The Bicentennial of the Norwegian Constitution in 2014 had special significance for everyone interested in constitutional developments and, in particular, the relationship between the Norwegian and the American Constitutions. These constitutions are the only ones to have survived from the revolutionary period between 1776 and 1814, which is why they have many similarities. However, this has not always been immediately apparent, not even among scholars of constitutional history. My intent here is, firstly, to point out some of these similarities and explain the influence the United States Constitution had on the Norwegian Constitution and, secondly, since there are also differences between the constitutions, I will attempt to discuss whether some of these differences may have had an impact on Norwegian emigration to the United States.  

Let us first look at the Norwegian Constitution. When the 112 constitutional fathers-to-be convened at Eidsvoll, Norway on 10 April 1814,
they came from widely varying backgrounds. The assembly ranged from the country’s only count, Count Herman Wedel-Jarlsberg, to the sailor Even Thorsen. Decisive influence on the content of the Constitution and the progress of its formulation was exerted by a group of government officials educated in Copenhagen, the former joint Dano-Norwegian capital. Of these, 26 were lawyers, 15 were theologians, and some were military officers. In the Constitutions Com3/mittee, which carried out the work of writing the Constitution, 14 of the 15 members were or had been government officials.²

The Norwegian Constitution is the last of a wave of revolutionary constitutions that was set off by the American Declaration of Independence in 1776 and ended with the Norwegian Constitution of 17 May 1814. Immediately afterwards, on 4 June 1814, the constitutions of the restoration began to emerge with the French Charte Constitutionelle, the French constitution issued by Louis XVIII, King by the grace of God, and not adopted by any popular assembly. The ideas behind the Norwegian Constitution stem in particular from this wave of new constitutions that lasted for a period of nearly forty years. The wave led to a number of constitutions being adopted, as well as to an even greater number of constitutional proposals in many countries, but all of them soon faded away or were overturned, with the exception of the American and the Norwegian documents. The basis of the Norwegian Constitution includes key American elements, as well as French, British and Swedish constitutional ideas.

“The Liberty Tree in North American Soil”

How well informed were the Eidsvoll fathers about developments in North America? In 1814, the United States of America was a small country, albeit a country undergoing rapid development. People in Northern Europe were keeping a close eye on these developments. Information about the American Declaration of Independence in 1776 soon reached the Danish capital by way of Hamburg and London, and was reported in the newspapers: however, the reports were incomplete. The long list of abuses that the English King George III had inflicted on the colonial citizens was partly censored. In autocratic Copenhagen, strong accusations against a king could not be openly reported.³ Thereafter, further events were followed with great interest. Two men in particular appeared as American heroes in the Dano-Norwegian press: Benjamin Franklin and George Washington.
On several occasions, reports were published from the Philadelphia Convention which \textit{drafted} the American Constitution. In July 1787, the prestigious journal \textit{Minerva}, which was read both in Denmark and Norway, wrote that it was a good sign that “Dr. Franklin” and “General Washington” both were members of this important council.\textsuperscript{4} The following is a striking report from America: “The newspapers have reported that General Washington has been appointed dictator of the United States for a period of four years. Thus, if this information is true, they have a monarch for at least these four years. It has apparently been established that such a monarch cannot be appointed for any other period than four years, that he invariably must be a North American by birth, and at least 35 years of age. He has a viceroy subordinate to him, and they both have a fixed remuneration. The dictator has supreme command over the land and naval forces, and appoints the lesser commanders, he establishes relations with foreign powers, and sends out and receives ambassadors. He can be deposed if he can be legally convinced of \textit{crimen laesae majestatis reipublicae} or other crimes.”\textsuperscript{5}

In September 1787, the Convention had adopted the American Constitution, but it was not ratified until 1789, and Washington thus did not become President until that year. In 1787, he was nevertheless chair of the Convention, and the presidential office was designed with him in mind. Apart
from the title of dictator, the quote provides a good summary of the presidential rules of the American Constitution. Most likely, the author, the Norwegian born Christen Pram, has made use of elements from his classical training and chosen to explain the content of this newly established office in terms of the concept of dictator in ancient Rome. Ten years later, the American Constitution had been added to the reading list for law students in Copenhagen, where all Norwegians had to study if they wanted a valid university degree for entering the civil service. Professor Johan Frederik Wilhelm Schlegel, who wrote the leading Danish treatise on natural law in the 1790s, explained representative democracy thus: it is when “all citizens” participate in the exercise of sovereignty “through their elected representatives.” On the legislative assembly in a democracy, he wrote that it can be divided into two chambers, either according to the age of the representatives, “such as in France,” or according to their seniority as representatives, “such as in North America.”

