

# "CREATURE of their OWN WILL"

## The Formative Years of the U.S. Constitution

The United States Constitution is a remarkably durable document that has served as the framework of government for our relatively young nation. Anniversaries such as this bicentennial stimulate awareness, reflection and reinterpretation, and 1987 has produced much valuable scholarship on the subject of the U.S. Constitution. The books, pamphlets, newspapers, manuscripts and prints from the Special Collections Department of the University of Delaware Library included in this exhibit, and mentioned in this overview, trace the developmental period of the U.S. Constitution from the early eighteenth to the mid-nineteenth century. They are assembled to evoke the human and evolutionary dimension of a document that has become fixed in our national imagination as a divinely inspired, almost sacred artifact.

In 1821, Chief Justice John Marshall (1755-1835), one of the earliest and greatest interpreters of the Constitution, observed that "the people made the Constitution, and the people can unmake it. It is the creature of their own will, and it lives only by their will." Evidence of this democratic process lies in the influence of European and American writings on political and legal theory; pamphlets and orations promoting constitutional government and the process of ratification; the first attempts at amendment; and early reflections on the Constitution and the American constitutional system.

*"In the formation of our constitution, the wisdom of all ages is collected—legislatures of antiquity are consulted—as well as the opinion and interests of the millions, who are concerned. In short it is an empire of reason."*

—Noah Webster.

The framers of the U.S. Constitution drew upon the precedents and ideas of the past to devise a plan that would provide a stable yet flexible system of government for the future. The members of the Federal Convention of 1787 were literate men, familiar with European social and political theories. For instance, the principle of the separation of powers was outlined in Baron de Montesquieu's *Spirit of Laws* (first English translation London, 1750; first published Geneva, 1748), and the concept of popular sovereignty was discussed in Algernon Sidney's *Discourses Concerning Government* (Edinburgh, 1750; first published London, 1689) and Jean-Jacques Rousseau's *Discours sur l'Oeconomie Politique* (Geneva, 1758). These works were well known to the members of the Federal Convention, as were those of Lord Bolingbroke, James Burgh, James Harrington, Granville Sharp, and Emmerich de Vattel.

The Constitution also owes much to American political writers and institutions. Daniel Coxe's *A Description of the English Province of Carolana* (London, 1726; first published London, 1722) proposed the earliest known plan for a union of the colonies under a federal system of government. *Letters from a Farmer* (Boston, 1768; first published Philadelphia, 1768) by John Dickinson, one of the five signers of the Constitution from Delaware and principal author of the Articles of Confederation, and *Common Sense* (London, 1792; first published Philadelphia, 1776) by Thomas Paine, exerted an enormous influence in unifying the colonies against British rule.

The Federal Constitution was not the first constitution to be adopted by Americans. Each state, with the exception of Connecticut and Rhode Island, was already governed by its own written constitution prior to the Convention. Many of the Convention's delegates had practical experience at the state level, and collections of state constitutions, several of which are shown, were widely available in printed form. The principal author of Delaware's constitution, adopted September 20, 1776, was George Read, one of six men to sign both the Declaration of Independence and the Federal Constitution. In a letter dated August 21, 1776, Caesar Rodney, another Delaware signer of the Declaration of Independence and the presiding officer of the Delaware assembly calling for a state constitutional convention, wrote of Read's participation in the convention and mentioned its purpose. Just before the Federal Convention met in May, 1787, John Adams published his *Defense of the Constitutions of America* (London, 1787), a treatise that was extremely influential in the Convention debates because it advocated a tripartite division of authority and a bicameral legislature. The copy of Adams's *Defense* on display is from the library of John Dickinson, and bears his signature.

*"All nations, under all governments, must have parties; the great secret is to controul them."*

—John Adams.

