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**Written Differently:
A Survey of Commonwealth Constitutional History in the Age of
Decolonisation**

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Abstract: This article provides a survey and definition of the field of Commonwealth constitutional history since 1918, especially during and after global decolonisation. It asks what is Commonwealth constitutional history and how it differs from its English and Imperial counterparts. The article puts forward a working definition of Commonwealth constitutional history and introduces key and diverse writers who illustrate the range and potential of this history. The article provides an historiography and survey of constitutional history in the Pre-Commonwealth and Post-war Commonwealth periods while also assessing the opportunities of Post-British Commonwealth constitutional history. Throughout the article is the objective to show how Commonwealth constitutional history can contribute to the historical study of state power and to see its worth to other fields of history and disciplines. Commonwealth constitutional history is a necessity to examine the politics, power and consequences of the British empire during the long age of decolonisation.

Introduction

The perceptive Florentine scholar of democracy, Giovanni Sartori, wrote in 1962 that ‘one must be very careful about importing the British constitutional textbooks. They have not been written for export’. Nonetheless, British texts and histories on constitutions, governments, and

institutions of state were found across the globe and they disproportionately dominated the field. This being so despite the infamous and widely held judgement that Britain, unlike almost every other country, had no written constitution. For Sartori, however, it was not that the United Kingdom had an unwritten constitution, but instead that it was ‘written differently’¹. The same could be said, in fact more so, for the constitutional history the Commonwealth. Nothing of this history was, or could be, uniform. The span and diversity of the British Empire and the torrents and dribbles of decolonisation that followed ensured a need for such historical assessments. Constitutional and political history became in this guise less a rarefied academic speciality and more a much taught and studied tool to provide, however weak or inapt, precedents, warnings, tuition, and ideas for building new Jerusalems beyond England’s green and peculiar land. Yet it has become more and more true that such history has been relegated to collect dust instead of citations. With the rectifying of this trend in mind this article has three main aims. Firstly, it seeks to introduce and define the field of Commonwealth constitutional history since World War I, especially the post-war period and to see how it connected to politics. Secondly, it will briefly describe the impact and range of eight selected scholars to the field of Commonwealth constitutional history (other key writers shall be found throughout these pages). Finally, it will survey three key stages in twentieth century and modern Commonwealth constitutional history and argue for the importance of the subject for the contemporary teaching and writing of histories of imperialism and decolonisation.

What is Commonwealth Constitutional History?

The twentieth century witnessed the British Empire at both its greatest extent as well as its awesome and rapid demission. The century rebounded with the impact of colonialism. The history surrounding decolonisation is full of flux, ambiguity, messiness, complex density, and lack of cohesion. Nonetheless decolonisation as an ever-moving world phenomena should not detract from the quest to demarcate what Commonwealth constitutional history is, and why we should care to employ it to study the end of empire and the post-colonial results. Yet The cudgels of constitutional history are usually left untouched despite the force they can deliver to critiquing the colonial state, imperialism, and the inheritors that followed. As John Darwin observed the situation is one lately where ‘historians of empire have shown a surprising indifference to constitutional matters, as if the rules of the political game did not matter intensely to contemporaries. This is a bizarre misjudgement’.² Lazy characterisations of constitutional history

as an enterprise given to elitist, legalist and obscurantist esoterica only comfortable with slates of statutes and remote judicial portentousness is far from the mark. Commonwealth constitutional history instead is intrinsic to understanding the process of decolonisation and the post-independence travails. Commonwealth constitutional history can be broadly defined as the study of the sources, legitimisations, and control of state power through the prism, shared experience and consequences of British rule both direct and indirect. This definition gives Commonwealth constitutional history a crucial role in studying the end of the British empire and the dynamics of the colonial state and its successors. To evade this research area entirely or insufficiently historical writing on the British Empire and Commonwealth becomes devalued and incomplete. Whether national, regional, transnational or global Commonwealth constitutional history inherently draws on the vast influences and constitutional manifestations linked to British imperial authority. This does not imply an exclusivity centred on the direct impact of Britain, but rather allows a history fertilised with imperial and Commonwealth comparisons and disparities. Therefore, the objective of Commonwealth constitutional history is to chart machinations, political desires, local cultures, negotiating gambits and personalities just as readily as it as an examination of official documents, legislation, institutional structure, and law. To be clear this is not traditional legal history, which is primarily and tellingly in the United Kingdom and Commonwealth a conscious adjunct to Law Schools not History ones and thus not unnaturally concentrates on Law almost exclusively. Nor is this a survey and history of successive constitutions. Instead Commonwealth constitutional history as defined above openly embraces broader historical concerns of the political, social and cultural to interrogate the imperial, colonial and post-colonial state in order to derive the crucial constitutional dimension of decolonisation. In turn this means for historians the need to go beyond the discipline and exact from Law and Social Sciences the necessary analytical and scholarly information on the state to infuse their historical study. A situation described by A. F. Madden in the 1950s that saw the political scientist Sir Kenneth Wheare, Gladstone Professor of Government at Oxford, not only give lectures to historians but also be Chairman of the History board was evidence of a years where ‘there was no divorce yet between history and social studies’ is too rare today.³ Unlike its imperial cousin Commonwealth constitutional history carries the need to bridge and traverse British involvement and the post-independence era. The colonial period could not be ignored any more than the post-colonial. While clearly within the family Commonwealth constitutional history is still written differently from its older English and imperial sisters.

For most English school children from the nineteenth century to the 1950s constitutional history was central to their curriculum. Not as a dense dispassionate examination of governments and laws, but, as Michael Bentley explains, in a pedagogical and patriotic influence tied to the

national story since 'England's constitutional history functioned not as the accompaniment but as explanation of her glory' and 'instilled a distinctive temper in the English nation' that saw in the country's constitutional history the genius and liberty of England.⁴ This same English constitutional history impressed itself upon the colonial empire. Drummed into children and students, fortunate enough to have formal education, were the near omniscient superiority of the English and the verities of their constitution and empire. William Stubbs argued that to do English constitutional history was not to assemble facts and views, but instead to engage in the 'piecing of the links of a perfect chain' from the Saxons to the present. As Amanda Behm explains for historians like Stubbs this method showcased English political development, stability and liberty and was 'encoded in the canon of an unwritten constitution' and encouraged the notion of British settler colonialism as carrying this superior "history".⁵ For the ruled constitutional history was on one hand the history of England, and on the other, the constitutional history of British rule. To C. L. R. James the Whig progression of constitutional development lionised of England and the aspiration and question of when greater autonomy would come to the Anglo-Caribbean was answered from London and Government House with ' "Self-government when fit for it". That had always been the promise'. James sardonically commented, not unrelatedly, ' "Patriotism," says Johnson, "is the last refuge of a scoundrel." It is the first resort of the colonial Englishman'.⁶ There was from the nineteenth century, as Nicholas Mansergh wrote, a strong feeling in English political and academic culture that self-government was associated with 'people of British origin who alone, by reason of history and aptitude in the art of government, were thought qualified to exercise its responsibilities'.⁷ This showed a very distinctive cultural annexe to English constitutional history.

Imperial and commonwealth history is simultaneously and indelibly linked to England, and markedly separate from it. The teleological progress of constitutional history slowed, stuttered, and sometimes deviated from traditionally ordained paths when confronted with the colours of local demands, colonial urges, and, of course, realities. Serialisation of English constitutional history did not always translate or read well in Commonwealth and colonial contexts. The works of renowned English constitutional historians around the end of the nineteenth and beginning of the twentieth century like F. W. Maitland or the Oxford constitutional scholar A. V. Dicey travelled far from the Port of Spain to Port Moresby⁸. Yet constitutional historians like Stubbs and Maitland and such ilk were not historians of the British Empire, and nor did they claim to be. How could English ideas and institutions of cabinet government, parliamentary sovereignty, responsible advice, collective responsibility, prerogative powers, heredity within parliament and state, Christian assumptions, selective suffrage, and of course an unwritten constitution find meaning and form

away from London. Such hallowed principles of liberty and highlights of English constitutional history did not effortlessly flow to the empire.

