

*Analysis  
Of  
Civil Government*

INCLUDING  
A TOPICAL AND TABULAR ARRANGEMENT

OF THE

*Constitution of the United States*

DESIGNED AS  
A CLASS-BOOK FOR THE USE OF GRAMMAR, NORMAL,  
AND HIGH SCHOOLS, ACADEMIES, SEMINARIES, COLLEGES, UNIVERSITIES,  
AND OTHER INSTITUTIONS OF LEARNING.

BY  
**CALVIN TOWNSEND,**  
COUNSELOR AT LAW

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## Republication Note:

In 1994, I was browsing through a used book store when I spotted a little book first published in 1868 called *Analysis of Civil Government*. The author bragged on the cover page that this book was designed as “A class-book for the use of grammar, normal, and high schools, academies, seminaries, colleges, universities, and other institutions of learning.”

I dismissed his claim as absurd – no one can write a book (especially on a subject as intense as the Constitution) that can be read and understood by an audience that includes both grade school kids and university students. But the book store was only asking a dollar or two for the book, so I bought it.

I took the book home and started reading. I was about a third of the way through when I realized that the text *was* so clearly written, so easily understood that the author’s extravagant claim just might be correct. Truly, his text could not only be easily understood by an intelligent 8th grade student but could also serve as a text in a first year class on constitutional law in any law school in the U.S.A. I was amazed.

Later, I learned that my copy of *Analysis Of Civil Government* was a rare book worth between \$2,000 and \$3,000. Unfortunately, thinking it was just an cheap, old curiosity, I’d written all over it and reduced the value to approximately the price I’d originally paid. Nevertheless, this is still a very valuable book since it offers a remarkably clear insight into elements of American history and especially how the Constitution was understood at the end of our Civil War.

This “e-book” is a reproduction in PDF format of the original *Analysis of Civil Government* . Although I use a more modern font, every effort has been made to reproduce the original text as accurately as possible. Spelling, punctuation, capitalization are the same in this book as they were in the original.

I hope you’ll be as pleased with this work as I am.

Alfred Adask

Editor, AntiShyster News Magazine

December 7, 2000 A.D.

Entered, according to Act of Congress,  
in the year 1868, by  
CALVIN TOWNSEND,  
In the Clerk's Office of the  
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Northern District of New York.

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CALVIN TOWNSEND,  
In the Clerk's Office of the  
District Court of the United States for the  
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## Preface

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The analytic method of this work furnishes its chief claim to superiority over others as a textbook on civil government. The Constitution of the United States is our fundamental law. To understand this well is to understand the whole theory; and to analyze this is to analyze the entire American system.

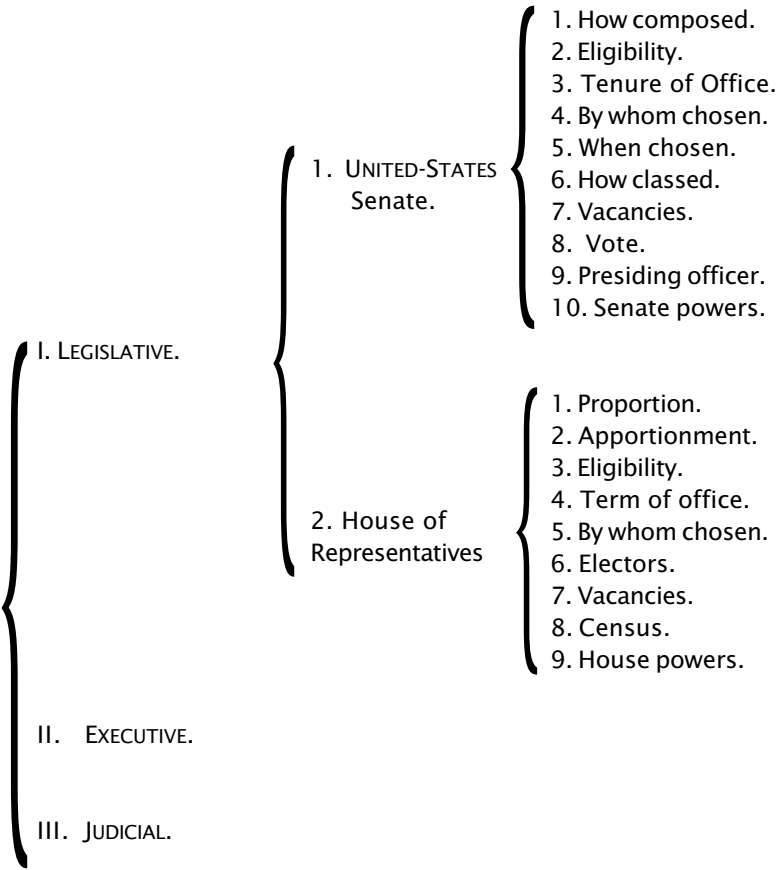
The principal aim, therefore, of this work is to present analytically the subject of civil government as administered in this country.

The living, earnest teacher of today insists on a critical analysis of whatever subject he brings into the classroom. This has been the tendency of his profession for several years. A general acquaintance with miscellaneous and scattered facts bearing on his subject does not satisfy. He must get inside of things, and take his pupil with him.

No work has been published, known to the author, pretending to give a topical and tabular arrangement of the principles of our government. Several authors have written with ability on civil government, having direct reference to the wants of the school room; but they have not satisfied the instructor. Whether the present attempt shall add one more to the list of failures, time and the teacher will tell.

The Constitution of the United States consists of a combination of powers *granted* and powers *prohibited*. Each of these classes of powers is divisible into general topics under general titles. Each of these is subdivisible into more specific topics, having more specific titles; and these last into others, and they into still others, until the point of final analysis is gained. Example:

# CIVIL GOVERNMENT



The executive and judicial branches are each divisible and sub-divisible into topics, the same as the legislative branch. The subtitles at the extreme right, or several of them, may be divided also. Take, for instance, ELIGIBILITY. Its conditions are, 1 st, Age; 2d, Citizenship; 3d, Inhabitan-  
cy; 4th, Official Disencumbrance. Also SENATE POWERS: 1 st, Legis-  
lative; 2d, Executive; 3d, Elective; 4th, Judicial.

Thus all the elements of kindred significance are grouped together in one table, under one common and appropriate title. For this purpose, paragraphs, sections, and clauses, whenever necessary, are severed from their original connections in the Constitution. Indeed, very little atten-  
tion is paid to the original arrangement of the subjects of that docu-  
ment. The preceding example will give the teacher an idea of the manner in which lessons may be given by topics.

Exhaustively grouping the sections and clauses of the Constitution itself must necessarily make thorough work at every step. Every element of the main subject, even to critical minuteness, will be clearly comprehended by the pupil. He will experience the scholarly satisfaction also, that something is *completed* every lesson.

In the tabular arrangement of the sections and clauses of the Constitution, nothing is omitted or added; and, as far as possible, the precise language of that instrument is retained.

Familiar and critical explanations of the Analysis, topic by topic, in the order of their arrangement, are given according to the views of the most eminent writers on constitutional law. Very little or no claim is laid by the author to originality of construction. In this, he acknowledges his entire indebtedness to the illustrious men who formed the Constitution, as their views appear in the Madison Papers and the Federalist; and to the profound jurists whose works are accepted by the legal profession as of the highest authority.

For several years, there has been a growing conviction among educators, that civil government should be added to the list of studies in all our schools of the higher grades, and in the advanced classes of the common school.

The schoolboy of today becomes the voter of tomorrow. The millions of youth now in the schools of America are soon to decide all the grave questions of national interest which concern us as a people. The ballot more than the bullet must determine the destiny of our country. The ballot in the hands of the ignorant may do more mischief than the torch of the incendiary in the towers of the metropolis.

If the publication of this work shall contribute to a more extended acquaintance by the masses of American youth with the fundamental principles of our government, the purpose for which it was written will be realized.

THE AUTHOR.  
ROCHESTER, N.Y., OCTOBER, 1868.

## *Introduction.*

*By Rev. James E. Latimer, D.D.*

In these days, a new book can vindicate its claims to public notice and favor only on the ground that the topics of which it treats are absolutely new, or that it discusses a known subject in such a manner as to make us instantly feel that it meets an acknowledged want.

Such is the claim we make for the book before us. It treats a common subject, one that was ably presented by the distinguished Judge Story, some thirty years since, in convenient form for the use of schools, and, since, by several authors of less distinction, though of acknowledged ability. But the peculiar merit of our author consists in the *analytical* method which he adopts. His aim is purely didactic, and to teach exactly what the Constitution contains.

This book is one that was not *made*, but *grew*. Prof. Townsend, the author, has for years made civil government a speciality in lessons and lectures before the teachers' institutes of New York. What was small and unpretending in the beginning has thus grown into importance on his hands, until it has become the full, well-rounded treatise which is here presented.

He has been urged to the preparation and publication of this work by the myriad voices of educators and teachers who have listened to his instructive lessons upon a subject which is usually so dry and repulsive.

He has drawn the materials for his work from original sources, and from commentaries of classic excellence. We see traces of interminable rummagings of the Madison Papers, the Federalist, Elliot's Debates, Story and Rawle on the Constitution, Kent's and Blackstone's Commentaries, as well as the most patient gleanings from official, statistical, and chronological tables.

In reading the author's manuscript, as I was permitted to do, I was struck with its absolute freedom from all political bias, the pure ether of impartiality that marks every page, the clear and well-defined statement of fact, and, above all, the almost faultless analysis and symmetry of the entire work.

The author has published the analysis in chart form, separate from the book, in large type, suitable for display in the schoolroom; and has thus furnished an invaluable aid in the study of the book and in class rehearsals.

We commend the book as a conscientious one, made on honor, and calculated to last. Not only graded schools, but colleges and the higher institutions of learning, will find it of advantage to introduce it into their course of study. The student of civil government will thank the author for such a book, as it will surely kindle a taste for the study of this subject. Besides, it will do much to remove the popular ignorance regarding our institutions, too long prevalent in this country, where the humblest citizen is invested with the attributes of political sovereignty.

JAMES. E. LATIMER.



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# ANALYSIS OF CIVIL GOVERNMENT IN THE UNITED STATES

## Part I.

### Chapter I.

#### Early Settlement of America

§1. The North-American Colonies, over which the British Government maintained supremacy for more than a hundred years, were known as New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, and Georgia. Ever since the Declaration of Independence, they have been called States.

§2. They were settled chiefly by British subjects, except New York and Delaware; the former by emigrants from Holland, and the latter from Holland and Switzerland.

§3. The British claim to jurisdiction over these Colonies was founded on what Christian nations recognized as the right of discovery. Great Britain denied from the beginning the right of the Dutch to make settlements in America. That denial was based on the fact that John Cabot and his son Sebastian, British subjects, under commission from Henry the Seventh, sailed along the eastern coast of North America in 1497. The Cabots, however, made no attempt at settlement or conquest.

§4. At the time of its settlement, Delaware was an appendage to the government of New York; but it was afterwards separated from that Colony, and came under the jurisdiction of Pennsylvania. New York was early wrested from the Dutch by conquest, and brought under British authority.

§5. The only title which the nations of Europe had to any part of the American continent was founded on what they called the right of discovery. It is difficult to comprehend the justice of this pretense, when it is known that the country was already occupied by a race of men who had been in undisputed possession for untold ages. As between themselves, it might not be unjust or improper that the European nations should make discovery the foundation of title; but, as against the natives of the soil, discovery could not furnish the shadow of a claim.

§6. The right of discovery set up by the Europeans, substantially ignores the sacred rights of the original inhabitants of this country. Nativity must furnish a more valid title than discovery; and there is not a people on earth that would require any argument to convince them of this where their own rights were involved. Demonstrations of power are not always demonstrations of right.

§7. The Indians have always been treated as merely lawful *occupants*, having at most only a *qualified* right to the soil. The powerful nations of Europe, and our own government, have recognized them only as tenants-at-will, subject to removal at the pleasure of superior power.

§8. The learned Judge Story remarks in regard to the wrongs perpetrated on the red man, "They have not been permitted, indeed, to alienate their possessory right to the soil, except to the nations to whom they were thus bound by a qualified dependence: but, in other respects, they have been left to the free exercise of internal sovereignty in regard to the members of their own tribe, and in regard to the intercourse with other tribes; and their title to the soil, by way of *occupancy*, has been generally respected, until it has been extinguished by purchase, or by conquest, under the authority of the nation upon which they were dependent.

§9. "A large portion of the territory in the United States to which the Indian title is now extinguished has been acquired by purchase; and a still larger portion by the irresistible power of arms, over a brave, hardy, but declining race, whose destiny seems to be to perish as fast as the white man advances upon his foot-steps.

## Chapter II.

### Origin of Land-Titles in the United States.

1. When our fathers conquered their independence, the States, and, subsequently, the United States, succeeded to whatever title Great Britain previously had to the territory.

2. The lapse of time, and general acquiescence, as well as the judicial and legislative authorities, have so established this source as the foundation of land titles, that its validity can not now be successfully called in question. Whether just or unjust, it will probably remain for ever undisturbed.

3. But these remarks are applicable to those lands only which were obtained through the revolutionary struggle with Great Britain, resulting in the achievement of our independence. Extensive additions have been made to the domain of this country by treaties with other powers; and, of course, the origin of land-titles is traceable within any such territory to the treaties through which the titles have been acquired.

#### DATES OF THE SETTLEMENTS OF THE NORTH-AMERICAN COLONIES.

Virginia 1606	North Carolina 1663
Massachusetts 1620 <sup>1</sup>	South Carolina 1663
New Hampshire 1629	New Jersey 1664
Maryland 1632	Pennsylvania 1681
Connecticut 1635	Delaware 1682
Rhode Island 1636	Georgia 1732
New York 1662	

These dates refer only to permanent settlements made under distinct organizations.

<sup>1</sup> Originally called the Colony of Plymouth; but afterwards united with Massachusetts proper, which was settled in 1628.



## Chapter III.

### Common Law in the Colonies.

§ 1. When territory is found uninhabited at the origin of new settlements therein, it is usual to adopt the laws of the nation from which the settlers have migrated, so far as they maybe found applicable to the new condition of things.

Although this country was occupied by a wild, uncultivated, and savage population, without law or government in any civilized sense, the colonists chose to consider themselves as settling an *uninhabited* territory. As a large proportion of the new settlers of these Colonies were from England, they would naturally lean to the jurisprudence of that country.

§ 2. It must be remembered, also, that the Colonies were nearly all settled under the patronage and favor of Great Britain. Those that were not, soon came under the jurisdiction of the British Crown.

§ 3. These are the principal circumstances that led to the adoption of the English Common law among the North-American Colonies, and which constitutes to a great extent, at the present time, the system of jurisprudence in this country.

## Chapter IV.

### Colonial Governments

The Colonial Governments may properly be divided into three classes:—

1. PROVINCIAL,
2. PROPRIETARY, and
3. CHARTER

#### 1. Provincial Governments.

§1. The Provincial Governments were wholly under the control of the sovereign of Great Britain. They emanated from his authority, and had no fixed constitution of government. The king issued his commissions to the royal governors from time to time, accompanied with specific instructions which were to be obeyed.

§2. The governors were, under these governments, regarded as the representatives or deputies of the king. The king also appointed a council, having limited legislative authority, who were to assist the governor in the discharge of his official duties. Both governor and council held their offices during the royal pleasure.

§3. The governor had authority to convene a general assembly of the representatives of the freeholders and planters of the Province. The governor, council, and representatives constituted the Provincial Assembly.

- §4. Provincial Assembly, constituted of,
- 1st. THE REPRESENTATIVES,—Lower House;
  - 2d. THE COUNCIL,—Upper House;
  - 3d. THE GOVERNOR,—

having a veto on all the proceedings of the two houses, with power also to prorogue and dissolve them. These constituted the local law-making power, subject to the approval or disapproval of the Crown.

§5. The governor appointed the judges and magistrates.

Under this form of government were included the Colonies of New Hampshire, New York, Virginia, North Carolina, South Carolina, Georgia.

#### 2. Proprietary Governments.

§6. The meaning of the word proprietary is *owner*, or *proprietor*. The proprietor, or proprietary, derived not only the title to the *soil*, but also the general powers of *government*, from the king. The powers of

government extended over the whole territory so granted, which became a kind of dependent royalty.

§7. Under these governments, the governors were appointed by the proprietary or proprietaries. The legislature was convened and organized according to the will of the proprietary. He also had the appointment of officers of every grade.

§8. Lord Baltimore held Maryland, and William Penn held Pennsylvania and Delaware, under this form of government, and as proprietaries.

### 3. Charter Governments.

§9. These were, in many respects, not unlike our State Governments. They were created by letters patent, or grants of the Crown, which conferred the soil within the limits defined, and all the powers of government, on the grantees and their associates and successors. These charters were similar to some of our State Constitutions, distributing the powers of government into three departments, — legislative, executive, and judicial.

§10. They defined the powers of the different branches of the government, and secured to the inhabitants certain political privileges and rights. “The appointment and authority of the governor, the formation and structure of the legislature, and the establishment of courts of justice, were specially provided for; and generally the powers appropriate to each were defined.”

Massachusetts, Rhode Island, and Connecticut had charter governments.

## Chapter V.

### Causes of the American Revolution

§1. The Colonies were not sovereignties in any political sense, not being endowed with power to enter into alliances or treaties with each other or with foreign nations. They were merely dependencies on the British Crown; but the citizens of each Colony enjoyed the full rights of British subjects in all the Colonies, and were at liberty to move from one Colony to another, and to become inhabitants and citizens thereof.

§2. The growth of the Colonies was slow and gradual, running along through a period of from one hundred to one hundred and fifty years. The prerogatives of the Crown and the rights of the people had not been clearly defined on the one side, nor accepted on the other. During the latter part of this period, therefore, the relative rights of sovereign and subject became a matter of serious and earnest contention.

§3. The Colonial Legislatures claimed entire and exclusive authority in all matters relating to their own domestic and internal affairs. They denied all power of taxation, except under laws passed by themselves; not admitting that even the British Parliament and Crown combined had any such power. They insisted that a free people could not be taxed without their consent in person, or through their accredited representatives.

§4. On the other hand, the British Parliament, by express declaration, claimed that the Colonies and Plantations in America have been, are, and of right ought to be, subordinate unto, and dependent upon, the imperial Crown and Parliament of Great Britain; that the king, with the advice and consent of Parliament, "had, hath, and of right ought to have, full power and authority to make laws and statutes of sufficient force and validity to bind the Colonies and people of America in all cases whatsoever."

§5. The theory that Great Britain had the right to tax the Colonies, together with the attempt to carry that doctrine into practice on the part of the Crown and Parliament, and its denial on the part of the Colonies, united with the determination on their part to carry that denial to open, practical resistance, led to final separation from Great Britain.

§6. Hoping to prevent this result, Parliament passed an act intended to conciliate the Colonies, which declared that "Parliament would not impose any duty or tax on the Colonies, except for the regulation of com-

merce; and that the net produce of such duty or tax should be applied to the use of the Colony in which it was levied.” But this did not satisfy the disaffected colonists. They claimed to be sole judges of what should be done, even for their own good.

§7. The spirit of liberty was thus aroused; and a sense of future danger inspired them to take the onward steps that finally led to the Declaration of Independence on the fourth day of July, 1776.

## Chapter VI.

### Unity of the Colonies.

§1. Although the Colonies were not at any time united in any sense as a nation, they sometimes found it of advantage to unite temporarily for the common defense against the Indian tribes, as well as the Dutch; and also in 1754, for the purpose of defending themselves in case of war with France, which at that time seemed imminent.

§2. These experiences had taught them that there was safety as well as strength in union. Therefore, when England gave evidence of a determination to oppress the Colonies, they did not hesitate to unite in vindication of their common interests.

§3. A Congress, at the call of Massachusetts, assembled in Philadelphia, Sept. 5, 1774, consisting of delegates from all the Colonies. This is known in history as the "First Continental Congress." It was the first in which all the Colonies were represented.

§4. This Congress published to the world a long and emphatic bill of rights, which may be regarded as the first decided step towards independence. It was clear to every reflecting mind, that, if that declaration of rights were accepted by the people, either England must take a speedy backward step, or the declaration of separation and independence was just at hand.

§5. The Second Continental Congress assembled in Philadelphia May 10, 1775. This Congress continued in session until the close of the Revolutionary War, and until a definite form of government was adopted. It passed the Declaration of Independence, in which, for the first time, the Colonies received the name of *United States of America*,—a title which has been continued ever since.

## Chapter VII.

### Articles of Confederation.

§1. On the eleventh day of June, 1776, it became evident that the Declaration of Independence was only a question of a few days' time, as a committee was appointed on that day to draft such a document to be reported to Congress. This step rendered it more than ever necessary that some plan of union between the Colonies should be adopted. Another committee was therefore appointed to prepare Articles of Confederation, which should bring the Colonies into a closer and more definite union.

§2. This committee reported a plan of confederation July 12 following, just eight days after the adoption of the Declaration of Independence. It was debated at several times, until Aug. 20 of the same year; when Congress, in committee of the whole, reported a new draft, which was ordered to be printed. This last plan was elaborately discussed, and finally, with sundry amendments, adopted by Congress Nov. 15, 1777.

§3. The Articles of Confederation were immediately sent to all the States, with the Congressional recommendation for their approval and adoption. The new government constituted by these Articles was not to go into operation until the consent of all the States should be obtained.

§4. In July, 1778, the ratification of all the States was obtained, except Delaware, New Jersey, and Maryland. The assent of New Jersey was given Nov. 25 of the same year; of Delaware, Feb. 22, 1779,; and of Maryland, March 1, 1781. On the second day of March, 1781, Congress assembled under the Confederation.

§5. But the Revolutionary War, which began in 1775, had continued all this time; during which the States had been united by the ties of a common interest, by the sense of a common danger, and by the necessities of a common cause, having no written bond of union. In short, they were held together by their fears.

## Chapter VIII.

### Peculiarities Under the Confederation.

Although the Articles of Confederation are given in full in another place, It is deemed proper to give here some of the peculiarities of that document which distinguish it from the present Constitution of the United States.

§1 . The Confederation was declared to be a firm league of friendship between the several States.

§2 . Delegates to Congress were to be appointed annually, in such manner as the Legislature of each State might direct.

§3. The power was reserved to the States to recall their delegates, or any of them, within the year, and to send others in their places for the remainder of the year.

§4. No State was allowed representation in Congress by less than two, nor more than seven, members.

§5. No person was eligible to a seat in Congress for more than three in any term of six years.

§6. Each State had to maintain its own delegates in a meeting of the States, and while acting as members of the Committee of the States.

§7. In determining questions in the Congress, each State had but one vote.

§8. All charges of war and other expenses, incurred for the common defense and general welfare, were to be defrayed out of a common treasury.

§9. The treasury was to be supplied by the several States, in proportion to the value of all lands, and the improvements and buildings thereon, within each State, granted to or surveyed for any person, to be estimated according to the direction of Congress.

§10. Congress was to send and receive ambassadors.

§11. Congress was the tribunal of last resort, on appeal, in all disputes and differences, between two or more States, concerning boundary, jurisdiction, or any other cause whatever.

§12. Congress was the tribunal to decide all controversies concerning the private right of soil claimed under different grants of two or more States, under certain limitations.

§13. Congress was to commission all the officers of the United States.



§14. Congress had authority to appoint a committee, to sit during the recess of that body, to be denominated “a Committee of the States,” and to consist of one delegate from each State.

§15. Canada, acceding to the Confederation, and joining in the measures of the United States, was to be admitted into the Union.

§16. The Union was to be perpetual.

§17. No provision was made for any such officer as President.

§18. There was no national judiciary.

§19. Congress consisted of but one house.

## Chapter IX.

### Decline and Fall of the Confederation.

§1. The National Government, under the form and Articles of Confederation, soon demonstrated its own weakness, and, in a few years, resulted in a total failure. Six years of war experience *without* this bond of union, two years of like experience *with* it, and six years of peace experience *under* it, convinced the statesmen of that day, and indeed the people generally, that the Confederacy was merely the “shadow of a government, without the substance.”

§2. The education of leading minds and statesmen of that day was but a revolutionary education; and their efforts at the framework of a new government were mainly directed to such a system as might have answered the purpose under the revolutionary condition of things through which they were passing.

§3. But a few years of peace showed that the States, when no longer influenced by a fear inspired by a sense of weakness, would be slow to render obedience to a power of which they were jealous from the beginning, and which, paradoxical as it may seem, was contemptible for its very want of strength.

§4. In the language of a leading mind of that day, “By this political compact, the United States in Congress have exclusive power for the following purposes, without being able to execute one of them:—

“1st. They may make and conclude treaties, but can only *recommend* the observance of them.

“2d . They may appoint ambassadors, but can not defray even the expenses of their tables.

“3d . They may borrow money in their own name on the faith of the Union, but can not pay a dollar.

“4th. They may coin money, but they can not purchase an ounce of bullion.

“5th. They may make war, and determine what number of troops are necessary, but can not raise a single soldier.

“6th. In short, they may declare every thing, *but do nothing.*”

## Chapter X.

### Leading Defects of the Confederation

The following is a summary of the leading defects of the Articles of Confederation, as a Constitution for a nation made up of a large number of States, as given by an eminent jurist of a later day:—

§1. There was an utter want of all coercive authority in the Continental Congress to carry into effect any of their constitutional measures.