The new U.S. Constitution, as approved by the Convention on September 17, 1787, was submitted to Congress on September 20. Within days, the first printed texts of the Constitution were published throughout the states in newspapers such as the September 27 issue of Connecticut's *New-Haven Gazette*. On September 28, Congress submitted the Constitution to the states, and the Federalists and Anti-Federalists began their debates over ratification in a multitude of pamphlets and newspaper editorials for and against the Constitution. Examples of this genre include Richard Henry Lee's anti-federalist *Letters from the Federal Farmer to the*



*Republican* (New York, 1787), the federalist positions of John Dickinson's *Letters of Fabius* (Wilmington, 1797), and *The Federalist* (New York: 1788) by Alexander Hamilton, James Madison and John Jay. In an unpublished letter dated May 20, 1817, John Jay wrote to William Coleman, a close friend of Hamilton's and editor of the *New York Evening Post* and the *New York Herald*, concerning his part in writing *The Federalist*. Jay remarked that "between the commencement and conclusion of the Federalist, my cooperation in that work was so interrupted, as that very few of the Papers . . . were written by me. How many they were exactly I do not remember . . . on reading over the Federalist, my Recollection of them might be revived; but at present I am too unwell to undertake it."

Delaware became the first state to ratify the Constitution, calling for a state convention on November 10, electing delegates on November 26, opening the convention on December 1, and ratifying unanimously on December 7, 1787. One spirited and lengthy state convention took place in Virginia, and was recorded in the *Debates and Other Proceedings of the Convention of Virginia* (Petersburg, 1788-89). After twenty-four days of intense debate, Virginia's convention finally ratified the Constitution on June 25, 1788, only after proposing a twenty-point Bill of Rights and twenty further amendments to the Constitution.

*"The basis of our political system is the right of the people to make and to alter their constitutions of government."*

—George Washington.

Indeed, the process of amending the U.S. Constitution began even before it went into effect, with six states proposing amendments upon ratification. Among them, the state conventions proposed some 150 amendments. By 1791, ten amendments comprising the Bill of Rights were ratified; two more were added in 1795, concerning the use of federal judicial power, and in 1804, concerning the manner of electing the President and Vice President. The Senate debate over the resolution that became the Twelfth Amendment of 1804 is recounted in the *Report of a Debate in the Senate of the United States* (Philadelphia, 1804), written and printed by the Philadelphia journalist and politician, William Duane. Many more amendments were proposed and rejected, such as James Hillhouse's *Propositions for Amending the Constitution of the United States* (New Haven, 1808), concerning limiting the power of the President, and Henry R. Storrs's *Proposition to Amend the Constitution of the U. States* (Washington, 1826), concerning the election of the President and Vice President.

*"Our Constitution is in actual operation; everything appears to promise that it will last: but in this world nothing is certain but death and taxes."*

—Benjamin Franklin.

Printed critiques or analyses of the Constitution within the first forty years after ratification were surprisingly scarce. Early comparative examinations appeared in Europe, particularly in France, such as Jacques Vincent Delacroix's *Constitutions des Principaux États de l'Europe et des États-Unis de l'Amérique* (Paris, 1791). Certainly the most famous European observation on the American political system is Alexis de Tocqueville's *Democracy in America* (first English translation London, 1835; first published Paris, 1835). The earliest American essays pertaining to the Constitution or to constitutional law were reactive publications aroused by the debates following ratification, such as Augustus B. Woodward's *Considerations on the Executive Government of the United States of America* (Flatbush, N.Y., 1809), concerning a proposal to reform the executive branch of government. The first truly substantive monographs about the Constitution were published in the 1820s and 1830s. These include John Taylor of Caroline's *New Views of the Constitution of the United States* (Washington, 1823) and Henry Baldwin's *A General View of the Origin and Nature of the Constitution and Government of the United States* (Philadelphia, 1837).

As Justice Marshall observed, the people did indeed "make" the U.S. Constitution through precedence, proposals, debate and consensus. "It is the creature of their own will"—an organic doctrine, evolving through interpretation and application, and, as Marshall also noted, "intended to endure for ages to come, and consequently to be adapted to the various crises of human affairs." And so it has proved, to this day.



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