Discussing the export of British model A. F. Madden argued that in any period of British imperialism ‘the product finally delivered at the frontier is different from the blueprint devised in the department. Distance has blurred the exactness of the copy, had aided the normal erosion of convention upon law and has permitted variants unsuspected at the centre or unknown in the prototype’.⁹ The same could be said for English constitutional history. Traditionally imperial and Commonwealth constitutional history instead sought to take England as reference point and chart the establishment and development of colonial government and settlement in the territory through an almost invariably English perspective. The Whig constitutional historians may have had a predilection for Stubbs’ “perfect chain” of historical development of English liberty, but historians of empire also saw in their field the need for a certain narrative and pride too. If, as Ronald Hyam, has argued British imperial power relied on prestige and ‘conveying an impression of unquestionable omniscience’ even if the reality were different¹⁰, the constitutional history of England and its empire profited from this impression also. No equivalent of the Germanic intellectual tradition of *Staatsrecht* cohesively draped the constitution at home or the empire across the seas. No school of law or history determined the Commonwealth’s laws and philosophy unlike many European traditions. Indeed as R. T. E. Latham pointed out in the late 1930s strictly speaking the ‘Statute of Westminster is all that there is of the Commonwealth in law, and it is not very much’.¹¹ History, expedience and crises filled these considerable gaps. The constitutional and political history of the British Empire and Commonwealth was an idiosyncratic enterprise that like its subject never failed to evade uniformity, generalisation, or, despite enduring impressions to the contrary, functioning under one law.

It is interesting to note that all the major writers who contributed lasting works and scholarship on the constitutional history of the British Empire and Commonwealth during the twentieth century and beyond rarely, if ever, labelled themselves as constitutional historians and a good many were not even to be found in academia let alone in the History common room. Martin Wight, J. D. B. Miller, and Alfred Zimmern gave respectively invaluable histories on colonial legislatures and constitutions, surveys of Commonwealth affairs and historical foundations for constitutional cooperation are seen as key scholars and theorists of International Relations; Dennis Austin, Sir Kenneth C. Wheare and Geoffrey Marshall who wrote historical works on governments and concepts of the Commonwealth hailed from the field of Politics; Sir Ivor Jennings and S. A. de Smith left invaluable works on the constitutional history of the ‘old’ and ‘new’ Commonwealth and both held Maitland’s old chair of Downing Professor in the Laws of England in Cambridge;

Sir Charles Jeffries, Sir William Dale and Sir Kenneth Roberts-Wray left major constitutional studies unquestionably and openly informed from their mandarin vantage in Whitehall; B. R. Ambedkar, Leo Amery, Lord Bryce, Sir Zelman Cowen, H. V. Evatt, Eugene Forsey, Patrick Gordon Walker, Lord Hailey, Richard Hart, Hugh Hickling, Sir Fred Philips, Sir B. N. Rau, Eric Williams, H. M. Seervai all combined a talent for Commonwealth constitutional history with state or political office; Alpheus Todd, a parliamentary librarian in Ottawa, wrote the huge and much used constitutional and parliamentary history of the colonies and Dominions; and perhaps the most impressive historian of them all in terms of depth, range and citation, A. B. Keith, who we shall hear of again, was a prolific Indologist.

An Ecumenical Octet of Commonwealth Constitutional Writers

Political Scientist Anthony King in his study of the British constitution has a chapter entitled 'The Canonical Sextet' to describe some of the 'classical writers on the constitution'.¹² For the sake of brevity and reticence post 1918 Commonwealth constitutional history an ecumenical octet of writers are offered here to give varied sample of the field of Commonwealth constitutional history and in their work exemplify its range. W. David McIntyre in his *The Britannic Vision* provides a fascinating study and brief description of key Historians and the Commonwealth. So as not to replicate him the Octet consciously leaves out those covered so expertly by McIntyre with the exception of A. B. Keith who is in need of further attention due to his contributions. The importance of Nicholas Mansergh will be recognised in a further section towards the end of the article. Obvious names like Sir Reginald Coupland, Lionel Curtis, Sir Keith Hancock, Dame Margery Perham, Sir Kenneth Wheare and Alfred Zimmern, among others, are omitted from the list – though all their names feature across this article.¹³ Instead the list below aims to complement McIntyre's and to bring forward other writers, now past, who have contributed in various critical ways to constitutional history of the Commonwealth and critically whose work has resonance beyond one state. Almost none of the writers below, as above, would likely describe themselves as constitutional historians of the Commonwealth. Nonetheless they all conform to my definition of Commonwealth constitutional history stated in the previous section as they have all weaved the constitutional story within their powerful narratives and impressed upon their reader the centrality of constitutional history to the study of the state's power and the conceptions of ruling as well as the effects of being ruled. The eight writers selected give a taste to the field, but in no way, provide a definitive or exhaustive list. All of them write constitutional history covering more than one

place and all of them have latent interest in the constitutional affairs of other colonial and Commonwealth states. Below follows in order of birth a very abbreviated coverage of each.

1. Arthur Berriedale Keith (1879-1944)

Few constitutional histories of the late British Empire can avoid the writings of the Scot A. B. Keith – mainly because he wrote much of it. Keith was author of such books as *Responsible Government in the Dominions* (Oxford: 1928), *The Governments of the British Empire* (London: 1935), *Constitutional History of India, 1600-1935* (London: 1936), *The King and the Imperial Crown: The Powers and Duties of His Majesty* (London: 1936) and *Speeches and Documents on the British Dominions, 1918-1931: From Self-Government to National Sovereignty* (London: 1948). Educated at Edinburgh and Oxford universities in, among other subjects, Sanskrit, Pali, Greek, Latin and Logic Keith served in the Colonial Office from 1901 covering a wide array of areas including legal and political issues involving Natal, Nigeria, North America, the Caribbean, and Home Rule for Ireland. On his return to academic from 1914 till his death in 1944 he held the Regius Chair in Sanskrit and Comparative Philology at the University of Edinburgh and later acquired the additional position in the Law School of “Lecturer on the Constitution of the British Empire”. For Keith the interwar years were critical in the development of government, constitutional status and institutions across the empire and the end of World War I ushered in a great demand for his knowledge and words. He helped develop and promote the critical idea that political autonomy was not inimical to the Commonwealth. Keith was a rare scholar who could combine deep understanding of “oriental” culture and history with an equal command of the United Kingdom, settler cases and much of the colonial world too. Dominion leaders like the William Mackenzie King would consult the constitutional polymath of empire and the veteran Canadian prime minister would often visit Keith in Edinburgh after the imperial conferences in London. His writings would remain cited in constitutional and political events across the Empire-Commonwealth for decades after his death and his detailed studies remain the commanding source.¹⁴

2. B. Shiva Rao (1891-1975)

B. Shiva Rao was a well-regarded journalist who wrote for *The Hindu* and the *Manchester Guardian* well known to the major Indian political leaders and had cut his political teeth helping Annie Besant’s Home Rule for India movement. Shiva Rao also sat in the Constituent Assembly a body tasked to frame a new constitution for India and would later serve in both houses of the

