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At Last, after Two Hundred Years: A Documentary Record of Our Constitutional Beginnings

by William F. Swindler

Publication has begun of a fifteen-volume work devoted to the documentary history of the ratification of the federal Constitution. While it has taken two hundred years before the resources required for this project were brought together, perhaps now there will be a keener appreciation of the need for financial support for this kind of project.

TWO VOLUMES, the forerunners of a fifteen-volume documentary record of how American constitutional government began, have made their appearance in this bicentennial year 1976. A formal ceremony at the Supreme Court of the United States on May 17 marked official publication of the first volumes of *The Documentary History of the Ratification of the Constitution*, a monumental project which has been planned or in process for nearly twenty-five years.

Merrill Jensen, Vilas Research Professor of History at the University of Wisconsin, one of the country's leading historians of the early period of the United States, presented the volumes to Chief Justice Warren E. Burger. The occasion was arranged by the National Historical Publications and Records Commission, a government agency that distributes congressional appropriations to selected projects of historical scholarship, and the State Historical Society of Wisconsin, which is the publisher of the ratification volumes.

When the commission was established in 1949, one of its first objectives was to develop a program to collect, edit, and eventually publish an exhaustive documentary record of the actions of the original thirteen states by which the Constitution, drafted in convention at Philadelphia in 1787, was adopted. Professor Jensen has edited the documents since 1970, taking over from the late Robert Cushman of Cornell, who had begun the work in 1957.

No collection, public or private, of these significant documents on the nation's constitutional beginnings has

been attempted on this scale. For 130 years the standard reference has been Jonathan Eliot's *Debates in the Several State Conventions, on the Adoption of the Federal Constitution*, the second edition, in four volumes, published in Washington in 1836. The historian George Bancroft in 1882 published a two-volume *History of the Formation of the Constitution of the United States of America*, and in 1894 the State Department published a five-volume *Documentary History of the Constitution*.

Eliot, however, collected only a fragment of the materials that have subsequently been discovered. Bancroft covered both the Constitutional Convention and the ratification conventions; the State Department material extended from 1786 to 1870. Thus, until the twentieth century the United States has lacked a comprehensive documentary record of both the convention that drafted the Constitution—the instrument Gladstone once called the greatest political instrument conceived by Western man—and the vigorous disputes, pro and con, that attended the ratification process from December 7, 1787, when Delaware ratified, until May 29, 1790, when Rhode Island finally approved.

In 1911 Max Farrand published his memorable documentary collection, *The Records of the Federal Convention*, in three volumes. This work was republished in 1937 with the addition of a fourth volume of supplemental documents and an index to the whole. For the first time, with the Farrand project, a comprehensive record of the Philadelphia convention became available. Prior to that there had been a publication of the convention journal and some related documents by Secretary of State John Quincy Adams in 1819 and the posthumous publication of the papers of James Madison, edited by Henry D. Gilpin, in three volumes in 1840–41.

The Madison papers helped to counterbalance the denigrating notes of Robert Yates, a New York delegate who had left Philadelphia in mid-July, protesting against the course the convention was taking. Yates's publication in 1821, together with Adams's edited *Journal* and the Madison materials, formed the major sources for Farrand's work. Since then the notes of Yates's fellow apostate, John Lansing, Jr., have been published under the editorship of Joseph R. Strayer and the title, *The Delegate from New York* (Princeton, 1939).

The third delegate from New York was Alexander Hamilton, who stayed through most of the convention and requested permission to sign the final draft of the Constitution as a private person since he could not bind

• The first two volumes of *The Documentary History of the Ratification of the Constitution*, edited by Merrill Jensen, are available from the State Historical Society of Wisconsin, 816 State Street, Madison, Wisconsin 53706. Volume I, 391 pages, \$20.00. Volume II, 879 pages with microfiche supplement, \$27.50.

his state. Hamilton then returned to New York to launch an uphill battle for ratification, ultimately enlisting two associates—John Jay, later to become the first chief justice, and Madison—to collaborate on a series of newspaper articles in favor of the new document. These articles, later published in book form as *The Federalist*, became a classic exponent of the theory of the Constitution. (The best of more than a hundred editions of these papers is probably the version annotated by Jacob Cooke and published by the Wesleyan University Press in 1961.)

