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Daniel Defoe and the Written Constitution

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Today, as constitutionalism spreads around the globe, it is embodied de rigueur in written documents. Even places that sustained polities for centuries without a written constitution have begun to succumb to the lure of writtenness. America, we think, spawned this worldwide force, inaugurating a radically new form of political organization when it adopted the U.S. Constitution as its foundational text. Yet the notion of the written constitution had, in fact, received an earlier imprimatur from the pen of Daniel Defoe, English novelist, political pamphleteer, and secret agent. Plying his trades in the early eighteenth century, Defoe, now known largely as the author of *Robinson Crusoe*, in a number of disparate literary and political guises advocated the development of written documents setting forth the basic principles of a governmental order and restraining the power of legislative majorities. Just as the individualist ethos of *Robinson Crusoe* grabbed the American imaginary from the mid-eighteenth-century onwards, a conception of written constitutionalism similar to the one promulgated by *Crusoe's* author took root on American soil.

My article elaborates the contours of written constitutionalism that Defoe outlined and demonstrates the close alignment of some of Defoe's arguments with the scholarship of today, an alignment that suggests the persistence of a number of the mythic ideals of written constitutionalism that Defoe elaborated in the early eighteenth century. Methodologically, the article illuminates the importance of looking to the emerging genre of the novel as well as other widely read forms - rather than focusing exclusively on more traditional historical sources - to discern the construction of a popular imaginary at the time of the Founding. At the same time, however, the article argues that the differences between the account of written constitutionalism that emerges out of Defoe's works and the claims made for written constitutionalism by Chief Justice Marshall in *Marbury v. Madison* and legal academics today illuminate the contingency of what writing may mean for constitutionalism and demonstrate the ways in which the mythic entailment's of writing are sometimes precisely that - myths.