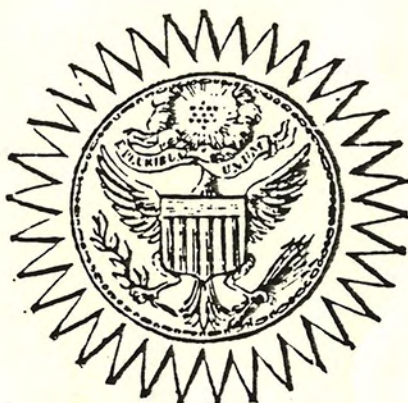


“CREATURE of their OWN WILL”
The Formative Years of the U.S. Constitution



Hugh M. Morris Library
Special Collections Department
October 15, 1987—February 15, 1988
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Newark, DE 19717-5267

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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, correspondence and prints from the Special Collections Department of the University of Delaware Library included in this exhibit trace the development of the U. S. Constitution from the early eighteenth to the mid-nineteenth centuries. They 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." "Creature of their Own Will" presents evidence of this democratic process in European and American writings on political and legal theory, pamphlets and orations promoting constitutional

government, the process of ratification and the first attempts at amendment, and early observations on and reactions to the Constitution and the American constitutional system. Through precedence, proposals, debate and consensus, the Constitution became and remains a document that, as Chief Justice Marshall also noted, was "intended to endure for ages to come."

EUROPEAN INFLUENCES

The framers of the U. S. Constitution drew upon the experience and ideas of the past to devise 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. Fundamental principles that were debated at the Constitutional Convention and incorporated into the body of the Constitution were discussed in the works of European writers that were well known to the members of the Convention. From these sources, the framers of the Constitution derived their concepts of popular sovereignty (2-7); the advantages of representative government (1, 2, and 6); the separation of powers (4 and 5); equality of suffrage and property (3); freedom of speech and press (2); the responsibility of government to protect and secure the rights of its people (4 and 8); and the rights of the people to oppose and alter

their government (2, 7, and 8).

AMERICAN INFLUENCES

The U. S. Constitution owes much to American political writers and institutions. Daniel Coxe's A Description of the English Province of Carolana (9) proposed the earliest known plan for a union of the colonies under a federal system of government. The works of Stephen Hopkins, Thomas Paine, and John Dickinson, one of the five signers of the Constitution from Delaware and principal author of the Articles of Confederation, exerted an enormous influence in unifying the colonies against British rule and in establishing an independent government (10-13).

The Federal Constitution was not the first constitution to be adopted by Americans. Each state, with the exceptions of Connecticut and Rhode Island, was already governed by its own written constitution prior to the Constitutional Convention. Many of the Convention's delegates had practical experience at the state level, and collections of state constitutions were widely available in printed form (14 and 15). The principal author of Delaware's constitution, adopted September 20, 1776, was George Read (16a), 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 mentions its purpose (16). The Articles of Confederation (17) adopted in March, 1781 was the first national constitution to be accepted by the states. Its provisions proved deficient to join the states in a national unit, however. Calls for reform of the government appeared in pamphlets, orations and newspapers from the time of the Articles' adoption until a new constitution was submitted to Congress in September, 1787 (18-20).

Several political and legal events had direct implications for the formation and development of the U. S. Constitution. Two significant law cases were the 1735 libel trial of John Peter Zenger, which set the precedent for freedom of the press in this country (21), and the 1786 case of *Trevett v. Weeden*, which helped to establish the principle of judicial review (22). The letters of Alexander Hamilton written under the pseudonym, Phocion, were also central to the concepts of constitutional government, the right of citizenship, and the opposition to ex post facto laws (23). Just before the Federal Convention met in May, 1787, John Adams published his Defense of the Constitutions of America, a treatise that was extremely influential in the Convention debates because it advocated a tripartite division of authority and a bicameral legislature (24).

