

The U.S. Constitution

America's Most Important Export

by Albert P. Blaustein

America's Founding Fathers drafted the world's first written constitution more than 200 years ago. The legacy of that historical document is evident today in the constitutions of most of the world's democracies, and it continues to influence drafters of the very newest constitutions. Celebrating this important document, a distinguished constitutional scholar discusses how the Philadelphia model helped to change the world and how it continues to be a model for democratic governance.

THE U.S. CONSTITUTION is America's most important export. From its very inception, its influence has been felt throughout the world. And even where that influence has not resulted in democracy and freedom, it has still brought hope—in President Abraham Lincoln's words—of government of, by, and for the people.

The story of that influence is a tale worth telling. America's Founding Fathers¹ fashioned a constitution that was a unique breakthrough in the continuing struggle for human freedom. They believed in the principle of constitutional government, which they hoped might have relevance beyond America. Thomas Jefferson looked upon the Constitution as a standing monument and a permanent example for other peoples. 'It is impossible,' he wrote, 'not to [sense] that we are acting for all mankind.' President John Adams was convinced that American political ideas would profoundly affect other countries. Alexander Hamilton thought that it had been reserved to the American people to decide the question whether societies themselves are really capable of establishing good government.



Jan Matejko's The Constitution of May 3rd, 1791 shows the new Polish constitution held aloft by King Stanisław August Poniatowski. He is carried triumphantly from the Royal Castle, seen in the background and where it hangs today, to Warsaw's St. John's Cathedral.

James Madison, president and contributor to the *Federalist Papers*, believed that posterity would be indebted to the Founding Fathers for their political achievement and for the sound governing principles provided for in the U.S. Constitution.

Thus it was the Founding Fathers who became the teachers of why and (more importantly) how constitutions should be written. Their principal students were the French. The Marquis de Lafayette, for example, admired Jefferson, as did other critics of the old regime in France. (There exists a draft of the 1789 French Declaration of the Rights of Man and Citizen—generally considered one of the most important human rights document ever drafted—with Jefferson's handwritten editing in the margins.) French scholars likewise clustered about Gouverneur Morris, a principal architect of the U.S. Constitution [who is credited with penning the preamble 'We the People of the United States, in order to form a more perfect Union...'] when he visited Paris.

But it was not only Frenchmen who praised the Founding Fathers. The Polish Constitution, adopted May 3, 1791, preceded the French document by four months. Any perusal of the Polish charter—starting with the preamble itself—confirms the study of the American model. In addition, there are records of American constitutional consultations with German, Austrian, Belgian, Dutch, Spanish, and Portuguese scholars and with leaders from the New World. One of the leaders of the Brazilian revolutionary movement, Mason Jose Joaquim da Maia, met with Jefferson in France for such discussions.

The Spread of Constitutionalism

Since that seventeenth day of September 1787, a one-document constitution has been deemed an essential characteristic of nationhood. Today, of the 192 independent nations of the world, all but a very few have such a constitution or are

committed to having one. Among the exceptions are the United Kingdom, New Zealand, and Israel—democratic nations with sophisticated constitutional jurisprudence but no one specific document that can be called a constitution. Committed to the principle of parliamentary supremacy, the constitutions of these nations consist of numerous legislative enactments specifically designated as ‘basic laws’ (in the case of Israel) or legal scholarship that has been classified as fundamental or organic.

American Constitutionalism Before 1787

Historians generally agree that the first constitution to include language creating a governing, political entity was the Fundamental Orders of Connecticut in 1639; it is known that the first constitution that used the word ‘constitution’ was Virginia’s Constitution of 1776.

Immediately after the Declaration of Independence in 1776, the thirteen former British colonies began writing a new series of constitutions. Fifteen were published between 1776 and 1787, six of the most significant in 1776. These included the constitutions of Pennsylvania and Virginia. Both of these documents created interest abroad and were being translated into other languages—notably French—within weeks of their being made public. Other copies, whether in English, French, or in another language, were soon in the hands of scholars from Poland, Germany, Austria, Switzerland, and Spain, as well as from Mexico, Venezuela, Argentina, and Brazil.