§2. There was no power in the Continental Congress to punish individuals for any breach of their enactments. Their laws must be wholly without penal sanction.

§3. They had no power to lay taxes, or to collect revenue for the public service. The power over taxes was expressly and exclusively reserved to the States.

§4. They had no power to regulate commerce, either with foreign nations, or among the several States. It was left, with respect to both, exclusively to the management of each particular State, thus being at the mercy of private interests or local prejudices.

§5. As might be expected, “the most opposite regulations existed in different States; and there was a constant resort to retaliatory legislation from their jealousies and rivalries in commerce, in agriculture, or in manufactures. Foreign nations did not fail to avail themselves of all the advantages accruing from this suicidal policy, tending to the common ruin.

§6. “For want of some singleness of power,—a power to act with uniformity, and one to which all interests could be reconciled,—foreign commerce was sadly crippled, and nearly destroyed.”

§7. The country was deeply in debt, without a dollar to pay, or the means even to draw a dollar into the public treasury; and what money there was in the country was rapidly making its way abroad.

§8. Great as these embarrassments were, the States, full of jealousy, were tenaciously opposed to making the necessary concessions to remedy the great and growing evil. All became impressed with the fear, that, unless a much stronger national government could be instituted, all that had been gained by the Revolutionary struggle would soon be lost.

§9. Many of the more prominent patriots and statesmen of the day had made the effort to obtain an enlargement of the powers of Congress, but without success. It became evident, that, whatever else might be done, the Confederacy, as such, must crumble into ruins.

## Chapter XI.

### Origin of the Present Constitution.

§1. To the State of Virginia belongs the immortal honor of taking the first step that led to the formation and adoption of our present Constitution; and to the illustrious James Madison, more than to any other man, must be awarded the distinction of making the first effective move in that direction.

§2. On the 21st of January, 1786, the legislature of Virginia passed the following resolution:—

*Resolved*, That Edmund Randolph, James Madison, jun., Walter Jones, St. George Tucker, and Meriweather Smith, Esqs., be appointed Commissioners, who, or any three of whom, shall meet such commissioners as may be appointed in the other States of the Union, at the time and place to be agreed on, to take into consideration the trade of the United States;

“To examine the relative situations and trade of said States;

“To consider how far a uniform system in their commercial regulations may be necessary to their common interests and their permanent harmony;

“And to report to the several States such act relative to this great object, as, when unanimously ratified by them, will enable the United States in Congress effectually to provide for the same.”

§3. Just previous to this, in 1785, Commissioners had been appointed by Virginia and Maryland for the accomplishment of amore limited object, and which more exclusively concerned those two States.

§4. Maryland deemed the concurrence of her neighbors, Delaware and Pennsylvania, indispensable in the matter; although it related only to settling the jurisdiction on waters dividing the two States of Virginia and Maryland. The same reasons that rendered it necessary that Maryland should consult her neighbors seemed to render it equally necessary that those neighbors should consult their neighbors.

§5. It was thus demonstrated, that, whatever action might be taken on any subject of general concern, it would extend itself or its influences all over the Union. This illustration of the necessity of uniformity in matters of public interest had its influence in impressing all minds with a sense of the importance of such a general Convention as was now recommended in the resolution of the Virginia Legislature.

§6. The time and place of the proposed Convention being left to the Virginia Commissioners, they named for the time the first Monday in September, 1786; and the place, Annapolis, Md. The Commissioners who attended from Virginia were Messrs. Randolph, Madison, and Tucker.

§7. Although there was a strong popular feeling in favor of the proposed Convention, when the time came for its meeting, only five states were represented. Several States had not even appointed Commissioners, and some Commissioners who were appointed failed to attend. But it had become evident, that although this Convention, as such, was a failure, public opinion was advancing in the right direction.

§8. The New-Jersey deputation had a commission extending its object to a general provision for the "exigencies of the Union." Acting on this suggestion, a recommendation for this enlarged purpose was reported by a committee to whom the subject had been referred.

§9. That report was written by Alexander Hamilton of New York, and addressed to the legislatures of the States represented in the Convention; viz., New York, Pennsylvania, Virginia, Delaware, and New Jersey.

Commissioners appointed from New Hampshire, Massachusetts, Rhode Island, and North Carolina, failed to report themselves to the Convention.

The States of Maryland, Connecticut, South Carolina, and Georgia, did not appoint Commissioners.

§10. This report was an able, lucid, and elaborate document, recommending another convention of deputies from all the States, to meet on the second Monday of May following, 1787, in the city of Philadelphia Convention. The legislature of that State were unanimous, or very nearly so, in their response to the call of the report. "As a proof of the magnitude and solemnity attached to it, they placed Gen. Washington at the head of the deputation from that State; and, as a proof of the deep interest he felt in the case, he overstepped the obstacles to his acceptance of the appointment."

§11. Virginia again took the lead, and was the first to act favorably on the recommendation to appoint deputies to the proposed Philadelphia. A copy of the report was also sent to Congress.

§12. Congress took no action on the recommendation of the report, until the legislature of New York instructed its delegation in that body "to move a resolution, recommending to the several States to appoint deputies to meet in Convention for the purpose of revising and proposing amendments to the Federal Constitution."

§13. Feb. 21, 1787, a resolution was moved and carried in Congress, recommending a Convention to meet in Philadelphia at the time suggested in the report, “for the purpose of revising the Articles of Confederation, and reporting to Congress and the several State legislatures such alterations and provisions therein, as shall, when agreed to in Congress and confirmed by the States, render the Federal Constitution adequate to the exigencies of government and the preservation of the Union.”

§14. Public opinion was on the rapid march. Many events had transpired, even after the appointment of commissioners to meet at Annapolis, and before that Convention assembled, which matured the popular judgment in favor of the proposition for a general Convention for the purposes set forth in the report.

§15. Still other events took place immediately after the Hamilton report was published, which still further demonstrated the necessity of such a Convention as was proposed therein. All were now satisfied that the Union was in extreme danger. No calm, dispassionate observer could ignore it.

§16. “Among the ripening incidents,” says a prominent statesman of that day, “was the insurrection of Shays in Massachusetts against her government, which was with difficulty suppressed, notwithstanding the influence on the insurgents of an apprehended interposition of the Federal troops.”

§17. The insurrection above alluded to was led by one Daniel Shays, who was followed by about two thousand insurgents, having for their object the open defiance and resistance of the laws under which the taxes were to be collected and private obligations and contracts to be enforced. It spread over several of the counties of that State; and so formidable was it, that United-States troops were called for to suppress it. But, by vigorous measures on the part of the State, it was overcome. Several of the leaders were condemned to death; but, on account of the popular sentiment in their favor, it was deemed unwise to execute them.

§18. The public debt, most of which had been contracted in the sacred cause of liberty in the struggle for independence, remained unpaid. Congress had made repeated calls on the States for payment: but these calls were either partially or wholly unheeded; one State expressly and openly refusing to take any step tending to its liquidation. The public mind was everywhere filled with gloom and despondency.

§19. In reference to the embarrassments of commerce, Mr. Madi-

son says, "The same want of a general power over commerce led to an exercise of the power separately by the States, which not only proved abortive, but engendered rival, conflicting, and angry regulations."

§20. "Besides the vain attempt to supply their respective treasuries by imposts, which turned their commerce into the neighboring ports, and to coerce a relaxation of the British monopoly of the West-India navigation, which was attempted by Virginia, the States having ports for foreign commerce taxed and irritated the adjoining States, trading through them, as New York, Pennsylvania, Virginia, and South Carolina. Some of the States, as Connecticut, taxed imports from other States, as Massachusetts; which complained in a letter to the Executive of Virginia, and doubtless to those of other States."

§21. "In sundry instances, as of New York, New Jersey, Pennsylvania, and Maryland, the navigation interests treated the citizens of other States as aliens." . . .

§22. "As a natural consequence of this distracted and disheartening condition of the Union, the Federal authority had ceased to be respected abroad; and dispositions were shown there, particularly in Great Britain, to take advantage of its imbecility, and to speculate on its approaching downfall. At home it had lost all confidence and credit: the unstable and unjust career of the States had also forfeited the respect and confidence essential to order and good government, involving a general decay of confidence between man and man."

§23. Under these distracting and depressing influences, the States had become favorable to the call from Annapolis to send delegates to the proposed Philadelphia Convention, which convened at the time appointed. There was by no means a full representation of the States, however; there being present but twenty-nine delegates at the opening. They did not organize, therefore, until May 25, when George Washington was unanimously chosen president of the Convention.

§24. There being so few delegates present, the Convention did not proceed immediately to business, but adjourned from day to day until Monday the 28th. The Convention sat with closed doors; and remained in session until the seventeenth day of September following, when they reported the draft of the present Constitution of the United States.

§25. By a resolution of the Convention, it was laid before the United States in Congress assembled, with the recommendation that it should be submitted to a Convention assembled, with the recommendation that it should be submitted to a Convention of delegates chosen in each

State by the people thereof, under the direction of its legislature, for their assent and ratification; and that each Convention assenting to and ratifying the same should give notice thereof to the United States in Congress assembled.

§26. The original intention and object of the Convention were, it will be remembered, simply to revise and amend the Articles of Confederation. But the Convention early came to the conclusion that it was necessary to form an entirely new Constitution.

§27. With the report to Congress, the Convention addressed a letter to that body, giving the reasons for their proceedings. The Convention also passed two resolutions, copies of which were sent to Congress; the substance of one of which has been already given, and both of which, with the letter, will be found appended to the Constitution in this work.

§28. Sept. 28, 1787, Congress having received the report of the Convention, unanimously

*“Resolved, That the said report, with the resolutions and letter accompanying the same, be transmitted to the several legislatures, in order to be submitted to a Convention of delegates chosen in each State by the people thereof, in conformity to the resolves of the Convention made and provided in that case.”*

§29. By the terms of the new Constitution, the ratification of the Conventions of nine States was declared sufficient for its establishment between the States so ratifying the same.



## Chapter XII.

### Ratification of the Constitution.

§ 1. The new Constitution was now fairly before the people of the United States. It met from the outset with very strong opposition; and the attacks were as various as the points of the compass.

§ 2. One class of objectors held that it gave too much power into the hands of the Federal Government; and another, that it did not give enough.

One maintained that the Senate should be elected for life; another, that six years was quite too long. One, that it should be elected by the people; another, that it should be elected by the House of Representatives.

Some held that the terms of office generally were quite too long; others, that they were too short.

§ 3. One class thought the President should be elected for life; one, for ten years; one, for six; and another, that he should be elected annually. One class held that he ought to be elected by Congress; another, that he should be elected by direct vote of the people; and still another, that we could get along very well without any President at all.

One class thought the Constitution invested the President with too much power; and another, with too little.

§ 4. Similar objections were urged against the House of Representatives. Some were for having the members elected by electors for that purpose appointed; others, for having them elected by the State legislators. Some thought the term of two years too short; others, too long. The objections against the judiciary were quite as various and opposite.

§ 5. The storm raged with terrible political and personal violence and asperity. Probably at no time in the history of this country has party spirit run so high as at that time. Every feature of the new plan of government was debated by the ablest minds of the day. Profound statesmen were found in the ranks of opposition to the Constitution,—men whose patriotism, and purity of motive, could not be questioned. Even some of the members of the Convention that framed that document, able and influential members too, not only refused to sign it for submission to the people, but went out amongst their constituencies, and denounced it to the last.

§6. But the friends of the new Constitution finally triumphed. Three States ratified it before the close of the year 1787, and eight more by the 26th of July, 1788; so that, in less than one year from the time of its submission to the people, a sufficient number of States had accepted it as the fundamental law of the land to warrant the commencement of operations under it.

§7. Sept. 13, 1788, Congress passed a resolution appointing the first Wednesday in January following for the choice of electors of President of the United States; the first Wednesday of February of the same year for the meeting of the electors to vote for that officer; and the first Wednesday of March thereafter for commencing proceedings under the Constitution at New York, which was then the place of the meetings of Congress.

§8. Electors were accordingly appointed, and their votes given for President. Elections of members of the House of Representatives by the people, and for senators by the State legislatures, were held; so that on Wednesday, the fourth day of March, 1789, the first Constitutional Congress met, and proceedings were commenced under the new organization.

§9. In those days, travel was far more difficult than in these later days of railroad facilities. A quorum in Congress, therefore, did not assemble until the 6th of April, at which time the votes for President were counted; and it was found that George Washington was unanimously elected, having received sixty-nine votes,—the whole number. John Adams of Massachusetts was elected Vice-President; receiving thirty-four votes, the next highest number.

§10. April 30, 1789, the President elect took the constitutional oath of office, it being administered to him by the Chancellor of the State of New York; and the new government went into full operation.

On the twenty-first day of April, John Adams entered on his duties as President of the Senate, and Vice-President of the United States.

§11. "Thus was achieved," says Judge Story, "another and still more glorious triumph in the cause of national liberty than even that which separated us from the mother country. By it we fondly trust that our republican institutions will grow up, and be nurtured into more mature strength and vigor; our independence be secured against foreign usurpation and aggression; our domestic blessings be widely diffused and generally felt; and our union, as a people, be perpetuated as our own truest glory and support, and as a proud example of a wise and beneficent government, entitled to the respect, if not the admiration, of mankind."

§12. The number of original States, as they are usually called, was thirteen. The following table exhibits the dates of the ratification of the new Constitution by these States respectively:—

DELAWARE, Dec. 7, 1787  
PENNSYLVANIA, Dec. 12, 1787.  
NEW JERSEY, Dec. 18, 1787.  
GEORGIA, Jan. 2, 1788.  
CONNECTICUT, Jan. 9, 1788.  
MASSACHUSETTS, Feb. 6, 1788.  
MARYLAND, April 28, 1788.  
SOUTH CAROLINA, May 23, 1788.  
NEW HAMPSHIRE, June 21, 1788.  
VIRGINIA, June 26, 1788.  
NEW YORK, July 26, 1788.  
NORTH CAROLINA, Nov. 21, 1789.  
RHODE ISLAND, May 29, 1790.

## Chapter XIII.

### Amendments to the Constitution.

§1. The chief design of this work, but for which it would not have been written, being the treatment of the Constitution by *topics*, renders it necessary to refer, in this place, to the amendments which have been made to that instrument. Indeed, to carry out the design, no distinction can be made between the original instrument and its amendments: they must all be treated as one document in the Analysis, as they are in fact.

§2. One of the strongest objections urged by its opponents against the adoption of the Constitution as it came from the hands of the Convention was, the want of a recognition of certain rights of citizens, several of which have since been adopted as amendments to the Constitution. Those who were vehement in their opposition to the ratification of the instrument were emphatic in urging that it ought to contain such a bill of rights as would insure individual safety among the people.

§3. The people had been unused to a national government that could reach *individuals*; that is, that could reach them *directly*: for, under the Confederation, the government was utterly powerless to punish. There was a popular clamor, therefore, for a comprehensive bill of rights. The people feared governmental encroachments on individual rights.

§4. Most of the amendments to the Constitution were adopted under this apprehension, and within a few years after the organization of the new government. The Constitution contained provisions for its own amendment; for its illustrious authors never claimed that it was by any means perfect.

§5. At the first session of the first Congress under the Constitution, therefore, held in New York, that body passed a resolution, Sept. 25, 1789, two-thirds of both houses concurring, proposing to the legislatures of the several States twelve articles of amendment to the Constitution.

§6. Ten of these articles were ratified by the States in the following order, viz.:—

NEW JERSEY, Nov. 20, 1789.

MARYLAND, Dec. 19, 1789.

NORTH CAROLINA, Dec. 22, 1789.

SOUTH CAROLINA, Jan. 19, 1790.

NEW HAMPSHIRE, Jan. 25, 1790.

DELAWARE, Jan. 28, 1790.  
PENNSYLVANIA, March 10, 1790.  
NEW YORK, March 27, 1790.  
RHODE ISLAND, June 15, 1790.  
VERMONT, Nov. 3, 1791.  
VIRGINIA, Dec. 15, 1791.

§7. As the legislatures of three-fourths of the several States concurred in the first ten articles of amendment proposed, they became valid to all intents and purposes as a part of the Constitution from Dec. 15, 1791.

§8. The eleventh article of amendment was proposed by the Third Congress at its first session, March 15, 1794. President Adams declared in his message to Congress, Jan. 8, 1798, that it had received the ratification of the constitutional number of States, and was therefore a part of the fundamental law of the land.

§9. The twelfth article of amendment was proposed at the first session of the Eighth Congress, Dec. 12, 1803, and received the ratification of the requisite number of States during the following year, and became part of the Constitution.

§10. The thirteenth article of amendment was proposed at the second session of the Thirty-eighth Congress, passing the Senate April 8, 1864, and the House Jan. 31, 1865. William H. Seward, Secretary of State, officially announced to the country, Dec. 18, 1865, that it had been ratified by three-fourths of the States, and was therefore a part of the supreme law of the land.<sup>1</sup>

<sup>1</sup> The fourteenth Article of Amendments has been adopted since this work was prepared for the press,—too late for comment or analysis in the proper place.—See pages 77 and 109.

## Chapter XIV.

### Departments of Government.

§1. No free government can exist on earth, in which the administration of its powers and functions is not distributed. Let one man have the power to make the laws, to interpret them, and to execute the same, and that man will become a despot, and his government a despotism. Human nature must be made over anew, or such a result must follow such an investment of authority in a single individual.

§2. If this concentration of powers shall be vested in an indefinite number of men, whether that number be few or many, the character of the government will be the same. One or more persons might safely be trusted with either one of these high prerogatives; but the danger consists in the concentration of *all* in the same hands.

§3. All writers on free government agree, that the legislative, the executive, and the judicial powers should be kept as separate and distinct as possible. It is hardly possible, however, for human wisdom to devise a plan by which they can be kept *entirely* separate in the administration of government.

§4. This has been attempted by the wisest and best of minds, but has failed. Not one of all the American States has succeeded; though, in some instances, they may have done all that finite wisdom could accomplish. But in all cases, without a single exception, there has been a partial mixture of these powers.

§5. In several of the States, for instance, the Executive is elected by the legislature, if no one receives a majority-vote by the people. In one State he is elected by the legislature, without any attempt at an election by the people.

In nearly all of the States, the judicial officers are impeachable by one or both branches of the legislature. In some of the States, the officers of the judiciary are appointed by the governor and the legislature, or one branch of that body.

In others, the governor may veto any act passed by the legislature; after which, in order that the act so vetoed may become a law, it must be re-passed by a two-thirds majority of both houses.

In some States, the judicial officers are elected by the people, but removable on the address of one or both branches of the legislature. In others, they are removable by one or both branches, on the address of the

Executive. In still others, the judicial officers are appointed by one or both branches of the legislature, and removable by one branch on impeachment by the other.

§6. In fact, there is no such thing as a complete and absolute separation of the three departments from each other. And all that is intended, in speaking of the three branches being kept separate and distinct, is that the powers and duties properly belonging to any one branch or department shall not be interfered with or administered by either of the others; that neither shall possess a controlling influence over the others in the performance of their respective duties.

§7. In order that there may be official independence, it is necessary “that the legislative, executive, and judiciary powers shall be kept as separate from, and independent of, each other, as the nature of a free government will admit, or as is consistent with that chain of connection that binds the whole fabric of the Constitution in one indissoluble bond of unity and amity.”

§8. The Constitution of the United States aims to separate the three departments as widely as possible, and to render them as independent, the one of the others, as the complicated nature of the subject will permit. The government of the United States is a *representative* government; and there is far less danger to liberty arising from the partial mixture of these powers in this country, than in a government of less direct responsibility to the people.

## I.

The following is the Declaration of Rights made by the first Continental Congress, Oct. 14, 1774,—nearly two years before the Declaration of Independence. But it was not difficult to foresee that separation from the mother country was imminent, unless Great Britain or the Colonies should take an immediate backward step. Indeed, this Declaration of Rights foreshadowed the Declaration of Independence.

### Declaration of Rights

WHEREAS, since the close of the last war, the British Parliament, claiming a power of right to bind the people of America by statutes in all cases whatsoever, hath, in some acts, expressly imposed taxes on them, and in others, under various pretenses, but in fact for the purpose of raising a revenue, hath imposed rates and duties payable in these Colonies, established aboard of commissioners with unconstitutional powers, and extended the jurisdiction of admiralty, not only for collecting the said duties, but for the trial of causes merely arising within the body of a county;

And whereas, in consequence of other statutes, judges, who before held only estates at will in their offices, have been made dependent on the Crown alone for their salaries, and standing armies kept in time of peace; and whereas, it has lately been resolved in Parliament, that, by force of a statute made in the thirty-fifth year of the reign of King Henry the Eighth, colonists may be transported to England, and tried there upon accusations for treasons, and misprisions or concealments of treasons, committed in the Colonies, and by a late statute such trials have been directed in cases therein mention;

And whereas, in the last session of Parliament, three statutes were made.—one entitled an “Act to discontinue, in such manner and for such time as are therein mentioned, the Landing and Discharging, Lading or Shipping, of Goods, Wares, and Merchandise at the Town and within the Harbor of Boston, in the Province of Massachusetts Bay, in New England;” and another statute was then made, “for Making more Effectual Provisions for the government of the Province of Quebec,” &c.,—all which statutes are impolitic, unjust, and cruel, as well as unconstitutional, and most dangerous and destructive of American rights;

And whereas, assemblies have been frequently dissolved, contrary to



the rights of the people, when they attempted to deliberate on grievances; and their dutiful, humble, loyal, and reasonable petitions to the Crown for redress have been repeatedly treated with contempt by his majesty's ministers of State;

The good people of the several Colonies of New Hampshire, Massachusetts Bay, Rhode Island and Providence Plantations, Connecticut, New York, New Jersey, Pennsylvania, New Castle, Kent and Sussex on Delaware, Maryland, Virginia, North Carolina, and South Carolina, justly alarmed at these arbitrary proceedings of Parliament and Administration, have severally elected, constituted, and appointed deputies to meet and sit in General Congress, in the city of Philadelphia, in order to obtain such establishment as that their religion, laws, and liberties may not be subverted. Whereupon the deputies so appointed, being now assembled in a full and free representation of these Colonies, taking into their most serious consideration the best means of attaining the ends aforesaid, do in the first place, as Englishmen, their ancestors, in like cases have usually done, for affecting and vindicating their rights and liberties, DECLARE,—

That the inhabitants of the English Colonies in North America, by the immutable laws of nature, the principles of the English Constitution, and the several charters or compacts, have the following RIGHTS:—

*Resolved*, N.C.D.,<sup>1</sup> 1. That they are entitled to life, liberty, and property, and they have never ceded to any sovereign power whatever a right to dispose of either without their consent.

*Resolved*, N.C.D., 2. That our ancestors, who first settled these Colonies, were, at the time of their emigration from the mother country, entitled to all the rights, liberties, and immunities of free and natural born subjects within the realm of England.

*Resolved*, N.C.D., 3. That, by such emigration, they by no means forfeited, surrendered, or lost any of those rights; but that they were, and their descendants now are, entitled to the exercise and enjoyment of all such of them as their local and other circumstances enable them to exercise and enjoy.

*Resolved*, 4. That the foundation of English liberty, and of all free government, is a right in the people to participate in their legislative council; and as the English colonists are not represented, and from their local and other circumstances can not properly be represented, in the British Parliament, they are entitled to a free and exclusive power of legislation in their several Provincial legislatures, where their right of representation can alone be preserved, in all cases of taxation and internal polity, subject

only to the negative of their sovereign, in such manner as has been heretofore used and accustomed. But from the necessity of the case, and a regard to the natural interests of both countries, we cheerfully consent to the operation of such acts of the British Parliament as are *bona fide* restrained to the regulation of our external commerce, for the purpose of securing the commercial advantages of the whole empire to the mother country, and the commercial benefits of its respective members; excluding every idea of taxation, internal or external, for raising a revenue on the subjects in America without their consent.

*Resolved*, N.C.D., 5. That the respective Colonies are entitled to the common law of England, and more especially to the great and inestimable privilege of being tried by their peers of the vicinage according to the course of that law.

*Resolved*, 6. That they are entitled to the benefit of such of the English statutes as existed at the time of their colonization, and which they have, by experience, respectively found to be applicable to their several local and other circumstances.

*Resolved*, N.C.D., 7. That these, his Majesty's Colonies, are likewise entitled to all the immunities and privileges granted and confirmed to them by royal charters, or secured by their several codes of Provincial laws.

*Resolved*, N.C.D., 8. That they have a right peaceably to assemble, consider of their grievances, and petition the king; and that all prosecutions, prohibitory proclamations, and commitments for the same, are illegal.

*Resolved*, N.C.D., 9. That the keeping a standing army in these Colonies in times of peace, without the consent of the legislature of that Colony in which such army is kept, is against the law.

*Resolved*, N.C.D., 10. It is indispensably necessary to good government, and rendered essential by the English Constitution, that the constituent branches of the legislature be independent of each other; that, therefore, the exercise of legislative power in several Colonies by a council, appointed during pleasure by the Crown, is unconstitutional, dangerous, and destructive to the freedom of American legislation.

All and each of which the aforesaid deputies, in behalf of themselves and their constituents, do claim, demand, and insist on, as their indubitable rights and liberties, which can not be legally taken from them, altered, or abridged, by any power whatever, without their own consent, by their representatives in their several Provincial legislatures.