According to Schlegel, the relationship between the chambers could be organized in various ways, either with a mutual right of veto or other safeguards to avoid decisions that would be harmful to the common good. Schlegel also claimed to have shown that “in a democracy in particular, the executive power must be carefully separated from the legislative power, if tyrannical acts are to be prevented.” About the executive power in a democracy, Schlegel wrote that it may be executed by “a so-called President, such as in North America, or by several individuals assembled in a corps under the name of a directorate, such as in the French Republic.” The quotations show how Schlegel, in his textbook for the discussion of representative democracy, uses precisely the United States of America and France as the two leading examples in this respect. Thus, the Eidsvoll fathers-to-be became well versed in this type of discussion, even though they had studied in an autocratic state with no representative bodies. Schlegel had discussed America also in another context. In his previous work on statistics, published in 1793, he claimed that, “the recently established state in North America should also be counted among the states of Europe, since its citizens descend from Europeans and maintain the most intimate connections with Europe.” Culturally speaking, the USA was European and thus had a rightful place in a “Statistical description of the most prominent European states” as the title of his book was.

The United States of America also featured in more essayist political literature, and prominently so. In 1802, Envold Falsen, the father of “The Father
of the Constitution,” Christian Magnus Falsen, wrote an article with the title: “What is freedom, and where should we search for it?” in which the United States was prominent. Here, Falsen analyzed developments in Great Britain, France, and the United States in particular. In Great Britain, freedom had been corrupted, and France had frittered away the fruits of the revolution. To Envold Falsen, North America was the nation where freedom had produced the greatest gains. The events in America unfolded in “our days,” Falsen wrote. It was a “long smoldering fire, which was ignited by Paine’s boldness, but governed by Franklin’s wisdom.” Most of all, the Americans should be grateful to George Washington: “The most honest advocate of freedom and the friend of all good men.” Falsen summarized his analysis of North America thus: “The independence of North America was recognized, but did it also gain freedom? Irrespective of what some travelers may report about the inadequacies of its jurisprudence, about the influence of the moneyed classes and about the land speculators, the flourishing of the United States and its growing population seem to testify in the affirmative. When the liberty tree flourishes on the soil of North America, this good fortune is brought about by the skilled hands that planted it and protected its young trunk by hedging it in, and wisely sought to protect it from outgrowths.”


We can see that Falsen the elder was familiar with the criticism that had been raised in the United States but that nevertheless this was the land where freedom had been won, and in somewhat florid language he claims that it had been saved by moderation. We cannot say for certain whether Falsen the younger agreed with his father in every respect, but it is notable that the son was also very occupied with the experience from America, and we will return to this
American influence on the Norwegian Constitution manifests itself on three levels: First, the purpose of the Constitution, second, on the fundamental principles of the Constitution, and third, on the direct wording of the Constitution.

First, let us look at the overall purpose of a constitution. Freedom must be deemed to constitute the key purpose of the Norwegian Constitution. This is not mentioned in any section or preamble, because the constitutional fathers were practical men who wanted the text of the Constitution to contain only practical rules. However, “Liberty” was the first word in the preamble to the draft text of the Constitution prepared by Christian Magnus Falsen and Johan Gunder Adler. Of all the drafts, this was the most important, and most of the eleven fundamental principles that the Constitutional Assembly adopted in the course of their work on the Constitution protected civil and political liberties. Protecting civil liberties is also one of the three key rights mentioned in the American Declaration of Independence from 1776: “Life, Liberty and the Pursuit of Happiness.” In the preamble to the Federal Constitution from 1787, to “secure the Blessings of Liberty,” is noted as one of its objectives. It may also be that the Norwegian Constitution is even more oriented towards freedom than its American counterpart because of the influence of the philosopher Immanuel Kant.