Upon the signing of the alliance between France and the United States in 1778, these state constitutional texts, by then known as the *Code de la Nature*, were published in Paris. In 1783, the American minister in Paris, Benjamin Franklin, obtained from the French minister

for foreign affairs official authorization for a Paris printing of *Constitutions des Treize Etats de l’Amerique*. In 1786, a year before the drafting of the American Constitution, French philosopher and mathematician, the Marquis de Condorcet, outlining his ideas for a French declaration of rights, authored a study of the role of American political ideas entitled *De l’influence de la Revolution d’Amerique sur l’opinion et la legislation de l’Europe*.

The American Precedent

It was the Philadelphia Constitution, however, that set the irreversible precedent for constitutionalism. At the time of its drafting and even before its ratification, a course on the U.S. Constitution was being taught by lawyer Jacques Vincent Delacroix at the Lycee de Paris, an institution of free higher education. The number of foreigners who attended that course is unknown. However, it is known that the course attracted a large following and that it was the subject of substantial articles in *Le Moniteur*, the most important newspaper in France. Paris was then the intellectual capital of Europe and the center for studies on revolutions and their aftermath.

Certainly, the Belgians were among the first to feel the impact of new constitutional ideas, as can be seen by looking at the Belgian revolution of 1789. The Belgian Democratic Party, which existed for a short time in 1790, looked to American state constitutions for examples of what it advocated.

The first influences of the American Constitution on national constitutions was felt in the 1791 documents of Poland and France. The Polish Constitution was short-lived. It disappeared in a series of partitions that, in 1795, ended the existence of Poland as a separate nation until after World War I.

This is not the case with the 1791 French Constitution. While it lasted only briefly and was replaced by the French constitutions of 1793 and 1795, its greatest resource was felt in Spain. The American-inspired French charter was used as the basis of the Cadiz Constitution of 1812, Spain's first constitution. This, in turn, formed the basis of the first Portuguese Constitution in 1822. These Iberian constitutions were known to Simon Bolivar and to other heroes of Latin American liberation and were also critical for the preparation of the constitutions of the new nations of the Americas.

As early as 1784, Francisco de Miranda was developing a 'project for the liberty and independence of the entire Spanish American continent' and sought the aid of leading North American constitutionalists in his quest. Failing to get sufficient support, he went to London and pursued a business career for more than two decades. He returned to Venezuela in 1810 to work with Bolivar to establish a Latin American government based on the U.S. Constitution. History tells us that Venezuela, Argentina, and Chile formed their first constitutions in 1811, one year before Spain's Cadiz Constitution. All were based, in part, on the Philadelphia model.

The American Constitution also affected the development of Latin American federalism. Venezuela and Argentina are federal states as are Mexico and Brazil, both of whose national charters were established in 1824.

The American Constitution also found admirers in Africa. Liberia, which had been settled by freed slaves from the United States, adopted a constitution in 1847, which was written in major part by a professor from the Harvard Law School.

The U.S. precedent became an inspiration as well as a model for the European constitutions that followed the revolutions of 1848. In this year, the first important constitutional developments occurred in Austria and Italy, and new constitutions were enacted in France and Switzerland. It was also the year that the never-to-be implemented Frankfurt Constitution was drawn up. It was used in a modified form for later German constitutions, such as the one drafted for imperial Germany and the one that established the Weimar Republic in 1919.

American colonialism led to further constitutional development at the turn of the century. Cuba, Panama, and the Philippines were all to adopt American-style national charters. Such colonialism is also apparent in the pre-World War I constitution of Haiti, reputedly written by then Assistant Secretary of the Navy Franklin D. Roosevelt.

By far the most important constitution of the World War I period was that of Mexico, which was adopted in 1917. Still in existence, although frequently amended, this ranks as one of the most historic constitutions ever drafted. This was the first constitution to recognize economic and cultural as well as political rights. Its inner structure and much of its language is taken directly from the Philadelphia Constitution. Also between the world wars many Latin American nations rewrote their constitutions, and the Philadelphia model is apparent in all of them. The constitutions of Chile and Uruguay provide excellent examples.