In the course of our inquiry, we find many infringements and violations of the foregoing rights; which, from an ardent desire that harmony and mutual intercourse of affection and interest maybe restored, we pass over for the present, and proceed to state such acts and measures as have been adopted since the last war which demonstrate a system formed to enslave America.

*Resolved*, N.C.D., That the following acts of Parliament are infringements and violations of the rights of the colonists; and that the repeal of them is essentially necessary, in order to restore harmony between Great Britain and the America Colonies; viz.:—

The several acts of 4 Geo. III, Ch. 15 and Ch. 34, 5Geo.III. Ch. 25, 6 Geo. III. Ch. 52, 7 Geo. III. Ch. 41 and ch.46, 8 Geo. III. Ch. 22, which impose duties for the purpose of raising a revenue in America, extend the power of the admiralty courts beyond their ancient limits, deprive the American subject of trial by jury, authorize the judges" certificate to indemnify the prosecutor from damages that he might otherwise be liable to, requiring oppressive security from a claimant of ships and goods seized before he shall be allowed to defend his property, and are subversive of American rights.

Also 12 Geo. III, ch. 24, entitled "An Act for the Better Securing his Majesty's Dock-Yards, Magazines, Ships, Ammunition, and Stores." which declares a new offense in America, and deprives the American subject of a constitutional trial by jury of the vicinage, by authorizing the trial of any person charged with the committing any offense described in the said act, out of the realm, to be indicted and tried for the same in any shire or county within the realm.

Also the three acts passed in the last session of Parliament, for stopping the port and blocking up the harbor of Boston, for altering the charter and government of Massachusetts Bay, and that which is entitled "An Act for the Better Administration of Justice," &c.

Also the act passed in the same session for establishing the Roman-Catholic religion in the Province of Quebec; abolishing the equitable system of English laws, and erecting a tyranny there, to the great danger (from so total a dissimilarity of religion, law, and government) of the neighboring British Colonies, by the assistance of whose blood and treasure the said country was conquered from France.

Also the act passed in the same session, for the better providing suitable quarters for officers and soldiers in his Majesty's service in North America.

Also that the keeping a standing army in several of these Colonies in time of peace, without the consent of the Legislature of that Colony in which such army is kept, is against the law.

To these grievous acts and measures Americans can not submit; but in hopes their fellow-subjects in Great Britain will, on a revision of them, restore us to that state in which both countries found happiness and prosperity, we have, for the present, only resolved to pursue the following peaceable measures: 1. To enter into a non-importation, non-consumption, and non-exportation agreement or association; 2. To prepare an address to the people of Great Britain, and a memorial to the inhabitants of British America; and, 3. To prepare a loyal address to his Majesty, agreeable to resolutions already entered into.

<sup>1</sup> Abbreviations for *nemine contradicente*; signifying, no one opposing.

## II.

# The Declaration of Independence,

ADOPTED BY CONGRESS JULY 4, 1776.

### A DECLARATION BY THE REPRESENTATIVES OF THE UNITED STATES OF AMERICA, IN CONGRESS ASSEMBLED.

When, in the course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume among the powers of the earth the separate and equal station to which the laws of nature and of nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.

We hold these truths to be self-evident, that all men are created equal; that they are endowed by their Creator with certain unalienable rights; that among these are life, liberty, and the pursuit of happiness; that to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed; that, whenever any form of government becomes destructive of these ends, it is the right of the people to alter or to abolish it, and to institute a new government, laying its foundation on such principles, and organizing its powers in such form, as to them shall seem most likely to effect their safety and happiness. Prudence, indeed, will dictate that governments should not be changed for light and transient causes; and, accordingly, all experience hath shown that mankind are more disposed to suffer, while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed. But when a long train of abuses and usurpations, pursuing invariably the same object, evinces a design to reduce them under absolute despotism, it is their right, it is their duty, to throw off such government, and to provide new guards for their future security. Such has been the patient sufferance of these Colonies, and such is now the necessity which constrains them to alter their former systems of government. The history of the present king of Great Britain is a history of repeated injuries and usurpations, all having indirect object the establishment of an absolute tyranny over these States. To prove this,

let facts be submitted to a candid world:—

He has refused his assent to laws the most wholesome and necessary for the public good.

He has forbidden his governors to pass laws of immediate and pressing importance, unless suspended in their operation till his assent should be obtained; and, when so suspended, he has utterly neglected to attend to them.

He has refused to pass other laws for the accommodation of large districts of people, unless those people would relinquish the right of representation in the Legislature; a right inestimable to them, and formidable to tyrants only.

He has called together legislative bodies at places unusual, uncomfortable, and distant from the depository of their public records, for the sole purpose of fatiguing them into compliance with his measures.

He has dissolved representative houses repeatedly, for opposing, with manly firmness, his invasions on the rights of the people.

He has refused, for a long time after such dissolutions, to cause others to be elected; whereby the legislative powers, incapable of annihilation, have returned to the people at large for their exercise; the State remaining, in the mean time, exposed to all danger of invasion from without, and convulsions within.

He has endeavored to prevent the population of these States; for that purpose, obstructing the laws for naturalizing of foreigners; refusing to pass others to encourage their migration hither, and raising the conditions of new appropriations of lands.

He has obstructed the administration of justice by refusing his assent to laws for establishing judiciary powers.

He has made judges dependent upon his will alone for the tenure of their offices, and the amount and payment of their salaries.

He has erected a multitude of new offices, and sent hither swarms of officers to harass our people, and eat out their substance.

He has kept among us, in times of peace, standing armies, without the consent of our Legislature.

He has affected to render the military independent of, and superior to, the civil power.

He has combined, with others, to subject us to a jurisdiction foreign to our Constitution, and unacknowledged by our laws; giving his assent to their acts of pretended legislation,

For quartering large bodies of armed troops among us;

For protecting them, by a mock trial, from punishment for any murders which they should commit on the inhabitants of these states;

For cutting off our trade with all parts of the world;

For imposing taxes on us without our consent;

For depriving us, in many cases, of the benefits of trial by jury;

For transporting us beyond seas to be tried for pretended offenses;

For abolishing the free system of English laws in a neighboring Province, establishing therein an arbitrary government and enlarging its boundaries, so as to render it at once an example and fit instrument for introducing the same absolute rule into these Colonies;

For taking away our charters, abolishing our most valuable laws, and altering fundamentally the powers of our governments;

For suspending our own legislatures, and declaring themselves invested with power to legislate for us in all cases whatsoever;

He has abdicated government here, by declaring us out of his protection, and waging war against us;

He has plundered our seas, ravaged our coasts, burnt our towns, and destroyed the lives of our people.

He is, at this time, transporting large armies of foreign mercenaries to complete the works of death, desolation, and tyranny, already begun with circumstances of cruelty and perfidy scarcely paralleled in the most barbarous ages, and totally unworthy the head of a civilized nation.

He has constrained our fellow citizens taken captive on the high seas to bear arms; against their country, to become the executioners of their friends and brethren, or to fall themselves by their hands.

He has excited domestic insurrections amongst us, and has endeavored to bring on the inhabitants of our frontiers the merciless Indian savages, whose known rule of warfare is an undistinguished destruction of all ages, sexes, and conditions.

In every stage of these oppressions, we have petitioned for redress in the most humble terms: our repeated petitions have been answered only by repeated injury. A prince whose character is thus marked by every act which may define a tyrant is unfit to be the ruler of a free people.

Nor have we been wanting in attention to our British brethren.

We have warned them, from time to time, of attempts made by their legislature to extend an unwarrantable jurisdiction over us. We have reminded them of the circumstances of our emigration and settlement here. We have appealed to their native justice and magnanimity; and we have conjured them, by the ties of our common kindred, to

disavow these usurpations, which would inevitably interrupt our connections and correspondence. They, too, have been deaf to the voice of justice and consanguinity. We must, therefore, acquiesce in the necessity which denounces our separation, and hold them, as we hold the rest of mankind, enemies in war; in peace, friends.

We, therefore, the representatives of the United of America, in GENERAL CONGRESS assembled, appealing to the Supreme Judge of the world for the rectitude of our intentions, do, in the name and by the authority of the good people of these Colonies, solemnly publish and declare, that these United Colonies are, and of right ought to be, *free and independent* States; that they are absolved from all allegiance to the British Crown, and that all political connection between them and the state of Great Britain is, and ought to be, totally dissolved; and that as FREE AND INDEPENDENT STATES, they have full power to levy war, conclude peace, contract alliances, establish commerce, and to do all other acts and things which INDEPENDENT STATES may of right do. And for the support of this declaration, with a firm reliance on the protection of DIVINE PROVIDENCE, we mutually pledge to each other our lives, our fortunes, and our sacred honor.

The signers to this Declaration were

JOHN HANCOCK, President.

*NEW HAMPSHIRE.*  
JOSIAH BARTLETT,  
WILLIAM WHIPPLE,  
MATTHEW THORNTON.

SAMUEL HUNTINGTON,  
WILLIAM WILLIAMS,  
OLIVER WOLCOTT.

*MASSACHUSETTS BAY.*  
SAMUEL ADAMS,  
JOHN ADAMS,  
ROBERT TREAT PAINE,  
ELBRIDGE GERRY.

*NEW YORK*  
WILLIAM FLOYD,  
PHILIP LIVINGSTON,  
FRANCIS LEWIS,  
LEWIS MORRIS.

*RHODE ISLAND.*  
STEPHEN HOPKINS,  
WILLIAM ELLERY.

*NEW JERSEY.*  
RICHARD STOCKTON,  
JOHN WITHERSPOON,  
FRANCIS HOPKINSON,  
JOHN HART,  
ABRAHAM CLARK.



*CONNECTICUT.*  
ROGER SHERMAN,

*PENNSYLVANIA.*  
ROBERT MORRIS,  
BENJAMIN RUSH,  
BENJAMIN FRANKLIN,  
JOHN MORTON,  
GEORGE CLYMER,  
JAMES SMITH,  
GEORGE TAYLOR,  
JAMES WILSON,  
GEORGE ROSS

*DELAWARE.*  
CAESAR RODNEY,  
GEORGE-REED,  
THOMAS MCKEAN.

*MARYLAND.*  
SAMUEL CHASE,  
WILLIAM PACA,  
THOMAS STONE,  
CHARLES CARROLL, of Carrollton.

*VIRGINIA*  
GEORGE WYTHE,  
RICHARD HENRY LEE,  
THOMAS JEFFERSON,  
BENJAMIN HARRISON,  
THOMAS NELSON, JR.,  
FRANCIS LIGHTFOOT LEE,  
CARTER BRAXTON

*NORTH CAROLINA.*  
WILLIAM HOOPER,  
JOSEPH HEWES,  
JOHN PENN.

*SOUTH CAROLINA*  
EDWARD RUTLEDGE,  
THOMAS HAYWARD, JR.,  
THOMAS LYNCH, JR.,  
ARTHUR MIDDLETON.

*GEORGIA*  
BUTTON GWINNETT,  
LYMAN HALL,  
GEORGE WALTON.

### III.

We have already spoken of the adoption of the Articles of Confederation. They are, at length, as follows:—

## Articles of Confederation and Perpetual Union Between the States.

*To all to whom these presents shall come, we, the undersigned Delegates of the States affixed to our names, send greeting:*

Whereas the Delegates of the United States of America, in Congress assembled, did, on the fifteenth day of November, in the year of our Lord 1777, and in the Second Year of the Independence of America, agree to certain Articles of Confederation and perpetual Union between the States of New Hampshire, Massachusetts Bay, Rhode-Island and Providence Plantations, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, and Georgia, in the words following, viz.:—

*Articles of Confederation and Perpetual Union between the States of New Hampshire, Massachusetts Bay, Rhode-Island and Providence Plantations, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, and Georgia.*

**Article I.** The style of this Confederacy shall be, “The United States of America.”

**ART. II.** Each State retains its sovereignty, freedom, and independence, and every power, jurisdiction, and right which is not by this Confederation expressly delegated to the United States in Congress assembled.

**ART. III.** The said States hereby severally enter into a firm league of friendship with each other, for their common defense, the security of

their liberties, and their mutual and general welfare, binding themselves to assist each other against all force offered to or attacks made upon them, or any of them, on account of religion, sovereignty, trade, or any other pretense whatever.

**ART. IV.** The better to secure and perpetuate mutual friendship and intercourse among the people of the different States in this Union, the free inhabitants of each of these States — paupers, vagabonds, and fugitives from justice, excepted — shall be entitled to all privileges and immunities of free citizens in the several States; and the people of each State shall have free ingress and regress to and from any other States, and shall enjoy therein all the privileges of trade and commerce, subject to the same duties, impositions, and restrictions as the inhabitants thereof respectively; provided that such restriction shall not extend so far as to prevent the removal of property, imported into any State, to any other State of which the owner is an inhabitant; provided also that no imposition, duties, or restriction shall be laid by any State on the property of the United States, or either of them.

If any person guilty of or charged with treason, felony, or other high misdemeanor, in any State, shall flee from justice, and be found in any of the United States, he shall, upon demand of the governor or executive power of the State from which he fled, be delivered up and removed to the State having jurisdiction of his offense.

Full faith and credit shall be given in each of these States to the records, acts, and judicial proceedings of the courts and magistrates of every other State.

**ART. V.** For the more convenient management of the general interest of the United States, delegates shall be annually appointed in such manner as the legislature of each State shall direct, to meet in Congress on the first Monday in November in every year, with a power reserved to each State to recall its delegates, or any of them, at any time within the year, and to send others in their stead for the remainder of the year.

No State shall be represented in Congress by less than two nor by more than seven members; and no person shall be capable of being a delegate for more than three years in any term of six years; nor shall any person, being a delegate, be capable of holding any office under the United States, for which he, or another for his benefit, receives any salary, fees, or emolument of any kind.

Each State shall maintain its own delegates in any meeting of the States, and while they act as members of the committee of the States.

In determining questions in the United States in Congress assembled, each State shall have one vote.

Freedom of speech and debate in Congress shall not be impeached or questioned in any court, or place out of Congress; and the members of Congress shall be protected in their persons from arrests and imprisonments during the time of their going to and from, and attendance on, Congress, except for treason, felony, or breach of the peace.

**ART. VI.** No State, without the consent of the United States in Congress assembled, shall send any embassy to, or receive any embassy from, or enter into any conference, agreement, alliance, or treaty with, any king, prince, or state; nor shall any person holding any office of profit or trust under the United States, or any of them, accept of any present, emolument, office, or title, of any kind whatever, from any king, prince, or foreign, state; nor shall the United States in Congress assembled, or any of them, grant any title of nobility.

No two or more States shall enter into any treaty, confederation, or alliance whatever between them, without the consent of the United States in Congress assembled; specifying accurately the purposes for which the same is to be entered into, and how long it shall continue.

No State shall lay any imposts or duties which may interfere with any stipulations in treaties entered into, by the United States in Congress assembled, with any king, prince, or state, in pursuance of any treaties already proposed by Congress to the courts of France and Spain.

No vessels-of-war shall be kept up in time of peace by any State, except under number only as shall be deemed necessary, by the United States in Congress assembled, for the defense of such State or its trade; nor shall any body of forces be kept up by any State in time of peace, except such number only as, in the judgment of the United States in Congress assembled, shall be deemed requisite to garrison the forts necessary for the defense of such State; but every State shall always keep up a well-regulated and disciplined militia, sufficiently armed and accoutered, and shall provide and have constantly ready for use in public stores a due number of field-pieces and tents, and a proper quantity of arms, ammunition, and camp equipage.

No State shall engage in any war without the consent of the United

States in Congress assembled, unless such State be actually invaded by enemies, or shall have received certain advice of a resolution being formed by some nation of Indians to invade such State, and the danger is so imminent as not to admit of a delay till the United States in Congress assembled can be consulted; nor shall any State grant commissions to any ships or vessels of war, nor letters of marque or reprisal, except it be after a declaration of war by the United States in Congress assembled, and then only against the kingdom or state, and the subjects thereof, against which war has been so declared, and under such regulations as shall be established by the United States in Congress assembled, unless such State be infested by pirates; in which case vessels-of-war may be fitted out for that occasion, and kept so long as the danger shall continue, or until the United States in Congress assembled shall determine otherwise.

**ART. VII.** When land-forces are raised by any State for the common defense, all officers of or under the rank of colonel shall be appointed by the Legislature of each State respectively by whom such forces shall be raised, or in such manner as such State shall direct; and all vacancies shall be filled up by the State which first made the appointment.

**ART. VIII.** All charges of war, and all other expenses that shall be incurred for the common defense or general, and allowed by the United States in Congress assembled, shall be defrayed out of a common treasury, which shall be supplied by the several States in proportion to the value of all land within each State, granted to or surveyed for any person, as such land and the buildings and improvements thereon shall be estimated, according to such mode as the United States in Congress assembled shall from time to time direct and appoint. The taxes for paying that proportion shall be laid and levied by the authority and direction of the Legislatures of the several States within the time agreed upon by the United States in Congress assembled.

**ART. IX.** The United States in Congress assembled shall have the sole and exclusive right and power of determining on peace and war, except in cases mentioned in the Sixth Article; of sending and receiving ambassadors, entering into treaties and alliances, provided that no treaty of commerce shall be made whereby the legislative power of the respective States shall be restrained from imposing such imposts and duties on foreigners as their own people are subjected to, or from prohibiting the

exportation or importation of any species of goods or commodities whatsoever; of establishing rules for deciding in all cases what captures on land or water shall be legal, and in what manner prizes taken by land or naval forces in the service of the United States shall be divided or appropriated; of granting letters of marque and reprisal in times of peace, appointing courts for the trial of piracies and felonies committed on the high seas, and establishing courts for receiving and determining finally appeals in all cases of captures, provided that no member of Congress shall be appointed a judge of any of the said courts.

The United States in Congress assembled shall also be the last resort on appeal in all disputes and resort on appeal in all disputes and differences now subsisting or that hereafter may arise between two or more States concerning boundary, jurisdiction, or any other cause whatever; which authority shall always be exercised in the manner following: Whenever the legislative or executive authority or lawful agent of any State, in controversy with another, shall represent a petition to Congress, stating the matter in question, and praying for a hearing, notice thereof shall be given by order of Congress to the legislative or executive authority of the other State in Controversy, and a day assigned for the appearance of the parties by their lawful agents, who shall then be directed to appoint, by joint consent, commissioners or judges to constitute a court for hearing and determining the matter in question: but, if they can not agree, Congress shall name three persons out of each of the United States; and from the list of such persons each party shall alternately strike out one, the petitioners beginning, until the number shall be reduced to thirteen; and from that number not less than seven nor more than nine names, as Congress shall direct, shall in the presence of Congress be drawn out by lot; and the persons whose names shall be so drawn, or any five of them, shall be commissioners or judges to hear and finally determine the controversy, so always as a major part of the judges who shall hear the cause shall agree in the determination; and if either party shall neglect to attend at the day appointed, without showing reasons which Congress shall judge sufficient, or, being present, shall refuse to strike, the Congress shall proceed to nominate three persons out of each State, and the Secretary of Congress shall strike in behalf of such party absent or refusing; and the judgment and sentence of the court, to be appointed in the manner before prescribed, shall be final and conclusive; and, if any of the parties shall refuse to submit to the authority of such court, or to appear or defend their claim or cause, the court shall nevertheless proceed to pro-

nounce sentence or judgment, which shall in like manner be final and decisive,—the judgement or sentence and other proceedings being in either case transmitted to Congress, and lodged among the acts of Congress for the security of the parties concerned: provided that every commissioner, before he sits in judgment, shall take an oath, to be administered by one of the judges of the Supreme or Superior Court of the State where the cause shall be tried, “well and truly to hear and determine the matter in question, according to the best of his judgment, without favor, affection, or hope of reward;” provided also that no State shall be deprived of territory for the benefit of the United States.

All controversies concerning the private right of soil claimed under different grants of two or more States, whose jurisdictions as they may respect such lands, and the States which passed such grants, are adjusted, the said grants or either of them being at the same time claimed to have been originated antecedent to such settlement of jurisdiction, shall, on the petition of either party to the Congress of the United States, be finally determined, as near as may be, in the same manner as is before prescribed for deciding disputed respecting territorial jurisdiction between different States.

The United States in Congress assembled shall also have the sole and exclusive right and power of regulating the alloy and value of coin struck by their own authority, or by that of the respective States; fixing the standard of weights and measures throughout the United States; regulating the trade and managing all affairs with the Indians, not members of any of the States, provided that the legislative right of any State within its own limits be not infringed or violated; establishing or regulating post-offices from one State to another throughout all the United States, and exacting such postage on the papers passing through the same as may be requisite to defray the expenses of the said office; appointing all officers of the land-forces in the service of the United States, excepting regimental officers; appointing all the officers of the naval forces and commissioning all officers whatever in the service of the United States; making rules for the government and regulation of the said land and naval forces, and directing their operations.

The United States in Congress assembled shall have authority to appoint a committee, to sit in the recess of Congress, to be denominated “A Committee of the States,” and to consist of one delegate from each State; and to appoint such other committees and civil officers as may be necessary for managing the general affairs of the United States under

their direction; to appoint one of their number to preside, provided that no person be allowed to serve in the office of president more than one year in any term of three years; to ascertain the necessary sums of money to be raised for the service of the United States, and to appropriate and apply the same for defraying the public expenses; to borrow money, or emit bills on the credit of the United States, transmitting every half-year to the respective States an account of the sums of money so borrowed or emitted; to build and equip a navy; to agree upon the number of land forces, and to make requisitions from each State for its quota, in proportion to the number of white inhabitants in such State; which requisition shall be binding; and thereupon the Legislature of each State shall appoint the regimental officers, raise the men, and clothe, arm, and equip them in a soldier-like manner, at the expense of the United States; and the officers and men so clothed, armed, and equipped shall march to the place appointed and within the time agreed on by the United States of Congress assembled: but if the United States in Congress assembled shall, on consideration of circumstances, judge proper that any State should not raise men, or should raise a smaller number than its quota, and that any other State should raise a greater number of men than the quota thereof, such extra number shall be raised, officered, clothed, armed, and equipped in the same manner as the quota of such State, unless the Legislature of such State shall judge that such extra number cannot be safely spared out of the same; in which case they shall raise, officer, clothe, arm, and equip as many of such extra number as they judge can be safely spared; and the officers and men so clothed, armed, and equipped shall march to the place appointed, and within the time agreed on by the United States in Congress assembled.

The United States in Congress assembled shall never engage in a war; nor grant letters of marque and reprisal in time of peace; nor enter into any treaties or alliances; nor coin money, nor regulate the value thereof; nor ascertain the sums and expenses necessary for the defense and welfare of the United States, or any of them; nor emit bills, nor borrow money on the credit of the United States; nor appropriate money; nor agree upon the number of vessels-of-war to be built or purchased, or the number of land or sea forces to be raised; nor appoint a commander-in-chief of the army or navy, unless nine States assent to the same; nor shall a question on any other point, except for adjourning from day to day, be determined, unless by the votes of a majority of the United States in Congress assembled.



The Congress of the United States shall have power to adjourn to any time within the year, and to any place within the United States, so that no period of adjournment be for a longer duration than the space of six months; and shall publish the journal of their proceedings monthly, except such parts thereof, relating to treaties, alliances, or military operations, as in their judgment require secrecy.: and the yeas and nays of the delegates of each State on any question shall be entered on the journal, when it is desired by any delegate; and the delegates of a State, or any of them, at his or their request, shall be furnished with a transcript of the said journal, except such parts as are above excepted, to lay before the Legislatures of the several States.

**ART. X.** The Committee of the States, or any nine of them, shall be authorized to execute in the recess of Congress, such of the powers of congress as the United States in Congress assembled, by the consent of nine States, shall from time to time think expedient to vest them with; provided that no power be delegated to the said committee, for the exercise of which, by the Articles of Confederation, the voice of nine States in the Congress of the United States assembled is requisite.

**ART. XI.** Canada, acceding to this Confederation, and joining in the measures of the United States, shall be admitted into, and entitled to all the advantages of, this Union; but no other Colony shall be admitted into the same, unless such admission be agreed to by nine States.

**ART. XII.** All bills of credit emitted, moneys borrowed, and debts contracted, by or under the authority of Congress before the assembling of the United States, in pursuance of the present Confederation, shall be deemed and considered as a charge against the United States, for payment and satisfaction whereof the said United States and the public faith are hereby solemnly pledged.

**ART. XIII.** Every State shall abide by the determinations of the United States in Congress assembled, on all questions which, by this Confederation, are submitted to them. And the Articles of this Confederation shall be inviolably observed by every State, and the Union shall be perpetual; nor shall any alteration at any time hereafter be made in any of them, unless such alteration be agreed to in a Congress of the United States, and be afterwards confirmed by the Legislatures of every State.

And whereas it hath pleased the great Governor of the world to incline the hearts of the Legislatures we respectively represent in Congress to approve of, and to authorize us to ratify, the said Articles of Confederation and perpetual Union, KNOW YE, that we, the undersigned delegates, by virtue of the power and authority to us given for that purpose, do by these presents, in the name and in behalf of our respective constituents, that they shall abide by the determinations of the United States in Congress assembled on all questions which by the said Confederation are submitted to them; and that the Articles thereof shall be inviolably observed by the States we respectively represent, and that the Union shall be perpetual.