Indian parliament. He collated constitutional histories of countries across the world including Mexico, the U. S. S. R. and the Kingdom of the Serbs, Croats, and Slovenes as well as entries on the Statute of Westminster, the Irish Free State, Canada and Australia. *Select Constitutions of the World* originally was produced 'by order of the Irish Provisional Government in 1922'. Shiva Rao updated it with Irish approval while in London and published it in Madras in 1934 for those 'actively interested in the constitutional changes which taking place in India'.¹⁵ In terms of constitutional history of the Commonwealth he made two related contributions that continue to resonate. The lesser known service, and one that surreptitiously adds another name to list, was to edit a collection entitled *India's Constitution in the Making* (Calcutta: 1960) of the notes, reports and memoranda of the incredibly erudite and influential Indian Constituent Assembly's Adviser, Sir B. N. Rau (1887-1953), who happened to be his elder brother. Herein were detailed references to the constitutional histories of the Dominions and elsewhere and arguing in a measured manner how their example might be used for the republic's new constitution. Rau was adept at absorbing massive amount of historical and legal texts and his service to independent India's constitutional framework rivals B. R. Ambedkar's. Aside from international influences Rau was also adept at drawing on India's own rich historical traditions and ancient texts such as the Code of Manu concerning government to situate the new state's constitutional pedigree for democracy. Yet in the end he favoured English and Commonwealth constitutional traditions, but not whole. Rau was active helping Burma with its first constitution and was instrumental in finding the formula in keeping republican India in the Commonwealth, which had hitherto been the preserve of realms. Shiva Rao's second service was to edit the multi volume *The Framing of India's Constitution – Select Documents* (New Delhi: 1966-1968), which remains the indispensable source of the debates and decisions of the Constituent Assembly. A separate volume contains from Shiva Rao a majestic section on the "Historical Background" of the constitution, which not only draws on colonial India, but brings in the struggles, ideas and constitutional history from across India and the British Empire. Crucially it brings important Indian narratives and their engagement, frustrations and constitutional stratagems that were fundamental to Indian freedom. The works serve as an imperfect but necessary reminder of the historical foundations of the empire's greatest possession and the Commonwealth's most critical member. It remains in print with a mine of information showing how Westminster, colonial India, the Commonwealth and precious Indian innovations contributed to the constitution of the Indian republic.

3. C. L. R. James (1901-1989)

C. L. R. James is an example of a writer, unlike most in this list, who evaded academia and sought with no little success to articulate the need for self-government and champion anti-colonialism. Several other writers did similar things fitfully fighting with their pen under the canopy of colonialism, but James had resonance. The Trinidadian James worked as a school teacher and among those he taught was Eric Williams, who openly imbibed the lessons of his mentor James during his time as a doctoral student in history under Vincent Harlow and Reginald Coupland in Oxford and later himself an articulator and representative of responsible government as independent Trinidad and Tobago's first prime minister. James was highly influential in the Caribbean and also in Africa impressing figures from Nkrumah to E. P. Thompson, with his tireless efforts to eradicate colonialism and racism. His works on slavery through colonialism remain powerful. While in later life he took on Marxist positions his earlier work appreciated the forms of government available in the empire, but attacked it not being offered to the Caribbean. He cuttingly critiques colonial government and the political and personal prejudice it upholds in the West Indies and uses clear arguments for autonomy within the British Empire. C. L. R. James' *The Life of Captain Cipriani: An Account of British Government in the West Indies* (Nelson: 1932) and its abridged focus on the Caribbean Crown Colony experience *The Case for West Indian Self-Government* (London: 1933)¹⁶ were written in the wake of the autonomy recognising Statute of Westminster Act 1931 for the white settler Dominions. James cogently ridicules the colonial government and its impeding of racial equality and democracy despite British rule proclaiming the opposite. His powerful appraisal of Crown Colony government and his search for constitutional arrangements that suited in his mind the distinct polities of the West Indies having a population of many cultures were sincerely made. Like many anti-colonialists under the British Empire James knew his constitutional history and was keenly aware of constitutional developments beyond his own country, but within the imperial world. In the *Case for West Indian Self-Government*, for example, he sees options from Ceylon and Malta and views parallel experiences in Ireland and Quebec as pertinent. He sees no need to lazily and "plastically" copy the English model. The anti-colonial writings of James underscore how constitutional history and the English idiom can be used to articulate a case for independence and highlight inequality and the hypocritical strains of English liberal imperial constitutionalism. James shows the symbiotic relationship of social history and political history and their collective impact upon constitutional history. No one reading his classic history of cricket *Beyond a Boundary* can fail to see the politics of empire and race as well as the need for "fair play" in society and state.

4. Sir Ivor Jennings (1903-1965)

The Bristol born Master of Trinity Hall, Cambridge and law professor Ivor Jennings engrossed himself in reading British and Imperial political history from the very beginning of his education. At a young age at the LSE he had already written key constitutional texts. Indeed, his name and works are still regularly cited by legal scholars due to his lasting works on the British constitution such as multiple editions of *The Law and the Constitution* (London: 1933), *Cabinet Government* (Cambridge: 1936) and *Parliament* (Cambridge: 1939) as well as on the complexities of that very Commonwealth constitutional expedient: conventions. What is less well known in British academia is that almost half of his career was spent outside Britain, especially in the “New Commonwealth”. Jennings was a major “constitution-maker” working as a constitutional adviser and constitutional commission member from Singapore to Sudan. In these critical assignments across the globe Jennings drew upon imperial and Commonwealth constitutional history with incredible dexterity. For Ceylon, where he was at his the most influential and served as vice-chancellor, for example, he recommended and incorporated in the constitutional documents lessons from seemingly unlikely locations such as Newfoundland and Ireland. Critically for Commonwealth constitutional history his accounts still provide first hand assessments of the cases he wrote on and his prolific books remain, however dated, often the most durable constitutional account of critical stages in state-building as well as more general books that capture the constitutional mood and thinking during the heyday of decolonisation. Numerous editions of *The Constitution of Ceylon* (Oxford: 1949), *Constitutional Laws of the Commonwealth* (Oxford: 1952), *Some Characteristics of the Indian Constitution* (Madras: 1953) *The Approach to Self-Government* (Cambridge: 1956), *Constitutional Problems in Pakistan* (Cambridge: 1957) and *Democracy in Africa* (Cambridge: 1963) display his wide interests and, less openly, his involvements. Jennings’ Commonwealth scholarly works and constitutional memoranda are always full of politics, personalities and history that seldom allowed legal doctrine or academic boundaries to trouble his ambitions or style.¹⁷

5. A. F. Madden (1917-2011)

Between 1985 and 2000 eight volumes of over 6000 pages and approximately 30 years of work *Select Documents on the Constitutional History of the British Empire* emerged with the imprimatur of Oxford historian Frederick Madden with the collaboration, at times, of D. K. Fieldhouse and later John Darwin, both of whom were immensely receptive to the virtues of constitutional history,

which is very evident in their own substantial work. Madden's immense scholarship was in evidence as he completed the enormous publishing feat of covering over 800 years of constitutional history and was never in doubt. However, they have never become even marginally read let alone cited or positioned anywhere near a History reading list. Part of this is due to laborious type setting of the American publisher, but the subject and its coverage were mired by what Peter Burroughs described as 'changing fashions', which reduced constitutional history, once in vogue and central to imperial history, to be labelled 'antediluvian and blinkered'. Madden himself described it as an 'idiosyncratic project' when conceived in Sir Kenneth Wheare's study in All Souls in 1953. Yet like Wheare, Madden, did not see "constitution" in narrow terms instead viewing constitutional history as crucial to understand governance, politics, institutions and cultures. Important since, as Burroughs assesses 'imperial history is – and will always be – utterly unintelligible without an intimate understanding of political institutions and public law in both Britain and its colonies'.¹⁸ While Michael Brock wryly praised the 'unfashionable independence'¹⁹ of a book project like Madden's few took up the intellectual message of Burroughs in seeing the value of constitutional history for their own fields of imperial and commonwealth history. With Kenneth Robinson he presented a collection of important essays in *Imperial Government* (Oxford: 1963) for Margery Perham, with W. H. Morris-Jones *Australia and Britain – Studies in a Changing Relationship* (London, 1980) and with D. K. Fieldhouse another valuable edition entitled *Oxford and the Idea of the Commonwealth* (London: 1982). Madden was equally at home with the constitutional history of the Angevins as he was on the settlers of Australia, the planters of Antigua or the traders of Aden. It is hard to find an historian of imperial and commonwealth government in the post war era with such remarkable breadth, command of detail and indefatigably focussed dedication to Commonwealth history and government.