With the end of World War II, American influence was dominant in the preparation of the new basic charters of West Germany and Japan. Less publicized, but equally significant, was the adherence to the Philadelphia model in India's 1949 Constitution. Copies of the U.S. Supreme Court reports are available to the

justices of the Supreme Court of India, where they are not only read but frequently cited.

The study of American constitutionalism after World War II led to a near-universal interest in the role of the U.S. Supreme Court in determining the constitutionality of legislation. This function was likewise performed by the Supreme Court of India and the Supreme Court of Australia as well as by other common-law countries. Constitutional review could not be exercised by the Latin American nations because their judicial structures were based on the civil law system. However, these nations wanted to include the process of judicial review. The solution was the establishment of constitutional courts. The first of these were in Germany and Italy, and they have since proliferated throughout the world. The Constitutional Court of Poland [established in the 1980s] was the first in the communist world. Brazil, which drafted a new constitution in 1988, reexamined its judicial system to determine whether it should place judicial review within the province of its supreme court or create a constitutional court.

The effect of the Philadelphia Constitution continues to be seen. Nigeria, the most populous country of Africa, has discarded the parliamentary system, which it inherited from Britain and which was incorporated into its Independence Constitution. In 1999, it adopted a new constitution embodying presidential government and ending years of military rule. American influence was likewise evident in the constitutions adopted by Canada and Honduras in 1982, El Salvador in 1983, Liberia in 1984, Guatemala in 1985, and the Philippines in 1987.

Understanding the American Influence

All this leads to the question: Why has the American Constitution been so influential? To begin with, it was the first constitution and thus the obvious precedent for all subsequent constitution-makers. Most constitution-writers are lawyers, and lawyers inevitably seek precedents. From the beginning, commentaries on the American Constitution were published—and studied and discussed by fellow lawyers throughout the world.

America's Founding Fathers believed in a constitutionally limited republic and they succeeded in constructing a regime that balanced order and liberty. This has led a large number of foreigners to our shores to study American-style government and to return home advocating selected features of it. In many instances, this has been made possible by scholarships provided by the American foundations and universities and by grants from the U.S. government. To this category must be added the foreigners who came here for other purposes and were likewise inspired by American constitutionalism. This started with France's Lafayette and Poland's Tadeusz Kosciuszko, both officers in George Washington's army who later became leaders in the struggles for freedom in their own countries.

Conversely, the influence of the U.S. Constitution has been carried abroad by Americans who have been called upon to serve as advisers in the writing of other constitutions. Americans have helped draft the Liberian, Mexican, German, Japanese, and Zimbabwean constitutions. American scholars also provided ideas for constitutional reform in the Philippines [and more recently in Central and Eastern Europe and the Middle East].

The principal reason for the influence of the Philadelphia Constitution abroad, however,

can be summed up in one word—success. America is the richest, freest, and most powerful country in the world, with the longest-lived constitution. The second oldest is Belgium's, from 1831, followed by Norway's, from 1841. There are only four other countries that have constitutions written before the twentieth century: Argentina in 1853, Luxembourg in 1868, Switzerland in 1878, and Columbia in 1886. Seven other constitutions were created before World War II.

The U.S. Constitution has withstood the test of time. U.S. constitutional research is a major project in at least a dozen countries, as its value is being analyzed with a view to the writing of new constitutions.

Albert P. Blaustein was professor of law at Rutgers (The State University of New Jersey) School of Law. He authored numerous scholarly works on the subject of constitutionalism including a six—volume work on the U.S. Constitution entitled Constitution of Dependencies and Special Sovereignties. Blaustein helped draft more than 40 constitutions worldwide and visited many of those countries. In 1991, he helped to write the constitution for the Russian Republic. Professor Blaustein died in 1994.

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1. Those individuals whose contributions to critical documents (Federalist Papers, Declaration of Independence, the Articles of Confederation, and the U.S. Constitution) resulted in the creation of a United States of America based on ideals of liberty and freedom.

Photograph, page 7: Maciej Bronarski photographer, courtesy of The Royal Castle in Warsaw.

The opinions expressed in this article are those of the author and do not necessarily reflect the views or policies of the U.S. government.

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