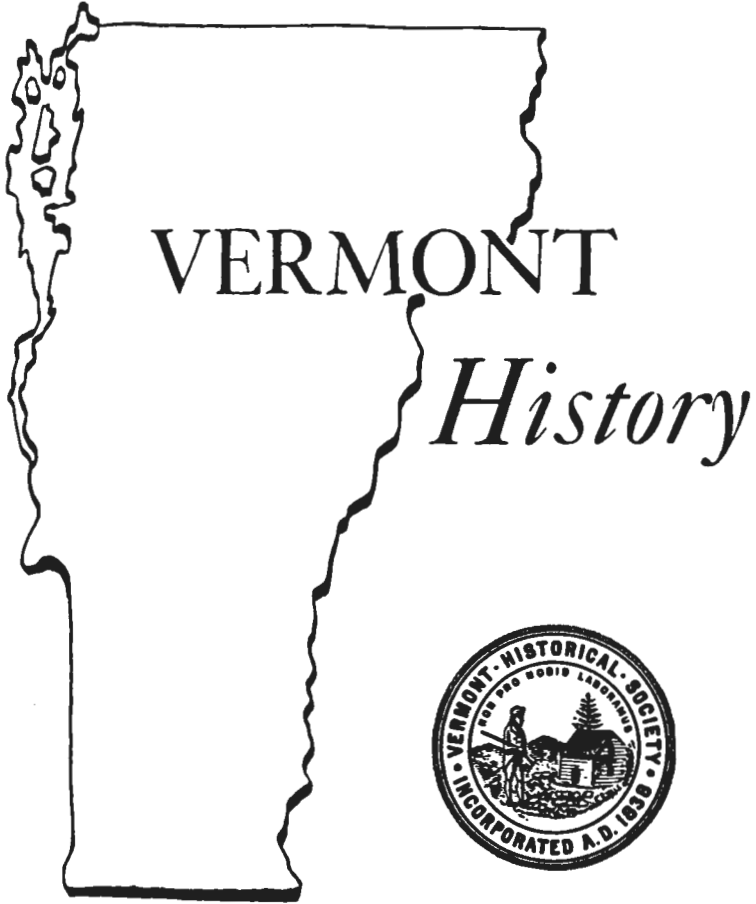


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The special importance of written constitutions in the eighteenth century is closely tied to the emergence of a culture that for the first time had come to understand itself in terms of the printed word.

## The Print Revolution of the Eighteenth Century and the Drafting of Written Constitutions

By PATRICK H. HUTTON

Historians and lawyers share much as they bring their powers of rational analysis to their work. Both gather as many facts as possible and both seek to construct plausible explanations that will persuade others. But neither lawyers nor historians reason within timeless settings. The comparison of their methods requires an appreciation of the context in which they carry on their investigations. To some extent this, too, is common ground. There is a humanist tradition of jurisprudence dating from the Renaissance that contributed over several centuries to the rise of modern historical scholarship.<sup>1</sup> Within American culture, moreover, lawyers and historians have long shared an interest in constitutional interpretation. Constitutional history is one of the oldest and most venerable fields of study within American historiography.<sup>2</sup> Vermont's state constitution provides an intellectual crossroads at which the interests of historians and lawyers meet; it is appropriate, then, to look at that constitution as a context for comparing their methods.

At the same time, this context is more complex than it might have been even a generation ago. Over the past generation, historians have become preoccupied with new methodologies.<sup>3</sup> If the methods of lawyers remain to some degree bound by the well-established traditions of jurisprudence in which they have always worked, those of historians are today opening upon far wider horizons. As an historian, therefore, I may still wish to look at the problem of constitution-making in the late eighteenth century. But I am more likely to do so in a new methodological context. A generation ago, I might have put my accent upon the origins of the ideas and values embodied in these documents. The principle of separation of powers derived from Roman law, the democratic ideals first voiced in

the Putney debates in seventeenth-century England, the alternative theories of the social contract proposed by John Locke and Jean-Jacques Rousseau, the liberal political philosophy of the founding fathers: these were the stuff of constitutional history.<sup>4</sup> Today, in light of recent historiographical developments, I would prefer to say something about the mentality of the framers. What I find distinguishing about the Vermont constitution of 1777, like the federal one that followed in its wake in 1787, is that it is written. All previous constitutional documents in Western legal history were seen as partial contributions to a broader tradition of fundamental laws that remained for the most part unwritten. The deep sources of constitutional law were derived from ancient customs and were only vaguely understood. The late eighteenth century, therefore, marks a turning point in constitutional interpretation because of the unprecedented determination of constitutional reformers in both Europe and America to draft documents that would clearly enunciate and comprehensively define the principles of government and the rights of citizens. There is herein a move from tacit acceptance of the hidden character of the structures of constitutional law to a declared imperative to profess them openly.