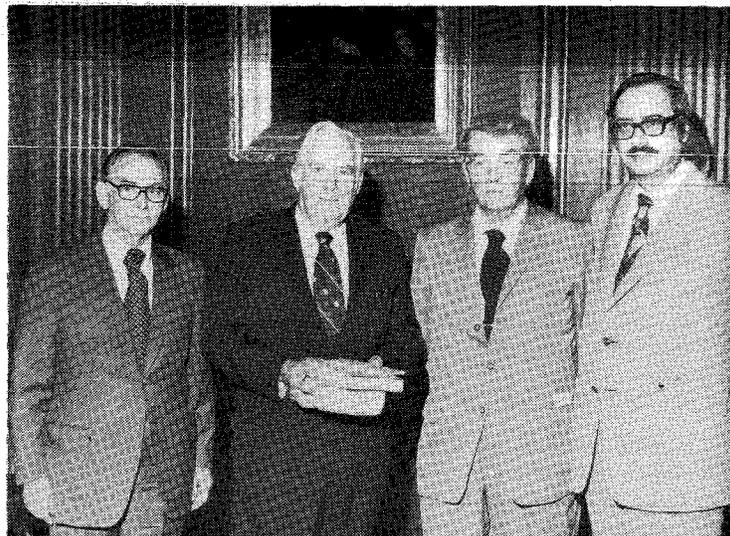
An Unimpeachable Authority

The middle years of the twentieth century have been punctuated with various claims as to the “original meaning” or “original understanding” of the Constitution or of certain parts of it—for example, the Fourteenth Amendment. Now, with the beginning of the Jensen collection on the original language of the ratification process, there will be at last a trustworthy assembling of the “best evidence” to be offered in the ongoing argument. The fundamental importance of this documentary resource in the disputes of our own time is an ultimate answer to the question periodically raised by contemporary pragmatists and revisionist historians as to the importance of devoting considerable financial and scholarly efforts to bringing a collection like this into being.

The Federalist is a case in point. Mr. Jensen has observed to me that his staff’s work of assembling similar pamphleteering efforts during the period of 1787–90 has indicated that as a newspaper series these famous “papers” had relatively less impact outside New York State (and possibly even within it) than many lesser-known “columnists” of the day. The opportunism of the publishers in capturing the book market and the subsequent eminence of the authors may have accounted for the lasting influence of *The Federalist*. Now its contemporary significance will be brought into perspective with the publication of the last four of the projected fifteen volumes, which will collect for the first time a vast number of public and private commentaries on the Constitution.

Here, again, the new documentary volumes will fill a long-standing gap in the basic information about our own Constitution. Except for two highly selective collections by Paul Leicester Ford—*Pamphlets on the Constitution*, published in 1888, and *Essays on the Constitution*, published in 1892—this source of material indicating contemporary attitudes has been undeveloped. These four volumes, moreover, which in effect represent a subseries complementing the official and quasi-official ratification documents, will not wait on the publication of the first eleven. The editors express the guarded hope that the first two of these volumes may come out sometime in 1977.

The first eleven volumes undertake to assemble and place in perspective the constitutional developments from 1776 to the Philadelphia convention of 1787 (Volume I) and the great amount of study and discussion that



THE FIRST TWO volumes of a projected fifteen-volume work, *The Documentary History of the Ratification of the Constitution*, edited by Merrill Jensen and published by the State Historical Society of Wisconsin under a grant from the National Historical Publications and Records Commission, were presented to Chief Justice Burger at a ceremony at the Supreme Court Building on May 17. Pictured (left to right) are James M. Smith of the State Historical Society of Wisconsin; Chief Justice Burger; Merrill Jensen, Vilas Research Professor of History of the University of Wisconsin; and James B. Rhoads, archivist of the United States.

attended the ratification in Pennsylvania (Volume II). Then will follow the less voluminous debates and proceedings in Delaware, New Jersey, Georgia, and Connecticut (Volume III). Two volumes (IV and V) will be required to cover the materials relating to ratification by Massachusetts. Then a milestone will be reached with Volume VI, covering the first and second sessions of the New Hampshire convention, the failure of the first ratification attempt in Rhode Island, and the affirmative steps of the conventions of Maryland and South Carolina.

When New Hampshire finally approved, on June 21, 1788, it became the ninth state to do so, and thus, under Article VII of the Constitution, the necessary number was achieved to bring the instrument into operation. It was a matter of obvious practical necessity, however, to win over Virginia and New York before there could be any real hope for the success of the new government. The strenuous and prolonged debates in Virginia will take up Volumes VII and VIII and in New York, Volume IX. When New York—whether or not persuaded by Hamilton and his collaborators on *The Federalist*—finally ratified on July 26, 1788, the curtain was raised for the second government of the United States to move onto the stage of history, while the Confederation Congress departed into the wings.

Belatedly, North Carolina struggled through two conventions and finally ratified on November 21, 1789 (Volume X). The next year Rhode Island finally overcame the opposition and joined the Union (Volume XI).