6. S. A. de Smith (1922-1974)

Stanley Alexander de Smith was a lucid LSE and Cambridge law professor who actively engaged professionally and academically with all parts of the Commonwealth, and his services were actively in demand. Like Jennings, despite his faculty home, he would not allow himself or his constitutional writings to be limited by what he called "lawyers' law". While famous for his works on Administrative Law it is his forays into the constitutional life of the "New Commonwealth" that attract the attention of the Commonwealth constitutional historian. De Smith's *The New Commonwealth and its Constitutions* (London: 1964) remains a classic of its kind and skilfully brings in the constitutional history of South Asia and the newly independent states from

South East Asia and Africa, describing the reception of the Westminster model in these lands and how British constitutional concepts developed or wilted there. De Smith also probed the terms and words inherent to the British constitution and their application in the Commonwealth, realising that the vocabulary of the constitution might be the same, but not necessarily the meaning. He was also very interested in thorny cases like Rhodesia, Nigeria, Malaya, Pakistan, and the neglected microstates of the Pacific. He spent time too on constitutional missions and commissions, including being secretary at Keith Hancock's request to the Buganda Commission in the mid 1950s and was Constitutional Commissioner to Mauritius. Unlike some British law scholars De Smith had the ability to write accessibly, not just about Britain constitutional affairs for a Commonwealth audience, but more importantly about constitutional issues affecting the Commonwealth in the particular states themselves.

7. D. A. Low (1927-2015)

After reading African history in Margery Perham's Oxford, Indian born and Haileybury educated Anthony Low took his first academic position as a Lecturer at the new Makerere University College in Kampala in 1951, wanting to understand colonial Africa first hand. He also became the East Africa correspondent for the *Times*. While in Buganda he met Hancock who helped him with his career in Britain and Australia and whom would be the subject of a biography by Low. African political history would be continuing passion and arm of Low's - his first book and last over a period of over fifty years (and in-between) were on British East Africa. Increasingly Low, now moving between Canberra and England, became engrossed with the endgame of empire in the Indian subcontinent and produced elegant and powerful books examining the fissures of colonial power and investigating the Indian and British motivations, collaborations and political manoeuvres. *Congress and the Raj – Facets of the Indian Struggle* (London: 1977) and *Britain and Indian Nationalism – The Imprint of Ambiguity* (Cambridge, 1996) continue to illuminate a complex and critical stage in Indian history. Later holding the Smuts chair in Cambridge, he scanned together, as few could, different parts of the Empire-Commonwealth to interrogate the politics and power relations at not just end of empire, but also during the growth of national consciousness in the emergent post-independence states. This was amply in view in his collections *Lion Rampant – Essays in the Study of British Imperialism* (London: 1973) and *Eclipse of Empire* (Cambridge: 1991). Britain and the 'old' Dominions were not left out. He edited two superb volumes (one with David Butler) on constitutional crises involving heads of state in the post-war Commonwealth and covered Buckingham Palace and the emblematical constitutional crisis that dramatically befell

Australia in November 1975 when the Governor-General sacked the prime minister, Gough Whitlam, while Low was close by as Australia National University vice-chancellor.²⁰ His last book *Fabrication of Empire – The British and the Uganda Kingdoms 1890–1902* (Cambridge: 2009) evidenced a Commonwealth scholar writing in his 80s upholding his consistent passion to understand the history of colonial and local government and the exercise of power by all. Above all he expressed, for all its faults, the connectedness Commonwealth history afforded.

8. C. A. Bayly (1945-2015)

World historian Sir Christopher Alan Bayly is a generation younger than the previous writer in the list, D. A. Low. Bayly, gained his doctorate on nineteenth century local politics in Allahabad under Jack Gallagher at Oxford in 1970, and was captivated by Indian history, despite being taught almost exclusively European history beforehand. For him and his cohort constitutional history of empire was prone to be viewed as dull repetition of endless disappointing commissions and hollow exhortations of Britain's civilising constitutionalism. Imperial history had been taught and written in outlets like the *Cambridge History of the British Empire* (the series began in 1929) with, as Bayly described, an 'unwritten purpose...to demonstrate how the English values of "justice", "benevolence" and "humanity" were transformed into a universal ethos of free nations through the operation of the rule of law and democratic government'.²¹ Crucially for historians like Bayly's, working on colonial India, the voice of the ruled in these histories had hitherto been absent. While primarily known for his original, expansive, and meticulously composed histories of eighteenth and nineteenth century imperial and South Asian history Bayly, later in his career, added the twentieth century to his unequalled historical repertoire. His powerful and inquisitive mind proceeded to disentangle Britain's imperial mission and to uncover its imperfections. With Tim Harper, their books *Forgotten Armies – The Fall of British Asia 1941-1945* (London: 2004) and *Forgotten Wars – The End of Britain's Asian Empire* (London: 2007) dramatically and skilfully displayed the constitutional and political schemes of the British and local leaders in a climactic context as well as the impact on the ruled. Bayly's *Recovering Liberties – Indian Thought in the Age of Liberalism and Empire* (Cambridge: 2012) singed with captivating intellectual history of liberalism both in British and South Asian hands and how liberalism related to power and the state. With unparalleled and expanding reach his world history analysis became ever ready to draw constitutional and political

comparisons and original connections across the “modern world”. The British Empire and Commonwealth and its constitutional history were only a part of his intellectual domain, but became a progressively significant one in his majestic surveys of power, ideas and society.²²

Pre-Commonwealth Constitutional History

Perhaps it is no surprise that one of the most important authorities on constitutional history across the British Empire in the early twentieth century held a position as ostensibly removed as Regius Chair of Sanskrit and Comparative Philology at the University of Edinburgh. Verses of the *Upanishads* might have helped Arthur Berriedale Keith decipher the myths and complexities of the British Empire’s constitutional and political evolution. Before the modern Commonwealth came about in 1949 with the admission of India on its own republican terms the key constitutional moment in the interwar period was the imperial conference in 1926 held in the aftermath of the so-called King-Byng affair, which questioned the Crown’s imperial powers in Canada to intervene in local affairs. The Balfour Declaration from the conference of Dominion leaders of 1926 famously described Britain and the Dominions as “autonomous communities within the British Empire, equal in status, in no way subordinate one to another in any aspect of their domestic affairs or external affairs...”, which gained legislative form in the 1931 Statute of Westminster. Keith wryly commented that the ‘definition may be admired for its intention rather than for its accuracy’, reminding his readers the often forgotten qualification in the declaration that followed: “the principles of equality and similarity in status do not universally extend to function”, as well as such incongruities as the ‘rather stupid’ ignoring of Northern Ireland.²³ For constitutional historians like Keith, events like the seminal 1926 Imperial Conference of British and Dominion leaders (with nominal representation from India) were not mere abstractions, but principles and policies for a new world order that gave flesh to Whig historical ambitions of transforming the empire. Did this apply beyond the “kith and kin”? Some had in mind the words of Lord Macaulay in 1833.

It may be that the public mind of India may expand under our system till it has outgrown the system, that by good government we may educate our subjects into a capacity for better government, that having become instructed in European knowledge they may in some future age demand European institutions. Whether such a day will ever come I know not. But never will I attempt to avert or retard it. Whenever it comes, it will be the proudest day in English history.