This shift in interest from the ideological content to the cognitive preconditions of constitution-making illustrates the broader reorientation taking place in historical writing today. For much of the 1960s and 1970s, historians were preoccupied with issues about gathering facts. They were fascinated with the possibilities provided by the newly developed techniques of computer-assisted research for amassing unprecedented quantities of data.<sup>5</sup> The unstated assumption of the most zealous advocates of quantitative methods was that if enough data were assembled and collated, an interpretation would emerge spontaneously in the process.<sup>6</sup> Rarely did this happen. All but the very best of these studies proved to be tedious because they failed to pay sufficient attention to issues of interpretation. During the 1980s, therefore, there has been a return to specific historical documents, and, for those interested in theory, to the more elusive problem of their interpretation. Like lawyers, historians are once again reading texts, but they are reading them in a new way. Once they read them directly for their content. Now they read them indirectly for their rhetorical form. For today's historians, texts are less important for what they say than for what they signify. The task, they contend, is to find the context for the text, the field in which it operates symbolically. A text is to be viewed not as a fact but as an artifact. The ideas it conveys are less important than the mindset it expresses. To understand a text requires the historian to understand the kind of discourse of which it is a part.<sup>7</sup>

The historian's newfound interpretative perspective also has some parallels in our sensitivity today to the forms as opposed to the content of political discourse. Consider, for example, the way journalists and political commentators interpret political statements. What a politician says often seems less important than how he says it. No longer do journalists simply interpret a political statement for its professed argument. Instead they decipher it for its hidden meaning. When President Ronald Reagan repeatedly asserts that the crisis in Nicaragua is a civil war between freedom fighters and communists, the journalists are likely to interpret his statement not for what it tells us about the facts but for what it signifies about his underlying political conceptions. The president's statement is a sign in a code, and the code must be deciphered if we are to make sense of the statement. Understanding is conveyed not through the transparent meaning of his vocabulary but through the semiotic signals conveyed by his mode of discourse. For the political analyst as for the historian, deconstruction of the discourse has become the more compelling task.

Out of this conceptual reorientation has emerged a new field of historical inquiry labeled the history of collective mentalities. Historians investigating problems in this field are more interested in the way in which people ordinarily thought in a given historical era than they are in the specific ideas or viewpoints that they held. These historians set aside the content of discourse in order to concentrate on what the forms of discourse can tell them. They wish to gain some insight into the modes of parlance, the methods of communication, the symbolic imagery, the rites, rituals, and collective memories of the popular cultures of the past. In short, their focus is on the building blocks of thought rather than thoughts themselves. Their interest is in the rhetoric, or more precisely, the poetics of history.<sup>8</sup>

As an example of this kind of history with specific applications for our understanding of the law, I would mention the widely heralded study by Carlo Ginzburg, *The Cheese and the Worms* (1976).<sup>9</sup> Conceptually, it concerns the way in which the law was interpreted on the boundary between oral and literate culture in early modern Europe. Based upon the legal records of the sixteenth-century Roman Inquisition, it is a study of the prosecution of a miller, a simple man of the people, for his unorthodox views about the nature of the cosmos. Ginzburg is less interested in the miller's ideas than he is in his mode of discourse. Conceived within the conceptual framework of oral tradition, the miller's ideas were articulated in an earthy, popular idiom full of visceral images and poetic expressions foreign to the refined, more abstract vocabulary of his learned inquisitors. The miller's thoughts, Ginzburg explains, were shaped by the linguistic forms through which he gave them expression. His