STRUGGLE FOR RATIFICATION

The 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 in newspapers throughout the states and continued to appear in newspapers and pamphlets during the year (25, 26 and 26a). On September 28, Congress submitted the Constitution to the states. Immediately, the arguments for and against the Constitution were published in a multitude of pamphlets and newspaper editorials by the Federalists (27-32) and Anti-Federalists (33 and 34). Of particular note are the first book editions of Richard Henry Lee's anti-federalist Letters from the Federal Farmer to the Republican (33), and the federalist positions of John Dickinson's Letters of Fabius (28), and The Federalist (27) by Alexander Hamilton, James Madison and John Jay. In an unpublished letter dated May 20, 1817 (27a), John Jay wrote to William Coleman, a close friend of Hamilton 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."

In 1786 a convention of the states at Annapolis, Maryland, was proposed by the Virginia legislature to discuss commercial regulations. On June 15, 1786, the State of Delaware appointed five delegates to the Annapolis Convention: George Read, Gunning Bedford, Jr., John Dickinson, Richard Bassett, and Jacob Broom (35a), although only three--Read, Dickinson and Bassett--attended. The convention met at Annapolis in September 1786 and elected John Dickinson as its president, but because of low attendance - only five states were represented - the convention postponed its discussions and proposed another convention at Philadelphia for the following spring to consider not only commercial regulations, but the strengthening of the central government. On February 3, 1787, the same five delegates appointed to Annapolis were selected as representatives to the Philadelphia convention, which became known as the Constitutional Convention (35). These five delegates successfully argued the rights of the smaller states to equal representation in the union. Following the Convention, Delaware moved swiftly to become the first state to ratify the Constitution, calling for a state convention on November 10 (36), electing delegates on November 26, opening the convention on December 1, and ratifying unanimously on December 7, 1787 (37).

One spirited and lengthy state convention took place in Virginia and was recorded in

the Debates and Other Proceedings of the Convention of Virginia (38). 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.

AMENDING THE CONSTITUTION

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 Eleventh Amendment of 1795 was a direct response to the unpopular decision in Chisholm v. Georgia (1793), the first constitutional law case to be decided by the Supreme Court (39). 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 (40), written and printed by the Philadelphia journalist and politician, William Duane. Many more amendments were proposed and rejected within the first half-century of the Constitution, such as James Hillhouse's Propositions for Amending the Constitution of the United States (41),

concerning limiting the power of the President, and Henry R. Storrs's Proposition to Amend the Constitution of the U. States (42), concerning the election of the President and Vice President.

REFLECTION, OBSERVATION AND PRACTICE

Within the first forty years after ratification, writings about the U. S. Constitution were surprisingly scarce. Early observations appeared in Europe, particularly in France, where revolutionary struggles stimulated a close interest in the political events of America. Many translations of American treatises on government and comparative examinations of America's constitutions appeared in French (43 and 44). The French constitution of 1791 (45) owed much to American models and influence. Certainly the most famous European observation on the American political system, also by a Frenchman, is Alexis de Tocqueville's Democracy in America (46).

In America, response to ratification was both celebratory and reactive. The July 4th festivities of 1788 included the "Grand Federal Procession" in Philadelphia, directed and recounted by Francis Hopkinson, to celebrate the ratification of the Constitution which had been officially adopted two days earlier (47). In Delaware, a constitutional convention was called in 1791 to rewrite the state's constitution and adjust it to the framework of the new

constitutional government of the union (48 and 48a). The earliest American essays pertaining to the Constitution or to constitutional law were aroused by the political and legal debates following adoption of the U. S. Constitution (49-51).

Early on, the authority and tenets of the U. S. Constitution were used to promote factional political programs. For instance, in 1795 James Madison used the Constitution in his Political Observations (52) to defend his resolutions upholding moderate defense measures, opposing war, and justifying friendship with revolutionary France. Madison remarked that his opponents were "ever ready to invoke the name of Washington." Several years later, Madison's opponents made use of Washington's name ("Fellow Citizens! Your beloved Washington told you to beware of innovations of the Constitution . . ."), and they blatantly used the Constitution to oppose his nomination for president (53).