History and politics were not so simple. Such statements as the above were crafted as “alibis” of liberal imperialism and constitutional absolutism.²⁴ J. R. Seeley famously asked in 1883 how could England reconcile ‘opposite extremes’ in being ‘despotic in Asia and democratic in Australia’.²⁵ The empire relied on those ruled believing that “the proudest day” could be theirs. The first President of the Ceylon National Congress, Sir Ponnambalam Arunachalam, for example, quoted this passage of Macaulay in 1917 in his presidential address to the party faithful. Constitutional history of the empire travelled far. He stressed that ‘England’, ‘in her dealings with dependent peoples, her staunch faith in the healing and ennobling power of popular institutions and has found in them the only sure remedy for the ills of the body-politic’. Yet, as Arunachalam recognised a problem was that the history that he and others received was that it was only the *genius* of English constitutional and political history and as such wilfully ignored local constitutional and political history. A constitutional, classical and historical scholar taught by the same Seeley at Cambridge, he pleaded with the Westminster and the Colonial Government for a university on the island for schools to teach Sinhalese, Tamil and local history so that Ceylonese could learn their own “worthy” constitutional and political history. As he reminded Colonel Wedgwood the island had ‘twenty centuries of autonomous rule before Westerners arrived here’.²⁶ Arunachalam and others like him across the colonial world, particularly in Asia, Africa, the Pacific and Caribbean, found that their political liberalisms that acknowledged a place within the empire was still frustrated and stunted. They were confounded at the settler and British denial of their country’s and people’s entry into the hallowed community of ‘autonomous’ Dominion states within the empire. For they knew, as A. V. Dicey, admitted to Keith, that ‘Dominion’ was shorthand for ‘colonial independence’, but as yet restricted to the white communities of Canada, Australia, New Zealand, Newfoundland, South Africa and the Irish Free State.²⁷ Indeed much could be taken from the cultural and geopolitical underpinnings of the revered Dominion constitutional status since, as few appreciated, other than allegiance to the Crown it mandated few other constitutional requirements. Reginald Coupland argued that Dominion status did not even mean having to function domestically under a parliamentary government.²⁸ In such circumstances admission criteria to the Dominion club was wilfully murky.

Keith, as a devout Indianist recorded in his disappointment that there was still a strong instinct to keep pushing away “such a day” and judged that India at the 1926 conference had ‘fared badly in the constitutional discussion’ and ‘remained excluded from the constitutional discussions of the Expert committees’.²⁹ Keith had witnessed at first hand the gap between rhetoric and practice. Having been a civil servant at the Colonial Office and serving as secretary to several

imperial conferences before taking his academic post in Edinburgh in 1914, he knew the realities. Indeed, in almost all his books, of which there are many, he inserted after his name and academic positions “Formerly Assistant Secretary to the Imperial Conference”. Another towering imperial and constitutional historian from the period was Coupland himself, the second holder of the Beit Chair in Colonial History at the University of Oxford. Like Keith, he was “involved”. Serving on commissions in Palestine and India as well as authoring reports on contemporary issues affecting governance and reform across the Empire-Commonwealth, Coupland saw himself as using history to inform constitutional reform and spread the virtue of the Commonwealth outside his academic work with a range of connections and networks from the Cabinet to the Colonies well facilitated from the imperial cloisters of All Souls. Not all were convinced. The future first prime minister of Trinidad and Tobago, Eric Williams, would write in his 1944 seminal book *Capitalism and Slavery* that Coupland’s presentation of British liberal imperial progress witnessed by the moral need to end slavery was ‘merely poetic sentimentality translated into modern history’.³⁰ In his inaugural lecture as chair in 1921 Coupland also concentrated on the issue of race, nationality and the extension of the British Commonwealth to all peoples within the empire. Indeed, he went so far as to argue just years after the Treaty of Versailles and devastation of war that the British Commonwealth that he variously described as a ‘miscellany of nations’, ‘motley company’ and a ‘unique experiment in international relations’ could become an example to the world and become a ‘British League of Nations’. If the British Commonwealth and Empire, however, were in this “experiment” to fall apart and embrace narrowness and ‘less generous ideals’ it would then ‘split into a chaos of alien sovereignties’ and ‘the hope of the world will be dimmed’. Interestingly reversing the judgement on Britain’s constitution Coupland believed that in the British Commonwealth it is the constitutions that are written unlike their histories.³¹

As W. David McIntyre assesses, historians of this period which saw rapid constitutional change found themselves ‘both as participants and interpreters’. This meant that for figures like Lionel Curtis, who believed in a great union or federation of Britain and the Commonwealth that history was a ‘teleological progression of civilizations and constitutions to be manipulated for the cause’.³² The Commonwealth for the dynamic Curtis was a rebuke to imperialism and empire since it ideally could bring shared government by uniting ‘an Australian native, a London free-thinker, a Ugandan gentlemen, a Rand negro, an Egyptian merchant and a Singapore Chinamen’ who lived under ‘one rule and one peace’. For such historians, as Wm. Roger Louis argues, imperial history was inseparable ‘from the perspective of British constitutions and administration’.³³

The Australian Sir Keith Hancock was another who gravitated and shaped such thinking of the British Commonwealth as a model for world government. While based at All Souls in

Oxford he was invited by Arnold Toynbee at Chatham House in the early 1930s to write what would become one of his lasting historical legacies the first *Survey of British Commonwealth Affairs*.³⁴ As Hancock wrote in a letter to Toynbee when drafting the final sections of the first volume, 'I am anxious in this last chapter to make the reader feel that the fate of the British Commonwealth is interwoven with the fate of world order'.³⁵ Commonwealth constitutional history became a way of collectivising a British race mantra that benevolently *guided* the world in its image and interest. The ambiguities of imperial and Commonwealth government meant its virtues could be proclaimed loudly without clarifying the constitutional necessities for attaining independence. Hancock himself, like other historians and civil servants of the period, preferred the word 'self-government' over that of 'independence', and even then this was dampened down with the proviso that self-government should be practiced 'wherever it can be followed'.³⁶ As Roger Louis notes, for Hancock a favourite phrase was 'sovereign equality' and seeing the Commonwealth as early as 1930 as 'a cooperative confederacy'.³⁷ Yet for Hancock this was always to be under the leadership of Britain and the settler Dominions, however multiracial the Commonwealth would become since Britishness and race counted more in this conception than country.³⁸ The problem of promoting the empire's constitutional 'procession' to self-government, as Zimmern called it, was that for too many communities in the interwar years it was not a procession, but a frustrating ordeal of fits and starts.³⁹ As Hancock himself recognised in the 1930s for Malta, for example, 'for a hundred years Malta's march had been like Sisyphus purposefully pushing his stone up the hill'.⁴⁰ As S. Gopal notes, All Souls during the inter-war years and an astonishing influence on British and colonial policy and constitutional ideas since it included aside from Hancock important figures like Amery, Coupland, Curtis, Lord Halifax, Geoffrey Dawson, Penderel Moon, Sir John Simon, and Sir Maurice Gwyer and even included a fellow, L. Rushbrook Williams, who acted from Oxford as the foreign minister of the Indian princely state of Patiala despite it not having any foreign relations.⁴¹ Whatever else high table at All Souls and other comparable bastions proved a fertile ground for constitutional idealism. The ideas of world government bubbled with Commonwealth thinking with its premise that this potential force in international affairs would march, naturally, in the interest of Britain and the white dominions performing the divine as custodians of the "highest civilisation".⁴² Hancock's biographical subject, Jan Smuts, was another who knew how to smoothly pass the port at such tables enthusiastically promoted his own Commonwealth vision of liberal world government again under the leadership of the white dominions without brooking any interference or admitting contradiction in the domestic racial policies of South Africa. This was borne, as Mark Mazower argues, from an anxiety of the 'restless peoples of Asia and Africa' which led Smuts and others to imagine the British Commonwealth as a constitutional solution of

government to bring together the ‘civilised peoples’ in a parliamentary harmony to administer the backward world and preserve their own.⁴³

Hancock, whose historical scholarship ranged wide and deep over the empire, never, at his own admission, mastered India. Yet he recognised that after the second world war India would replace Canada as the ‘pacemaker of constitutional and political change’ in the Commonwealth and Empire.⁴⁴ If Hancock and Lord Linlithgow are to be believed Gandhi admitted in 1941 that he had never read the Government of India Act 1935, perhaps the most complex constitutional document ever to emanate from the British parliament, it was also the longest piece of legislation ever produced from Westminster. Supposedly Gandhi ‘discovered to his surprise that it gave to a united India all the essentials of self-government’. Had he known earlier, according to the famously hardnosed Viceroy Linlithgow, who was no friend of the Mahatma, the option would have been taken and conflict with the British might have been avoided. A story well repeated by Hancock to other sympathetic ears.⁴⁵ This reveals a very warped and erroneous view of Indian history, but whatever else the reading of constitutional history, in its short or longue durée coverage, held ramifications for imperial and Commonwealth affairs and the post-war world.