In witness whereof, we have hereunto set our hands in Congress. Done at Philadelphia, in the State of Pennsylvania, the ninth day of July, in the year of our Lord 1778, and in the third year of the Independence of America.

Josiah Bartlett, John Wentworth, jun., } on the part and behalf of the  
Aug. 8, 1778, } State of New Hampshire

John Hancock, Francis Dana, }  
Samuel Adams, James Lovely, } on the part and behalf of the  
Elbridge Gerry, Samuel Holton, } State of Massachusetts Bay.

William Ellery, John Collins, }  
Henry Marchant, } on the part and behalf of the  
} State of Rhode Island and  
} Providence Plantations.

Roger Sherman, Titus Hosmer, }  
Samuel Huntington, Andrew Adam, } on the part and behalf of the  
Oliver Wolcott, } State of Connecticut

Jas Duane, William Duer, }  
Fras Lewis, Gov(r) Morris, } on the part and behalf of the  
} State of New York.

Jn<sup>o</sup> Witherspoon, Nath<sup>l</sup> Scudder, }  
} on the part and behalf of the  
} State of New Jersey, Nov.  
} 26, 1778.

Rob<sup>t</sup> Morris, William Clingan,  
Daniel Roberdeau, Joseph Reed,  
Jon<sup>a</sup> Bayard Smith, 22d July, 1778, } on the part and behalf of  
the State of Pennsylvania.

Tho. McKean, Feb. 12, 1779,  
Nicholas Van Dyke. } on the Part and behalf of  
John Dickinson, May 5, 1779, } the State of Delaware.

John Hanson, March 1, 1781,  
Daniel Carroll, March 1, 1781, } on the part and behalf of  
the State of Maryland.

Richard Henry Lee, Jn<sup>o</sup> Harvie,  
John Banister, Francis Lightfoot Lee,  
Thomas Adams, } on the part and behalf of  
the State of Virginia.

John Penn, July 21, 1778,  
Corns Harnett, Jn<sup>o</sup> Williams, } on the part and behalf of  
the State of North Carolina.

Henry Laurens, Richd Hutson,  
William Henry Drayton, } on the part and behalf of  
Thos. Heyward, jun., Jn<sup>o</sup> Matthews, } the State of South Carolina.

Jn<sup>o</sup> Walton, Edw(d) Telfair,  
24th July, 1778, Edw(d) Langworthy, } on the part and behalf of  
the State of Georgia.

# IV. CONSTITUTION OF THE UNITED STATES OF AMERICA

NOTE.—A large figure is placed on the left margin of each paragraph of the following copy of the Constitution, so that the paragraphs may be referred to by numbers. This will be found a convenience in studying the Analysis of the Constitution, as the corresponding figures are used there.

1 We, the People of the United States, in order to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.

## ARTICLE I.

### Section 1.

2 1. All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

### Section 2.

3 1. The House of Representatives shall be composed of members chosen every second year by the people of the several States, and the electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State Legislature.

4 2. No person shall be a Representative who shall not have attained to the age of twenty-five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State in which he shall be chosen.

3. Representatives and direct taxes shall be apportioned among the several States which may be included within this Union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three-fifths of all other persons. The actual enumeration shall be made within three years after the first meeting of the Congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of Representatives shall not exceed one for every thirty thousand, but each State shall have at least one Representative; and, until such enumeration shall be made, the State of New Hampshire shall be entitled to choose three, Massachusetts eight, Rhode-Island and Providence Plantations one, Connecticut five, New York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

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4. When vacancies happen in the representation from any State, the executive authority thereof shall issue writs of election to fill such vacancies.

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5. The House of Representatives shall choose their Speaker and other officers, and shall have the sole power of impeachment.

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### Section 3.

1. The Senate of the United States shall be composed of two Senators from each State, chosen by the Legislature thereof for six years; and each Senator shall have one vote.

8

2. Immediately after they shall be assembled in consequence of the first election, they shall be divided, as equally as may be, into three classes. The seats of the Senators of the first class shall be vacated at the expiration of the second year; of the second class, at the expiration of the fourth year; and of the third class, at the expiration of the sixth year; so that one-third may be chosen every second year: and if vacancies happen, by resignation or otherwise, during the recess of the Legislature of any State, the executive thereof may make temporary appointments until the next meeting of the Legislature, which shall then fill such vacancies.

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10           3. No person shall be a Senator who shall not have attained to the age of thirty years, and been nine years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State for which he shall be chosen.

11           4. The Vice-President of the United States shall be President of the Senate, but shall have no vote unless they be equally divided.

12           5. The Senate shall choose their other officers, and also a President *pro tempore* in the absence of the Vice-President, or when he shall exercise the office of President of the United States.

13           6. The Senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath or affirmation. When the President of the United States is tried, the Chief Justice shall preside; and no person shall be convicted without the concurrence of two-thirds of the members present.

14           7. Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust, or profit, under the United States; but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment, and punishment, according to law.

#### Section 4.

15           1. The times, places, and manner of holding elections for Senators and Representatives shall be prescribed in each State by the Legislature thereof; but the Congress may at any time, by law, make or alter such regulations, except as to the places of choosing Senators.

16           2. The Congress shall assemble at least once in every year; and such meeting shall be on the first Monday in December, unless they shall be law appoint a different day.

#### Section 5.

17           1. Each house shall be the judge of the elections, returns, and qualifications of its own members; and a majority of each shall constitute a

quorum to do business, but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner and under such penalties as each House may provide.

2. Each House may determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two-thirds, expel a member. **18**

3. Each House shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may, in their judgment, require secrecy; and the yeas and nays of the members of either House on any question shall, at the desire of one-fifth of those present, be entered on the journal. **19**

4. Neither House, during the session of Congress, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two Houses shall be sitting. **20**

### Section 6.

1. The Senators and Representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the treasury of the United States. They shall, in all cases except treason, felony, and breach of the peace, be privileged from arrest during their attendance at the session of their respective Houses, and in going to and returning from the same; and for any speech or debate in either House, they shall not be questioned in any other place. **21**

2. No Senator or Representative shall, during the time for which he was elected, be appointed to any civil officer under the authority of the United States which shall have been created, or the emoluments whereof shall have been increased, during such time; and no person holding any office under the United States shall be a member of either House during his continuance in office. **22**

### Section 7.

1. All bills for raising revenue shall originate in the House of Representatives; but the Senate may propose or concur with amendments, as on other bills. **23**

24           2. Every bill which shall have passed the House of Representatives and the Senate, shall, before it become a law, be presented to the President of the United States: if he approve, he shall sign it; but, if not, he shall return it, with his objections, to that House in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider it. If, after such reconsideration, two-thirds of that House shall agree to pass the bill, it shall be sent, together with the objections, to the other House, by which it shall likewise be reconsidered; and, if approved by two-thirds of that House, it shall become a law. But, in all such cases, the votes of both Houses shall be determined by yeas and nays; and the names of the persons voting for and against the bill shall be entered on the journal of each House respectively. If any bill shall not be returned by the President within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law in like manner as if he had signed it, unless the Congress, by their adjournment, prevent its return; in which case it shall not be a law.

25           3. Every order, resolution, or vote, to which the concurrence of the Senate and House of Representatives may be necessary (except on a question of adjournment), shall be presented to the President of the United States, and, before the same shall take effect, shall be approved by him, or, being disapproved by him, shall be re-passed by two-thirds of the Senate and House of Representatives, according to the rules and limitations prescribed in the case of a bill.

## Section 8.

The Congress shall have power,—

26           1. To lay and collect taxes, duties, imposts, and excises, to pay the debts, and provide for the common defense and general welfare, of the United States; but all duties, imposts, and excises shall be uniform throughout the United States;

27           2. To borrow money on the credit of the United States;

28           3. To regulate commerce with foreign nations, and among the several States, and with the Indian tribes;



4. To establish a uniform rule of naturalization, and uniform laws on the subject of bankruptcies, throughout the United States;	<b>29</b>
5. To coin money, regulate the value thereof and of foreign coin, and fix the standard of weights and measures;	<b>30</b>
6. To provide for the punishment of counterfeiting the securities and current coin of the United States;	<b>31</b>
7. To establish post-offices and post-roads;	<b>32</b>
8. To promote the progress of science and useful arts, by securing for limited times, to authors and inventors, the exclusive right to their respective writings and discoveries;	<b>33</b>
9. To constitute tribunals inferior to the Supreme Court;	<b>34</b>
10. To define and punish piracies and felonies committed on the high seas, and offenses against the law of nations;	<b>35</b>
11. To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water;	<b>36</b>
12. To raise and support armies; but no appropriation of money to that use shall be for a longer term than two years;	<b>37</b>
13. To provide and maintain a navy;	<b>38</b>
14. To make rules for the government and regulation of the land and naval forces;	<b>39</b>
15. To provide for calling forth the militia to execute the laws of the Union, suppress insurrections, and repel invasions;	<b>40</b>
16. To provide for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the States respectively the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress;	<b>41</b>

42 17. To exercise exclusive legislation in all cases whatsoever over such district (not exceeding ten miles square) as may, by cession of particular States and the acceptance of Congress, become the seat of the Government of the United States; and to exercise like authority over all places purchased by the consent of the Legislature of the State in which the same shall be, for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings. And,—

43 18. To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the Government of the United States, or in any department or officer thereof.

### Section 9.

44 1. The migration or importation of such persons as any of the States now existing shall think proper to admit of the States now existing shall think proper to admit shall not be prohibited by the Congress prior to the year one thousand eight hundred and eight; but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person.

45 2. The privilege of the writ of *habeas corpus* shall not be suspended, unless when, in cases of rebellion or invasion, the public safety may require it.

46 3. No bill of attainder, or *ex-post-facto* law, shall be passed.

47 4. No capitation or other direct tax shall be laid, unless in proportion to the *census* or enumeration hereinbefore directed to be taken.

48 5. No tax or duty shall be laid on articles exported from any State. No preference shall be given by any regulation of commerce or revenue to the ports of one State over those of another; nor shall vessels bound to or from one State be obliged to enter, clear, or pay duties, in another.

49 6. No money shall be drawn from the treasury but in consequence of appropriations made by law; and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time.

7. No title of nobility shall be granted by the United States; and no person holding any office of profit or trust under them shall, without the consent of the Congress, accept of any present, emolument, office, or title, of any kind whatever, from any king, prince, or foreign state. 50

### Section 10.

1. No State shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make any thing but gold and silver coin a tender in payment of debts; pass any bill of attainder, *ex-post-facto* law, or law impairing the obligation of contracts; or grant any title of nobility. 51

2. No State shall, without the consent of the Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws; and the net produce of all duties and imposts laid by any State on imports or exports shall be for the use of the treasury of the United States, and all such laws shall be subject to the revision and control of the Congress. No State shall, without the consent of Congress, lay any duty of tonnage, keep troops or ships-of-war in time of peace, enter into any agreement or compact with another State or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay. 52

## ARTICLE II.

### Section 1.

1. The executive power shall be vested in a President of the United States of America. He shall hold his office during the term of four years, and together with the Vice-President chosen for the same term, be elected as follows:— 53

2. Each State shall appoint, in such manner as the Legislature thereof may direct, a number of Electors, equal to the whole number of Senators 54

and Representatives to which the State may be entitled in the Congress; but no Senator or Representative, or person holding an office of trust or profit under the United States, shall be appointed an Elector.

*(Superseded by the 12th Article of Amendments.)*

3. The Electors shall meet in their respective States, and vote by ballot for two persons, of whom, one, at least, shall not be an inhabitant of the same State with themselves. And they shall make a list of all the persons voted for, and of the number of votes for each; which list they shall sign and certify, and transmit sealed to the seat of the Government of the United States, directed to the President of the Senate. The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes shall be the President, if such number by a majority of the whole number of Electors appointed; and, if there be more than one who have such majority and have an equal number of votes, then the House of Representatives shall immediately choose, by ballot, one of them for President; and, if no person have a majority, then, from the five highest on the list, the said House shall in like manner choose the President. But, in choosing the President, the votes shall be taken by States, the representation from each State having one vote: a quorum for this purpose shall consist of a member or members from two-thirds of the States, and a majority of all the States shall be necessary to a choice. In every case, after the choice of the President, the person having the greatest number of votes of the Electors shall be Vice-President. But, if there should remain two or more who have equal votes, the Senate shall choose from them, by ballot, the Vice-President.

**55** 4. The Congress may determine the time of choosing the Electors, and the day on which they shall give their votes; which day shall be the same throughout the United States.

**56** 5. No person, except a natural-born citizen, or a citizen of the United States at the time of the adoption of this Constitution, shall be eligible to the office of President; neither shall any person be eligible to that office who shall not have attained to the age of thirty-five years, and been fourteen years a resident within the United States.

6. In case of the removal of the President from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the Vice-President; and the Congress may by law provide for the case of removal, death, resignation, or inability, both of the President and Vice-President, declaring what officer shall then act as President, and such officer shall act accordingly until the disability be removed, or a President shall be elected.

57

7. The President shall, at stated times, receive for his services a compensation, which shall neither be increased nor diminished during the period for which he shall have been elected; and he shall not receive within that period any other emolument from the United States, or any of them.

58

8. Before he enter on the execution of his office, he shall take the following oath or affirmation:—

9. "I do solemnly swear (or affirm) that I will faithfully execute the office of President of the United States; and will, to the best of my ability, preserve, protect, and defend the Constitution of the United States."

59

## Section 2.

1. The president shall be commander-in-chief of the army and navy of the United States, and of the militia of the several States when called into actual service of the United States: he may require the opinion, in writing, of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices; and he shall have power to grant reprieves and pardons for offenses against the United States, except in cases of impeachment.

60

2. He shall have power, by and with the advice and consent of the Senate, to make treaties, provided two-thirds of the Senators present concur; and he shall nominate, and by and with the advice and consent of the Senate shall appoint, ambassadors, other public ministers, and consuls, judges of the Supreme Court, and all other officers of the United States whose appointments are not herein otherwise provided for, and which shall be established by law: but the Congress may by law vest the appointment of such inferior officers as they think proper in the President alone, in the courts of law, or in the heads of departments.

61

62 3. The President shall have power to fill up all vacancies that may happen during the recess of the Senate by granting commissions, which shall expire at the end of their next session.

### Section 3.

63 1. He shall, from time to time, give to the Congress information of the state of the Union, and recommend to their consideration such measures as he shall judge necessary and expedient; he may, on extraordinary occasions, convene both houses, or either of them, and, in case of disagreement between them with respect to the time of adjournment, he may adjourn them to such time as he shall think proper; he shall receive ambassadors and other public ministers; he shall take care that the laws be faithfully executed, and shall commission all the officers of the United States.

### Section 4.

64 1. The President, Vice-President, and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors.

## ARTICLE III.

### Section 1.

65 1. The judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may, from time to time, ordain and establish. The judges, both of the supreme and inferior courts, shall hold their offices during good behavior; and shall, at stated times, receive for their services a compensation, which shall not be diminished during their continuance in office.

### Section 2.

66 1. The judicial power shall extend to all cases in law and equity arising under this Constitution, the laws of the United States, and treaties made or which shall be made under their authority; to all cases affecting ambas-

sadors, other public ministers, and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; (to controversies between two or more States,) between a State and citizens of another State, between citizens of different States, between citizens of the same State claiming lands under grants of different States, and between a State, or the citizens thereof, and foreign states, citizens, or subjects.

2. In all cases affecting ambassadors, other public ministers, and consuls, and those in which a State shall be a party, the Supreme Court shall have original jurisdiction. In all the other cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions and under such regulations as the Congress shall make. **67**

3. The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the State where the said crimes shall have been committed: but, when not committed within any State, the trial shall be at such place or places as the Congress may by law have directed. **68**

### Section 3.

1. Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason, unless on the testimony of two witnesses to the same overt act, or on confession in open court. **69**

2. The Congress shall have power to declare the punishment of treason; but no attainder of treason shall work corruption of blood, or forfeiture except during the life of the person attainted. **70**

## ARTICLE IV.

### SECTION 1.

1. Full faith and credit shall be given in each State to the public acts, records, and judicial proceedings, of every other State. And the Con- **71**

gress may, by general laws, prescribe the manner in which such acts, records, and proceedings shall be proved, and the effect thereof.

### Section 2.

**72** 1. The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States.

**73** 2. A person charged in any State with treason, felony, or other crime, who shall flee from justice and be found in another State, shall, on demand of the executive authority of the State from which he fled, be delivered up, to be removed to the State having jurisdiction of the crime.

**74** 3. No person held to service or labor in one State under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor may be due.

### Section 3.

**75** 1. New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the jurisdiction of any other State, nor any State be formed by the junction of two or more States, or parts of States, without the consent of the legislatures of the States concerned, as well as of the Congress.

**76** 2. The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory, or other property, belonging to the United States; and nothing in this Constitution shall be so construed as to prejudice any claims of the United States or of any particular State.

### Section 4.

**77** 1. The United States shall guarantee to every State in this Union a republican form of government, and shall protect each of them against invasion, and, on application of the legislature or of the executive (when the legislature can not be convened), against domestic violence.



## ARTICLE V.

1. The Congress, whenever two-thirds of both Houses shall deem it necessary, shall propose amendments to this Constitution, or, on the application of the legislatures of two-thirds of the several States, shall call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes as part of this Constitution, when ratified by the legislatures of three-fourths of the several States, or by conventions in three-fourths thereof, as to the one or the other mode of ratification may be proposed by the Congress: provided that no amendment which may be made prior to the year one thousand eight hundred and eight shall in any manner affect the first and fourth clauses in the ninth section of the first article; and that no State, without its consent, shall be deprived of its equal suffrage in the Senate.

78

## ARTICLE VI.

1. All debts contracted, and engagements entered into, before the adoption of this Constitution, shall be as valid against the United States, under this Constitution, as under the Confederation.

79

2. This Constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every State shall be bound thereby, any thing in the Constitution or laws of any State to the contrary notwithstanding.

80

3. The Senators and Representatives before mentioned, and the members of the several State legislatures, and all executive and judicial officers both of the United States and of the several States, shall be bound by oath or affirmation to support this Constitution; but no religious test shall ever be required as a qualification to any office or public trust under the United States.

81

## ARTICLE VII.

1. The ratification of the Conventions of nine States shall be sufficient for the establishment of this Constitution between the States so ratifying the same.

82

## AMENDMENTS TO THE CONSTITUTION.

### ARTICLE I.

- 83** 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.

### ARTICLE II.

- 84** A well-regulated militia being necessary to the security of a free State, the right of the people to keep and bear arms shall not be infringed.

### ARTICLE III.

- 85** No soldier shall, in time of peace, be quartered in any house without the consent of the owner; nor in time of war but in a manner prescribed by law.

### ARTICLE IV.

- 86** The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated; and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

### ARTICLE V.

- 87** No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service, in time of war or public danger; nor shall any person be subject,

for the same offense, to be twice put in jeopardy of life or limb; nor shall be compelled, in any criminal case, to be a witness against himself; nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

### ARTICLE VI.

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law; and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor; and to have the assistance of counsel for his defense.

88

### ARTICLE VII.

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved; and no fact, tried by a jury, shall be otherwise re-examined in any court of the United States than according to the rules of the common law.

89

### ARTICLE VIII.

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

90

### ARTICLE IX.

The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people.

91

### ARTICLE X.

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

92

## ARTICLE XI.

- 93 The judicial power of the United States shall not be construed to extend to any suit in law or equity commenced or prosecuted against one of the United States by citizens of another State, or by citizens or subjects of any foreign State.

## ARTICLE XII.

- 94 1. The electors shall meet in their respective States, and vote by ballot for President and Vice-President, one of whom, at least, shall not be an inhabitant of the same State with themselves: they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President; and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President, and of the number of votes for each; which lists they shall sign and certify, and transmit, sealed, to the seat of the government of the United States, directed to the President of the Senate. The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted: the person having the greatest number of votes for President shall be the President, if such number be a majority of the whole number of electors appointed; and if no person have such majority, then, from the persons having the highest numbers, not exceeding three, on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But, in choosing the President, the votes shall be taken by States, the representation from each State having one vote: a quorum for this purpose shall consist of a member or members from two-thirds of the States, and a majority of all the States shall be necessary to a choice. And if the House of Representatives shall not choose a President, whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice-President shall act as President, as in the case of the death, or other constitutional disability, of the President.

- 95 2. The person having the greatest number of votes as Vice-President shall be the Vice-President, if such number be a majority of the whole number of electors appointed; and if no person have a majority, then, from the two highest numbers on the list, the Senate shall choose the Vice-President: a quorum for the purpose shall consist of two-thirds

of the whole number of Senators; and a majority of the whole number shall be necessary to a choice.

3. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice-President of the United States. **96**

### ARTICLE XIII.

1. Neither slavery nor involuntary servitude, except as a punishment for crime, whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction. **97**

2. Congress shall have power to enforce this article by appropriate legislation. **98**

### ARTICLE XIV.

1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws. **99**

2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice-President of the United States, representatives in Congress, the executive and judicial officers of a State, or the members of the legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age and citizens of the United States, or in any way abridged, except for participation in rebellion or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State. **100**

**101** 3. No person shall be a senator or representative in Congress, or elector of President and Vice-president, or hold any office, civil or military, under the United States or under any State, who, having previously taken an oath as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may, by a vote of two-thirds of each House, remove such disability.

**102** 4. The validity of the public debt of the United States authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection and rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations, and claims, shall be held illegal and void.

5. The Congress shall have power to enforce by appropriate legislation the provisions of this article.

## ARTICLE XV.

**103** Section 1. The right of the citizens of the United States to vote shall not be denied or abridged by the United States or any State on account of race, color, or previous condition of servitude.

Section 2. The Congress shall have power to enforce by appropriate legislation the provisions of this article.

\* \* \* \* \*

The following resolutions of the Constitutional Convention, passed at the close of its labors, and the letter of its President, together with a copy of the proposed Constitution, were transmitted to Congress:—

IN CONVENTION, MONDAY, SEPT. 17, 1787.

Present: The States of New Hampshire, Massachusetts, Connecticut, Mr. Hamilton from New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, and Georgia.

*Resolved*, That the preceding Constitution be laid before the United States in Congress assembled; and that it is the opinion of this Convention that it should afterwards be submitted to a convention of delegates, chosen in each State by the people thereof, under the recommendation of its Legislature, for their assent and ratification; and that each convention, assenting to and ratifying the same, should give notice thereof to the United States in Congress assembled.

*Resolved*, That it is the opinion of this Convention, that, as soon as the conventions of nine States shall have ratified this Constitution, the United States in Congress assembled should fix a day on which electors should be appointed by the States which shall have ratified the same, and a day on which the electors should assemble to vote for the President, and the time and place for commencing proceedings under this Constitution; that, after such publication, the electors should be appointed, and the senators and representatives elected; that the electors should meet on the day fixed for the election of the President, and should transmit their votes, certified, signed, sealed, and directed as the Constitution requires, to the Secretary of the United States in Congress assembled; that the senators and representatives should convene at the time and place assigned; that the senators should appoint a President of the Senate, for the sole purpose of receiving, opening, and counting the votes for President, and that, after he shall be chosen, the Congress, together with the President, should, without delay, proceed to execute this Constitution.

By the unanimous order of the Convention.

GEORGE WASHINGTON, *President*.

WILLIAM JACKSON, *Secretary*.

IN CONVENTION, Sept. 17, 1787.

SIR,—We have now the honor to submit to the consideration of the United States in Congress assembled that Constitution which has appeared to us the most advisable.

The friends of our country have long seen and desired that the power of making war, peace, and treaties, that of levying money and regulating commerce, and the correspondent executive and judicial authorities, should be fully and effectually vested in the General Government of the Union. But the impropriety of delegating such extensive trust to one body of men is evident: hence results the necessity of a different organization.

It is obviously impracticable, in the Federal Government of these States, to secure all rights of independent sovereignty to each and yet provide for the interest and safety of all. Individuals entering into society must give up a share of liberty to preserve the rest. The magnitude of the sacrifice must depend as well on situation and circumstance as on the object to be obtained. It is at all times difficult to draw with precision the line between those rights which must be surrendered and those which may be reserved; and, on the present occasion, this difficulty was increased by a difference among the several States as to their situation, extent, habits, and particular interests.

In all our deliberations on this subject, we kept steadily in our view that which appears to us the greatest interest of every true American,—the consolidation of our Union,—in which is involved our prosperity, felicity, safety, perhaps our national existence. This important consideration, seriously and deeply impressed on our minds, led each State in the Convention to be less rigid on points of inferior magnitude than might have been otherwise expected; and thus the Constitution which we now present is the result of a spirit of amity, and of that mutual deference and concession which the peculiarity of our political situation rendered indispensable.

That it will meet the full and entire approbation of every State, is not, perhaps, to be expected; but each will doubtless consider, that, had her interest been alone consulted, the consequences might have been particularly disagreeable or injurious to others. That it is liable to as few exceptions as could reasonably have been expected, we hope and believe; that it may promote the lasting welfare of that country so dear to us all, and secure her freedom and happiness, is our most ardent wish.

With great respect, we have the honor to be, sir, your Excellency's most obedient, humble servants.

By unanimous order of the Convention.

GEORGE WASHINGTON, *President*

His Excellency the PRESIDENT OF CONGRESS.