The first truly substantive monographs about the U. S. Constitution were published in the 1820's and 1830's, including John Taylor of Caroline's New Views of the Constitution of the United States (54) and Henry Baldwin's A General View of the Origin and Nature of the Constitution and Government of the United States (55). These publications were written in response to controversial Supreme Court decisions. One such decision was in the case of *Worcester v. Georgia* (1832), which prompted a

constitutional crisis that was sensationally debated in the nation's press, pitting state sovereignty against federal jurisdiction. In an opinion written by Chief Justice John Marshall (with Justice Henry Baldwin dissenting) (56), the Court ruled against Georgia, upholding the exclusive power of the federal government. This decision was so unpopular that President Andrew Jackson refused to enforce it - the only instance in which a President has done so. The case caused Marshall to write Justice Joseph Story that "our Constitution cannot last The Union has been preserved thus far by miracles. I fear they cannot continue." But the union was preserved, not by miracles, but by a Constitution that Marshall also declared was "intended to endure for ages to come, and consequently, to be adapted to the various crises of human affairs."



State of Delaware.

In the House of Assembly, June 15. 1786.

Whereas official Information has been received, that the States of Massachusetts, Pennsylvania, Maryland, and Virginia have passed Resolutions appointing certain Persons therein named as Commissioners, on the Part of those States, to meet such Commissioners as may be appointed by the other States in the Union for the Purpose of taking into Consideration the Trade of The United States, and to report such an Act relative thereto as will best promote the Interest of The United States: And this State being willing to co operate with them in so laudable and useful a Measure,

Resolved,

That the Honorable George Read Esq^r, Jacob Broom Esq^r, John Dickinson Esq^r, Richard Basset Esq^r, and the Honorable Gunning Bedford Esq^r, be, and they are hereby appointed Commissioners on the part of this State, who or any three of them may act, to meet such other Commissioners as may have been, or shall be, appointed by the other States, at Annapolis on the first Monday in September next, for the Purpose

CATALOGUE OF THE EXHIBIT

1. HENRY SAINT-JOHN, LORD VISCOUNT BOLINGBROKE (1678-1751).
The Works of the late Right Honorable Henry St. John, Lord Viscount Bolingbroke. London: D. Mallet, 1754. Volume 3 of 5 volumes, containing Letters on the Spirit of Patriotism; On the Idea of a Patriot King; and The State of Parties.
2. JAMES BURGH (1714-1775). Political Disquisitions. Philadelphia: Robert Bell and William Woodhouse, 1775. 3 volumes.

The third volume of this edition contains the "Names of the Encouragers," which include, among many famous patriots, the names of some who attended the Federal Convention: George Clymer, John Dickinson, Thomas McKean, Thomas Mifflin, Robert Morris, Roger Sherman, and James Wilson.
3. JAMES HARRINGTON (1611-1677).
The Oceana of James Harrington and His Other Works. London: [J. Darby] 1700.
4. CHARLES DE SECONDAT, BARON DE MONTESQUIEU (1689-1755).
The Spirit of Laws. London: J. Nourse and P. Vaillant, 1750. 2 volumes. First English translation.
5. JEAN JACQUES ROUSSEAU (1712-1778).
Discours sur l'Oeconomie Politique. Geneve: Emmanuel Du Villard, Fils, 1758. First edition.
6. GRANVILLE SHARP (1735-1813).
A Declaration of the People's Natural Right to a Share in the Legislature; Which is the Fundamental Principle of the British Constitution of State. London: B. White, 1774. Author's presentation copy.
7. ALGERNON SIDNEY (1622-1683).
Discourses Concerning Government. Edinburgh: G. Hamilton and J. Balfour, 1750. 2 volumes.
8. EMMERICH DE Vattel (1714-1767).
The Law of Nations; or, Principles of the Law of Nature; Applied to the Conduct and Affairs of Nations and Sovereigns. Northhampton, (Mass.): Printed by Thomas M. Pomroy for S. & E. Butler, 1805.
9. DANIEL COXE (1673-1739).
A Description of the English Province of Carolana, by the Spaniards call'd Florida, and by the French La Louisiane. 2nd edition. London: A. Bettsworth, 1726.