Post-War and Professional Commonwealth Constitutional History

C.A. Bayly commented on how even after the second world war History departments, if they had Asianists, were often educated by those who had direct experience of the colonial empire and imparted their ‘assumptions’ to a new generation. While those that studied the Dominions were regaled in the Seeley tradition of the expansion of English civilisation. In this ‘Commonwealth history was the history of progressive British settlement and constitutional benevolence’ while Asian history was largely ‘a narrative which had served to make European dominance appear the natural consequence of the weakness of oriental government’ and the collapse of once notable civilisations owing to fatal flaws of the oriental’.⁴⁶ Arguably the most dramatic change in post-war constitutional history was to provide guidance in the creation of the Indian republic’s constitution. India’s freedom movement and her prominence in the empire meant that all eyes were on Delhi as not only the most important, but also the first non-white territory to emerge from the British Empire to take its independence. Constitution-making was critical and constitutional history essential to this unique task. India’s Constituent Assembly started its work in 1946 and history – colonial and constitutional – was everywhere. The complexity of India’s constitutional history befitted a continent that was the most populous colonial possession in history. Scores of scholars, charlatans and politicians wrote histories of British India and almost

inevitably the power and the state were the core of their story. If the British colonial power in India produced a jumble of constitutional arrangements that mystified all but the most dedicated the task of crafting a new constitution for what was to be the world's largest democracy would be no easy task. Constitutional history was required and needed to be carefully sifted and pragmatically used to shape the newly independent state. Scholar-Civil Servants in early independent India like Sir Alladi Krishnaswami Aiyer, Sir Girja Bajpai, Sir C. P. Ramaswami Iyer, V. P. Menon, Sir B. N. Rau, H. M. Seervai and M. C. Setalvad openly drew upon historical political and constitutional precedents from imperial and Commonwealth history to abet their preferences towards constitutional forms and reforms they perceived not only India's due, but also best suited for a New India. This erudite brood was active and agile in the deployment of historical analogy and a wide reading of common law to craft a constitutional order, both in the colonial and post-colonial moments. India by drawing on imperial, colonial, Westminster and Commonwealth precedents as well as making key deviations of its own became an *Eastminster*, as did many other states in the region.⁴⁷ The 1950 Indian constitution that the Assembly produced was soon lauded by the world, but especially by its citizenry. India would soon find itself, like the nineteenth-century English historians mentioned above, with scholars congratulating the country on its constitutional history, with the story patriotically spun into nationalist fabric of India.⁴⁸ Nationalist history made the constitution the inevitable result of an anti-colonial struggle and the exclusive due of Indian autochthony – to use a word popularised by Wheare in constitutional studies⁴⁹ - without recognising the soils used from other cultures and influences including, obviously less popularly, the colonial period that clearly contributed to the Indian constitution.

The history of India's constitution-making period in the Assembly and its debates was even perceived as popular enough to produce in 2014 a well-received ten-part miniseries *Samvidhaan: The Making of the Constitution of India* in Hindi and launched in parliament by President Pranab Mukherjee. However, Commonwealth constitutional history is yet to catch on as a popular film genre. The drama of the transfer of power did place Commonwealth scholars at the fore of the scene through the need for historical accounts to understand the end of empire and the beginning of new and restored original states to use the distinction of C. H. Alexandrowicz.⁵⁰ Independent states needed constitutions and constitutional history from the Commonwealth was never more in vogue. In 1960 the Ghanaian Constituent Assembly, for example, quotes glowingly from Ivor Jennings' *Approach to Self-Government* found their way into *Hansard* thanks to the Leader of the Opposition and a Parliamentary Secretary to the Government.⁵¹ Even for the Dominions where there was no identifiable flag lowering ceremony a rummage in constitutional history periodically was carried out to see if anything useful could be found. Michael King in his popular

2003 history of New Zealand argued that November 25 be treated like an independence day due to it being the date the country ratified the Statute of Westminster in 1947 – an opinion shared by then deputy prime minister Michael Cullen in the 2000s.⁵² There was an active need for constitutional history in the post-war era for those many territories in Africa still under colonial rule. Margery Perham prepared an annotated reading list on “Colonial Government” and stated in her 1950 introduction that ‘It is, of course, impossible to understand the government of the colonies to-day without considerable historical knowledge of the conditions, purposes, and principles which determined their earlier development’.⁵³

In this context the early to mid-twentieth century constitutional history writers became constitution-makers, sometimes in reverse order. Commonwealth scholars like Wheare, Hancock, Keith, De Smith, Forsey, Jennings, Perham, Rau, David J. Murray, Vincent Harlow, Ronald Robinson and others were actively called upon to provide their constitutional and historical expertise to countries and commissions across the Commonwealth world. A felicity in history helped. In fact, the constitutional history of the British Empire and Commonwealth could be used as a vast arsenal from which deadly political and legal blows would be inflicted upon opponents. History wars by other means. In Pakistan, for example, in 1954 the Ghulam Muhammad, the Governor-General, dissolved, without advice, a legislature that dared put a bill for assent that would limit his powers. The president of the Constituent Assembly challenged the decision in the courts and eventually the famed constitution scholar and constitution-maker, Sir Ivor Jennings, offered precedents not only from other Commonwealth jurisdictions, but even from English rulers Oliver Cromwell, Charles II, William, Mary, and James II to justify the use of autocratic Crown power against parliament in a predominantly Muslim South Asian state in the 20th century. Three centuries of desuetude of such power and the near consensus of this in the historical literature was no barrier for the Federal Court siding with autocracy over democracy.⁵⁴ Supposedly ceremonial heads of state based on the British model saw and exercised great power drawing on their constitutional history and local traditions, which has encouraged political conflict such in Malaysia with the Sultans and Prime Minister Mahathir Mohamad⁵⁵ and the propensity of Governors-General in the Pacific islands to act in extraordinary ways during not infrequent constitutional crises.⁵⁶ Constitutional history arrayed for such improbable political manoeuvres not only stretched the use of history, but also laid a powerful legacy how history of this kind can be manipulated with very real consequences. From post-war Guyana to Sierra Leone, from Australia to Fiji constitutional history was employed in the manner for successful skirmishes against elected governments.⁵⁷

Despite Colonial Officials arrogantly assuming that few understood the tenets of the British constitutionalism, what could compel the Nkrumah supporting Ghana Representative Assembly of around 3000 people to pass the following resolution in 1950?:

That the people of the Gold Coast be granted immediate self-government by the British Government, that is full Dominion status within the British Commonwealth of Nations based on the Statute of Westminster. That the assembly respectfully demand immediate grant and sanction of full self-government for the chiefs and people of the Gold Coast.⁵⁸

Nkrumah, and leaders like him, across the colonial world not only were highly aware of constitutional developments across the Empire and Commonwealth, but also keenly appropriated and absorbed constitutional history, which enabled a political vocabulary to parley with the Colonial Power. Using terms like “Dominion status” or “Self-government”, and alluding to critical milestones like the Statute of Westminster, showed a shrewd understanding that displaying historical knowledge of advances in the British Empire provided cogent arguments and precedents that intensified the case for freedom. Cascades of constitutional dicta fell eloquently from the mouths of freedom fighters, whether in legislatures, market squares, Governor’s residences or on release from prison. History, of course, did also show that the exposition of constitutional history to argue a point did not translate into the acceptance of it.