# V.

## ANALYSIS OF THE CONSTITUTION OF THE UNITED STATES.

Note.—The figures at the end of the paragraphs, in the following analysis, refer to paragraphs in the Constitution printed in this work marked with corresponding figures.

### PREAMBLE

We, the people of the United States,

1. In order to form a more perfect Union,
2. Establish justice,
3. Insure domestic tranquility,
4. Provide for the common defense,
5. Promote the general welfare, and
6. Secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America. **1.**

### DEPARTMENTS

Civil government in the United States is administered through three several departments; viz.,—

- I. The Legislative,
- II. The Executive, and
- III. The Judicial.

### LEGISLATIVE.

All legislative powers granted by the Constitution are vested in a Congress of the United States, consisting of a Senate and House of Representatives. **2.**

# CHAPTER I. HOUSE OF REPRESENTATIVES.

## ARTICLE I.—PROPORTION.

1. The number of representatives shall not exceed one for every thirty thousand. **5.**

2. Until the first enumeration was made, the States were allowed to choose as follows:—

New Hampshire, 3.	Delaware, 1.
Massachusetts, 8.	Maryland, 6.
Connecticut, 5.	Virginia, 10.
New York, 6.	North Carolina, 5.
New Jersey, 4.	South Carolina, 5.
Pennsylvania, 8.	Georgia, 3.
Rhode-Island and Providence Plantations, 1.	<b>5.</b>

## ART. II.—HOW APPORTIONED.

Representatives shall be apportioned among the several States according to their respective numbers, which shall include,

1. The whole number of free persons, excluding Indians not taxed;
2. Those bound to service for a term of years;
3. Indians who are taxed; and
4. Three-fifths of all other persons. **5.** (See appendix to Analysis C.)

## ART. III.—ELIGIBILITY.

1. A representative must have attained to the age of twenty-five years.

2. Must have been seven years a citizen of the United States.

3. When elected, must be an inhabitant of the State in which chosen. **4.**

4. No United-States officer shall be a member of either House of Congress. **22.** (See appendix to Analysis D.)

### ART. IV.—TERM

Members are chosen every second year. **3.**

### ART. V.—BY WHOM ELECTED.

By the people of the several States. **3.**

### ART. VI.—ELECTORS.

The electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislature. **3.**

### ART. VII.—VACANCIES.

When vacancies happen in the representation from any State, the executive authority thereof shall issue writs of election to fill such vacancies. **6.**

### ART. VIII.—CENSUS.

1. *How made.*—In such manner as Congress shall by law direct.
2. *When made.*—1st. The actual enumeration shall be made within three years after the first meeting of Congress.
  - 2d. It shall be made within every subsequent term of ten years. **5.**

### ART. IX.—HOUSE POWERS.

1. Co-ordinate with the Senate in general legislation. **2.**
2. Sole power of originating bills for raising revenue. **23.**
3. Sole power of originating impeachments. **7.**
4. To choose their Speaker and other officers.
5. When the electors of President and Vice-President of the United States fail to elect a President, the House of Representatives shall elect one. **94.**

## CHAPTER II. UNITED-STATES SENATE.

### ART. I.—HOW COMPOSED.

Of two senators from each State. **8.**

### ART. II.—ELIGIBILITY.

1. Must have attained to the age of thirty years.
2. Must have been nine years a citizen of the United States.
3. When elected, shall be an inhabitant of the State for which chosen. **10.**
4. No United-States officer shall be a member of either House of Congress. **22.** (See appendix to Analysis D.)

### ART. III.—TERM.

The senatorial term is six years. **8.**

### ART. IV.—BY WHOM CHOSEN.

By the legislatures of the several States. **8.**

### ART. V.—WHEN CHOSEN.

One-third the number of senators shall be chosen every second year. **9.**

### ART. VI.—HOW CLASSED.

Immediately after they shall be assembled in consequence of the first election, they shall be divided as equally as may be into three classes:—

1. The seats of the senators of the first class shall be vacated at the expiration of the second year.
2. Of the second class, at the expiration of the fourth year.
3. Of the third class, at the expiration of the sixth year. **9.**

## ART. VII.—VACANCIES.

If vacancies happen by resignation or otherwise during the recess of the legislature of any State,

1. The executive thereof may make temporary appointments until the next meeting of the legislature.
2. The legislature shall then fill such vacancies. **9.**

## ART. VIII.—VOTE.

Each senator shall have one vote. **8.**

## ART. IX.—PRESIDING OFFICER.

1. The Vice-President of the United States shall be President of the Senate.

2. He shall have no vote unless they be equally divided. **11.**

3. The Senate shall also choose a president *pro tempore* in the absence of the Vice-President, or when he shall exercise the office of President of the United States. **12.**

1. *Legislative.*—1st. Co-ordinate with the House of Representatives in general legislation. **2**

2d. May propose or concur with amendments to bills for raising revenue. **23.**

2. *Executive.*—1st. To ratify treaties proposed by the President of the United States, two-thirds of the senators present concurring.

2d. To confirm the following officers when nominated by the President of the United States:—

1st. Ambassadors, other public ministers, and consuls.

2d. Judges of the Supreme Court.

3d. All other officers of the United States whose appointments are not otherwise provided for by the Constitution, and which shall be established by law. **61.**

3. *Elective.*—1st. Excepting their president, they shall choose their officers, and also a president *pro tempore*. **11, 12.**

2d. When the electors of President and Vice-President of the United States fail to elect a Vice-President, the Senate shall elect one. **95.**

4. *Judicial.*—1st. The Senate has the sole power to try all impeachments, when sitting for that purpose, on oath or affirmation. **13.**

2d. The Chief Justice shall preside when the President of the United States is tried.

3d. Without the concurrence of two-thirds of the members present, no person shall be convicted. **13.**

4th. May render judgment in cases of impeachment no further than,—

1st. To removal from office; and,

2d. Disqualification to hold and enjoy any office of honor, trust, or profit under the United States. **14.**

## CHAPTER III. PROVISIONS COMMON TO BOTH HOUSES.

### ARTICLE I.—MEMBERSHIP.

Each house shall be the judge of the elections, returns, and qualifications of its own members. **17.**

### ART. II.—QUORUM

1. A majority of either house is a quorum to do business.
2. A small number may adjourn from day to day.
3. A smaller number may be authorized to compel the attendance of absent members, in such manner and under such penalties as each house may provide. **17.**

### ART. III.—JOURNAL.

1. Each house shall keep a journal of its proceedings.
2. They shall publish the same from time to time, except such parts as in their judgment shall require secrecy. **19.**

### ART. IV.—YEAS AND NAYS.

At the desire of one-fifth of those present, the yeas and nays of the members of either house shall be entered on the journal on any question. **19.**

### ART. V.—BUSINESS RULES.

Each house may determine the rules of its proceedings. **18.**

### ART. VI.—PENALTIES.

1. Either house may punish its members for disorderly behavior; and,
2. With the concurrence of two-thirds, expel a member. **18.**

## ART. VII.—PROHIBITIONS.

### 1. *Adjournments.*

- 1 st. Neither house during the session of Congress shall, without the consent of the other, adjourn for more than three days; nor,
- 2d. To any other place than that in which the two houses shall be sitting. **20.**

2. *On Members.*—No member of either house shall, during the time for which he was elected, be appointed to any office under the United States,

- 1 st. Which shall have been created during such time; nor,
- 2d. The emoluments whereof shall have been increased during such time. **22.**

## ART. VIII.—OFFICIAL OATH.

The senators and representatives shall be bound by oath or affirmation to support the Constitution of the United States. **81.**

## ART. IX.—SALARIES.

1. The members shall receive a compensation for their services, to be ascertained by law; and,
2. The same shall be paid out of the treasury of the United States. **21.**



## CHAPTER IV. POWERS OF CONGRESS.

### ARTICLE I.—FINANCES.

#### 1. *Resources.*

1st. To lay and collect taxes, uniform duties, imposts and excises. **26.** But all direct taxes must be apportioned among the several States according to their respective numbers. **5, 47.**

2d. To borrow money on the credit of the United States. **27.**

3d. To dispose of the territory belonging to the United States.

4th. To dispose of other property belonging to the United States. **76.**

#### 2. *Disbursements.*

1st. To pay the debts of the United States.

2d. To provide for the common defense.

3d. To provide for the general welfare of the United States. **26.**

### ART. II.—COMMERCE.

To regulate commerce,

1. With foreign nations;
2. Among the several States;
3. With the Indian tribes. **28.**

### ART. III.—COMMERCIAL.

1. To coin money;
2. To regulate the value thereof;
3. To regulate the value of foreign coin;
4. To fix the standard of weights and measures. **30.**
5. To establish uniform laws on the subject of bankruptcies throughout the United States. **29.**

### ART. IV.—PENALTIES.

1. To provide for the punishment of counterfeiting,
  - 1st. The securities of the United States;
  - 2d. The current coin of the United States. **31.**
2. To define piracies and felonies committed on the high seas, and offenses against the law of nations;
3. Also to provide for punishing these crimes. **35.**
4. To declare the punishment of treason. **70.**

### ART. V.—POSTAL.

1. To establish post-offices;
2. To establish post-roads. **32.**

### ART. VI.—PATENT AND COPY RIGHTS.

To promote the progress of science and useful arts by securing for limited times,

1. To authors, the exclusive right to their respective writings;
2. To inventors, the exclusive right to their respective discoveries. **33.**

### ART. VII.—WAR.

1. To declare war;
2. To grant letters of marque and reprisal;
3. To make rules concerning captures on land and water. **36.**
4. To raise and support armies. **37.**
5. To provide and maintain a navy. **38.**
6. To make rules for the government and regulation of the land and naval forces. **39.**
7. *To provide*, 1st. For organizing, arming, and disciplining the militia;
- 2d. For governing such part of the militia as may be employed in the service of the United States. **41.**

- 3d. For calling forth the militia,
  - 1st. To execute the laws of the Union.
  - 2d. To suppress insurrections;
  - 3d. To repel invasions. **40.**

### ART. VIII.—JUDICIARY.

- 1. To constitute tribunals inferior to the Supreme Court. **34.**
- 2. To determine by law where the trials of crimes shall be held which are not committed within any State. **68.**
- 3. May make exceptions and regulations in cases over which the Constitution gives the Supreme Court appellate jurisdiction. **67.**

### ART. IX.—NATURALIZATION.

- To establish a uniform rule of naturalization. **29.**

### ART. X.—TERRITORY.

- 1. *Government.*—To make all needful rules and regulations respecting the territory belonging to the United States. **76.**
- 2. *Seat of Government.*—To exercise exclusive legislation in all cases whatsoever over such district (not exceeding ten miles square) as may, by cession of particular states and the acceptance of Congress, become the seat of the government of the United States. **42.**
- 3. *Public Works.*—Also over all places purchased by the consent of the legislature of the State in which the same shall be, for the erection, 1st, of forts; 2d, magazines; 3d, arsenals; 4th, dockyards; and, 5th, other needful buildings. **42.**
- 4. *Alienation.*—To dispose of the territory belonging to the United States. **76.**
- 5. *New States.*—May admit new States into the Union. **75.**

### ART. XI.—STATES

- 1. *Elections.*—May alter the times, places, and manner of holding elections for senators and representatives prescribed in the several States, by the legislatures thereof, except as to the places of choosing senators. **15.**

2. *Electors of President and Vice-President.*—May determine,
  - 1 st. The time when the States shall choose their electors of President and Vice-President of the United States;
  - 2d. Also the day on which the electors shall give their votes, which day shall be the same throughout the United States. **55.**
3. *Acts, Records, Judicial Proceedings.*—May by general laws prescribe the manner in which the public acts, records, and judicial proceedings of the several States shall be provided, and the effect thereof. **71.**
4. *Imposts and Duties.*—May revise and control any State laws in reference to laying any imposts or duties on imports or exports. **52.**

### ART. XII.—EXECUTIVE VACANCY.

1. May by law provide for the case of removal, death, resignation, or inability, both of the President and Vice-President.
2. May by law declare what officer shall then act as President, until,
  - 1 st. Such disability be removed; or,
  - 2d. A President shall be elected. **57.**

### ART. XIII.—APPOINTMENTS.

- May by law vest the appointment of such inferior officers as they think proper,
1. In the President alone;
  2. In the courts of law; or,
  3. In the heads of departments. **61.**

### ART. XIV.—CONSTITUTIONAL AMENDMENTS.

1. Shall propose amendments to the Constitution whenever two-thirds of both houses of Congress shall deem it necessary; or,
2. On application of the legislatures of two-thirds of the several States, Congress shall call a convention for proposing amendments.
3. May propose either of two modes of ratifying the proposed amendments:
  - 1 st. By the State Legislatures (**78**); or,
  - 2d. By State Conventions.

### ART. XV.—SLAVERY.

1. Shall have power to enforce the abolition of slavery by appropriate legislation. **98.**
2. While the foreign slave-trade was lawful (until 1808), Congress shall have the power to impose a tax or duty not exceeding ten dollars on each slave imported. **44.**

### ART. XVI.—GENERAL LAW-MAKING.

Shall have power to make all laws which shall be necessary and proper for carrying into execution the powers vested by the Constitution,

1. In the government of the United States; or,
2. In any department thereof; or,
3. In any officer thereof. **43.**

### ART. XVII.—MEETING.

1. Shall assemble at least once in every year; which meeting shall be on the first Monday in December, unless,
2. They shall by law appoint a different day. **16.**

## CHAPTER V. LAW-MAKING.

### ARTICLE I.—PROCEEDINGS.

A bill may become a law through any one of the three following processes:—

#### FIRST PROCESS.

1. The bill shall pass both houses of Congress.
2. It shall then be presented to the President:
3. If he approve, he shall sign it. **24.**

#### SECOND PROCESS.

1. The bill shall pass both houses of Congress;
2. It shall then be presented to the President;
3. If he disapprove it, he shall return it, with his objections, to that house in which it originated;
4. That house shall enter the objections at large on their journal;
5. They shall proceed to reconsider it; and if, after such reconsideration, two-thirds of that house shall agree to pass it,
6. It shall be sent with the objections to the other house;
7. The other house shall reconsider the bill;
8. If approved by two-thirds of that house, it shall become a law;
9. The votes of both houses shall be determined by the yeas and nays in all such cases;
10. The names of the persons voting for and against the bill shall be entered on the journal of each house respectively. **24.**

#### THIRD PROCESS.

1. The bill shall pass both houses of Congress.
2. It shall then be presented to the President.
3. He neglects to approve and sign it.
4. He also neglects to return it to the house in which it originated.
5. It becomes law at the end of ten days (Sundays excepted), unless Congress, by adjournment within that time, prevents its return. **24.**

## ART. II.—ORDERS, RESOLUTIONS, AND VOTES.

Every order, resolution, or vote, to which the concurrence of the Senate and House of Representatives may be necessary (except on a question of adjournment),

1. Shall be presented to the President of the United States.
2. It shall be approved by him before the same shall take effect; or, being disapproved by him,
3. It shall be passed by the two Houses of Congress, by two-thirds of each, according to the rules and limitations prescribed in case of a bill. **25.**

## CHAPTER VI. PROHIBITIONS ON THE UNITED STATES.

### ARTICLE I.—HABEAS CORPUS.

The privilege of the writ of *habeas corpus* shall not be suspended unless when the public safety may require it.

1. In cases of rebellion;
2. In cases of invasion. **45.**

### ART. II.—DIRECT TAXES.

No capitation or other direct tax shall be laid unless in proportion to the census. **5, 47.**

### ART. III.—EXPORT-DUTIES.

No tax or duties shall be laid on articles exported from any State. **48.**

### ART. IV.—INTER-STATE COMMERCE.

1. No preference shall be given, by any regulation of commerce or revenue, to the ports of one State over another.
2. Nor shall vessels bound to or from one State be obligated to enter, clear, or pay duties, in another. **48.**

### ART. VI.—PUBLIC MONEY.

1. No money shall be drawn from the treasury but in consequence of appropriations made by law.
2. A regular statement and account of the receipts and expenditures of all public money shall be published from time to time. **49.**
3. No appropriation of money to raise and support armies shall be for a longer term than two years. **37.**

### ART. VI.—NOBILITY.

No title of nobility shall be granted by the United States. **50.**



## ART. VII.—PENALTIES.

1. No bill of attainder shall be passed.
2. No *ex-post-facto* law shall be passed. **46.**
3. No attainder of treason shall work,
  - 1st. Corruption of blood; nor,
  - 2d. Forfeiture except during the life of the person attained. **70.**

## ART. VIII.—FOREIGN SLAVE-TRADE.

- The importation of slaves was not to be prohibited,
1. By Congress, prior to 1808, **44**; nor,
  2. By any amendment to the Constitution prior to that time. **78.**

## ART. IX.—REPUDIATION.

1. Nothing in the Constitution shall be construed so as to prejudice any claim,
  - 1st. Of the United States; nor,
  - 2d. Of any particular State. **76.** (See appendix to Analysis E.)
2. All debts contracted, and engagements entered into before the adoption of the Constitution, shall be as valid against the United States under the Constitution as under the Confederation. **79.**

## ART. X.—FREEDOM.

1. *Civil.*—1st. Congress shall make no law abridging,
  - 1st. The freedom of speech; nor,
  - 2d. The freedom of the press; nor,
  - 3d. The right of the people peaceably, to assemble and petition the government for a redress of grievances. **83.**
2. The right of the people to keep and bear arms shall not be infringed. **84.**
2. *Religious.*—1st. No religious test shall ever be required as a qualification to any public office or trust under the United States. **81.**
  - 2d. Congress shall make no law,
    - 1st. Respecting an establishment of religion; or,
    - 2d. Prohibiting the free exercise thereof. **83.**

## CHAPTER VII. RELATING TO OFFICERS.

### ART. I.—INELIGIBILITY.

1. *United-States Officers*.—No person holding any office of trust or profit under the United States shall,

1 st. Be appointed an elector of President and Vice-President;  
nor,

2d. Be a member of either house of Congress during his continuance in office. **22.** (See appendix to Analysis D.)

2. *Congressman*.—No senator or representative shall,

1 st. Be appointed an elector of President and Vice-President,  
**54**; nor,

2d. During the time for which he was elected, be appointed to any civil office under the United States,

1 st. Which shall have been created during such time; nor,

2d. The emoluments whereof shall have been increased during such time. **22.**

### ART. II.—FOREIGN PATRONAGE.

No person holding any office under the United States shall, without the consent of Congress, accept of any present, emolument, office, or title, of any kind whatever, from any king, prince, or foreign State. **50.**

### Art. III.—THE PRESIDENT.

1. The compensation for the services of the President of the United States shall neither be increased nor diminished during the period for which he shall have been elected.

2. He shall not receive within that period any other emolument from the United States or any State. **58.**

## ART. IV.—IMPEACHMENT.

1. The President, Vice-president, and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors. **64.**

2. Judgment in cases of impeachment shall not extend further than,

1 st. To removal from office; and,

2d. Disqualification to hold and enjoy any office of honor, trust, or profit, under the United States.

3. The party convicted shall nevertheless be liable and subject to indictment, trial, judgment, and punishment, according to law. **14.**

## CHAPTER VIII. RIGHTS OF STATES.

### ARTICLE I.—REPRESENTATION.

1. Each State shall have at least one representative. **5.**
2. No amendment shall be made to the Constitution, depriving any State, without its consent, of its equal suffrage in the Senate. **78.**

### ART. II.—PRIVILEGES OF CITIZENSHIP.

The citizens in each State shall be entitled to all the privileges and immunities of citizens in the several States. **72.** (See appendix to Analysis A.)

### ART. III.—STATE AMITY.

Full faith and credit shall be given in each State to the acts, records, and judicial proceedings, of every other State. **71.**

### ART. IV.—NEW STATES.

1. No new State shall be formed or erected within the jurisdiction of another State.
2. Nor shall nay new State be formed by the junction of two or more States, or parts of States, without the consent of the legislatures of the States concerned, as well as of the Congress. **75.**

### ART. V.—ELECTIONS.

The times, places, and manner of holding elections for senators and representatives shall be prescribed in each State by the legislature thereof, subject to the revision of Congress, except as to the places of choosing senators. **15.**

### ART. VI.—MILITIA.

1. The appointment of the militia-officers is reserved to the States respectively.

2. Also the training of the militia according to the discipline prescribed by Congress. **41.**

### **ART. VII.—FEDERAL PROTECTION.**

1. The United States shall guarantee to every State in the Union a republican form of Government;

2. Shall protect each of them against invasion;

3. Also against domestic violence,

1 st. On the application of the legislature of the State; or,

2d. On application of the State Executive, when the legislature cannot be convened. **77.**

### **ART. VIII.—FUGITIVES.**

1. *From Justice.*—A person charged in any State with treason, felony, or other crime, who shall flee from justice, and be found in another State, shall, on demand of the executive authority of the State from which he fled, be delivered up, to be removed to the State having jurisdiction of the crime. **73.**

2. *From Service.*—No person held to service or labor in one State under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor may be due. **74.** (This clause has been superseded by the 13th article of Amendments to the Constitution.)

### **ART. IX.—RESERVATIONS.**

1. The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people. **92.**

2. The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people. **91.**

## CHAPTER IX. STATE SUBORDINATION.

### ARTICLE I.—ORIGIN OF STATE OBLIGATIONS.

1. *Constitution.*—The ratification of the conventions of nine States was declared to be sufficient for the establishment of the Constitution between the States so ratifying the same. **82.**

2. *Amendments.*—Whenever amendments to the Constitution are proposed in accordance with the terms of that instrument, they become to all intents and purposes a part of it,

- 1 st. When ratified by the conventions of three-fourths of the several States; or,
- 2d. By the legislatures of three-fourths thereof. **78.**

### ART. II.—SUPREMACY OF UNITED-STATES AUTHORITY.

1. The supreme law of the land shall be,

- 1 st. The Constitution of the United States;
- 2d. All laws made in pursuance thereof;
- 3d. All treaties made, or which shall be made, under the authority of the United States.

2. The judges in every State shall be bound thereby, notwithstanding any thing in the constitution or laws of any State to the contrary. **80.**

### ART. III.—OFFICIAL OATH.

1. The members of the several State legislatures shall be bound by oath or affirmation to support the Constitution of the United States.

2. All executive officers of the several States shall be bound in like manner;

3. Also all judicial officers of the several States. **81.**

## CHAPTER X. STATE PROHIBITIONS.

### ARTICLE I.—STATE RELATIONS.

1. No state shall enter into any treaty, alliance, or confederation (51), nor,
2. Into any agreement or compact with another State, or with a foreign power, without the consent of Congress. 52.

#### ART. II.—COMMERCIAL.

1. No State shall coin money; nor,
2. Emit bills of credit; nor,
3. Make any thing but gold and silver coin a tender in payment of debts; nor,
4. Pass any law impairing the obligation of contracts. 51.

#### ART. III.—WAR.

1. No State shall grant letters of marque and reprisal (51); nor,
2. Without the consent of Congress, keep troops or ships of war in time of peace; nor,
3. Engage in war, unless,
  - 1 st. Actually invaded; or,
  - 2d. In such imminent danger as will not admit of delay. 52.

#### ART. IV.—PENALTIES.

1. No State shall pass any bill of attainder; nor,
2. Any *ex-post facto* law. 51.

#### ART. VI.—NOBILITY.

No State shall grant any title of nobility. 51.

## ART. VI.—DUTIES.

1. No State shall, without the consent of Congress,
  - 1 st. Lay any duty of tonnage; nor,
  - 2d. Any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection-laws.
2. The net produce of all duties and imposts laid by any State on imports or exports shall be for the use of the treasury of the United States. **52.**

## ART. VII.—SLAVERY.

Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist,

1. Within the limits of the United States; nor,
2. In any place subject to their jurisdiction. **97.**  
(See appendix to Analysis B.)



## CHAPTER XI. PERSONAL RIGHTS.

### ARTICLE I.—DOMICILE.

1. No soldier shall, in time of peace, be quartered in any house without the consent of the owner; nor,
2. In time of war, but in a manner prescribed by law. **85.**

### ART. II.—SECURITY.

1. The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated.
2. No warrants shall issue but upon probable cause, supported by oath or affirmation,
  - 1 st. Particularly describing the place to be searched; and,
  - 2d. The persons or things to be seized. **86.**

### ART. III.—JUDICIAL.

1. No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising,
  - 1 st. In the land or naval forces; or,
  - 2d. In the militia when in actual service, in time of war or public danger.
2. No person shall be subject for the same offense to be twice put in jeopardy of life and limb.
3. No person shall be deprived of life, liberty, or property, without due process of law.
4. Private property shall not be taken for public use without just compensation. **87.**

## ART. IV.—CRIMINAL ACTIONS.

In all criminal prosecutions,

1. *Accusation.*—The accused shall be informed of the nature and cause of the accusation.
2. *Trial by Jury.*—He shall enjoy the right to a speedy and public trial.
  - 1 st. By an impartial jury;
  - 2d. The jury shall be of the State and district wherein the crime shall have been committed.
  - 3d. The district shall have been previously ascertained by law. **88.**
3. *Witnesses.*—1 st. No one shall be compelled in any criminal case to be a witness against himself. **87.**
  - 2d. He shall have compulsory process for obtaining witnesses in his favor.
  - 3d. He shall be confronted by the witnesses against him. **88.**
4. *Counsel.*—He shall have the assistance of counsel for his defense. **88.**
5. *Bail.*—Excessive bail shall not be required.
6. *Fines.*—Excessive fines shall not be imposed.
7. *Punishments.*—Cruel and unusual punishments shall not be inflicted. **90.**

## ART. V.—CIVIL ACTIONS.

In suits at common law, where the value in controversy shall exceed twenty dollars,

1. The right of trial by jury shall be preserved;
2. No fact tried by a jury shall be otherwise re-examined, in any court of the United States, than according to the rules of the common law. **89.**

## ART. VI.—TREASON.

1. *Definition.*—Treason against the United States shall consist only,
  - 1 st. In levying war against them; or,
  - 2d. In adhering to their enemies, giving them aid and comfort.