Second, there is a significant American influence, directly as well as indirectly, on the fundamental principles of the 1814 Constitution, in particular with regard to popular sovereignty and the separation of powers. The Norwegian Constitution makes it clear that sovereignty rests with the people, and there it should remain. The Constitution was written and adopted without any formal participation by the regent, the Dano-Norwegian Prince Christian Frederik, who was not appointed King of Norway until the Constitution had been adopted. Moreover, the regulations on future constitutional amendments determined that these could only be made by the Storting, without any participation by the King. Later in the nineteenth century, the fact that the Constitution could be changed without any royal participation caused some theoreticians to consider
that the Kingdom of Norway was in fact a republic – because the people could abolish the monarchy without royal consent. Throughout the nineteenth century, however, there was a continuing debate on whether the constitutional fathers really had intended to adopt a constitution without any royal right of veto, although now in the aftermath we can see that this was the indisputable outcome. On the other hand, in the ensuing period after 1814, constitutional ideas in Europe turned in a strongly monarchist direction, so that more recent constitutions did not introduce popular sovereignty in the manner of the Norwegian and American Constitutions. Therefore, the Norwegian Constitution was later called into question, in Norwegian as well as international political science debate.17

At the third level of influence, several provisions in the Norwegian Constitution have been transferred more or less directly from the American document. This applies to the organization of the legislative power in particular. In his draft, Falsen wanted a national assembly modeled on the American Congress with its division into two chambers, the House of Representatives and the Senate, with separate elections and the requirement that the representatives in the Lagting – the upper chamber – should be older and have considerably higher incomes and assets than those who would have seats in the Odelsting.18 This became a contentious issue in the Constitutional Committee as well as in the assembly. The committee concluded by recommending a two-chamber national assembly, but without any special requirements with regard to the members of the Lagting, which should have one-quarter of the representatives. Both the Odelsting and the Lagting should have the power to veto decisions made in the other chamber. If a matter had been put before both chambers twice, without any agreement having been reached, the matter would be dismissed, according to the decision made by the Constitutional Assembly. Then, however, the representative Frederik Schmidt raised the issue again in another version: What would happen if a matter was not resolved in this way? In that event, both chambers would have to convene to vote jointly and decide the matter with a two-thirds majority.

Adopting this proposal would circumvent the entire separation of powers within the Storting as it was intended, and for this reason Falsen and Count Wedel-Jarlsberg were both opposed to the proposal. The proposal was adopted, however, and the Storting would thus be less likely to face the same situation
that has recently occurred in the US Congress, where the Senate and the House of Representatives mutually block each other’s decisions.  

Statements that were imported more or less directly from the United States, include the formulation that legislative power should rest with the national assembly, the conditions for when the Storting has a quorum, requirements regarding remuneration for the representatives, exemption for the representatives from arrest while travelling to or from the sessions of the Storting or during the sessions, and the rules for impeachment.  

We know that delegates to the Constitutional Assembly’s session at Eidsvoll had access to information regarding American law. The National Library of Norway today possesses The Laws of the United States in five leather-bound volumes. They were sent to the Constitutional Assembly by Peter Greve Bredahl, a merchant in Bergen, who had purchased them himself in Baltimore. Here, the Eidsvoll fathers could find the text of the Federal Constitution and other regular federal legislation, as well as the text of a number of treaties, for example, between the United States Government and a number of Native American peoples. It remains doubtful, however, whether they had time to study these in any depth, since the entire session of the Constitutional Assembly lasted only five weeks. It should also be pointed out that they also had access to other sources of information about the American Constitution than this collection of laws. Both Adler and Falsen had already written their draft, partly inspired by the American model, before arriving at Eidsvoll.

Three years later, in commenting on a German article in which it was claimed that the Norwegian Constitution was based on the British (unwritten) one. Christian Magnus Falsen wrote that the British Constitution only indirectly, through North America, had been a source, “especially with respect to the organization of the national representation, one had nearly exclusively the American Constitution as a model.”
The Norwegian Constitution was adopted in May and survived the brief Swedish-Norwegian War of July and August 1814 and the entry into the union of Norway with Sweden in the autumn of 1814, basically intact. However, a small inspiration from America struck even the new Norwegian King Christian Frederik, whom the Danish King Frederik VI put under great pressure to yield to Swedish demands. On 1 July, he wrote in his diary that, “I would rather be a commoner in America than a Swedish subject in Denmark.” This was yet another expression of how freedom in the American republic was perceived even by royals. Christian Frederik returned to Denmark, however, in the autumn of 1814, and became King Christian VIII of Denmark 25 years later, in 1839.