cosmology, conceived as a vast cheese mottled by gnawing worms, was unintelligible to his inquisitors, who conceptualized their notions of the cosmos in a more refined way. The distance between the mode of parlance of the popular culture in which the miller's imagination had been formed and that of the high culture in which the inquisitors carried on their theological controversies was so great that only after repeated interrogations over a period of twenty years were they able to decipher the miller's discourse and to evaluate it within their lexicon of orthodox/heterodox thought. The Inquisition's search for heretics presupposed a common cultural framework of literacy. The crisis of the Reformation itself, Ginzburg implies, concerned a theological quarrel conducted within the rarefied context of a high culture. Beyond that cultural sphere existed a vast popular culture based upon oral tradition whose modes of expression could not be interpreted within the intellectual framework of the learned theologians. In sum, the religious controversies of the sixteenth century must be construed in terms of differences in mentalities as well as differences of ideas.

Ginzburg's study suggests that law, too, has a culture. Therefore law in the modern era must be appreciated in light of the mentality that fostered the writing of constitutions as well as the ideals they professed to enshrine. In this respect, there is today considerable interest among historians of mentalities in the eighteenth century as a threshold in the transition from a literate to a print culture.<sup>10</sup> The special importance of written constitutions in the eighteenth century is closely tied to the emergence of a culture that for the first time had come to understand itself in terms of the printed word. Constitutional documents have been extant since the Middle Ages, and some famous ones, such as the Magna Carta or the English Bill of Rights of 1688, are perceived to be precedents upon which the late eighteenth-century constitutions were erected. But these earlier documents were prepared for a literate culture that still operated within the context of oral tradition. Common law was derived from immemorial custom. England's unwritten constitution was really an oral tradition to which many written documents and countless judicial precedents had been contributed over the centuries, but whose meaning was still construed against the backdrop of collective memory. Before printing became widespread, political authority was proclaimed according to the protocols of the spoken word. Legal principles were often enunciated as easily remembered maxims to insure that their meaning would not be distorted over time. Statements of political authority, such as royal edicts, may have been written, but they were designed to be read aloud.<sup>11</sup> From a cultural perspective, it was not only the ideas contained in the constitutional documents of the eighteenth century that were revolutionary, but also the way in which political authority was made manifest through them. Their originali-

ty was derived from the fact that they were designed to be read rather than to be heard. Because of the power of the printed word to fix knowledge permanently, written constitutions made use of the newly prevalent technology of the printing press to promulgate political principles everywhere in a uniform and comprehensive way.<sup>12</sup>

The growing importance attached to written constitutions reveals the change in mentality that had been worked by the spread of print culture between the sixteenth and the eighteenth centuries. By the eighteenth century, the middle class, then on the verge of acquiring political power, had learned to read. Reading was of fundamental importance because it promoted a transformation in the way humans learn. Reading involved a move from learning through hearing to learning through seeing, a change that had far-reaching implications for political culture. Reading promoted a desire for precise information, and hence encouraged belief in the perfectibility of knowledge. One who reads is encouraged to define, to classify, and to specify. In the eighteenth century, this new mentality was characterized as “clarity of mind.” In other words, reading creates a mentality that wishes to set precise rules and boundaries. The desire to set down in writing universal principles, grounded in reason, was promoted by this underlying imperative for precision that the print revolution had engendered.<sup>13</sup>

The discovery of reason was lodged in a new technology for sealing knowledge accurately and permanently in movable type.<sup>14</sup> The written constitution was one instrument through which this new sense of the permanence of acquired knowledge was conveyed in the political sphere. In both the English Revolution of the seventeenth century and the French Revolution of the eighteenth century, advocates of constitutional reform argued that an unwritten constitutional tradition was too vague to protect rights or to provide just government. From their modern vantage point, this ancient, oral tradition permitted too much capriciousness in the way in which rights were respected or political authority exercised. It dated from the Middle Ages, when political authority was decentralized and the rights and obligations of feudal relationships were defined in personal terms. But over the following centuries, such personal contracts had been superseded by more impersonal ones, as political power was consolidated and a competitive market economy reshaped social relationships.<sup>15</sup> The covenants of radical religious sects as well as the charters of joint-stock companies and colonial corporations in the seventeenth century were way stations on a road toward political abstraction that called for more nearly universal definitions and more uniform rules.<sup>16</sup> If all citizens enjoyed rights that were inalienable, if governmental agencies were obliged to follow uniform procedural rules—as political reformers had

come to believe by the eighteenth century —, then tacit understanding of a constitutional tradition was no longer enough. It was important to specify precisely what these rights and obligations were.<sup>17</sup>