2. *Conviction.*—No person shall be convicted of treason, unless,
  - 1 st. On the testimony of two witnesses to the same overt act; or,
  - 2d. On confession in open court. **69.**

## ART. VII. OFFICIAL IMMUNITIES.

### *Freedom.*

1. From Arrest.—Members of Congress shall, in all cases except treason, felony, and breach of the peace, be privileged from arrest,
  - 1 st. During their attendance at the session of their respective houses; and,
  - 2d. While going to and returning from the same.
2. Of Speech.—For any speech or debate in either house, they shall not be questioned in any other place. **21.**

## CHAPTER XII. EXECUTIVE.

### ART. I.—IN WHOM VESTED.

In a President of the United States of America. **53.**

### ART. II.—TERM

He shall hold his office during the term of four years. **53.**

### ART. III.—ELIGIBILITY.

1. He must have attained to the age of thirty-five years.
2. He shall be a natural-born citizen; or,
3. A citizen of the United States at the time of the adoption of the Constitution. **56.**
4. Must have resided within the United States fourteen years.

### ART. IV.—ELECTION.

#### 1. *Electors.*

1 st. Each State shall appoint electors of President and Vice-President in such manner as the legislature thereof may direct.

2d. The number of electors shall equal the number of senators and representatives to which the State may be entitled in Congress. **54.**

#### 2. *Proceedings of Electors.*

1 st. They shall meet in their respective States;

2d. They shall vote by ballot for President and Vice-President at least one of whom shall not be an inhabitant of the same State with themselves.

3d. They shall name in their ballots,

1 st. The person voted for as President; and,

2d. The person voted for as Vice-President.

- 4th. They shall make distinct lists of all persons voted for,
    - 1 st. As President;
    - 2d. As Vice-President, and the number of votes for each.
  - 5th. The electors shall sign and certify the lists.
  - 6th. They shall transmit the lists sealed to the seat of government of the United States.
  - 7th. The lists shall be directed to the President of the Senate. **94.**
3. *Proceedings in Congress.*
- 1 st. The President of the Senate shall open all the certificates in the presence of both houses of Congress.
  - 2d. The votes shall then be counted.
  - 3d. The person having the greatest number of votes for President shall be President if such number be a majority of the whole number of electors appointed. **94.**
4. *House of Representatives.*
- 1 st. If no person have such majority, then the House of Representatives shall choose immediately the President.
  - 2d. He shall be chosen from the persons having the highest numbers, not exceeding three, on the list of persons voted for as President.
  - 3d. The election in such case shall be by ballot.
  - 4th. The vote shall be taken by States.
  - 5th. The representation from each State shall have one vote.
  - 6th. A quorum for this purpose shall consist of a member or members from two-thirds of the States.
  - 7th. A majority of all the States shall be necessary to a choice. **94.**

## ART. V.—OATH OF OFFICE.

Before he enter on the execution of his office, he shall swear or affirm,

1. That he will faithfully execute the office of President of the United States; and,
2. That he will, to the best of his ability, preserve, protect, and defend the Constitution of the United States. **59.**

## ART. VI.—HOW REMOVABLE.

He shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors. **64.**

## ART. VII.—SALARY.

He shall receive for his services, at stated times, a compensation which shall neither be increased nor diminished during the term for which he shall have been elected. **58.**

## ART. VIII.—POWERS AND DUTIES.

1. *Military.*
  - 1st. He is commander-in-chief of the army and navy of the United States.
  - 2d. Also of the militia of the several States when called into the actual service of the United States. **60.**
2. *Civil.*
  - 1st. Departments.—He may require the written opinion of the principal officers in each of the executive departments, on any subject relating to the duties of their respective offices.
  - 2d. *Reprieves and Pardons.*—He shall have power to grant reprieves and pardons for offenses against the United States, except in cases of impeachment. **60.**
  - 3d. *Treaties.*—He shall have power, by and with the advice and consent of the Senate, two-thirds of the members present concurring, to make treaties. **61.**
  - 4th. *Appointments.*—1st, *General.* He shall

nominate, and, by and with the advice and consent of the Senate, appoint.

1 st. Ambassadors, other public ministers, and consuls;

2d. Judges of the Supreme Court;

3d. All other officers of the United States whose appointments are not otherwise provided for in the Constitution, and which shall be established by law. **61.**

2d. *Special.*—He shall have power to fill all vacancies that may happen during the recess of the Senate, by granting commissions which shall expire at the end of their next session. **62.**

5th. *Messages.*—1st. He shall from time to time give Congress information of the state of the Union; and,

2d. Shall recommend to their consideration such measures as he shall judge necessary and expedient. **63.**

6th. *Congress.*—1st. On extraordinary occasions, he may convene either or both houses of Congress.

2d. In case of disagreement between them with respect to the time of adjournment, he may adjourn them to such time as he shall think proper. **63.**

7th. *Reception.*—He shall receive ambassadors and other public ministers. **63.**

8th. *Executor of the Laws.*—He shall take care that the laws are faithfully executed. **63.**

9th. *Commissions.*—He shall commission all officers of the United States. **63.**

10th. *Veto.*—He may approve or withhold his approval of bills passed by Congress. **24.**

## CHAPTER XIII. VICE-PRESIDENT.

### ARTICLE I.—ELIGIBILITY.

No person constitutionally ineligible to the office of President shall be eligible to that of Vice-President of the United States. **96.**

### ART. II.—ELECTION.

1. *In Congress.*—The person having the greatest number of votes for Vice-president shall be the Vice-President if such number be a majority of all the electors appointed. **95.**

2. *In Senate.*—1 st. If no person have a majority as Vice-President, then, from the two highest numbers on the list of persons voted for as such, the Senate shall choose the Vice-President.

2d. A quorum for this purpose shall consist of two-thirds of the whole number of senators.

3d. A majority of the whole number of senators shall be necessary to a choice. **95.**

### ART. III.—OATH OF OFFICE.

He shall be bound by oath or affirmation to support the Constitution of the United States. **81.**

### ART. IV.—TERM.

He shall hold his office during the term of four years. **53.**

### ART. V.—POWERS AND DUTIES.

1. He shall be President of the Senate, but have no vote unless they be equally divided. **11.**

2. In case of the removal of the President from office, or of his death, resignation, or inability to discharge the powers and duties of said office, the same shall devolve on the Vice-President. **57.**

3. If the House of Representatives shall not choose a President whenever the right of choice shall devolve on them, before the fourth day of March next following, the Vice-President shall act as President. **94.**



## CHAPTER XIV. JUDICIAL.

### ART. I.—WHERE VESTED.

The judicial power of the United States shall be vested,

1. In one Supreme Court; and
2. In such inferior courts as Congress may from time to time ordain and establish. **65.**

### ART. II.—JUDGES.

1. *How appointed.*—By the President of the United States, by and with the advice and consent of the Senate. **61.**

2. *Oath of Office.*—The judges shall swear or affirm that they will support the Constitution of the United States. **81.**

3. *Tenure of Office.*—The judges of the Supreme and Inferior Courts shall hold their offices during good behavior. **65.**

4. *How removable.*—They shall be removed on impeachment for, and conviction of, treason, bribery, and other high crimes and misdemeanors. **64.**

5. *Salary.*—The judges shall, at stated times, receive for their services a compensation, which shall not be diminished during their continuance in office. **65.**

### ART. III.—JURISDICTION.

1. *Limitation.*—The judicial power of the United States shall extend to all cases in law and equity arising,

- 1 st. Under the Constitution of the United States;
- 2d. Under the laws of the United States; and
- 3d. Under treaties made, or which shall be made, under their authority. **66.**

2. *Original.*—The Supreme Court shall have original jurisdiction,

- 1 st. In all cases affecting ambassadors;
- 2d. Other public ministers and consuls;
- 3d. In controversies between two or more States;
- 4th. Between a State and citizens of another State;

- 5th. Between a State or citizens thereof and foreign states, citizens, or subjects. **66, 67.**
- 6th. But the judicial power of the United States shall not be construed to extend in any suit in law or equity commenced or prosecuted,
  - 1 st. Against one of the United States by citizens of another State; or,
  - 2d. By citizens or subjects of a foreign state. **93.**
3. *Appellate*.—The Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions and under such regulations as the Congress shall make,
  - 1 st. In all cases of admiralty and maritime jurisdiction;
  - 2d. In controversies in which the United States shall be a party;
  - 3d. Between citizens of different States; and,
  - 4th. Between citizens of the same State claiming lands under grants of different States. **66, 67.**

## APPENDIX TO THE ANALYSIS.

Note.—This work was prepared for the press before Article 14 of the Amendments had become a part of the Constitution of the United States. The analysis of that article is, therefore, inserted here.

### A. CITIZENSHIP.

1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside.

2. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States. **99.**

### B. STATE PROHIBITIONS. PERSONAL SECURITY.

1. No State shall deprive any person of life, liberty, or property, without due process of law;

2. Nor deny to any person within its jurisdiction the equal protection of the laws. **99.**

### C. REPRESENTATION.

1. HOW APPORTIONED. Representatives shall be apportioned among the several States according to their respective numbers; counting the whole number of persons in each State, excluding Indians not taxed. **100.**

2. HOW APPORTIONMENT REDUCED. By a denial of any State to any of its male inhabitants, being citizens of the United States, twenty-one years of age, or in any way abridging, except for participation in rebellion, or other crime, the right to vote at any election,

1. For the choice of electors for President and Vice-President of the United States;
2. For representatives in Congress;
3. For State officers, judicial and executive; or,
4. For members of the State legislature. **100.**

3. RATIO OF REDUCTION. In all such cases, the basis of representation shall be reduced in proportion which the disfranchised male citizens shall bear to the whole number of male citizens in such State of the age of twenty-one years. **100.**

#### D. INELIGIBILITY TO OFFICE.

Any person having once taken an oath to support the Constitution of the United States, either as,

1. A member of Congress; or,
2. An officer of the United States; or,
3. As a member of any State legislature; or,
4. As an executive or judicial officer of any State, and having engaged in insurrection or rebellion against the United States, or given aid or comfort to their enemies, is ineligible thereafter; as,
  1. A member of either house of Congress;
  2. Elector of President and Vice-President of the United States; or,
  3. As an officer of any kind, civil or military,
    - 1st. Under the United States; or,
    - 2d. Under any State, unless Congress shall, by vote of two-thirds of each house, remove the disability. **101.**

#### E. REPUDIATION.

1. *Forbidden.*—The validity of the public debt of the United States authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection and rebellion, shall not be questioned.

2. *Enjoined.*—Neither the United States nor any State shall assume or pay any debt or obligation incurred,

- 1st. In aid of insurrection or rebellion against the United States; or,
- 2d. Any claim for the loss or emancipation of any slave.
- 3d. All such debts, obligations, or claims, shall be held illegal and void. **102.**

## PART II.

# ANNOTATIONS ON THE ANALYSIS OF THE CONSTITUTION OF THE UNITED STATES.

### PREAMBLE.

We, the people of the United States,

1. In order to form a more perfect union;
2. Establish justice;
3. Insure domestic tranquility;
4. Provide for the common defense;
5. Promote the general welfare; and,
6. Secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America. **1.**

### § 1.

1st. The Preamble is an exposition of the objects and purposes of the Constitution. Unlike the Articles of Confederation, which were an agreement or compact between the States as such, the Constitution is a compact of the People. The first line of the former document shows that the bargain is between the States: on the contrary, the first line of the Preamble to the Constitution shows that the agreement is by the People.

2d. Observe, the Preamble begins with, "We, the People;" and what they purposed to do was for themselves and their posterity. States can not properly be said to have posterity. The Articles of Confederation were never submitted to the people for their approval in any such direct manner as the Constitution was.

3d. The first object expressed in the Preamble is, to form a more perfect union; that is, a more perfect union than had existed under the Confederation. The government, under the former system, had been found by experience to be inadequate to the wants of the people. The

Union was so imperfect as to be almost unworthy of the name.

4th. Its imperfections as a national government appeared from the collision of interests between the States; their commercial aggressions upon each other; the laws of retaliation for real or imaginary injuries, which they did not hesitate to pass; the dangers from foreign interference, as well as the actual advantage which had often been taken of our weakness,—all of which threatened the dismemberment of the Union under the Confederation.

They demonstrated the necessity of a more powerful federal government, and a more perfect union of the people of the United States.

## § 2.

1st. A government having no judiciary that commands the respect of the people is wanting in one of the essential elements of stability. To establish justice was, therefore, the second object to be secured by the new Constitution.

2d. Under the Confederation, there was nothing that could be called a national judiciary. The State legislatures were often led to pass laws favoring their own immediate and respective localities, and State courts did not hesitate to disregard the decisions of co-ordinate tribunals of neighboring States.

3d. Treaties formed between the Confederacy and foreign nations were recklessly disregarded by the State legislatures as well as by the State courts. In several instances, this open disregard of the plighted faith of the nation threatened to involve the whole country in war.

4th. Laws were passed by the State legislatures, in many instances, in open defiance of the sacredness of private contracts between man and man. Remedies for the recovery of debts were suspended. Debtors were authorized to tender any sort of property, even though nearly worthless, in payment of debts that had been contracted to be paid in money.

5th. Insolvent laws were enacted by some of the States, the effect of which, when applied to the relations of debtor and creditor, practically amounted to a completed discharge of indebtedness without consideration.

6th. Laws were also passed making the most unjust and invidious distinctions in favor of the citizens of the States enacting them, and against foreigners and citizens of neighboring States. In fact, the American judiciary became a matter of contempt at home, and of burlesque abroad.

7th. There were other evils that called loudly for remedy. Some related to the welfare of our foreign commerce; Some to the conflict of interests between citizens of different States; Some to the relief of foreigners who had given credit to our citizens; Others related to territorial disputes between different States; and still others,

To titles of lands under grants from different States.

So loose and reckless had the legislative and judicial administration of affairs become, that it was conceded by all parties, that, unless some effectual remedy were applied, our political institutions must crumble into ruins. To establish justice, therefore, was a leading purpose of the authors of the Constitution.

### § 3.

1st. To insure domestic tranquility was another of the expressed objects of the new Constitution. Domestic contentions, as may be inferred from what has already been said, were not unfrequent.

2d. Whatever foreign influence, State jealousies, commercial rivalries, legislative retaliations, disputes about boundaries and State jurisdictions, and perpetual failure to administer justice through the State Courts, could accomplish to foster domestic discord, had been done from the close of the Revolution to the adoption of the Constitution. Hence the whole country was anxious for domestic tranquility.

### § 4.

1st. The common defense was not properly provided for under the Confederation.

A people not prepared for war, and known not to be, will constantly be liable to aggressions from neighboring nations. On the contrary, a nation known to be prepared will be quite unlikely to be attacked. A weak nation is never formidable, and will never command the respect of its neighbors.

2d. Congress, under the Confederation, as we have seen, could recommend, but could not enforce, measures for the common defense. They could not even declare war, nor exercise any of the war powers, without the concurrence of nine of the thirteen States; nor, even when they had declared war under these restrictions, should they do so, could

they force into service a single soldier. Sound statesmanship demanded, therefore, that something should be done to provide more effectually for the common defense. By reference to the war power in the Constitution, it will be seen that this provision has been made.

## § 5.

1st. The duty to promote the general welfare of its citizens properly devolves on every national sovereignty. It is indeed, or should be, the primary purpose of every government. The individual States of America had not the means, nor have they now, to secure this desirable object. It requires larger resources than belong to a single State.

2d. Stretching over such a vast extent of territory as the States of this Union occupied during the last century, and more especially as they are sure to occupy before the close of the present, isolation of State interests is out of the question. What concerns one State, in a greater or less degree, must concern all. There is not a State in this Union, for instance, which has not an interest in the harbors of New York and New Orleans.

From our geographical peculiarities and relations, it would be impossible to guard the interests of commerce, agriculture, and manufactures, without the agency of a more plenary power than belongs to a single State.

3d. This clause, "the general welfare," doubtless refers more especially to the affairs of commerce; and this is an interest that pervades all other interests of a great, growing, free, and industrious people. The clause means more than this, however.

It is general in its character, inserted not only in the preamble, but in the Constitution itself, in the enumeration of the powers of Congress. In fact, the whole Constitution is directed to this end.

4th. From the poverty of language, it would be impossible to specify, within any convenient limits, all the powers which a government like that of the United States might at some time find it necessary to exercise, and under some possible emergencies.

And although fears may be indulged in some quarters, that, under a clause of such broad signification, some of the departments, especially the legislative, and perhaps the executive, may overreach and go beyond their prerogatives, yet the ballot is the remedy in the one case, and impeachment in the other.



## § 6.

1st. "To secure the blessings of liberty to ourselves and our posterity" is the closing language of the preamble. It is an appropriate climax. It briefly expresses the whole purpose of human government.

"Give me liberty, or give me death!" exclaimed the immortal orator of the Revolution. Without political and religious liberty, life itself would become valueless, and existence a burden; with it, we may have all that is valuable in earthly institutions. For, if a nation enjoys liberty, its citizens have the means of enjoying every other earthly blessing.

2d. But the patriotic authors of the Constitution were not content with this sacred boon for themselves merely: they were earnest to perpetuate this inestimable blessing to the remotest posterity.

There was a sublime disinterestedness in the arduous and hazardous labors of our fathers, which ought to inspire the profoundest gratitude of their descendants to the latest ages.

May the fabric of constitutional liberty, reared by their wisdom, never be demolished until the last sun shall set on the last eve of time!

## DEPARTMENTS

Civil government in the United States is administered through three several departments; viz.:—

### *Civil Government*{

- I. LEGISLATIVE;
- II. EXECUTIVE;
- III. JUDICIAL.

### I.—LEGISLATIVE DEPARTMENT.

All legislative power granted by the Constitution is vested in a Congress of the United States, consisting of a Senate and *House of Representatives*. **2.**

CONGRESS {SENATE AND HOUSE OF REPRESENTATIVES.

# CHAPTER I. HOUSE OF REPRESENTATIVES.

## ARTICLE I.—PROPORTION.

1. *The number of representatives shall not exceed one for every thirty thousand.* **5.**

2. *Until the first enumeration was made, the States were allowed to choose as follows:—*

<i>New Hampshire, 3.</i>	<i>Delaware, 1.</i>
<i>Massachusetts, 6.</i>	<i>Maryland, 6.</i>
<i>Connecticut, 5.</i>	<i>Virginia, 10.</i>
<i>New York, 6.</i>	<i>North Carolina, 5.</i>
<i>New Jersey, 4.</i>	<i>South Carolina, 5.</i>
<i>Pennsylvania, 8.</i>	<i>Georgia, 3.</i>
<i>Rhode-Island and Providence Plantations, 1.</i>	<b>5.</b>

§ 1. At the time of the formation of the Constitution, no census having been taken, there was no accurate information in possession of the members of the Convention in regard to the population of the several States respectively. There was considerable variety of opinion on the subject; and, in fixing the proportion of representation in the House of Representatives, entire satisfaction was not secured.

§ 2. It was settled, however, without much difficulty, that, whenever the population should be accurately ascertained, the number of representatives should not exceed one for every thirty thousand inhabitants. It was believed that this proportion would give about sixty-five members in all,—the number of which the House was to be constituted until the census could be taken.

§ 3. Fifty-six was proposed at first as the most convenient number; but, in undertaking to assign to each State its equitable proportion of this number, the members of the Convention could not agree. Then it was proposed that this number should be doubled. But finally the Con-

vention adopted sixty-five, believing that this would give one member for about thirty thousand.

§ 4. The following table shows the ratio of representation in the House of Representatives through the several decades, from 1790 to 1860 inclusive:—

1790-1800, ratio	33,000, number of members	106.
1800-1810, “	33,000, “	“ 142.
1810-1820, “	35,000, “	“ 182.
1820-1830, “	40,000, “	“ 213.
1830-1840, “	47,000, “	“ 240.
1840-1850, “	70,680, “	“ 233.
1850-1860, “	93,420, “	“ 234.
1860-1870, “	127,316, “	“ 242.

§ 5. The number of members in each case is fixed by law of Congress, to take effect at the beginning of the following decade. But the law refers only to the aggregate number allowed to the States in the Union at the time of the passage of the law, and to their respective proportions of that aggregate. Of course the aggregate number is increased by the admission of new States, as each State is entitled to at least one member.

§ 6. In the decade beginning with 1860, it will be observed, the number of members was fixed at 242. But, in 1861, many seats were vacated on account of the great Rebellion which broke out in the early part of that year. All the representatives from those States that passed ordinances of secession resigned their seats; and, even now (July, 1868), but few of the seats vacated at that time have been filled.

§ 7. For various reasons, the Thirty-ninth Congress refused to admit the representatives from those States; and the Fortieth Congress has thus far taken the same view of the subject. On account of these vacancies, the Thirty-ninth Congress, at its second session, numbered but 192 members.

Each organized Territory is allowed one delegate, who may participate in the discussions of the house, but is not permitted to vote. But this is not a constitutional provision: it is by act of Congress.

## ART. II.—HOW APPORTIONED.

Representatives shall be apportioned among the several States according to their respective numbers, which shall include,

1. *The whole number of free persons, excluding Indians not taxed;*
2. *Those bound to service for a term of years;*
3. *Indians who are taxed; and,*
4. *Three-fifths of all others persons.* 5.

§ 1. One of the most perplexing of all the questions that came before the Constitutional Convention was that which related to the apportionment of members of the House of Representatives among the several States. So great a change was proposed in regard to the composition of the legislative branch from that which had existed under the Confederation, that this matter of apportionment became a very difficult question to settle.

§ 2. In the first place, under the Confederation, there was but one house of Congress. In that house, the States, large and small, had equal representation, and were equal in political influence and power. The smaller States, as might reasonably be presumed, were reluctant to surrender that advantage.

§ 3. In the second place, it was now proposed to have two houses of Congress, in one branch of which the smaller States insisted on equality of representation. This was opposed by the larger States, as it was claimed that political power should depend on population, or population and property.

§ 4. Here was a direct conflict of interests. The smaller States recognized this proposition as a blow aimed at their State sovereignty, and one which, if successful, would be humiliating to their State pride: it would greatly diminish their power in the national councils.

§ 5. A considerable number of the States were in favor of making wealth, or wealth and population combined, the basis of representation. The Southern States, at that time, were richer than the Northern; and this question was one of sectional interest.

§ 6. The smaller States at length yielded the point, consenting that population might be accepted as the basis of representation in the House. The larger States consented to equality of suffrage in the Senate. But now the question was, Who shall be *included*, and who *excluded*, in the representative population? Shall *all* persons be counted? or shall certain classes be omitted? On this vexed question, there was probably more asperity of feeling demonstrated than on any other that came before the Convention.

§ 7. The question finally narrowed down to this: Shall the *slaves* be counted the same as free white inhabitants? The States having the most slaves said “*Yes*,” those having but few said “*No*.” All the States except Massachusetts at that time held slaves. But the Northern and Eastern States held but few comparatively, and it was apparent that even these few were rapidly diminishing in numbers.

§ 8. If slaves were to be counted as free persons, this would give the Southern States a great advantage. The South insisted that they should be included in the representative basis; the North, that they should not. Here was a direct

conflict of opinion, based on conflict of interest. It became evident, that unless concessions were made from some quarter, or all quarters, the labors of the Convention were at an end.

§ 9. It should be remarked here, also, that the foreign slave-trade became a prominent element in the discussion. The idea of counting negroes imported from Africa, as soon as they were landed on our shores, as so many white men would count, when they were merely property, and in no manner contributed to the intelligence of the population, and of allowing that count to increase the number of Southern representatives in the House, to the minds of many of the great men in that Convention was offensive in the extreme.

§ 10. It was substantially saying to any State, North or South (for North and South were alike involved in the traffic), “The more negroes you will import, the more members you may have in the national council; and the more you will increase the slave population, the greater shall be your political power and influence.”

§ 11. On the other hand, those States in which the slaves were most numerous, and were likely to go on increasing, contended, that although there was a sense in which the slaves were property, yet they were something more: they were human beings, brought within the pale of civilized society, and ought to be counted with the representative population.

§ 12. It will be seen, that, if the basis of representation were fixed at one member for every thirty thousand inhabitants, a State having sixty thousand slaves would be entitled to two members on account of this slave population. Thus slavery would and should, the South contended, become an element of political power.

§ 13. As with many other questions in that Convention, this was finally settled by compromise, and on the following terms:—

1st. Five slaves were to be counted as three persons.

2d. The slaves were to be counted on the same basis for purposes of direct taxation for the support of the General Government; and direct taxation was to be imposed in proportion to the representative population.

3d. The Northern States consented to a clause in the Constitution prohibiting legislative interference with the foreign slave-trade prior to 1808.