10. STEPHEN HOPKINS (1707-1785).
The Grievances of the American Colonies Candidly Examined.
London: J. Almon, 1766.
11. JOHN DICKINSON (1732-1808).
The Political Writings of John Dickinson.
Wilmington: Bonsal and Niles, 1801. 2 volumes.

This copy belonged to Caleb P. Bennett, Governor of Delaware 1833-1836, and bears his signature.
12. THOMAS PAINE (1737-1809).
Common Sense. London: H. D. Symonds, 1792.
13. Journal of Congress. . . 1776. Philadelphia: R. Aitken, 1777.

Gunning Bedford, Jr.'s copy.

Bequest of Melva B. Guthrie in memory of Henry Clay Reed.
14. The Constitutions of the Several Independent States of America; The Declaration of Independence; The Articles of Confederation Between Said States. . . .
Philadelphia: Francis Bailey, 1781.
15. Constitutions des Treize Etas-Unis de L'Amérique.
Philadelphia: Ph.-D Pierres; Pissot, pere & fils, 1783.

Title page bears the first appearance of the United States seal in a book.
16. CAESAR RODNEY (1728-1784).
Autograph letter signed, to Thomas Rodney. Philadelphia, August 21, 1776, 3 pages.
- 16a. GEORGE READ (1733-1798).

Delaware signer of the Declaration of Independence and the U. S. Constitution.

Engraved by Samuel Sartain (1830-1906) from a painting by Thomas Sully (1783-1872).
17. The Constitutions of the Several Independent of America; the Declaration of Independence; the Articles of Confederation Between the Said States; Dublin: Gilbert, Price, Walker, [etc.], 1783.
18. NOAH WEBSTER (1758-1843).
Sketches of American Policy. Hartford: Hudson and Goodwin, 1785.
19. ROBERT R. LIVINGSTON (1746-1813).
An Oration Delivered Before the Society of Cincinnati of the State of New York; in Commemoration of the Fourth Day of July. New York: Francis Childs, 1787.
20. "The Political Establishments of the United States of America . . . with a Proposal of

Reformation . . . by a
Fellow Citizen," The New-
Haven Gazette and the
Connecticut Magazine, 10
May - 12 July 1787.

21. The Tryal of John Peter
Zenger, of New-York
Printer, Who was lately
Try'd and Acquitted for
Printing and Publishing a
Libel against the
Government. 4th Edition.
London: J. Wilford, 1738.

Bound with Remarks on the
Trial of John-Peter
Zenger, Printer of the
New-York Weekly Journal,
Who was lately Try'd and
Acquitted for Printing
and Publishing Two Libels
Against the Government of
that Province. London:
J. Roberts, 1738.

Purchased through the
Matthew Newkirk Memorial
Fund.

22. JAMES M. VARNUM (1748-
1789).
The Case, Trevett against
Weeden:
Providence: John Carter,
1787.

Bequest of Melva B.
Guthrie.

23. ALEXANDER HAMILTON (1757-
1804).
Colonel Hamilton's Second
Letter from Phocion to
the Considerate Citizens
of New-York, on the
Politics of the Times, in
Consequence of the Peace:
Containing Remarks on
Mentor's Reply.
Philadelphia: Robert
Bell, 1784.

24. JOHN ADAMS (1735-1826).
A Defense of the

Constitutions of
Government of the United
States of America.
London: C. Dilly, 1787.
3 volumes.

First two volumes are
John Dickinson's, with
his signature on the
title page.

25. [The Constitution]. The
New-Haven Gazette and the
Connecticut Magazine, 27
September 1787.