With Merrill Jensen, the editing of this essential reference collection is in the most competent hands to be found anywhere. Thirty-six years ago he published his definitive monograph, *The Articles of Confederation*, a classic that has gone through several printings and happily is still available in paperback form from the University of Wisconsin Press. In 1950 he published *The New Nation*, a history of the United States in the period of the Articles of Confederation, 1781–89. Among his antecedent editorial projects is also the three-volume *Documentary History of the First Federal Elections, 1788–1790*, published last year.

The professional career that produced these landmarks has proved to be the ideal preparation for this most important undertaking of all—the expert evaluation of virtually all of the primary materials from which the constitutional theory of American government can be at last defined. The opening volume, accordingly, assembles the evidence on the gradual evolution of the idea of constitutional federalism—the Declaration of Independence in 1776, itself the ultimate result of declarations of the two previous years in which the Continental Congress sought vainly to ensure their claimed constitutional rights as English subjects; then the Articles of Confederation, submitted by Congress in November of 1777 and finally ratified by the thirteenth state, Maryland, on March 1, 1781.

Transition to Constitutional Government Effected

A month before the Confederation came into being, the first effort was initiated to amend the articles, and this struggle continued through most of the post-Revolutionary decade until, in frustration at the whole process, calls began to be heard for a convention to overhaul the entire national structure. This movement ran for a year—from the first proposal for a meeting to discuss regulating interstate trade in January, 1786, through the attempted meeting (the abortive Annapolis Convention) to Congress's ultimate authorization of a gathering in Philadelphia "for the sole purpose" of amending the articles.

The pivotal point in the documentation in Volume I perhaps is in the speech of Gov. Edmund Randolph of Virginia on May 29, 1787, a few days after the convention opened. Randolph essentially articulated the tacit convention assumption that amendment of the articles would be ineffective and that a wholly new frame of government required the delegates' attention. With this rationale, the section of Volume I on the documents of the convention is not a mere abridgment of Farrand's work but a demonstration of how the transition was effected from an interparliamentary union under the articles to a sovereign national government under the Constitution.

Pennsylvania, the site of the Constitutional Convention, was the first to take up the question of a ratifying convention, and the difficulty of even bringing the question to a vote presaged the long and voluminous debate that was to follow. The convention completed its work

on September 17, 1787; in the state assembly the text was read to its membership the following day. On September 28 a number of delegates deliberately absented themselves to prevent a quorum from calling for a ratifying convention; the next day the absentees were forcibly returned to the meeting, the convention was voted, and the legislature adjourned.

Volume II collects the records of the Pennsylvania debates in what must be an unprecedented example of editorial exhaustiveness. The volume itself comes to 779 pages and is accompanied by a microfiche supplement of an additional 2,700 pages. A similar plan for microfiche supplements to the basic record preserved in the printed work is to be followed in other volumes whose documentary matter is too compendious to justify putting all of it into type.

The Pennsylvania debates, which began with a bitter reaction of the forcibly returned legislators and prompted an eloquent endorsement of the new Constitution by future Supreme Court Justice James Wilson, climaxed in a tumultuous state convention that ratified the instrument on December 12 by a vote of 46 to 23. A week later a lengthy minority dissent was published and circulated throughout the state. Ten days after that there were riots and wholesale arrests of troublemakers in Carlisle. The following March antifederalist militiamen marched on Carlisle and released the imprisoned rioters. Later in March petitions to rescind the ratification, signed by more than six thousand freeholders in half a dozen counties, were submitted to the assembly but were tabled there.

With documentary illustrations of these events, Volume II is far from being dry reading. An excerpt from the *Carlisle Gazette* for January, 1788, describes the action:

About five o'clock on Wednesday afternoon, public notice being given by ringing the bell and beating the drum, a number of persons met at the public square, to testify their approbation of the proceedings of the late Convention, in the most decent and orderly manner. A piece of artillery having been brought to the ground, and materials collected for a bonfire; a number of men armed with bludgeons came in regular order from one quarter of the town, while others sallied forth from different streets in the same manner. Major James A. Wilson . . . was preparing to have the gun loaded, when he was ordered by many of the armed party to desist, and many threats thrown out against any person who would attempt to kindle the bonfire; . . . The armed party having accomplished their premeditated designs of preventing the public rejoicing, proceeded to spike the cannon, and having made a large fire, committed to the flames the cannon and its carriage, together with a sledge on which it had been drawn to the ground. They then sent for an almanac, containing the Federal Constitution, which was formally burned. Loud huzzas were repeated, with damnation to the 46 members, and long live the virtuous 23.

Much of the dread of a powerful national government that was manifested in the passions in Pennsylvania and echoed in other state conventions would subsequently be expressed in demands for a bill of rights to be appended to the Constitution. Indeed, half a dozen of the later state

ratifications turned on the understanding that these amendments would be the business of the First Congress, as they were. The original project for the documentary history envisioned the continuation of the ratification record to cover these amendments as well. The present editors are discreetly silent about that phase of the plan. Certainly they have enough to do to carry through the monumental collection on the debates of 1787-90 in the present fifteen-volume series.