4th. The Southern States consented to the imposition of a tax or duty on imported slaves, not exceeding ten dollars for each person.

The clause "three-fifths of all other persons," at the head of this article, refers to slaves.

§ 14. At that day it was generally supposed, that counting three-fifths of the slaves for purposes of direct taxation would be a matter of considerable advantage to the Northern States; for it was not then presumed that the expenses for the support of government would be chiefly paid through the custom-house revenue as afterwards proved to be the case.

§ 15. But the advantage proved to be nearly all on the side of the Southern States: for, in the first place, only three-fifths of their slave population were to be counted for purposes of direct taxation; while all the Northern population was to be reckoned for this object, except the very few slaves held there.

In the second place (and this was a matter which the Convention did not foresee), direct taxation has never been a matter of much importance until since the abolition of slavery. The only instances of this kind of taxation were in 1798, 1813, and 1815. (The subject of taxation will be further noticed in another place.)

§ 16. By a recent amendment to the Constitution (Art. XIII. Of Amendments), slavery has been abolished. How the negro population will be counted among the representative population hereafter, remains to be determined. There is a proposed amendment before the country, which, if adopted, will require that they be excluded from the count altogether, unless they shall be enfranchised. (See appendix to Analysis C.)

§ 17. It will be observed that the Constitution nowhere mentions the word *slave* or *slavery*. Whenever it is necessary to allude to that class of persons, a *definition* is adopted instead of the word itself, except in the Thirteenth Article of Amendments before alluded to. This was studiously intended by the authors of that instrument, feeling that it would be a stain on their work.

### ART. III.—ELIGIBILITY.

1. *A representative must have attained to the age of twenty-five years.*

2. *Must have been seven years a citizen of the United States.*

3. *When elected, must be an inhabitant of the State in which chosen.* 4.

4. *No United-States officer shall be a member of either house of Congress.* 22. (See appendix to Analysis D.)

§ 1. That a member of the House of Representatives should be at least twenty-five years old was adopted in the Convention without debate. Few men before that age have had sufficient experience to fit them for so important a trust; and as it seemed necessary to specify some age before which a person should be held ineligible to this position, perhaps twenty-five may be regarded as the most suitable.

§ 2. In order to be a representative, it is not necessary that he shall be a natural-born citizen. By the Constitution, however, he must have been a citizen of the United States seven years. If born under another government, he may become a citizen of this country by a process called naturalization. By a law of Congress, it requires five years' residence before this can be accomplished; which, added to seven years' citizenship, requires twelve years actual residence before an alien can become a representative in Congress. A much longer period than this, however, was strenuously insisted on by many of the members of the Convention.

§ 3. The Constitution requires that the member, when elected, shall be an inhabitant of the State in which he is chosen. This is a provision so reasonable as to admit of neither debate in the Convention, nor of difference of opinion among the people. The inhabitancy of the State in which chosen is limited to the particular time *when* chosen, not requiring the representative to *continue* it there. He may hold his seat in the House, therefore, even should he change his residence to another State during his continuance as a representative. Nor is it necessary that he shall reside in the particular Congressional district in which, or by which, he is chosen.

§ 4. No person holding any office under the United States is eligible to a seat in either house of Congress. On this provision, there was no difference of opinion among the members of the Constitutional Convention; although many were in favor of carrying the restriction much further. The Constitution limits the ineligibility to the period of *continu-*

*ance* in office under the United States. Several of the members were in favor of extending this incompetency to hold a federal office for from one to three or four years beyond the expiration of the term of service for which a senator or representative should be elected.

§ 5. But their deliberations resulted in prohibiting any officer under the General Government from being a member of either house of Congress *during his continuance in office*. This provision originated in a deference to State jealousy, and fear that the General Government would obtain an undue influence in the national councils. If a Federal officer were allowed to be a member of either house, he might wield an undue influence over those with whom he would be associated in legislative deliberations.

#### ART. IV.—TERM.

*Members of the House of Representatives are chosen every second year. 3.*

§ 1. There was much difference of opinion in the Convention as to what length of time ought to constitute a representative term. One class was in favor of limiting it to one year; urging that the people were, and would continue to be, in favor of frequent elections; that such was the only defense of the people against tyranny; and that this plan, bringing representative and constituency more frequently face to face, would be likely to give a stronger sense of official responsibility.

§ 2. Another class urged that a term of three years was preferable to one; that instability is one of the great vices of a republic; that time should be given for members to acquire a competent knowledge of the various interests of States to which they did not belong. It was claimed that one year would be almost consumed in preparing for official duty, and traveling to and from the seat of national business.

§ 3. It was urged against the annual plan, that frequency of elections tended to make the people regardless of them, and to facilitate the success of little cabals. It had been found necessary in some States, where the elections were annual, to force attendance and voting by severe regulations.

§ 4. But, as was usual in the Convention, a compromise of opinion prevailed; and it was accepted that members be chosen every second year. The representative term always expires in the years of odd numbers, as 1867, '69, '71, &c.



**ART. V.—BY WHOM ELECTED.**

*By the people of the several States.* **3.**

§ 1. It was not easy for the Convention to agree on the question, "By whom shall the representatives be elected?" It was urged by some members, that the people were incapable of properly exercising this high and important trust; that they should have as little to do as possible about the government; that they were ignorant, and constantly liable to be misled; that great evils would result from such an excess of democracy; and that, while the people were not wanting in purity of motive, they were liable to become the dupes of pretended patriots.

§ 2. On the contrary, it was urged that the election of this branch of Congress should be by the people; that the House of Representatives was to be the grand depository of the democratic principle of the government; that it was to be our House of Commons; that it ought to know and sympathize with every part of the community, and ought, therefore, to be taken, not only from different parts of the whole republic, but from the various districts of the larger States.

§ 3. It was claimed that this was emphatically the people's own government; that, however elevated the situation of the more wealthy might be to-day, a few years not only might, but certainly would, distribute their posterity throughout the lowest classes of society. Every selfish motive, therefore, and every family attachment, ought to lead the Convention to provide no less carefully for the rights and happiness of the lowest than of the highest order of citizens.

§ 4. The members of the Convention who were opposed to an election of representatives by the people were in favor of electing them by the legislatures of the several States; maintaining that it would be utterly impracticable to elect them by the people. By a close vote, however, it was decided to place the election of members of the house in the hands of the people of the several States.

**ART. VI.—ELECTORS.**

*The electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislatures.* **3.**

§ 1. The word "electors," as used here, is synonymous with voters. It was necessary to adopt some rule that would apply to all the States in determining or defining the qualifications of voters for members of the House of Representatives. On this subject, there were three classes of opinions:—

§ 2. The first class proposed to require the same qualifications that were requisite to vote for members of the several State legislatures. This was objected to on two grounds:—

1st. That it would thus be left to the *States* to settle the question of qualifications.

2d. That it would be impracticable in many of the States, as the qualifications to vote for a State senator were higher than were required to vote for the members of the most numerous branch.

Another proposition was, that *freeholders* only should be allowed to vote for members of the House of Representatives. This found favor with many of the ablest members of that body, but failed.

§ 3. The test finally adopted was perhaps, the best among the number proposed, or that could be proposed; which leaves it in the hands of the States themselves, with this limitation, that whatever numerous branch of their own legislatures respectively, shall settle the question as to whether the elector may vote for a member of the House of Representatives.

§ 4. No State, therefore, has the right to require any higher or different qualifications of its citizens, to vote for a member of the House of Representatives, than it requires of them to vote for the popular branch of its own legislature.

§ 5. Members of the House of Representatives are elected in the several States by Congressional districts. When it has been ascertained how many members each State is entitled to, the legislatures of the several States divide them respectively into as many Congressional districts as they are each entitled to members. These Congressional districts are numbered, for convenience, 1st, 2d, 3d, &c., and are known by their numbers. The electors of each district vote for but one candidate, though that candidate need not necessarily be a resident of the voter's district. He must, however, as we have seen, be an inhabitant of the State in which he shall be chosen.

§ 6. Several of the States formerly elected their representatives by general ticket; that is, each elector voted for all the members to which the State was entitled, or for a number equal to that number. Until 1842, there was no act of Congress requiring elections of members by Congressional districts; but, June 25 of that year, a law was passed requiring the States to elect by districts, and allowing each district to elect but one representative.

## ART. VII.—VACANCIES.

*When vacancies happen in the representation from any State, the executive authority thereof shall issue writs of election to fill such vacancies. 6.*

§ 1. The writ of election is directed to the Congressional district in which the vacancy occurs. The election held in pursuance of such writ is called a special election.

§ 2. The representative elected to fill a vacancy does not serve a full term, but the remainder of the term for which his predecessor was elected. Vacancies can happen only by death, resignation, or expulsion of the incumbent from his seat in the house.

## ART. VIII.—CENSUS.

1. HOW MADE. *In such manner as Congress shall by law direct.*

2. WHEN MADE.

1st. *The actual enumeration shall be made within three years after the first meeting of Congress.*

2d. *It shall be made within every subsequent term of ten years. 5.*

§ 1. The manner of taking the census is under the control of Congress, to be fixed by law. It has been taken eight times since the organization of the government; viz., 1790, 1800, 1810, 1820, 1830, 1840, 1850, and 1860.

§ 2. By a law of Congress, the Department of the Interior has the general supervision of the matter. Under that department, the execution of the business is placed more immediately in the care of the United-States marshals for the several States, who divide their respective districts into sub-districts for greater convenience, each sub-district numbering not to exceed twenty thousand inhabitants. The marshals appoint assistants, or deputies, for each of these subdivisions.

§ 3. The duties of these assistants, or deputies, consist in visiting personally every dwelling-house and family within the limits of their respective jurisdictions, and propounding to some member of the family, of suitable age and intelligence, such questions as are required by act of Congress.

§ 4. These questions relate not only to the number of inhabitants, but their ages, sex, color, ability to read and write, facts relating to agriculture, manufactures, commerce, resources of the country, its productions, and, in fact, every thing that may be necessary to give a general view of the condition of the United States.

§ 5. Nor is it left to the discretion of persons questions, whether they will answer these interrogatories. They are *compelled* to answer under a penalty of thirty dollars for each refusal; and the person so refusing can be imprisoned until the penalty is paid; and a new refusal can be followed by a new penalty and imprisonment.

§ 6. The Constitution requires that the census shall be taken once in ten years. By act of Congress, it was taken the first time in 1790; and it has been taken decennially ever since. In the Constitutional Convention, the proposition was considered, to take it once in twenty years, and once in fifteen; but once in ten was finally adopted. Once in ten years was thought to be sufficiently frequent for all practical purposes. It is attended with considerable expense; costing for instance, in 1850, nearly a million and a half of dollars.

§ 7. The following table shows the aggregate population of the United States, according to the various censuses taken since the adoption of the Constitution:—

1790,	3,929,827.	1830,	12,854,711.
1800,	5,305,932	1840,	17,068,355.
1810,	7,239,812	1850,	23,263,485.
1820,	9,638,191	1860,	31,443,790.

### ART. IX.—HOUSE-POWERS.

1. *To choose their speaker and other officers.*
2. *Sole power of originating impeachments. 7.*
3. *Sole power of originating bills for raising revenue. 23.*
4. *Co-ordinate with the Senate in general legislation. 2.*
5. *When the electors of President and Vice-President of the United States fail to elect a President, the House of Representatives shall elect one. 94.*

§ 1. The speaker is chosen from among the members themselves, being himself a representative. It is his duty to preside over the deliberations of the House, and to keep order. The other officers are a clerk, sergeant-at-arms, postmaster, and doorkeeper. These officers are not members of the House. (List of Speakers of the House, Chap. XV., Art. VIII., Part II.)

§ 2. The House of Representatives has the sole power of originating articles of impeachment. An impeachment is a solemn and specific accu-

sation brought against a public officer, drawn out in due form, charging him with treason, bribery, or other crimes and misdemeanors. It is in the nature of an indictment, being only *prima facie* evidence of guilt,—sufficient, however, to put the accused on trial at the bar of the Senate. Although it requires a two-third majority of the Senate to convict the accused, it requires only a numerical majority to prefer the impeachment by the House.

§ 3. The following course, substantially, is pursued in preferring impeachments:—

1st. Some member of the House, who believes that charges should be made against the public officer, proposes that a committee be appointed to inquire into the matter, and to make report of the results of their investigations to the House at some future time. Such committee is generally appointed without opposition; and usually the mover will be appointed its chairman, as he is presumed, from the fact that he makes the move, to have some knowledge of the case.

2d. If the committee find, on investigation, that the charges are well founded, and are of such a character as to render the party implicated worthy of impeachment, they so report to the House, specifically defining the charges, and recommend that he be impeached.

3d. The House examines the report, the subject is discussed, and a vote taken. If the proposed impeachment is adopted by the House, and is not drawn out in due form, the House appoints another committee, to whom this part of the business is submitted, who report the impeachment in specific articles. Another vote is taken by the House on the impeachment, article by article.

4th. A committee is now appointed by the House to take the whole matter before the Senate, and to represent the House in its prosecution. The House has now taken all the steps properly belonging to that body in the proceedings. The proceedings of the Senate in the case will be noticed in treating of the judicial powers of that body.

§ 4. It seems proper that the House should possess the sole power of impeachment, as that body is constituted of the representatives of the *people*, who may be presumed to be better acquainted with public sentiment in their respective localities than members of the Senate. In England, the power of impeachment is vested in the House of Commons, the people's branch of the legislative department; and the trial of impeachment belongs to the House of Lords, to which our Senate is somewhat analogous.

§ 5. The House of Representatives has the sole power of originating bills for raising revenue. This body, as has been stated, is constituted of the more immediate representatives of the people; and, as the people are to pay the taxes if any are imposed, it would seem fit and proper that their representatives should be the prime movers in any measures that require money to prosecute them.

§ 6. In the Constitutional Convention, there was considerable opposition to this clause of the Constitution. Even Mr. Madison, who was ever watchful of the rights of the people, at first objected to it. He and some others thought that the Senate would be a more capable body of men, and that it would be bad policy to thus discriminate against them.

One member characterized it as a “degrading discrimination.” Another said it would take away the responsibility of the Senate, the great security for good behavior; that it would be a dangerous source of disputes between the two houses.

The workings of government in Great Britain were often referred to in the Convention. All bills for raising revenue there must originate in the House of Commons, which, as has been stated, is the people’s branch.

§ 7. Although the report of the committee in Convention, proposing that money-bills should originate with the House only, was declared passed, it did not pass by a *majority* of the States represented. Enough voted against it to defeat the measure, had the States that were divided in opinion (and therefore lost their vote) been added to their number. But it prevailed, and has thus far worked well.

§ 8. The House is co-ordinate with the Senate in general legislation. There are special powers peculiar to each house; and these are so clearly defined in the Constitution as to take away all ambiguity. There can be no mistaking the powers of one house for those of the other. But in the general, ordinary business of law-making, the houses are co-ordinate, with the foregoing exception.

§ 9. Among the peculiar and exclusive powers of the House of Representatives is that of choosing a President of the United States in a certain contingency. When the electors of President and Vice-President fail to elect a president by a majority of all the electors appointed by the people for that purpose, the election of the President devolves on the House.

§ 10. This has occurred twice since the adoption of the Constitution. Thomas Jefferson was elected the first time (1801) by the House of Representatives, on the thirty-sixth ballot. The opposing candidate

was Aaron Burr. At that time, there were sixteen States in the Union. When the house elects a President, it is done by States, each State having but one vote. Jefferson received the votes of eight; Burr, six; and two States were divided. The same result continued through thirty-five ballotings; but on the thirty-sixth, as above stated, Jefferson was elected. This was done under the third clause of Article II. Of the Constitution, which has been superseded by Article XII. of the Amendments.

§ 11. The second instance of the election of a President of the United States by the House of Representatives occurred in 1825. Four candidates were voted for on the electoral ticket, neither of whom received a majority of all the votes. These candidates were Andrew Jackson of Tennessee, who received ninety-nine votes; John Quincy Adams of Massachusetts, eighty-four; William H. Crawford of Georgia, forty-one; and Henry Clay of Kentucky, thirty-seven. No one receiving a majority of the electoral votes, the election was thrown into the House; when John Quincy Adams was elected. Mr. Clay's name did not come before the House, as he received the smallest number of electoral votes of the four candidates. For when the election comes into the House, since the Twelfth Article of Amendments was adopted, that body must elect from the persons having the highest numbers, not exceeding *three* on the list of candidates.

The election of President will be more critically examined when we come to treat of the executive department.

## CHAPTER II. UNITED-STATES SENATE.

### ART. I.—HOW COMPOSED.

*The Senate is composed of two senators from each State.* **8.**

§ 1. The composition of the Senate is the result of compromise between the larger and smaller States represented in the Constitutional Convention. Under the Confederation, it will be remembered, the representative power in Congress was the same in all the States; and that body consisted of but one house. The small State of Rhode Island had one vote, and the great State of Virginia had no more.

§ 2. The small States were tenacious of this power, and were reluctant to allow any encroachment on their sovereignty. It was inserted in the credentials of the members of the Constitutional Convention from Delaware, that they were prohibited from changing that article in the Confederation establishing an equality of votes among the States.

§ 3. The large States yielded one point in the controversy, and the small States another. The large States consented to equality in the Senate, and the small States to representation in the House in proportion to population. In the Senate, therefore there is no distinction between the States; and as every bill, before it can become a law, must pass both Houses of Congress, the rights of the smaller States are not likely to be compromised in the legislative department.

### ART. II.—ELIGIBILITY.

1. *Must have attained to the age of thirty years.*
2. *Must have been nine years a citizen of the United States.*
3. *When elected, shall be an inhabitant of the State for which chosen.* **10.**
4. *No United-States officer shall be a member of either house of Congress.* **22.** (See appendix D.)

§ 1. No difference of opinion prevailed in the Convention in reference to the age named. At thirty, the character of a man has usually become defined and established. He may be presumed, at this age, to



have had sufficient experience to give weight and dignity to the public councils, and to have acquired that firmness and independence which will give stability of purpose in the performance of his duties.

§ 2. By reference to the age required for membership of the other house, it will be seen that there is a difference of five years; a man being eligible to a seat in that house at twenty-five. It is considered, that, at least in some respects, the duties of a senator are more responsible than the duties of a member of the House of Representatives.

1st. There can be but two senators from one State, while the number of representatives will depend on the population. The State of New York, for instance, can have but two senators; but at present, 1868, has thirty-one members of the other house.

2d. The responsible duty of trying all impeachments devolves on the Senate; and from their decision there is no appeal.

3d. A senator holds for the term of six years; a representative, for but two. If a senator proves incompetent or unfaithful, and fails to give satisfaction, six years' term of office will prove burdensome to his constituency. On the other hand, the representative term is so short, that unfaithfulness or incompetency will cause but comparatively little inconvenience before he must meet his constituency at the ballot-box.

4th. On the Senate rests the grave responsibility of deciding on the fitness of executive nominations to office.

5th. In the Senate is vested, jointly with the executive, the prerogative of treaty-making.

§ 3. Eligibility to the senatorial office requires a United-States citizenship of nine years. This feature was debated in the Convention with great spirit and earnestness. Some members were in favor of requiring but four years, some seven, some nine, some ten, others thirteen, still others fourteen; and a few preferred that American nativity be required. Nearly all seemed averse to admitting strangers to a seat in the Senate. There were a small number of members, however, in favor of requiring no specified period, but simply that the incumbent should be *a citizen*.

§ 4. No one can regard the condition a hardship that requires a residence and citizenship of sufficient time to enable the party to demonstrate his attachment to our institutions, and form of government, and to give evidence of his determination to make our country his permanent home.

§ 5. The laws of Congress require five years' residence before an alien can become naturalized, and the Constitution nine years' citizen-

ship before he can hold the office of United-States senator; making fourteen years' residence necessary before he is eligible to a seat in that body.

§ 6. That a senator should be an inhabitant of the State for which he is chosen is a condition so reasonable, that it was accepted by the Convention without debate. It was inserted in every proposed draft of the Constitution; the only alteration being the striking out of the word "resident," and inserting the word "inhabitant."

§ 7. But it must be observed, that necessity of inhabitancy is limited to the time *when chosen*. A senator chosen from New York, for instance, does not vacate his seat in the Senate by changing his residence to any other State during the term for which he was elected. It might be in the highest degree proper that he should resign; but that is a matter within his own discretion.

§ 8. A member of Congress must not be encumbered with any office under the government of the United States. If he holds any such office at the time of his election to Congress, he must resign it before he can take his seat. This applies to membership of either house.

§ 9. The senatorial office is not an office under the government of the United States within the meaning of the Constitution. This was decided by the Senate itself at a very early period (1799), when Senator Blount was impeached by the House, and brought before the Senate for trial.

§ 10. The authors of the Constitution considered the duties of any office under the United States as incompatible with the faithful discharge of the duties of senator or representative. In several proposed drafts of the Constitution in the Convention, a clause was inserted, rendering a member of either house ineligible to any office under the United States for several years after the expiration of his legislative term. But it was finally agreed to confine the disability to the period of membership.

### ART. III.—TERM.

*The senatorial term is six years.* **8.**

§ 1. The senatorial term was another subject of earnest debate in the Convention, and on which, at first, there was great difference of opinion. There terms of three, four, five, six, seven, and nine years, were severally proposed; and each had its advocates. Several members were in favor of extending the term for life, or during good behavior.

§ 2. All were in favor of a term sufficiently long to insure to the office dignity, stability, and independence. A term of two or three years

was believed to be quite too short for a fair trial on any measure of importance on which there might be an almost equal division of opinion.

§ 3. On the other hand, it was contended that a term of eight or ten years , or for life, might lead a senator to forget his home responsibility. He might be persistent in measures known to be adverse to the best interests of the country, merely from pride of opinion, or from the more objectionable spirit of obstinacy. Six years was probably not the choice of half the members of the Convention; but that term was adopted as a compromise of the extremes.

#### ART. IV.—BY WHOM CHOSEN.

*By the legislatures of the several States.* 8.

§ 1. There were several propositions in the Constitutional Convention on the subject of this article. The first was by Edmund Randolph of Virginia, who opened the business of the Convention. He presented an outline of what he thought the new Constitution should contain. In that outline, it was proposed that the senators should be elected by the House of Representatives, on nomination by the legislatures of the several States.

§ 2. A second plan proposed was, that the senators shall be chosen by the people of the several States, by direct vote, in the same manner as the members of the House of Representatives are chosen.

§ 3. A third plan was, that senators shall be appointed by the President of the United States, from nominations made by the legislatures of the several States.

§ 4. A fourth plan proposed to unite several representative districts into a senatorial district, and let the people elect the senators by direct vote.

§ 5. A fifth plan was, that the people by direct vote elect senatorial electors, and that these electors should elect the senators.

§ 6. And still another plan was, that United-States senators shall be chosen by the legislatures of the several States. This plan prevailed. The principal reason that led to a decision in favor of this proposed was, that senators represent their respective States in their *political* capacity, and are not regarded as representatives of the *people*. It was the intention of the authors of the Constitution that the Senate should be a far more grave, dignified, and aristocratic body than the House.

## MODE OF ELECTION OF SENATORS.

NOTE.—By act of Congress, passed July 26, 1866, relating to the election of United-States senators by the State legislatures, it is provided,—

1st. That each House shall, by a vote *viva voce* of each member present, on the second Tuesday after the meeting and organization thereof, name a person for senator.

2d. On the day following, the two houses shall meet in joint assembly; and, if the same person shall have received a majority of all the votes cast in each house, he shall be declared duly elected senator of the United States.

3d. If no person has received such majorities, then the joint assembly shall choose, by a *viva voce* vote, a person for senator; and the person who shall receive a majority of all the votes of the joint assembly, a majority of the members of each house being present, shall be declared duly elected.

4th. If such senator is not elected on the first day, the joint assembly shall meet, and take at least one vote per day, during the entire session of the legislature, or until a senator shall be elected.

5th. In relation to vacancies, the act provides, that, when one exists at a meeting of the legislature, the same proceedings shall be had on the second Tuesday after their meeting and organization.

6th. When a vacancy shall happen during the session of the legislature, like proceedings shall be had, beginning with the second Tuesday after notice of such vacancy shall have been received.

7th. The Governor of the State shall certify the election of a senator to the President of the United States.

## ART. V.—WHEN CHOSEN.

*One-third the number of senators shall be chosen every second year. 9.*

This must necessarily be so, on account of the mode of classifying the senators which the Constitution prescribes, and which it directs to take place at the first organization of the Senate under the new government. Only one-third of the senators being chosen every second year, and but one-third retiring every second year, the Senate must always be constituted of members, one-third of whom have had at least four years of legislative experience, and of another third who have had at least two.

## ART. VI.—HOW CLASSED.

*Immediately after they shall be assembled in consequence of the first election, they shall be divided as equally as may be into three classes:—*

1. *The seats of the senators of the first class shall be vacated at the expiration of the second year.*
2. *Of the second class, at the expiration of the fourth year.*
3. *Of the third class, at the expiration of the sixth year.* 9.

§ 1. There was unanimity of opinion in the Constitutional Convention on the propriety of rendering the Senate a perpetual body. The prerogatives with which it is invested, and the duties required of it, render this indispensable; and it was therefore agreed to with but little or no discussion.