Reading also contributed to the way in which people perceived themselves. Learning through the dialogue of speaking and listening is a social art, but learning through reading is a solitary one. Reading encourages reflection and hence self-awareness.<sup>18</sup> The historian Robert Darnton has recently explained the significant role played by Jean-Jacques Rousseau in teaching people to read as a means of discovering their personalities. Rousseau is remembered by most of us for his philosophy of political democracy, but Darnton contends that his contemporaries learned more about themselves from his novels of love. Readers discovered in the amorous relationships of Rousseau's characters the depths of their own feelings. Vicariously identifying with the pangs of love expressed by these characters, readers used Rousseau's texts as mirrors to reflect their own emotions.<sup>19</sup> If the texts of constitutions were unlikely to provoke such outpourings of sentiment, reading them nonetheless confirmed the newfound sense of individual identity encouraged by print culture.

Both of the imperatives fostered by reading, the quest for precise knowledge and the preoccupation with the self, are embodied in the two major components of eighteenth-century constitutions: first, the exposition of explicit, universally applicable rules of governmental powers and procedures; second, the presentation of bills of rights that made manifest growing public recognition of a need for individual autonomy. Apart from what they said in their specific provisions, the written constitutions of the eighteenth century are artifacts on a cultural divide between the mentalities of traditional and modern society. They signify the shift from the culture of an old regime (in which the family shared sovereignty with the state, the ideal of social life was sociability, and learning was tied to oral tradition) to the culture of a new regime (in which the state claimed total sovereignty, the ideal of social life was individualism, and learning was tied to print culture).<sup>20</sup>

The historian's interest in constitutions for what they signify about a changing mentality in the eighteenth century sheds light on an enduring debate about constitution-making in that age. My knowledge and my examples are based upon the French rather than the American experience, but these paralleled one another in the tide of change that was then sweeping the Western world. Most historians agree that the French Revolution of 1789 was first and foremost a juridical revolution—a revolution of the laws in which the idea of law itself was reconceived.<sup>21</sup> The leaders of the French Revolution struck down the distinction between public and private law. They obliterated the hundreds of sometimes incompatible

systems of law extant in France and replaced them with a single uniform code. Implicit in this task of juridical reconstruction was a rejection of the traditional notion of rights as privileges (i.e., particular rules applying to special categories of people) in favor of a new notion of rights as universal principles, equally applicable to all.<sup>22</sup> The debate among historians turns on whether this was a victory for individual rights or for state power, both of which were furthered by the provisions of the new constitution. Which was more important in the process of constitution-making: the Declaration of the Rights of Man and Citizen (the French bill of rights) or the body of the Constitution of 1791, which defined the nature and powers of government?<sup>23</sup>

One school of historians, of which Georges Lefebvre is the leading exponent, favors the notion that the redefinition and defense of rights constitutes the heart of the work of the constitution makers of the French Revolution.<sup>24</sup> As a profound social upheaval marking the ascent of the middle class, the French Revolution witnessed the destruction of aristocratic privilege in favor of equality before the law. The Declaration of the Rights of Man may have served the immediate interests of the middle class, Lefebvre explains, but the universal terms in which rights were defined served the interests of everyone. The declaration stands, therefore, as a milestone in the saga of human liberation from oppression across the ages. The constitution-making of the eighteenth century, he concludes, is best appreciated for its place in history conceived as the story of the rise of liberty. But another school of historians, of which Alexis de Tocqueville is the founder, minimizes the significance of social change and contends that constitution-making during the French Revolution furthered above all else the consolidation of the state's power.<sup>25</sup> Despite the rhetorical claim by the revolution's liberal leaders that the best government is the one that governs least, the state, armed with laws that were uniform in their application, acquired power well beyond that which the kings of the Old Regime (who claimed to be absolute) might ever have exercised, given the practical impediments that the archaic, heterogeneous systems of law placed in their way.

Both are cogent interpretations, but from the standpoint of the history of mentalities one need not choose between them.<sup>26</sup> Rather one might contend that the powers of both the individual and the state were substantially enhanced, for written constitutions created a need to extend both. Having permanently enshrined universal principles as guidelines for the good society, these documents inspired a quest to delineate their meaning further. Thenceforth the imperatives to extend individual rights and the state's power were to be intimately allied. The issue was how to establish the boundary between the advancing claims of these two spheres of in-



terest. In the American political tradition, this became a major issue of constitutional interpretation.