26. The Constitution or Frame
of Government, for the
United States of America.
Boston: Thomas and John
Fleet, [1787].

- 26a. The Pennsylvania
Almanack, for the Year of
Our Lord 1788.
Philadelphia: Eleazar
Oswald [1787].

27. [ALEXANDER HAMILTON]
(1757-1804),
[JAMES MADISON] (1750-
1836)
and [JOHN JAY] (1745-
1829).
The Federalist: a
Collection of Essays,
Written in Favour of the
New Constitution, as
Agreed Upon by the
Federal Convention,
September 17, 1787. New
York: J. and A. McLean,
1788. 1st edition. 2
volumes.

Gift of the University of
Delaware Library
Associates

- 27a. JOHN JAY (1745-1829).
Autograph draft of
letter, to William
Coleman. Bedford [N.Y.],
20 May, 1817, 1 page.

28. [JOHN DICKINSON] (1732-1808).
The Letters of Fabius, in 1788, on the Federal Convention; and in 1797, on the Present Situation of Public Affairs. Wilmington: W. C. Smyth, 1797.
- 28a. JOHN DICKINSON (1732-1808).
Delaware signer of the U. S. Constitution.
Engraved by John B. Forrest (1814-1870) from a painting by Charles Wilson Peale (1741-1827).
29. [ALEXANDER CONTEE HANSON] (1786-1819).
Remarks on the Proposed Plan of a Federal Government, Addressed to the Citizens of the United States of America, and Particularly to the People of Maryland, by Aristides. Annapolis: Frederick Green [1788].
30. [JOHN JAY] (1745-1829).
An Address to the People to the State of New-York, On the Subject of the Constitution, Agreed upon at Philadelphia, The 17th of September, 1787. New York: Samuel and John Loudon [1788].
31. [NOAH WEBSTER] (1758-1843).
An Examination into the Leading Principles of the Federal Constitution Proposed by the Late Convention Held at Philadelphia By a Citizen of America. Philadelphia: Prichard & Hall, 1787.
- 31a. NOAH WEBSTER (1758-1843).
Engraved by George Parker (d. 1868) from a painting by James Herring (1794-1867).
32. "No. 1. To the People of Connecticut," The New-Haven Gazette and the Connecticut Magazine, 15 November 1787.
33. [RICHARD HENRY LEE] (1732-1794).
Observations Leading to a Fair Examination of the System of Government Proposed by the Late Convention . . . in a Number of Letters from the Federal Farmer to the Republican. [New York: Thomas Greenleaf, 1787].
34. [MELANCTON SMITH] (1744-1798).
An Address to the People of the State of New-York: Shewing the Necessity of Making Amendments to the Constitution, Proposed for the United States, Previous to its Adoption. By a Plebeian. [New York: Robert Hodge], 1788.
- 35a. STATE OF DELAWARE.
Autograph document signed by James Booth, Clerk of the Delaware Assembly. June 23, 1786. 2 pages.
Official copy of the resolution appointing commissioners to partake in an interstate convention at Annapolis concerning the trade of the United States. This document was one of several circulated to other state legislatures.

35. Laws of the State of Delaware New-Castle: Samuel and John Adams, 1797. 2 volumes.
36. Minutes of the Council of the Delaware State, from 1776 to 1792. Dover [DE]: James Kirk and Son, 1886.
37. Journal of the United States in Congress Assembled: Containing the Proceedings from the 5th Day of November, 1787 to the 3d Day of November 1788. Philadelphia: John Dunlap, [n. d.].
38. Debates and Other Proceedings of the Convention of Virginia, Convened at Richmond, on Monday the 2d day of June, 1788, for the purpose of deliberating on the Constitution recommended by the Grand Federal Convention. Petersburg: William Prentis, 1789.
39. A Case decided in the Supreme Court of the United States, In February, 1793. Boston: Adams & Larkin, 1793.
40. WILLIAM DUANE (1760-1835). Report of a Debate in the Senate of the United States on a Resolution for Recommending . . . an Amendment to . . . the Constitution of the United States, Relative to the Mode of Electing a President and Vice President of the Said States. [Philadelphia]: William Duane, 1804.
41. JAMES HILLHOUSE (1754-1832). Propositions for Amending the Constitution of the United States. New Haven: Oliver Steele & Co., 1808.