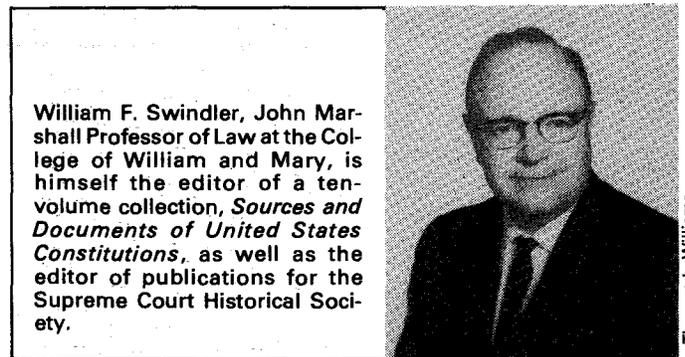
The ratification of the amendments known as the Bill of Rights has been covered, at least in part, by the indefatigable Bernard Schwartz of the New York University Law School. His two volumes, *The Bill of Rights: A Documentary History*, were published in 1971 by Chelsea House/McGraw-Hill. While the editorial plan differs somewhat from the ratification project, it provides a valuable supplement to the Jensen volumes. To both of these projects should be added another significant undertaking, *The Documentary History of the First Federal Congress of the United States of America*, sponsored, like the Jensen project, by the National Historical Publications and Records Commission. The First Congress project has already produced two volumes on the Senate journals, edited by Linda Grant DePauw of the George Washington University and published by the Johns Hopkins Press.

New Studies of Notable Americans

Amid a welter of hucksterism and superficial activities that have been perpetrated in this bicentennial year, the nation can take some satisfaction in realizing that, as it enters its third century, some solid accomplishments may be identified in works like the ratification documentation and related publications. They are not dust-dry. The comprehensive work on the Adams family papers, under the sponsorship of the Massachusetts Historical Society, contributed indirectly but significantly to the widely popular series on public television, "The Adams Chronicles."

The patriarch of all this editorial work is Julian P. Boyd of Princeton, now these many years at work on the papers of Thomas Jefferson. A new collection of documents on George Washington is under way at the University of Virginia; James Madison is the subject of a project jointly originated by Virginia and the University of Chicago; Yale has assembled Benjamin Franklin's papers; Columbia has Alexander Hamilton's; Kentucky has Henry Clay's; South Carolina has John Calhoun's. Perhaps most significant of all for the legal profession is the work on the papers of John Marshall under the joint auspices of the College of William and Mary and the Institute of Early American History and Culture.

Most of these multivolume editorial projects have developed in the generation since World War II—perhaps a sign of the nation's intellectual maturity that began to manifest itself in the approach to its two hundredth anniversary. After all, it was in the aftermath of the late eighteenth-century Enlightenment that Great Britain began publication of the Statutes of the Realm (1215-



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Thomas L. Williams

1714) in 1810, and the Records Commission began its great series of calendars of medieval documents in 1806. The British experience shows that such things take time. The Statutes of the Realm required eighteen years to edit and publish, while the work of the Records Commission has been continued under related sponsors virtually to the present day.

American documentary projects, still a relative novelty, have been running into a certain amount of recent criticism for the length of time and the amounts of money that are required. Private foundations and public agencies like the National Historical Publications and Records Commission and the National Endowment for the Humanities tend to grow restless with prolonged commitments. There is also a "new wave" of historical scholarship that emphasizes localized, ethnic, and rank-and-file men and women as subjects for study. While these are entitled to their proportionate share of the always limited sources of support, there is a real danger that conventional scholarship, which has never been adequately funded itself, may succumb to the all-too-typical American habit of making a place for the new simply by discarding all of the old.

The prototype projects like the Jefferson papers and—it is to be hoped—the ratification documentary apparently may continue to expect a commitment of support for their duration. Many of the related editorial projects, unfortunately, are facing the prospect of steadily dwindling sources of funding. Congressional appropriations for these undertakings are never generous and often are so hedged with statutory limitations and demands for matching moneys that it is extremely difficult for worthy programs to qualify for grants. Many business institutions at the beginning of the bicentennial year made voluble protestations that they wanted "to do something" for the anniversary, but the scholarly community generally has not been electrified by news of significant corporate support for a great number of carefully developed proposals now languishing as the two hundredth milestone is passed.

If the superlative accomplishment of the ratification documentary can serve to demonstrate the lasting importance of these undertakings, there may yet be time for foundations and corporations to realize both the opportunity and the responsibility. ▲