda for “defend[ing] themselves against the counterrevolutionary forces of the national power structure.”<sup>107</sup>

Significantly, the Panthers in their constitutional thinking never meaningfully took up the Boggsses’ invitation to conceive of “new relationships” between national, state, and city governments. In arguing for proper federal electoral representation for cities—where large Black majorities actually lived—the Boggsses imagined how aims of Black self-determination and genuine American democracy could reinforce one another.

These potential changes could have taken many forms. They might have included giving senators to major cities in a reconceived upper house—thus better representing the actual demographic and geographical diversity of the country. A place like New York City (the country’s largest, with a population now nearing 8.5 million) could then have a voice in the Senate more comparable to that enjoyed by Wyoming (the country’s smallest state by population, with fewer than 600,000

individuals). Or, perhaps more simply, they might have included assigning additional senators based on actual state population to reduce the malapportionment of the body. Other ideas might have entailed eliminating the Senate entirely (or making it largely ceremonial) and reconstructing the House on grounds of proportional representation, as SPA activists had long wanted. Such a House could be organized around multimember districts more likely to map the voting power of Black majorities. Indeed, related institutional reforms could have run the gamut from narrower alterations, like statehood or senators for cities such as Washington, DC, to a sweeping reimagining of federalism and the electoral system writ large.

Whatever the specific proposal, the Boggses' interest in city-based activism and representation indicated a practical concern with the deep impact of national and state dynamics. When left unaddressed, these dynamics imposed real constraints all the way down to the municipal level, with rippling racial and class effects rarely acknowledged in collective life. Indeed, the difficulties today facing radical efforts in places like Jackson, Mississippi are intricately tied to a hostile and white conservative-run state-level context, marked by top-down austerity and the denial of basic resources.<sup>108</sup>

#### RADICAL BLACK ORGANIZING AND THE MATTER OF INSTITUTIONAL DESIGN

The Boggses' basic idea of reconfiguring the role of the city in the legal-political infrastructure was absolutely of a piece with creative experiments in American decolonization. In this way it was consistent with Panther ambitions, as well as with some of the motivations that led RPCC participants to call for race- and gender-based representation.

None of this is to deemphasize the real creativity embedded in the RPCC's decolonial agenda and vision for a new American political community. However, the Panthers' lack of a thick institutional analysis ceded the debate over the procedural and electoral structures of democracy to white and African American mainstream voices. As more establishment Black politicians claimed control of city machinery, groups like the Panthers more or less had no argument to offer about why this failed to prove that American institutions worked effectively after all. In reality, the mere existence of African American mayors or even congressional representatives did not uproot the combination of racial and class hierarchy that many poor Black constituents experienced.

To a meaningful extent, the misallocations and blockages of the institutional system made it very difficult for those historically marginalized to drive national and state agendas, even if there were now more minority elected officials. But without any developed account of how American legal-political design contained transformative changes, Panther activists essentially acceded to a status quo in which democratic design was considered consonant with the existing electoral and representative arrangements. And for those increasingly suspicious of revolutionary talk, if American frameworks were imperfect, perhaps that simply meant that no system of government could be ideal. As Cold Warriors like Arthur Schlesinger contended, aspiring to more simply demonstrated a refusal to be sufficiently mature and realistic about the limits of politics. In the past, Du Bois had opposed the US model on *behalf* of democracy itself. But now Panther activists offered little sense of how design experimentation could transcend a constricted Cold War democratic imagination.

At the end of the day, the BPP's lack of structural remedies also spoke to activists' uncertainty about their level of support in the wider population. The party may have been at the forefront of a radicalizing movement politics for a short period. But could an actual majority of Americans—overwhelmingly white—be convinced of its ends?

The earlier SPA's interest in formal structural adaptations to the 1787 Constitution was linked to faith, especially in the years before World War I, that Socialists would one day claim a real electoral majority. This belief was underscored by those electoral victories the party did achieve, which then fed an investment in electorally grounded transformative change. SPA leaders like Eugene Debs or Allan Benson believed they could use victories at the ballot box as a springboard to implementing constitutional reforms on the road to socialism. Reforms would then open up the governing order for more and more radical alterations. As a result, Socialists would be able to improvise, from within the existing status quo, a whole new legal, political, and economic system.

Black radical organizing—even at moments of heightened non-Black Left support—faced a basic predicament in pursuing a broader transformative and decolonial agenda: the lack of a plausible pathway for implementation. As a substantive matter, in many ways the Panthers in the late 1960s had converged on an overarching approach that had much in common with Martin Luther King Jr.'s own policy commitments at the end of his life. King too had hoped to create a permanently mobilized and increasingly radical multiracial, class-conscious united



front. His primary strategy for change—the Poor People’s Campaign—revolved around what Brandon Terry calls “mass civil disobedience,” the “discipline[d]” use of large-scale protests and labor strikes to demonstrate coalitional “power” and to achieve specific demands.<sup>109</sup>

In many ways, King’s vision connected to Du Bois’s earlier account for mass insurgent action on behalf of democracy and against racial capitalism. As King declared, “if one hundred thousand Negroes [repeatedly] march in a major city to a strategic location, they will make municipal operations difficult; they will exceed the capacity of even the most reckless local government to use force against them.”<sup>110</sup> Unfortunately, his assassination undercut the Campaign’s energy and reach; without King the Campaign (and the movement) faced greater difficulties in building the national networks and mobilizing the necessary numbers for such directed and large-scale actions. And declining radicalism, within white anti-war and Black political spaces, sapped the ability of other movement organizations, like the Panthers, to fulfill the same ambitions.