Bequest of Melva B. Guthrie
42. HENRY R. STORRS (1787-1837). Speech of Mr. Storrs, on the Proposition to Amend the Constitution of the U. States, Respecting the Election of President & Vice President. Washington: Gales & Seaton, 1826.
43. [JOHN STEVENS] (1749-1838). Examen du Gouvernement d'Angleterre Comparé aux Constitutions des États-Unis. . . . Par un cultivateur de New-Jersey. Londres: Froulle, 1789.

Gift of the University of Delaware Library Associates
44. JACQUE VINCENT DELACROIX (1743-1832). Constitutions des Principaux États de l'Europe et des États-Unis de l'Amérique. Second edition. Paris: Buissson, 1791. 4 volumes.
45. La Constitution Francoise. Paris: Du Pont, 1791.

Bequest of Melva B. Guthrie

46. ALEXIS DE TOCQUEVILLE (1805-1859). Democracy in America. Translated by Henry Reeve. London: Saunders and Otley, 1835. First English translation.
47. [FRANCIS HOPKINSON] (1737-1791). Account of the Grand Federal Procession, Philadelphia, July 4, 1788. [Philadelphia]: M. Carey [1788].
48. "Constitution of Government. Published for the Consideration of the Citizens of the Delaware State; Pursuant to an Order of the Convention of the 31st Dec. 1791." Gazette of the United States, 28 January - 18 February, 1792.
- 48a. Draught of a Constitution of Government: Published for the Consideration of the Citizens of the Delaware State; Pursuant to an Order of the Convention of the 31st of December, 1791. Wilmington: Peter Brynberg and Samuel Andrews, 1792.
49. AUGUSTUS B. WOODWARD (1774-1827). Considerations on the Executive Government of the United States of America. Flatbush, NY: Isaac Riley, 1809.
50. JOHN TAYLOR, OF CAROLINE (1753-1824). An Inquiry into the Principles and Policy of the Government of the United States. Fredericksburg: Green and Cady, 1814.
51. GEORGE M. BIBB (1776-1859). An Exposition of the meaning of the clause in the Constitution of the United States, that "no State shall pass any ex post facto law, or law impairing the obligation of contracts:" [Frankfort, KY]: Amos Kendall & Co., [ca. 1824].
52. [JAMES MADISON] (1750-1836). Political Observations. [Philadelphia: s.n., 1795].
- Gift of the University of Delaware Library Associates
53. The Constitution. [s.l.: s.n., 1808]. Broadside.
54. JOHN TAYLOR, OF CAROLINE (1753-1824). New Views of the Constitution of the United States. Washington City: Way and Gideon, 1823.
55. HENRY BALDWIN (1780-1844). A General View of the Origin and Nature of the Constitution and Government of the United States. Philadelphia: John C. Clark, 1837. Presentation copy.
56. JOHN MARSHALL (1755-1835). Opinion of the Supreme Court of the United

States, at January Term,
1832, Delivered by Mr.
Chief Justice Marshall,
in the Case of Samuel A.
Worcester, . . . versus
the State of Georgia.
 Washington: Gales and
 Seaton, 1832.

57. Constitution of the
United States Published
for the Bicentennial of
its Adoption in 1787.
 Preface by Warren E.
 Burger. Introduction by
 Daniel J. Boorstin. San
 Francisco: The Arion
 Press, in association
 with the Library of
 Congress, 1987.

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 Hoyem, with initial
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The cover is taken from the descriptive broadside published for the exhibition. The type is Caslon Antique; the United States seal is from Constitutions des Treize États-Unis de l'Amérique. (Philadelphia, 1783) [no. 15].