“Judicial review” – a lasting American impact on Norwegian constitutional law

One feature of American constitutional law that remained especially influential in Norway after 1814 deserves special mention. This feature is the judicial review of ordinary legislation, and its influence remains in force to this day. Constitutional review of legislation is a key feature of American, and an important feature of Norwegian, constitutional law. Neither the American nor the Norwegian Constitution mentions it explicitly. In both countries, the arrangement has been developed by the Supreme Court through practice, in conjunction with deliberations in legal literature. In America, this principle was established by the well-known ruling Marbury v. Madison in 1803, penned by Chief Justice John Marshall. In Norwegian literature, from the period immediately after 1814, it was argued in favor of a corresponding power of judicial review, meaning that the courts of law can set aside a law adopted by the Storting if that law contradicts the rules of the Constitution. This parallel line of reasoning most likely developed independently of any direct American inspiration, since the constitutional situations were fairly similar. From 1822, the Norwegian right to judicial review evolved gradually in the courts of law, and became firmly established in the 1860s. By the year 1866, it is evident that the Norwegian Chief Justice of the Supreme Court, Peder Carl Lasson, had read the American court ruling mentioned above, as well as a famous American
description of the right to judicial review in the United States, written by Joseph Story.  

Most likely, this helped reinforce the protection of individual rights under the Norwegian Constitution. Later in the nineteenth century, several authors also made reference to American literature and practice. This parallel development in Norway was not widely known in the United States, where it was generally believed that America was the only country to have the right to judicial review. In 1923, however, this prompted the Norwegian-born Senator Knute Nelson to proudly declare to the Senate that there was, in fact, another country that had such a right, not only the United States. And, he added, “It is the freest country in Europe.” A fascinating feature of the further development of the Norwegian right to judicial review is that input from America continued even into the 1970s. Then, the Norwegian Supreme Court introduced a clearer distinction between the degree of constitutional protection granted to personal and economic rights according to the American model. This distinction was most recently applied in 2010.

Now to the other main topic: What was the impact of the American Constitution on Norwegian emigration to the United States? To understand this, an important distinction in the constitutional thinking of the early nineteenth century, and which is still with us, has to be introduced, namely, the distinction between political and civil rights, or, if you prefer, the distinction between political and civil freedoms (or liberties). For the elitist members of the assembly who wrote the Constitution at Eidsvoll, the inspiration from the United States Constitution was basically related to political freedom: How should a state be organized in which the people itself take part in the government. Political freedom was understood as the right to self-government, i.e., one should only be bound by laws that the people had given themselves, or, at least, to which they had given their consent. The famous American revolutionary slogan, “No taxation without representation,” expresses an aspect of this. This is why the Norwegian founding fathers were occupied with how the United States had organized itself politically and learned especially from the organization of the Congress. For the immigrants to be, it seems to me that this was not an important aspect of why they wanted to go to America. The constitutional issues that interested them concerned mainly their civil rights, how society was organized. Typical civil freedoms are freedom of speech, freedom of religion, freedom of assembly, freedom of establishment, trade and industry. These were
freedoms that, in part, were also guaranteed by the Norwegian Constitution. Freedom of speech was well protected in section 100 and future freedom of establishment, trade and industry was promised in section 101 of the Constitution, but only slowly implemented.

The first and most important issue in the early years of Norwegian immigration was the freedom of religion, which did not fare too well at Eidsvoll. In the First Amendment to the Constitution of the United States, it had been stated that “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.” Here freedom of religion was protected together with, most importantly, freedom of speech and freedom of assembly.” At Eidsvoll, the work of the Constitutional Assembly was undertaken in two distinct phases. First, the Constitutional Committee which made all the drafts presented a set of 11 basic principles to the Assembly. The plan was to get the Assembly to debate and decide on the principles before the detailed drafting of the Constitution itself would follow. There were three principles of civil freedom included: free speech, freedom of trade and industry, and freedom of religion. The latter was included in a provision with the following language: “The Evangelical-Lutheran Religion shall remain the Religion of the State and the Regent. All religious sects are given freedom to practice their religion, Jews, however, remain excluded from the realm.” This principle was adopted by the Assembly. But the Constitutional Committee later found that freedom of religion had been too broadly expressed and the draft of the text of the Constitution itself contained only freedom of religion for all Christian sects. Then a strange thing occurred, which has never been fully explained. After all the original 110 provisions had been voted upon, a select committee with three members was commissioned to organize the final text with respect to style and order. That committee omitted the wording with respect to freedom of religion, but kept the provisions on the Lutheran State Church, and on Jews (as well as Jesuits and religious orders (munkeordener)). This resulted in an unclear constitutional situation which, for many years, was used to uphold a strict state Lutheran authority.