The post-war Commonwealth evidenced many remarkable transnational evocations of the constitutional history. In the mid to late 1940s arguments made by G. G. Ponnambalam in the Ceylon State Council and to the Colonial Secretary advocated statutory representation for the Tamil minority listing historical precedents from asymmetric compromises for French Canadians in 1867, the Maori Representation Act of the same year in New Zealand or the position of Muslims from Cyprus to Mauritius as reasons for such protection. The Commission instructed to propose constitutional reforms for the island instead believed British constitutional history showed the opposite. His Majesty’s Government agreed and the scheme was held to be derogatory to the history of self-government by subjecting it to parochialism unworthy of modern democracy.⁵⁹ Kamisese Mara looked to imperial and Commonwealth constitutional history to show what could happen if indigenous Fijians were not careful concerning land. In a speech to his followers and allies ‘We do not have to look for the answers’ of what happens if native people were not protected since the sad historical examples of the Maori, Aborigines, Dyaks, Nagas, Zulus, and ‘Kaffirs’ in their native lands was more than enough.⁶⁰ As Donal Lowry has argued in a further cases of transnational constitutional history knowledge the Northern Irish and Southern Rhodesians kept

detailed notes of each other's history and relations with Britain seeing mutually beneficial lessons on how to deal with perfidious Albion.⁶¹ Julius Nyerere, as Ellen Feingold argues, sought to place on the early bench of independent Tanzania black judges from West Africa and the West Indies including having a Canadian educated Dominican, Telford Georges, serving in Trinidad and Tobago to come to Dar-es-Salaam and become the first non-white Chief Justice of the territory. An awareness of the comparable constitutional and imperial history of these parts of the Commonwealth and Colonial Empire helped foster such appointments since they simultaneously gave symbolic importance and crucial expertise that made such transnational movements plausible.⁶² Indeed the constitutional history of Britain was by no means the sole reference for the empire and Commonwealth. The Singaporean Chief Minister, David Marshall, like others, saw the constitutional and political history of India as critical for the non-settler possessions in their path to independence. Marshall told reporters in Bombay in 1955 that "To us who live far away, India has been a midwife of the rebirth of Asia and the vanguard of Asian freedom. I want to sit at Mr Nehru's feet to learn as much as I can and absorb all I can" since he wanted to get self-government 'at a quicker pace' and like many saw in the recent constitutional and political history of India key lessons for his land.⁶³ Sir John Kerr in February 1975, was able, at their request, to discuss the position of the Governor-General of Australia to the Indian Law Institute and converse freely about the constitutional conundrum in Canberra with the Malaysian Prime Minister, Tun Abdul Razak, later that year in October where Prime Minister Gough Whitlam joked about whether the prime minister or governor-general would get to the phone first to the Queen to sack the other.⁶⁴ A shared understanding of Commonwealth constitutional history enabled Kerr to talk about such matters affecting the Australian Crown and Executive to an audience in the Indian Republic and to the prime minister of an indigenous Islamic monarchy in South East Asia knowing that for his interlocutors the crisis of what might seem obscure and esoteric domestic details would in fact be understood through history, education, experience but also a reading of shared imperial constitutional history that made an understanding of the Australia's dramatic 1975 situation much more than just politely comprehensible. Constitutional framing and constitutional crises were periods that generated the most interest in Commonwealth constitutional history.

Post "British" Commonwealth Constitutional History

Over 70 years ago the name "British Commonwealth of Nations" became officially retired with the recent inclusion of the new South Asian states of India, Pakistan and Ceylon as

independent members. The name “Commonwealth” eventually emerged. The dropping of “British” was a deliberate ploy to promote the idea that the Commonwealth was an international organisation with a reach beyond London that embraced the wider world. Nicholas Mansergh believed that the ‘the ideal of the Commonwealth remains the government of men by themselves’. As such he did not mourn at the dropping of “British”, but did regret the loss “of Nations”.⁶⁵ Commonwealth constitutional history is indelibly linked to English and imperial constitutional history, but it is also more than that. Too often attention is drawn to the imperial and Commonwealth metropolis to the cost of understanding, comparing and using what might be described as trans-Commonwealth history, the Commonwealth world or just Commonwealth history since its span should be implicit. As D. A. Low put it in towards the end of his inaugural lecture in 1984 as Smuts Professor of the History of the British Commonwealth (renamed too on his retirement in October 1994 to the Smuts Professorship of Commonwealth History, a move Low lobbied for), that the ‘difficulty seems to lie in perceiving with the necessary clarity that the Commonwealth is no longer a British institution’.⁶⁶ Commonwealth history is the same and its constitutional branch no different. Global history needs to uncover the vast material available from Commonwealth constitutional history. Linda Colley’s plea for the place of constitutions in global history is especially germane for the unparalleled constitutional dimension during the age of global decolonisation and in turn map its indelible mark across the post-colonial world.

Constitutions illumine the extent of transnational and transcontinental political transfer over time and in different locations, and do so with rich empirical and individual detail. No less significantly, they help reveal the limits and tensions of transnational and transcontinental influences and borrowings, and how layering operates between the local and the universal...Global historians have often neglected political history in favour of economic history, because the former subject has traditionally been organized around nation states. But tracing the spread of constitutions shows how the political, too, has been interwoven with transnational influences, aspirations, and pressures.⁶⁷

‘Constitutional Decolonisation’, a term used by Trevor Munroe describing British withdrawal from Jamaica⁶⁸, was a crucial process in the lives of most states including the former Dominions. An unearthing of all these states’ constitutional history will of course show British roots, but they also can shed light on other influential traces. To use an example of Dennis Austin’s, the introduction of quasi-cabinet government to the Gold Coast in 1950 openly drew on the innovative 1931 executive council reforms in Ceylon⁶⁹, which in turn, as Colonial Service Officer John Smith

recounts⁷⁰, was a popular idea in the Pacific territories in the 1970s and yet direct constitutional and historical comparisons between Ghana, Sri Lanka and the Pacific are near non-existent in contemporary imperial or Commonwealth history. A key and glaring need is get better historical understanding of the impact of constitutional ideas and institutions on everyday people as well and in addition a greater sense of the public's impact on constitutional government and colonial authority. The question Carl Bridge and H. V. Brasted pose on how much did the subalterns and the bazaar alter the constitutional dynamic of the Raj through the force they heaped on the Indian National Congress, Muslim League and the British, remains essentially unanswered as it does for the rest of the British Empire in the course of decolonisation.⁷¹ This perspective is sorely required. A welcome exception is the growing recognition of the importance of indigenous history, which cannot be properly understood without the constitutional element. Indigenous history, for example, in, and covering, Australia, Canada, and New Zealand has seen a flourishing interest in recent years. No longer a backwater or the preserve of older patronising accounts of settler colonialism the serious historians that approach this subject and its enmeshment with colonialism utilise imperial and Commonwealth constitutional history to not only aid the comparative history element of their work, but also to uncover the mechanisms and heart of the relationship between indigenous people and colonialism. Without constitutional history, the land, the rights, the violence, the political relationships and the injustice of indigenous history would be incomplete and less powerful. It also has an explicit purpose in trying achieve redress for societies too long unsung or taken seriously in the citadels of power.⁷² Indigenous history also serves to remind of the constitutional importance of treaties, delegations, petitioning and political culture as well as the that most Commonwealth of institutions the Crown, which as J. R. Miller argues of the First Nations of Canada still pervades the lineage, protections and protests of the indigenous polity – patriated or not.⁷³ No longer called Dominion history the comparative study of constitutions and cultures of Australia, Canada and New Zealand fizz with new objectives and concerns. It is hoped, however, that unlike their predecessors, the new wave of historians covering what was once termed the Britannic realms or settler states, will look to other parts of the Commonwealth world to give further grist to their scholarly mills since they will find comparable experiences that resonate in places such as Burma, Malaysia, Southern Arabia, Nigeria, Guyana, South Africa, North-eastern India or the case John Lonsdale highlights in the “Ornamental Constitutionalism” of the Gikuyu people in their search for protection of “Victoria the Good” and her successors against the settlers in Kenya.⁷⁴