Like the French constitution of 1791, the American constitution of 1787 made manifest a profound sense of new beginnings.<sup>27</sup> The constitution was perceived to be, as the scholar Michael Kammen has recently reminded us, "a machine that would go of itself."<sup>28</sup> Rather than returning to custom for guidance about how present laws should reiterate past precedents, the constitution proposed to set forth once and for all time a direction of moral intention to guide the creation of law for the future. Constitutional interpretation, therefore, has been concerned with the exegesis of a document that defined the rules of government and the rights of citizens as they ought to be, and thereby created a moral imperative to make them real in practice. In this sense, the eighteenth-century constitutions not only marked a beginning, but anticipated further change.

From the vantage point of constitutional history, the written constitutions of the eighteenth century reveal a cultural shift in the understanding of precedent. In the unwritten constitutional tradition of early modern Europe, precedent was perceived to be an archetypal event to be repeated. Time moved cyclically in an eternal return to precedent for guidance. The task of the jurist was to interpret the law as it had been applied from time immemorial. The judicial imperative to repeat precedent was characteristic of a traditional society that tended to favor caution over innovation. For such a society, law is an expression of common sense: practical knowledge learned from past experience as a guide for present behavior. The coming of a written constitutional tradition based upon the founding documents of the eighteenth century, however, reveals the way in which the idea of precedent was being reconceived. Precedent was no longer a prototype to which we continually return, but a singular historical event, occurring but once. It became a point of departure in the construction of something new. This revisioning of precedent in terms of its historicity (i.e., its concrete and unique character) parallels the shift from oral tradition to print culture and is concomitant with the displacement of cyclical by linear notions of time.<sup>29</sup> The unwritten constitutional tradition continually evoked the past; the written constitutions of the eighteenth century presaged a different and more promising future. Because the future for the constitution makers of the eighteenth century held the prospect of creating a new kind of reality, constitutional interpretation became constructive rather than merely interpretative.

I would argue, therefore, that constitutional interpretation can find no refuge in a literal reading of its provisions. One cannot encapsulate the "original intent" of the framers in the past. To do so is to resort to the fundamentalist interpretation of unwritten constitutional traditions

that contends that precedent can only reconfirm custom. The doctrine of “original intent” ignores the fact that constitution-making in the modern era signifies a direction of moral intention for the future rather than a confirmation of a past reality. The meaning of a constitution exists only insofar as it enters our present field of knowledge and is interpreted by us. “Original intent” does not exist objectively. It exists only within our present interpretative context. Because we are continually creating a new and unique historical reality, our context of interpretation is continually changing. We integrate our perceptions of the past into our present frame of knowledge. We still want to know what the framers of our constitution had in mind, but we do not wish to return to the eighteenth century. We must interpret their designs in terms of the world in which we live.

Consider, for example, the question of individual rights. Clearly, the framers wished to protect these. But the question of what constitutes these rights is open-ended, for the history of the nineteenth and twentieth centuries has witnessed rising expectations about the pursuit of happiness, and hence a widening conception of what such rights should be.<sup>30</sup> The definition of rights is relative to a modern quest for ever higher levels of personal growth and fulfillment. The mentality underpinning the pursuit of personal happiness in the modern age has been explained by the historian Philippe Ariès as the product of the historical elaboration of our conception of developmental stages of life. Ariès argues that the traditional notion of the seven “ages of man” as a cycle of unrelated passages has gradually been displaced by a linear model of lifelong growth. The new conception was inaugurated in the fifteenth century, when childhood was reconceived in middle-class families as a preparation for adulthood. Over the course of time, other developmental stages were added. The early nineteenth century witnessed the birth of youth (early adulthood) as a new category for development. By the late nineteenth century adolescence as a distinct developmental stage was recognized. By the late twentieth century, the mid-life crisis had come into its own as a crucial time for growth and transformation. Presumably, old age will receive a special identification in the growth process in the century to come.<sup>31</sup> The historical elaboration of an ontogeny of personal development that is lifelong and of growing complexity suggests that the notion of individual rights must be continually expanded to meet these historically changing perceptions of ourselves.<sup>32</sup>