The strict Lutheran authority had different aspects. In an old absolutist law about religious assemblies, severe restrictions were placed on gatherings of lay people without the presence or, at least, the permission of the local clergy.
This legislation, the so-called Conventicle Act (Konventikkelplakaten), was still considered valid after the adoption of the Constitution since it was not in clear violation of any provision of the Constitution. This was used most prominently against the followers of the lay preacher Hans Nilsen Hauge and against Hauge himself who, in December 1814, was convicted for violations of the law. The followers of Hauge were not a sect separate from the State Church, but they disagreed in the question of who could be the Christian leaders. This was an issue about democratization of the church and hotly debated in the Storting until the legislation finally was abolished in 1842. The Storting used its legislative power to adopt a piece of legislation in three subsequent sessions of the Storting (in 1836, 1839 and 1842) because the law was vetoed twice by the King. Only the third time did the King give in because, on that occasion, it would have been enacted even without his sanction. The Quakers were a somewhat different case since they were not members of the State Church. Some of the first Norwegian Quakers are especially interesting in the context of 1814 because that is the year when Quakers became established in Norway. The first Norwegian Quakers were Norwegian prisoners of war who had been captured by the English Navy during the war between Britain and Denmark-Norway. This war lasted from 1807 till 1814, and the outcome of the war was the main reason behind the forced dissolution of the union between Denmark and Norway. These prisoners had been imprisoned in England, in Norwegian we even say that they sat “i prisonen,” using the English word. On British prison ships where they had been ministered to by British Quakers, they converted to their new faith which they brought back with them to Norway.

In the years after 1814, these two religious movements (Quakers and Haugeans) were watched closely by the authorities and became the first organized groups to emigrate. The Quakers, as is well known, were the dominant group on board the small ship Restauration, which sailed for the United States in 1825. Followers of Hans Nielsen Hauge were also on board. The motivation for religious freedom seems to have been important in later years as well. Henrik Wergeland remarked in 1837 that the religious coercion of the Constitution was partly to blame for the emigration craze.

Other civil freedoms seem also to have been important. Especially the freedom to establish oneself in a trade. In 1838, the famous immigrant and political activist Hans Barlien, a former member of the Norwegian parliament, wrote from America that in America the conditions were “just.” The “free”
constitution of Norway on the other hand had only served to oppress the people with taxes which favored the privileged civil servants.\textsuperscript{31} Also, the right to vote for ordinary working men was mentioned already in the letters from the emigrant Gjert G. Hovland in the 1830s.\textsuperscript{32} It is my impression, however, that such considerations of political freedoms became more important in the second half of the nineteenth century, after the famous labor leader, and later emigrant (immigrant), Marcus Thrane, petitioned for the general right to vote for all men in 1850.\textsuperscript{33} In Norway, that was not put into the Constitution until 1898, and not for all women until in 1913.

Bishop Jacob Neumann, who was the bishop of Bergen in 1837, famously warned people against emigration and referred to the highly esteemed freedoms of the Norwegian Constitution.\textsuperscript{34} Clearly, there were different class perspectives involved in the understanding of the Norwegian Constitution. The year after his public warning, an immigrant farmer from Voss, Lars Lødve, wrote home that the freedom in America was much greater than in Norway. “In America you can do what you want.” And America was economically more advantageous as well.\textsuperscript{35} In 1839, the well-known pamphlet by Ole Rynning, \textit{A True Account of America}, was published in Norway for the first time.\textsuperscript{36} It is a well written and balanced introduction to the United States. On the first page he explained that the United States was “the most important state in America, with respect to population as well as freedom and a happy constitution.” This is one of the few direct references that I have found to the Constitution as such. He also later explained parts of the Constitution, for example, the freedom of religion and the importance in the United States of the natural equality and freedom of man. But he added that this freedom and equality, which rightfully was the pride of the Americans, was contrasted with “the outrageous slave trade” still practiced in the Southern States.