As for an electoral strategy, Black politicians may have started winning elections, but this more establishment version of Black Power diverged markedly from the Left internationalism the Boggses or the BPP embraced. Unfortunately, even during periods of peak cultural resonance, more radical Black activists had real trouble actually winning at the ballot box. Take for instance the limited ability of DRUM and other related Revolutionary Union Movements (RUMs) to succeed in union elections. These Left labor efforts emphasized class consciousness and shared cross-racial worker solidarity, but they made little headway with rank-and-file white workers. Even worse, as the historian Jefferson Cowie tells us, such alternative unions “found it impossible to win . . . even in locals with black majorities.” Their “uncompromising language” may have energized young radicals, white and Black. But it largely “alienated the older generation of black workers,” whose own long experience with violent white business and state crackdowns made them deeply risk-averse when it came to new revolutionary calls for Black liberation.<sup>111</sup>

Thus, unlike early-twentieth-century Left formations, whether the SPA or New Deal-era activists, groups like the Panthers operated in a political context in which their potential to claim an actual popular majority seemed increasingly off the table. Neither King’s mass “militant non-violence”<sup>112</sup> nor the old Socialist hope of building a revolutionary voting majority appeared viable as pathways.

All of this left movement activists in a precarious position, in which finding solutions to the dilemma of how to get from here to there could feel increasingly out of reach. And this fact limited substantive interest in transitional adaptations, intermediate institutional reforms to the prevailing constitutional framework. Such adaptations, including those implied by the Boggesses, may have provided a bridge between the present and the utopian future. They would also have assisted in conceiving of change as not simply an either-or choice between armed struggle and gradualist accommodation. Yet, the dilemma of how to meaningfully achieve such intermediate institutional steps deflated interest in thinking concretely about ways to alter, piece by piece, the landscape of American legal-political institutions.

Alongside external state action, this central gulf between the present and the future also ultimately contributed to the Panther split and the tensions within Black radicalism more generally. In a context of blocked pathways, the only two options seemed to be focusing at the local level on basic services for those in need or further committing, against all odds, to a single great revolutionary break. The vast majority of Panther members chose the former. In late November 1970, Newton began referring to community efforts as “survival programs.” These included a variety of free services for poor Black neighborhoods, from children’s breakfasts (an already established backbone of the party) to healthcare clinics, ambulances, clothing, busing (including to prisons for family members), and educational centers.<sup>113</sup>

Although the survival programs reached thousands of poor families and had a massive impact on their well-being, the very name of the effort underscored the party’s defensive posture. Meanwhile, a “small cadre,” to use Brandon Terry’s term, embraced armed overthrow, no matter the total implausibility of recreating a Cuban Revolution in the United States.<sup>114</sup> And both approaches effectively signaled a retreat from constitutional engagement and an acceptance that the party was blocked in its aim of genuinely establishing a mobilized and transformative American majority.

## Conclusion: The Victory of Law and Order

In truth, the Panthers’ ambitions for a multiracial united front faced something like a historical impossibility in the early 1970s. Moved by anti-colonial politics in Asia and Africa, Black radicals had embraced their own version of Third World internationalism. And while the

Vietnam War escalated, more and more white students were open to linking foreign and domestic politics through critiques of empire. But radical activists operated in a context at home almost totally devoid of that early-twentieth-century white working-class culture of Left internationalism. In fact, the degree to which white anti-war radicalism dissipated in response to policy shifts in Vietnam indicated both the depth of Cold War nationalist attachment and the broader societal constraints on transformative change.

Groups like the Panthers, through their outreach to foreign liberation movements—not to mention the titles (“Minister of Defense”) they gave party members—consciously challenged the basic legitimacy of the Cold War state. As late as the 1930s, there were social bases within white working-class society for comparable brands of anti-nationalist politics. But the Black radical focus on class solidarity now proved less effective, given the post-war cultural rise of “middle class” as a dominant white identity and the steady decline of worker self-consciousness and militancy. Many now-middle-class white constituents, including union members, fully identified politically and psychologically with the nation-state and its larger security objectives. The country had been shaped by World War II, the Manichaean Cold War struggle with the Soviet Union, and of course post-war material prosperity. And after three decades of the American Century, a large swathe of the country had deeply imbibed exceptionalist narratives and faith in US primacy.

In fact, the limited appeal of BPP united front efforts to traditional labor—including with the Revolutionary People’s Constitutional Convention and throughout the 1968–1970 heyday—was telling. All these projects aimed to bring together poor and working people regardless of race, not dissimilar to the insurgent democratic organizing of the CIO in the 1930s. But persistent skepticism from the traditional labor movement, a key space for reaching white New Deal constituents, spoke to an ongoing structural roadblock. Radical activists certainly viewed labor mobilization as critical. But established and white-led unions were downright hostile, and organizations like DRUM remained contained in their practical reach. Thus, even at its peak, the united front movement always amounted to the mobilization of a political minority, even if it enjoyed outsized cultural salience for a short time.