The paradox is that the imperative to extend the sphere of personal opportunity has been closely intertwined with the concomitant imperative to extend state power. To make higher levels of personal fulfillment possible, the state has been obliged to become more involved in the lives of its citizenry by providing security and opportunity in new and more far-

reaching ways. The key term in this arena of extended governmental intervention is welfare.<sup>33</sup> The initial forays of the state into this field date from the eighteenth century, about the time that written constitutions were first being designed. The age that made a commitment to the written constitution also made one to the public asylum, reconceived as a place to segregate those considered a threat to the community.<sup>34</sup> The hospital, the insane asylum, and the prison all emerged during that era to deal with transgressions of the boundaries of expected behavior. Each had a therapeutic purpose that contributed to the public welfare: the hospital to heal, the mental asylum to restore reason, the prison to correct errant behavior. In the course of the nineteenth and twentieth centuries, the concept of welfare was further extended by governmental agencies seeking to provide a measure of economic security and by quasi-governmental "helping professions" that dealt with such social problems as adolescent delinquency, family crises, and personal adjustments to modern life. In this way, the managerial powers of the state reached beyond the asylum walls to the society at large. In the process, the individual's rising expectations about his right to the pursuit of happiness were matched by the state's more explicit specifications about the conditions under which that pursuit might take place.<sup>35</sup>

By this elaborate route, our discussion brings us back to the decision of the Vermont Supreme Court in *State of Vermont v. Jewett* about the relationship between the state and the federal constitutions as guarantors of the rights of individuals. If you were to ask me what this decision signifies (rather than what it says) in light of my discussion, I would reply that it seeks to make more explicit the definition of the boundary between public powers and individual rights. The opinion rendered in the *Jewett* case suggests that the court has discovered a sphere where these respective powers are undefined, and, by invoking the authority of the Vermont constitution, wherein it might define more precisely the boundary between them. The issue is less the respective jurisdictions of the federal and the state government than the existence of an undefined space between them. The imperative of constitutional interpretation is to give that space a definition.

The writing of constitutions in the eighteenth century took place in a cultural milieu in which their framers saw themselves as defining universal principles of government once and for all time. Today, the historians of the new history of mentalities are more inclined to see their enterprise as an attempt to seal in the new technology of the printed word an ideal of community that they shared. These reformers of the eighteenth century believed that they had through their refined powers of reason at last discovered some eternal verities that no previous generation had adequately

perceived.<sup>36</sup> Without discounting the value of the framers' accomplishment, today's historians are more inclined to evaluate it in terms of its place in a new kind of culture that instilled an enthusiasm for fresh beginnings. The eighteenth century did signify an important cultural divide. It marked the passage into an age that accepted for the first time that civilization is a human creation and that humankind is free to fashion its own future.<sup>37</sup> The constitutions of the eighteenth century are important statements of this proposition. But for all their originality, they, like the more parochial constitutional documents of earlier eras, are also to be judged as cultural artifacts of the epochs in which they were drafted and hence to be evaluated as part of an evolving historical tradition. The study of the mentality of constitution-making is one avenue for deepening our understanding of this ancestry. Lawyers and historians today may reason about the same problems within different professional contexts, but the change worked by time in the human perception of even our most fundamental commitments under the law is a reality that they should both acknowledge.

#### NOTES

<sup>1</sup> For a good overview, see Donald R. Kelley, *History, Law and the Human Sciences* (London: Variorum Reprints, 1984).

<sup>2</sup> For a useful recent bibliography, see Michael Kammen, ed., *The Origins of the American Constitution: A Documentary History* (New York: Penguin Books, 1986), 387-89.

<sup>3</sup> For surveys of new directions in historiography, see esp. Georg G. Iggers and Harold T. Parker, ed., *International Handbook of Historical Studies* (Westport, Conn.: Greenwood Press, 1979); Michael Kammen, ed., *The Past Before Us: Contemporary Historical Writing in the United States* (Ithaca: Cornell University Press, 1980); and Jacques Le Goff, Roger Chartier, and Jacques Ravel, ed., *La Nouvelle Histoire* (Paris: Retz - C.E.P.L., 1978).