The American inspiration in Norwegian constitutional law was evident in 1814, as well as in the long period that has ensued. The first is easily understandable, given the ideals of 1814 and the negative experience from France in the years after the revolution of 1789. But what about the influence in the period after the Norwegian Constitution had been adopted? The American Federal Constitution and its Norwegian counterpart are the only constitutions that have survived from the initial period of revolutionary constitutions. Although revolutionary as constitutions, they are both moderate. At the same time, the constitutions of both countries have played a key role in defining the
notions of what the countries really are. Both are *constitutional countries* where the symbolic value of the constitutions weighs heavily. The basis for this is that popular sovereignty was introduced as a fundamental principle for the constitutions, and never abolished later on. At the same time, this has caused the constitutions to take incontestable precedence above all other laws, to provide the citizens with a special protection which is enforced by the courts. Today, this is self-evident in most democratic countries, but until World War II, it was generally not the case. Even in this respect the USA and Norway have distinguished themselves, together.

1 Parts of this article have been published in a more popularized version and without references in Gudleiv Forr (ed.), *Rødt, hvitt og blått. Norsk grunnlov, amerikansk inspirasjon / Red, White and Blue. Norwegian Constitution, American Inspiration* (Oslo: ART PRO Forlag, 2014).
3 Thorkild Kjærgaard, *Denmark Gets the News of ’76* (Copenhagen 1975), 12-18.
4 *Minerva*, Copenhagen July 1787.
5 *Minerva*, Copenhagen December 1787 (my translation).
10 J.F.W. Schlegel, *Statistisk Beskrivelse of de fornemste europæiske Stater*, Del I og II (Copenhagen, 1793-1796; part II never completed).
13 Op.cit., 152-153. The use of the expression Liberty Tree, «Frihedstræet», demonstrates that Falsen was familiar with the American tradition from Boston with the liberty tree and how that custom had spread to France and other countries in Europe in the Revolutionary Era.
14 The draft is printed in *Riksforsamlings forhandlinger*, Vol. 3 (Christiania: Grøndahl, 1916), 3.
15 On the influence of Immanuel Kant on constitutional thinking in Denmark-Norway before 1814, Mestad (ed.) *op.cit.*, especially chapters 2, 4, 8 and 10.
16 Norwegian Constitution § 112 (in 2014 renumbered as § 121).
19 [See] Norwegian Constitution § 79.
20 [See] Norwegian Constitution § 49, § 65, § 73 (later abolished) and previous §§ 86 and 87 (on impeachment, basically amended in 2006).
22 *Kong Christian Frederiks dagbog fra hans ophold i Norge i 1814* (Kristiania: Grøndahl, 1914), 238-239.
24 See Supreme Court decision in *Norsk Retstidende* 1976, 1 (the Kløfta expropriation case), pp 5-6.
25 See Supreme Court decision in *Norsk Retstidende* 2010. 143 (taxation of ship owning companies) sections 184 - 188.
Spartacus, 2014). The ban on Jews was probably not related to Norwegian emigration as there were no Jews in Norway in 1814. The ban was lifted in 1851.


29 Supphellen, Konventikkelplakatens historie, 103 – 110.


31 Mørkhagen, Farvel Norge, 89.

32 Skard, USA i norsk historie, 113.

33 After imprisonment, Thrane emigrated to the United States in 1863 where he died in 1890. There had been an earlier family connection to the United States. Thrane’s paternal uncle, Johannes Berg Thrane had visited New York in 1799 and was later vice consul of the United States in Christiania, see Tallak Lindstøl, Stortinget og Statsraadet: 1814-1914 (Kristiania: Steen’ske boktrykkeri, 1914), 889.

34 Mørkhagen, Farvel Norge, 29.

35 Mørkhagen, Farvel Norge, 131.

36 Ole Rynning, Sandfærdig Beretning om Amerika – til Oplysning og Nytte for Bonde og Menigmand (Christiania 1838).