This meant that Left activists sought to build a white working-class base just as more and more white Americans rejected socialist class rhetoric. Members of this latter group increasingly conceived of themselves in Cold War nationalist terms, even when they shared the same

economic complaints as poorer Black people. The Panthers may never have been a credible threat to the US state's actual monopoly on violence; still, most white citizens absolutely rejected the right of the BPP and other Left groups even to challenge what Nikhil Pal Singh calls the US's "monopoly on legitimate symbolic violence"<sup>115</sup>—or the security state's claim that it alone served and protected the nation.

Especially as national politicians implemented ameliorative reforms, the very idea of Black radical contestation became anathema to mainstream white American politics. Many white voters—New Deal liberals among them—viewed the overturning of legal segregation, alongside the de-escalation of the war, as rightly altering perceptions about Left politics, including Black activism. African American communities may have continued to face intense and intertwined racial and class hierarchies. And mainstream white sentiment certainly found some of the government's actions heavy-handed. But civil rights successes seemed to indicate that the main creedal ends had more or less been achieved, and that it was time to turn the page on protest and rebellion.

As part of this shift, mainstream views largely came to accept the state's presentation of socialist and internationalist activism, particularly among Black radicals, as a genuine collective threat. Indeed, at the national level, Nixon's 1968 election and then landslide 1972 reelection—not to mention the political rise of the former actor Ronald Reagan in California—cemented the reality of a white majority moving decisively in a rightward political direction. At a more local level, the trajectory of Philadelphia police chief and eventual Mayor Frank Rizzo offered another bellwether. Rizzo's treatment of the Panthers in advance of the 1970 convention—not to mention his generally brutal approach to policing Black communities—never became a damaging political scandal. Instead, it proved an asset with many white voters, who had previously formed a core part of the New Deal coalition.

Perhaps the final ingredient fueling white conservatism revolved around economic changes. The early 1970s witnessed the definitive end of the American Cold War boom and the beginning of what Jefferson Cowie calls "a global restructuring of work itself," including deindustrialization, plant closings, and permanently stagnating wages.<sup>116</sup> This resulted in an economic and cultural context in which politicians like Rizzo could play on classic racist solidarities—even going so far as to urge Philadelphians in 1978 to "vote white"<sup>117</sup>—and present busing programs in the North or Lyndon Johnson's social spending programs as zero-sum attacks on white middle-class status and opportunity.

Ultimately, these dynamics recalibrated white public assessments of legality and illegality in ways that fundamentally shifted the viability of further structural change. As discussed in chapter 12, during the height of the traditional civil rights movement one remarkable feature of mainstream white national politics involved the racial inversion of who appeared to be properly American. A significant number of white national politicians treated Black protesters engaged in civil disobedience as lawful citizens asserting their constitutional rights. White supremacists in the South, meanwhile, were presented as un-American.

In a sense, though, the formal overcoming of segregation and the drawing down of the Vietnam War—alongside growing white public wariness of additional change—accelerated a reversion to established accounts of Black political danger. And for mainstream white audiences, such racial fears were further reinforced by the very different and often militarized self-presentation of groups like the Panthers by comparison with traditional civil rights protesters. The appeal to many white citizens of Nixonian “law and order” rhetoric powerfully embodied this reversion. Such rhetoric gave both a language and a voice to a growing white cultural focus on continuing Black and student activism as the preeminent and lawless threats to “the great silent majority”<sup>118</sup> of white middle-class Americans.

In fact, one striking feature of the state’s crackdown on Black Left activism is how the intensity of white official responses bore little correlation to whether activists had actually used violence. Afeni Shakur eventually became associated with the New York 21’s call in 1971 for immediate armed struggle, in the context of indictments on false charges and imprisonments. Before then, she had explicitly stated that her goal with the 1970 Convention was to “exhaust all legal means”: to pursue a version of King’s “militant non-violence.” Yet, as with Fred Hampton, national white politicians and security personnel responded just as brutally as if either had actually taken up arms.

Indeed, even when the state clearly perpetrated violence against individuals, as in the case of Fred Hampton’s assassination, the very fact of being killed or arrested often served as proof that activists—especially Black activists—had engaged in criminality. All of this underscored the profound propaganda victory the FBI and other government bodies achieved during these years: they had not only subverted Black organizations; they had also succeeded in depicting all Black radical thinking and organizing as violent extremism.

Most significantly, as chapter 15 details, Nixon’s particular law-and-

order rhetoric increasingly became part of a wider cultural concern, across the ideological spectrum, with addressing the previous years' perceived social disorder. Such an emphasis nullified whatever remained of mainstream interest in large-scale debates about the basic terms of state and economy. And this broadening anxiety about law and order pushed to the center a deeply nostalgic reinvestment in a narrowed conception of American values, traditions, and institutions.