<sup>4</sup> See esp. Charles Howard McIlwain, *Constitutionalism Ancient and Modern* (Ithaca: Cornell University Press, 1940); Bernard Bailyn, *The Ideological Origins of the American Revolution* (Cambridge: Harvard University Press, 1967); and J. G. A. Pocock, *Virtue, Commerce and History* (Cambridge: Cambridge University Press, 1985).

<sup>5</sup> J. Morgan Kousser, "Quantitative Social-Scientific History," in *The Past Before Us*, 433-56; Edward Shorter, *The Historian and the Computer: A Practical Guide* (Englewood Cliffs, N.J.: Prentice-Hall, 1971).

<sup>6</sup> François Furet, "Quantitative History," in *Historical Studies Today*, ed. Felix Gilbert and Stephen R. Graubard (New York: Norton, 1972), 45-61.

<sup>7</sup> Dominick LaCapra, *Rethinking Intellectual History* (Ithaca: Cornell University Press, 1983), 13-71; Paul Ricoeur, *Time and Narrative*, trans. Kathleen McLaughlin and David Pellauer (Chicago: University of Chicago Press, 1984), I: 91-230; Hayden V. White, *The Tropics of Discourse* (Baltimore: Johns Hopkins University Press, 1978), 81-100, and *The Content of the Form: Narrative Discourse and Historical Representation* (Baltimore: Johns Hopkins University Press, 1987), 24-25, 208-13.

<sup>8</sup> Roger Chartier, "Intellectual History or Sociocultural History? The French Trajectories," in *Modern European Intellectual History: Reappraisals and New Perspectives*, ed. Dominick LaCapra and Steven L. Kaplan (Ithaca: Cornell University Press, 1982), 13-46; Patrick H. Hutton, "The History of Mentalities: The New Map of Cultural History," *History and Theory* 20/3 (1981), 237-59; Peter Burke, "Strengths and Weaknesses of the History of Mentalities," *History of European Ideas* 7/5 (1986), 439-51.

<sup>9</sup> Carlo Ginzburg, *The Cheese and the Worms*, trans. John and Anne Tedeschi (New York: Penguin Books, 1982).

<sup>10</sup> Elizabeth L. Eisenstein, *The Printing Press as an Agent of Change* (Cambridge: Cambridge University Press, 1979); Robert Darnton, *The Literary Underground of the Old Regime* (Cambridge: Harvard University Press, 1982).

<sup>11</sup> M. T. Clanchy, *From Memory to Written Record* (Cambridge: Harvard University Press, 1979), 232-57; J. G. A. Pocock, *The Ancient Constitution and the Feudal Law* (Cambridge: Cambridge

University Press, 1957), 1-69, 229-51; Donald R. Kelley, "Ancient Verses on New Ideas: Legal Tradition and the French Historical School," *History and Theory* 26/3 (1987), 332-34.

<sup>12</sup> Walter J. Ong, *Orality and Literacy* (London: Methuen, 1982), 96-101.

<sup>13</sup> *Ibid.*, 115-23, 130-32.

<sup>14</sup> *Ibid.*, 132-35.

<sup>15</sup> For the theoretical aspects of the relationship between the formulation of abstract political conceptions and the rise of a competitive market economy in seventeenth-century England, see C. B. Macpherson, *The Political Theory of Possessive Individualism* (Oxford: Clarendon Press, 1962), 19-29, 46-68, 95-100, 251-71.

<sup>16</sup> Christopher Hill, "Covenant Theology and the Concept of 'A Public Person'," in *Powers, Possessions and Freedom*, ed. Alkis Kontos (Toronto: University of Toronto Press, 1979), 3-22; Andrew C. McLaughlin, *The Foundations of American Constitutionalism* (New York: New York University Press, 1932), 3-61; Forrest McDonald, *Novus Ordo Seclorum: The Intellectual Origins of the Constitution* (Lawrence: University of Kansas Press, 1985), 1-55.

<sup>17</sup> McLwain, *Constitutionalism Ancient and Modern*, 3-24; Bailyn, *Ideological Origins of the American Revolution*, 175-98.

<sup>18</sup> Ong, *Orality and Literacy*, 178-79.

<sup>19</sup> Robert Darnton, *The Great Cat Massacre and Other Episodes in French History* (New York: Basic Books, 1984), 215-52.