Rich constitutional sources abound for the purposes of investigating current historical concerns such as citizenship, federalism, accommodation or exclusion of minorities, individual

and collective rights, separatism, representation, transnational political schemes, power-sharing, and the style and substance of democracy. So much of this can be found from the academic labours of one person. Nicholas Mansergh is a Commonwealth scholar who should be more visible in the research of these topics. An argument could certainly be made to retrospectively place him, an Anglo-Irishman born near Tipperary, as the first Head of the Commonwealth Historians. Perhaps it was being Irish born that propelled him to take an interest in constitutional history. Ireland during his lifetime, spanning as it did most of the twentieth century, was at forefront of constitutional debates that affected the lives and passions for both islands touching the Irish Sea and beyond. Before he was thirty he had written three key books on Ireland (North and South) that traced its government and history expertly yet gilded with wit and humour.⁷⁵ After Oxford and serving during the war at the Dominions Office where his constitutional history interest could run with the needs of reality he became in 1947 the first Abe Bailey Research Chair in British Commonwealth Relations and the Royal Institute of International Affairs. The same year he attended in July the inter Asian conference in New Delhi and was transfixed with the possibilities of the Commonwealth and unlike many of his colleagues welcomed the entrance of India and the non-white Commonwealth world. Elected in 1953 as the first Smuts Chair in the History of the British Commonwealth at Cambridge, he published key constitutional and historical works on the High Politics regarding the transformation of empire to Commonwealth including the two volume *Survey of British Commonwealth Affairs* supported by a two volume documentary collection covering from the 1930s to the 1950s.⁷⁶ Clearly undeterred by difficult historical and political cases he produced books and papers covering racial policies in South Africa, partitions in India and Ireland, and the British experiment of responsible government. Mansergh, who would become Master of St John's, Cambridge, wrote *The Commonwealth Experience* which most likely remains the most popular Commonwealth history written.⁷⁷ His most monumental service to Commonwealth constitutional history, however, was to be Editor-in-Chief of the extraordinary and weighty (in every sense) twelve volume *Transfer of Power* series that documented the end of British rule in India from 1942 to the end in August 1947.⁷⁸ For Commonwealth constitutional historians, these remain the pinnacle of the documentary genre and continue to be indispensable to South Asian scholars covering the unique and bewilderingly complex end of the British Raj. Till the end of his long life he was a welcome in the seminar halls of New Delhi. Mansergh's example led to Hugh Tinker's excellent documentary volumes on Burma in the early 1980s.⁷⁹ A decade or later D. A. Low and S. R. Ashton, who worked for both the India and Burma sets, consciously evoked these collections when beginning the *British Documents on the End of Empire* project and series, which contains general volumes on British government policies regarding empire from 1925 to the 1970s as well as

individual country volumes expertly introduced and edited by specialists and all teeming with invaluable detail and range of striking importance.⁸⁰ Fortunately, collections and sources are steadily emerging that rectify the blind spot of the above collections and give an equivalent view of local sources. As Saul Dubow recently argued with the illustration of South Africa for Commonwealth history, much can be gained from inverting the examination and looking at the Commonwealth ‘from the outside in’ and comparing nation based perspectives.⁸¹ The dwindling Britishness acutely observed by James Curran and Stuart Ward must be replaced, as they do in the case of Australia, with a greater historical awareness of local experiences of empire and Commonwealth.⁸² The constitutional experience is no small part of this. India has produced the *Towards Freedom* series which unearths Indian voices and perspectives hitherto woefully absent.⁸³ Canada and Australia’s state supported documentary collections covering their constitutional and diplomatic relations with the world are another example.⁸⁴ Mark Hickford recently argued that constitutional history is essential to understand territorial and constitutional design. New Zealand and refreshingly seeks the local and indigenous history to do so over the usual preference for canonical texts from the English afar.⁸⁵ Countries while not formally members of the Commonwealth like Burma, Ireland, territories in the Near and Middle East along with the many “indirect” lands affected by British imperial power need to be drawn back into the Commonwealth story and vice-versa, especially since their complicated constitutional histories and links with the British Empire and Commonwealth states need telling.⁸⁶ Indeed it is easy to forget how often Commonwealth constitutional practice lingered despite outward rejections – almost wholly for practical historical reasons. As the Irish assistant secretary of External Affairs, Frederick Boland, noted in a 1944 memorandum on the Taoiseach’s right to advise a dissolution at a time when Ireland was a quasi-republic under De Valera and conspicuously neutral during the second world war: “The parliamentary law of this State derives, like that of most democratically-ruled States, from the practice of the British “Mother of Parliaments”. In our case, owing to our close association for so long with Great Britain and, latterly, with the British Dominions, we automatically turn to British and Dominion precedents in many of the constitutional problems with which we find ourselves from time to time faced’.⁸⁷ More scholarship is needed, especially, to understand local involvements and influence on empire and after, but the pressing importance is to convince historians of empire to use all these carefully collated and accessible editions of skilfully annotated primary sources and produce challenging new histories of empire and decolonisation sure of the constitutional dimension. Some contemporary legal scholars have been quicker than modern historians to appreciate the potential value of the vast reservoir of transnational constitutional ideas and thinking that the Commonwealth can provide with arguably

greater significance than the hitherto focus Lawyers (and others) give to Europe and the USA as a source of thinking.⁸⁸ While the absence of constitutional historians concerned with the British Empire and Commonwealth remain formally few there are a select band of Law scholars who openly search and incorporate Commonwealth history when arguing legal issues before them.⁸⁹ The courtesy is rarely reciprocated by historians using law.⁹⁰ Constitutions and their history are too important to left to lawyers alone.

Conclusion

Writing in 1979, A. F. Madden reflected from Oxford 'I have little doubt that I will be the last Reader in Commonwealth Government'. His Friday morning teaching seminar on imperial and Commonwealth constitutional sources was suspended that year with only a solitary New Zealander turning up.⁹¹ Forty years on there are no posts in Commonwealth Government, and hardly any in Commonwealth History in Britain or abroad. Things have changed. As late as the 1970s as Ronald Hyam confided that 'Even if one's colleagues did not necessarily expect a personal commitment to the imperial idea, everyone else invariably assumed an imperial historian must be a true-blue flag-waving 'Land of Hope and Glory' polemicist'.⁹² Most imperial and Commonwealth scholars had been servants in some way of the British Empire perhaps in the armed forces or Colonial Service and there were also a few in the field who fought against British colonial rule creating a very real and formative connection with their subject. This is no longer the situation in the 21st century. Flag waving is not advisable and neither is incinerating them. Perhaps this creates an opportunity to interrogate the constitutional history of the Commonwealth more dispassionately, though ever alive to its contemporary influence.

A. G. Hopkins has stated that earlier historical delineations 'to define imperial history solely by the legal status of the countries formally connected to Britain' is today unthinkable.⁹³ Commonwealth constitutional history defined at the beginning of this article as being concerned with the study of the sources, legitimisations and control of state power through the prism, shared experience and consequences of British rule both direct and indirect does have its proponents in the discipline. Indeed, to confine the focus to active Commonwealth scholars of Africa such as Saul Dubow, Philip Murphy, Sue Onslow and Sarah Stockwell covering thorny issues respectively as important as South Africa's apartheid and racial policies, the complexities and complications of the short-lived critical Central African Federation, the emergence of Zimbabwe, or commercial and business influence in the Gold Coast the incorporation of Commonwealth constitutional

history is axiomatic and vital to their impressive accounts.⁹⁴ While it is far from true to say “the Commonwealth strikes back”, there are, nonetheless reasons to see its significance and ability to inform historical and political themes in ways it has not done so for decades. The constitutional factor in the study of imperialism and post-colonialism over the twentieth century especially and its bearings on the state’s power need, however, to return to historian’s toolkit after being suitably reconditioned for modern purposes. Sartori observed that English constitutional scholars unlike their European and American counterparts ‘appear more inclined to address themselves to an MP by saying “you could” rather than “you cannot”.’⁹⁵ There is even more that you can say with post 1918 Commonwealth constitutional history. It just needs to be written.

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