

# 人民與制憲： 麻薩諸塞制憲(1776-1780)的 經驗及其意義

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制憲對任何國家而言，都是最關鍵的歷史時刻。制憲的成敗攸關一個國家未來政治的興衰，更深深地影響到人民的福祉。眾所周知，美國是第一個制訂成文憲法的國家，但是在中文世界裡面，卻對美國 1787 年前各邦的制憲經驗少有研究。本文旨在探索麻邦制憲的過程及其影響，並藉此揭櫫人民主權、分權制衡及司法獨立等重大理念如何由理論落實為制度。麻邦制憲的過程及其結果不僅成為美國憲法可資借取的寶貴經驗，同時也為主權在民首開先聲。在憲政史上，其具有無比的重要性，值得我人深入探索與借鏡。

關鍵字：麻薩諸塞憲法、憲政、制憲會議、制憲權、分權與制衡、艾塞克斯決議、亞當斯

# **The People and Constitution Making: The Experience and Significance of the Massachusetts Constitution Making (1776-1780)**

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## **ABSTRACT**

For any country, the stage of creating a constitution is a critical historical moment. The success or failure of making a proper and workable constitution has a significant impact on the ebb and flow of a country's political development and the felicity of its people. It is widely acknowledged that the first country with a written constitution was the U. S. A., but in Chinese academic circles, few if any studies have been carried out on the experience of making a state constitution before the framing of the federal constitution in 1787. So the main theme of this essay is a study of the process and impact of constitution making in Massachusetts, along with the analysis as popular sovereignty, separation of powers, check and balance, judicial independence, together with the mechanism of turning the theory into practice and institutions. The experience, i.e., the process and result of constitution making in Massachusetts, and its key concept of popular sovereignty, serve not only as a precursor to the American Constitution, but also as a chapter in the history of constitutionalism that any serious study can not afford to skip over.

**Key Words:** constitution making in Massachusetts,  
constitutionalism, constitutional convention,  
constituent power, separation of powers and check  
and balance, Essex result, John Adams