<sup>20</sup> Michel Foucault, *The Order of Things* (New York: Vintage Books, 1973), xxii, 367-73; Lynn Hunt, *Politics, Culture, and Class in the French Revolution* (Berkeley: University of California Press, 1984), 180-212; Michel Vovelle, *Idéologies et mentalités* (Paris: Maspéro, 1982), 267-94, and *La Mentalité révolutionnaire: Société et mentalité sous la Révolution française* (Paris: Éditions sociales, 1985), 19-54, 202-15.

<sup>21</sup> R. R. Palmer, *The Age of the Democratic Revolution* (Princeton: Princeton University Press, 1959), I: 3-24, II: 572-75.

<sup>22</sup> C. B. A. Behrens, *The Ancien Regime* (New York: Harcourt, Brace & World, 1967), 46-62, 96-102.

<sup>23</sup> See the recent assessments of the current state of the historiography of the French Revolution by Jack R. Censer, "The Coming of a New Interpretation of the French Revolution," *Journal of Social History* 21/2 (1987), 295-309, and by George C. Comninel, *Rethinking the French Revolution: Marxism and the Revisionist Challenge* (London: Verso, 1987), 5-27.

<sup>24</sup> Georges Lefebvre, *Études sur la Révolution française* (Paris: Presses universitaires de France, 1954), 317-26, and *The Coming of the French Revolution*, trans. R. R. Palmer (Princeton: Princeton University Press, 1947), 209-20.

<sup>25</sup> Alexis de Tocqueville, *The Old Regime and the French Revolution*, trans. Stuart Gilbert (1856; rpt. Garden City, N.Y.: Doubleday, 1955), vii-xv, 19-21, 193-211. See also Alfred Cobban, *Aspects of the French Revolution* (New York: Braziller, 1968), 90-108; François Furet, *Interpreting the French Revolution*, trans. Elborg Forster (Cambridge: Cambridge University Press, 1981), 132-63.

<sup>26</sup> Cf. Keith Michael Baker, "On the Problem of the Ideological Origins of the French Revolution," in *Modern European Intellectual History*, ed. LaCapra and Kaplan, 197-219.

<sup>27</sup> For a comparison of the two constitutional traditions, see Palmer, *Age of the Democratic Revolution*, I: 213-82.

<sup>28</sup> Michael Kammen, *A Machine That Would Go of Itself: The Constitution in American Culture* (New York: Knopf, 1986), 18.

<sup>29</sup> On the emergence of conceptions of temporality, see Mircea Eliade, *The Myth of the Eternal Return*, trans. Willard R. Trask (Princeton: Princeton University Press, 1954), 34-37, 46-48, 141-62, and David Lowenthal, *The Past is a Foreign Country* (Cambridge: Cambridge University Press, 1985), 198-200.

<sup>30</sup> Michael Kammen, *Spheres of Liberty: Changing Perceptions of Liberty in American Culture* (Madison: University of Wisconsin Press, 1986), 129-72.

<sup>31</sup> Philippe Ariès, *Centuries of Childhood*, trans. Robert Baldick (New York: Vintage Books, 1962), 18-32.

<sup>32</sup> Patrick H. Hutton, "The Psychohistory of Erik Erikson from the Perspective of Collective Mentalities," *Psychohistory Review* 12/1 (1983), 18-25.

<sup>33</sup> Jacques Donzelot, *The Policing of Families*, trans. Robert Hurley (New York: Pantheon Books, 1979), 48-95.

<sup>34</sup> Michel Foucault, *Madness and Civilization*, trans. Richard Howard (New York: Vintage Books, 1965), 38-64, and "The Political Technology of Individuals," in *Technologies of the Self*, ed. Luther H. Martin et al. (Amherst: University of Massachusetts Press, 1988), 145-62.

<sup>35</sup> Donzelot, *Policing of Families*, 96-168; Christopher Lasch, *Haven in a Heartless World: The Family Besieged* (New York: Basic Books, 1977), 134-41, 167-74, 189.

<sup>36</sup> Ernst Cassirer, *The Philosophy of the Enlightenment*, trans. Fritz C. A. Koelln and James P. Pettegrove (Boston: Beacon Press, 1955), xi, 4-7.

<sup>37</sup> Norman Hampson, *A Cultural History of the Enlightenment* (New York: Pantheon Books, 1968), 232-50.