§ 2. The number of senators at first was twenty-six, there being thirteen States in the Union, and two senators from each State; though all were not present at the first classification. Were each of these senators to serve for six years, their terms would all expire at the same time. But the plan was, that one-third should retire every second year: hence it was necessary to adopt some method by which to determine who should go out at the end of two years, who at the end of four, and who at the end of six.

§ 3. The first proposition before the Convention was, that this should be done by lot; and it was so inserted in the proposed draft of the Constitution. But this was erased on motion of Mr. Madison, so as to leave the Senate at liberty to adopt some method by which to prevent the election of two senators at the same time, and from the same State, for a full term of six years.

§ 4. It should be remarked here, that when a new State is admitted into the Union, and it chooses two senators, it is determined by lot which shall serve for the shorter, and which for the longer term.

At the first session of Congress under the Constitution, the division of the senators into three classes was made in the following manner:—

1st. The senators present were divided into three classes by name; the first consisting of six persons, the second of seven, and the third of six. (Two or three senators had not yet reached the seat of government; and it will be remembered that Rhode Island and North Carolina had not yet ratified the new Constitution.)

2d. Three papers of an equal size, numbered one, two, and

three, were, by the secretary, rolled up and put into a box, and drawn by a committee of three persons chosen for the purpose in behalf of the respective classes in which each of them was placed.

3d. The classes were to vacate their seats in the Senate according to the order of the numbers drawn for them, beginning with number one.

4th. It was also provided, that, when senators should take their seats from States which had not then appointed senators, they should be placed by lot in the foregoing classes, but in such a manner as should keep the classes as nearly equal as possible.

5th. In arranging the original classes, care was taken that both senators from the same State should not be in the same class, so that there never should be a vacancy, at the same time, of the seats of both senators.<sup>1</sup>

<sup>1</sup> Story on Const., § 726

#### ART. VII.—VACANCIES.

*If vacancies happen by resignation, or otherwise, during the recess of the legislature of any State,—*

1. *The executive thereof may make temporary appointments until the next meeting of the legislature.*

2. *The legislature shall then fill such vacancies.* **9.**

§ 1. If vacancies happen while the legislature of the State whose seats are thus vacated is in session, the legislature will fill the vacancies without official action on the part of the governor or executive. The governor has no authority in the case while that body is in session,—not even to appoint for a single day.

§ 2. He has no appointing power in anticipation of a vacancy soon to occur. He must wait until it actually happens. The Senate itself has decided this question. It is also doubtful if the legislature could choose a senator in anticipation of a vacancy.

§ 3. The senator chosen to fill a vacancy does not hold for the term of six years, but until the expiration of his predecessor's term only.

## ART. VIII.—VOTE

*Each senator shall have one vote. 8.*

This clause would seem to be superfluous, unless it be remembered, that, under the Confederation, each State, whatever the number of its members in Congress, had but one vote; and, if less than two members were present, it had no vote. The States were each allowed from two to seven members; and, if their delegation was equally divided, they lost their vote. One member was incapable of voting alone.

It was the intention of the Constitution to give equality of suffrage in the Senate; with the further advantage, that a senator shall not lose his vote, nor his State go entirely unrepresented, on account of the absence of one of the members from the senate-chamber.

## ART. IX.—PRESIDING OFFICER.

1. *The Vice-President of the United States shall be President of the Senate.*

2. *He shall have no vote, unless they be equally divided. 11.*

3. *The Senate shall choose a president pro tempore in the absence of the Vice-President, or when he shall exercise the office of President of the United States. 12.*

§ 1. There was strong opposition in the Constitutional Convention to creating any such office as the Vice-Presidency; and, when this point was carried, there was considerable opposition to the proposition making the Vice-President the

President of the Senate: though this last met with less hostility than the first; only two States voting against it.

§ 2. At first, it was intended to allow the Senate to choose their own presiding officer; but afterwards, when the Convention considered a second feature of the provision,—which was, that in case of the death, removal, or disability of the President of the United States, the President of the Senate, as was proposed, was to perform the duties of the office thus made vacant,—the Vice-presidency met with more favor.

§ 3. As presiding officer over the Senate, it was believed that he would be more impartial in his decisions than that officer would were he a member of their own body. He might, in that case, be too much influenced by the interest he would feel in his own State. But how his being Vice-President, instead of senator, would deprive him of this feeling of State interest, was not shown; nor was it shown why the same objection

might not apply as against the Speaker of the House of Representatives, who is a member of that body.

It seems more reasonable that the Constitution places that officer over the Senate “for want of something else to do” while there is a President of the United States.

§ 4. The Vice-President has no vote in the Senate unless they are equally divided. It is difficult to understand why he should have a vote even in such cases, since he is not a member of the Senate. A measure that can not be carried affirmatively by a majority of the members of a legislative body, especially after thorough discussion, it is generally presumed, ought to fail.

§ 5. The Vice-President’s vote, therefore, can never be given but to aid the *affirmative*. When the Senate is equally divided, the proposed bill or measure has failed unless the Vice-President comes to its rescue. An equal division in the other house defeats any proposition in legislative proceedings.

§ 6. The President *pro tempore* of the Senate is an officer of that body, chosen by its members, from among themselves, in the absence of the Vice-President, or when he shall exercise the duties of the presidential office.

§ 7. Three times in our history, the Vice-President has been called to perform the duties of the President on the death of that officer. Gen. Harrison died April 4, 1841,—just one month after his inauguration as President of the United States. He was succeeded by John Tyler, the Vice-President. Gen. Taylor was inaugurated March 5, 1849; and died July 9, 1850. He was succeeded by Millard Fillmore. Abraham Lincoln died April 15, 1865, having been inaugurated the second time, March 4, 1865; and, on his death, was succeeded by Andrew Johnson.

§ 8. It was customary, when we have a new Vice-President, for that officer to vacate his chair just before the close of the first session of the Senate, after his inauguration, to give them an opportunity to elect a president *pro tempore*. This is done, that, in case the Vice-President shall be called to the duties of the President, the Senate will not be left without a presiding officer.

§ 9. The President *pro tempore* of the Senate is sometimes called the Vice-President of the United States. This is often done, doubtless, by way of *courtesy*, but sometimes because he is really thought to be in fact such officer. But this is a mistake.

§ 10. Although, in case of the death, removal, or disability, both of



the President and Vice-President, the President *pro tempore* of the Senate would exercise the duties of President, he is by no means either Vice-President or President. It does not make him Vice-President simply because, in a certain contingency, he may be called to perform the duties of President: if so, we have had two, if not three, Vice-Presidents most of the time during our history; for the Speaker of the House may become acting President also.

§ 11. It is never claimed that the President *pro tempore* is Vice-President of the United States, unless the Vice-President has died, or succeeded to the Presidency; as in the cases of Tyler, Fillmore, and Johnson, before cited. The Vice-President is an officer of the United States; and no officer of the United States, the Constitution says, shall be a member of either House of Congress. But the President *pro tempore* of the Senate *is a member of the Senate*.

§ 12. The President *pro tempore* of the Senate must vote on the call of the yeas and nays the same as any other member: on the contrary, the Vice-President never can vote except in cases when the Senate is equally divided.

§ 13. The Vice-President must be at least thirty-five years of age, the same as the President; for the Constitution declares that "no person constitutionally ineligible to the office of President shall be eligible to that of Vice-President of the United States:" but a President *pro tempore* of the Senate need not be over thirty. The Vice-President must be native born, or a citizen of the United States at the adoption of the Constitution: the President *pro tempore* of the Senate need not be either. Any member of the Senate is eligible to the presidency *pro tempore* of that body.

§ 14. The Vice-President, in case of the death of the President, serves out the entire balance of the term for which the President and Vice-President were elected: on the contrary, the President *pro tempore* of the Senate, in case he succeeds to the duties of President, serves only until a President can be elected, or until the disability of the officer whom he has succeeded shall be removed.

§ 15. The Vice-President can be removed from office by impeachment only. The President *pro tempore* of the Senate is not a United-States officer, and can not, therefore, be impeached. The Senate has decided that a member of Congress is not impeachable.

§ 16. The Constitution recognizes but two modes of electing a Vice-President:—

1st. By *electors* of President and Vice-President of the United States.

2d. When the electors fail to elect a Vice-President, the Senate shall elect one; but this officer is not the President *pro tempore* of the Senate.

§ 17. The term of the President *pro tempore* of the Senate can not continue beyond his senatorial term; as in the case of Senator Foster of Connecticut, President *pro tempore* of the Senate, whose term expired March 4, 1867: but the Vice Presidency expires at the end of the presidential term only.

§ 18. If the President *pro tempore* of the Senate is Vice-President of the United States, there were two Vice-Presidents for some forty days after Mr. Foster's election to that position; for he was elected while Andrew Johnson was yet Vice-President, and before President Lincoln's death.

§ 19. These are regarded as conclusive proofs, drawn chiefly from the Constitution itself, that the President *pro tempore* of the Senate is not Vice-President of the United States, even when the Vice-President proper has succeeded to the Presidency; nor does the Constitution anywhere intimate that this officer of the Senate is to be so regarded. It is only by a law of Congress that he succeeds even to the temporary performance of the duties of the Presidency, in case of the death, removal, or other disability, both of the President and Vice-President. (List of Presidents of the Senate *pro tempore*, Chap. XV., Art. IX., Part II.)

## ART. X.—SENATE-POWERS.

### 1. LEGISLATIVE.

1st. *Co-ordinate with the House of Representatives in general legislation.* **2.**

2d. *May propose or concur with amendments to bills for raising revenue.* **23.**

### 2. EXECUTIVE.

1st. *To ratify treaties proposed by the President of the United States, two-thirds of the senators present concurring.*

2d. *To confirm the following officers when nominated by the President of the United States:—*

1st. *Ambassadors, other public ministers, and consuls.*

2d. *Judges of the Supreme Court.*  
3d. *All other officers of the United States whose appointments are not otherwise provided for by the Constitution, and which shall be established by law.* **61.**

3. ELECTIVE.

1st. *Excepting their president, they shall choose their officers, and also a president pro tempore.* **11, 12.**

2d. *When the electors of President and Vice-President of the United States fail to elect a Vice-President, the Senate shall choose one.* **95.**

4. JUDICIAL.

1st. *The Senate has the sole power to try all impeachments when sitting for that purpose on oath or affirmation.*

2d. *The Chief Justice shall preside when the President of the United States is tried.*

3d. *Without the concurrence of two-thirds of the members present, no person shall be convicted.* **13.**

4th. *May render judgment no further than,—*

1st. *To removal from office; and,*

2d. *Disqualification to hold and enjoy any office of honor, trust, or profit under the United States.* **14.**

### **1.—LEGISLATIVE.**

§ 1. The Constitution makes no general distinction between the powers of the two houses in legislation. It vests all legislative power in Congress of the United States, consisting of a Senate and House of Representatives.

§ 2. But there is one power relating to legislation vested in the House exclusively; and this is the power to originate bills for raising revenue. Yet, when these bills reach the Senate, that branch of the legislature may treat them in all respects as though they originated there. They can propose amendments, concur with amendments, or reject them, if proposed by the House, at any stage of the proceedings; or they can reject the bills altogether.

§ 3. The Constitution simply requires that this class of legislation shall *originate* with the House; beyond which, that branch has no more legislative authority than the Senate. The reasons for this distinction are noticed in treating of the house-powers.

## 2.—EXECUTIVE.

§ 4. In reference to the treaty-making power, particularly as to where it should be vested, there were three classes of views advanced in the Convention.

The first proposition was to place it exclusively in the Senate.

The second, exclusively in the President.

The third (and this prevailed), in the President and Senate.

§ 5. When it was finally settled to place this prerogative in the hands of the President and Senate, a new question arose, on which there was considerable difference of opinion: Shall it require a bare numerical majority of the senators present to ratify a treaty when proposed by the President? Or shall it require a two-third majority? At length, the plan was adopted requiring a two-third majority.

§ 6. There was then a proposition made to modify the treaty-making power with regard to treaties of *peace*. On this subject there were four parties.

One was for giving the whole power over treaties of peace into the hands of the President.

A second was for vesting it in the Senate, but requiring a two-third majority.

A third, for vesting it in the Senate, requiring only a numerical majority.

A fourth was for placing it with the President and the Senate, requiring a two-third senatorial majority as in all other cases. This last view was adopted. The ratification of any and all treaties proposed by the Executive requires the votes of two-thirds of all the senators present.

§ 7. A treaty is an agreement or contract between two or more nations, entered into with proper formality and solemnity, defining the rights of the respective parties thereto with regard to trade, commerce, boundaries, or any other subject of interest to the nations concerned.

§ 8. The terms of treaties are usually agreed upon either by commissioners appointed by their respective governments for the specific purpose of arranging the details, or by ambassadors or other public ministers.

§ 9. Treaties are discussed by the Senate in secret session. They can ratify or reject a treaty, or ratify it in part and reject it in part; or they can make additions to it. Every part of a treaty, to be valid, must be ratified by a vote of two-thirds of the senators present. When amendments to or alterations of the treaties have been made by the Senate, the whole document must be re-submitted to the President, and also to the foreign government with whom negotiations are pending.

§ 10. The President must submit the nominations of certain classes of officers to the Senate for their advice and consent. The Senate may confirm or reject a nomination made by the President; though it is usual, in deference to the Executive, to *confirm*, unless there is a palpable unfitness in the nomination.

The Senate's advice and consent are to be asked, on the nomination, by the President, of ambassadors, other public ministers and consuls, judges of the Supreme Court, and all other officers of the United States whose appointments are not otherwise provided for in the Constitution, and which shall be established by law.

§ 11. It will be seen, by reference to the powers of Congress, that the appointment of such inferior officers as they shall think proper may be vested in the President alone, in the courts of law, or in the heads of departments.

§ 12. On the subject of appointments, especially of the judges of the Supreme Court, members of the Constitutional Convention were divided in opinion. One class of opinions was in favor of giving the appointments to the Executive alone.

A second preferred that they should be vested in the Senate alone.

A third proposed that the nomination should be made by the Senate, allowing the President a negative, but giving the Senate the power to overrule his negative by a two-third majority.

A fourth was (and this prevailed), to give the nomination to the President, and the power of confirmation or rejection by a majority to the Senate; and ambassadors, other public ministers, and consuls, were included with the judges of the Supreme Court.

### 3.—ELECTIVE.

§ 13. The Senate has the power to elect its officers, except the president thereof, who holds this position by virtue of his being Vice-President of the United States. They are required by the Constitution to

choose a president *pro tempore* also. Deliberative bodies, with few exceptions, elect their own officers; and this is necessary to their independence. Here is one of the exceptions to the general rule, however, that the Vice-President is, *ex officio*, President of the Senate.

§ 14. Besides the president *pro tempore*, the Senate officers are a secretary, who keeps the record or journal, has charge of the papers, and reads such as he may be called upon by the members to read; a sergeant-at-arms, who sees that orders of the Senate are executed; a postmaster, who sees to the mailing and distributing letters and papers for the members; and a door-keeper, who has charge of the doors.

§ 15. These officers, except the president *pro tempore*, are not specified in the Constitution, and are not elected from among the members of the Senate.

§ 16. As a last resort, the Senate elects a Vice-President of the United States. This is not done, however, until an attempt to elect this officer on the part of electors chosen by the people has resulted in a failure. An election of a Vice-President by the Senate has taken place in the history of our government but once: in 1837, Richard M. Johnson was elected by the Senate.

#### 4.—JUDICIAL.

§ 17. The Constitution vests in the Senate the sole power to try all impeachments. To this provision there was very earnest opposition in the Constitutional Convention. Three different classes of views were maintained on this subject:—

1st. That, as a trial of impeachment is a judicial proceeding, it ought to be committed to the Supreme Court, or some other tribunal learned in the law.

2d. Others maintained that it was not *wholly* judicial; and therefore they preferred to have it submitted to the Supreme Court; united with some other tribunal for that purpose appointed.

3d. Still others (and for this proposition there was a majority) insisted that the trial of impeachment should be vested exclusively in the Senate.

§ 18. When trying impeachments, the Senate sits as a *court*; and from their decision there is no appeal. They organize anew, and take a special oath or affirmation applicable to the proceeding.

§ 19. When the President of the United States is tried, the Chief Justice shall preside. This clause was not debated in the Convention that

formed the Constitution; and therefore the precise reasons for its insertion are not apparent. It has been suggested by able writers, that the Vice-President should not preside on such an occasion, because he has a direct interest in the President's conviction. It has also been maintained by a very learned senator, that, when the President shall be on trial for impeachment, he should be suspended from office for the time being, and until the result shall be declared; and that this state of things would bring the Vice-President to the presidential chair. In such case, he could not preside over the trial of the President.

§ 20. Perhaps one or even both of the foregoing reasons may have influenced the authors of the Constitution to make this provision. There is still another reason that may have had something to do with its origin. The President of the United States is the highest officer under our government; and it may have been thought in the highest degree proper and befitting, that, if brought to trial on impeachment, the highest judicial officer should preside over the solemn deliberations of such an August proceeding.

§ 21. It requires a majority of two-thirds of the members present to convict a party on impeachment. This was believed to be necessary in order to guard against hasty and inconsiderate decisions, and to prevent convictions from party zeal and political bias and prejudice. So large a majority, moreover, would be more likely to command the respect and peaceable acquiescence of the whole country.

§ 22. The Constitution limits the punishment to be inflicted by the senate on impeachment,—

1st. To removal from office; and,

2d. To disqualification to hold and enjoy any office of honor, trust, or profit under the United States. But we shall see in another chapter, that the party convicted can not plead his conviction by the senate in bar to further trial, condemnation, and punishment by the courts of law.

§ 23. As we have seen, the impeachment is preferred by the House of Representatives, and is in the nature of an indictment, specifically charging the accused with the commission of certain crimes or misdemeanors in office. The articles of impeachment are brought to the notice of the Senate by a committee appointed for that purpose by the House of Representatives.

§ 24. The Senate issues a summons, citing the party accused to appear before them on a day and hour therein specified; which summons

is served on the party accused by the sergeant-at-arms of the Senate.

§ 25. When the accused appears at the off the Senate, either in person or by counsel, in obedience to the summons, he is informed of the impeachment brought against him by the House, a copy of the charges is given to him, and he is allowed time to prepare his answer.

§ 26. When he has answered to the charges specified in the impeachment, the House replies to the answer through its committee, and asserts its readiness to prove them. Time is given the accused to prepare for trial, and he is allowed to have the assistance of counsel. The trial proceeds substantially according to the usual forms and method observed in the higher courts of law.

§ 27. When the evidence in the case and the arguments are concluded, each senator, on the call of his name, and on each article of the impeachment, votes yea or nay on the guilt of the accused. If two-thirds of all the senators present find him guilty of any or all of the charges specified, sentence is pronounced accordingly.

§ 28. In pronouncing sentence, the first question put to each senator, on answering o his name, is, "Shall the accused be disqualified to hold and enjoy any office of honor, trust, or profit under the United States?" On this question, each senator answers *yea* or *nay*; and judgment is rendered accordingly, and can extend no further.



## CHAPTER III. PROVISIONS COMMON TO BOTH HOUSES.

### ARTICLE I.—MEMBERSHIP.

*Each house shall be the judge of the elections, returns, and qualifications of its own members. 17.*

§ 1. These are powers, which, from the necessity of the case, must be vested in the house where membership is claimed. It is necessary to settle the legality and regularity of the election; otherwise any person might intrude himself into either house without the least show of authority. Regularity and legality of election can be determined only by an inquiry into the election through the returns, which opens the whole subject for investigation; for, in ascertaining the validity of the returns, it may be necessary to go back of them, and inquire into the legality of the election itself.

§ 2. It is quite possible that a person might be legally and regularly elected, and yet be wholly disqualified for a seat in either house. His moral character might be such as to bring a reproach upon the house of which he should become a member. He might be known for treachery and disloyalty to the government, and for the most persistent efforts to betray its trusts and to sacrifice its interests. Or he might lack any or all those qualifications which the Constitution requires to render a person eligible to the membership in question.

§ 3. The power of determining the right to membership belongs not only to each house of Congress by express constitutional provision, but like authority is conceded to the legislative bodies of all the States, and to kindred bodies under all free governments.

### ART. II.—QUORUM.

1. *A majority of either house is a quorum to do business.*
2. *A smaller number may adjourn from day to day.*
3. *A smaller number may be authorized to compel the attendance of absent members in such manner and under such penalties as each house may provide. 17.*

§ 1. It is indispensable that the Constitution specify the number necessary to do business; otherwise a reckless and intriguing minority might take advantage of the absence of the majority, and usurp the functions of legislation by enacting repugnant and odious laws, or by repealing those most acceptable to the people.

§ 2. On the contrary, if a smaller number could not adjourn from day to day, or compel the attendance of absent members, the whole business of legislation might be suspended at the pleasure of a few refractory absentees. The necessity of these three provisions in reference to business, therefore, must be evident at a glance.

### ART. III.—JOURNAL.

1. *Each house shall keep a journal of its proceedings.*

2. *They shall publish the same from time to time, except such parts as in their judgment shall require secrecy.* 19.

§ 1. These provisions impose a salutary restraint upon the members of the two houses. In a certain sense, they bring representative and constituent face to face. What is done to-day in the legislative halls of the nation is transferred to-morrow to the columns of the press, and carried abroad in the mail-bags all over the land. We know to-morrow what our senator or representative has done to-day. Legislators are thus compelled to act under a high sense of their political responsibility.

§ 2. But there are proceedings, or may be, in every legislative body, especially in times of insurrection or invasion, the immediate publication of which would be imprudent in the highest degree. The publication of such from day to day might give great advantage to a formidable enemy, and endanger the very existence of the government itself. Each house is therefore allowed to judge of the propriety and prudence of such publications.

§ 3. The object of publication is twofold:—

First, For future convenience; as it may be necessary to refer to the record, from time to time, in the transaction of business which may be more or less connected with what has gone before.

Second, It acts as a salutary check to hasty legislation, as each member knows that he is making a *record* to be read by coming generations.

## ART. IV.—YEAS AND NAYS

*At the desire of one-fifth of those present, the yeas and nays of the members of either house shall be entered on the journal on any question. 19.*

§ 1. The usual method of taking a vote in deliberative bodies is substantially this: The question being stated by the presiding officer, he puts it first affirmatively, "As many as are in favor of the proposition, say Aye." All the members in favor of it respond *Aye*. The presiding officer then puts the question negatively, "Those opposed, say No." The president is generally able to decide by the sound; but, if not, he repeats the trial, calling the vote

both affirmatively and negatively. If still in doubt, or at the request of a member, the house may be divided; the affirmative taking one side, and the negative the other, when the secretary counts: and, on the count, the decision is made.

§ 2. But, in taking the yeas and nays, the process is quite different. The presiding officer states both sides at once, thus: "As many as are in favor, &c., will, when their names are called, *answer Yea*; and as many as are opposed will, when their names are called, *answer No*." The names are then called, usually in alphabetical order, each member rising at the call of his name by the secretary or clerk, and answering yea or nay, as he votes; the clerk noting the vote in each case. He then usually reads over the list of names and the votes in each case, so that, if any mistakes have been made, they may be corrected.

§ 3. The object of this process of voting is, that a definite and enduring record may be made of the transaction, both for the information of the people and for future reference. The record also shows who were absent; a matter of scarcely less importance to the member, or his constituency, than the vote itself one way or the other. Members sometimes absent themselves for the purpose of avoiding responsibility in voting.

§ 4. The Constitution places it within the power of one-fifth the members present to compel the calling of the yeas and nays. It is a power that may be shamefully abused, however, by a refractory minority calling for the yeas and nays on any and every frivolous pretense, for the purpose of defeating decisive legislation on measures which they cannot prevent on direct vote. It consumes considerable time to take the yeas and nays in an assembly constituted of a hundred and fifty or two hundred mem-

bers; and hours are sometimes wasted in this way on important motions, so as to compel the majority to an adjournment from sheer exhaustion.

#### ART. V.—BUSINESS RULES.

*Each house may determine the rules of its own proceedings.* **18.**

§ 1. Every deliberative assembly has an inherent right to adopt such rules as it chooses for the transaction of business, provided those rules do not violate any organic law from which such assembly receives its authority. It is but in affirmation of this right that the Constitution contains the foregoing clause.

§ 2. Take away the right to adopt their own rules of proceeding, and it would be utterly impracticable to transact business with facility and dispatch. Of course, the rules of business must be in conformity with the provisions of the Constitution. Neither house, for instance, could enforce a rule, should they make one, requiring more than one-fifth of the members present to secure the call of the yeas and nays.

#### ART. VI.—PENALTIES.

1. *Either house may punish its members for disorderly conduct; and,*
2. *With the concurrence of two-thirds, expel a member.* **18.**

§ 1. The power to punish members for disorderly conduct is usually given to legislative bodies. Without this power, it might be impossible, at times, to transact business. Under high excitement, members are sometimes boisterous and tumultuous in conduct; and they might persist in disturbing the assembly, but for this power to punish. Rules would be of no use without the power to enforce them.

§ 2. The power to expel a member is given for the same purpose; that is, for the preservation of order, and for the maintenance of proper decorum. Without these, the country would lose all respect for its legislative assembly. But lest party-spirit might overstep the limits of propriety, and a domineering majority expel members of opposite political sentiments from improper motives, a salutary restraint is imposed, requiring a vote of two-thirds for the expulsion of a member. So large a majority it would be difficult to secure in any case where the rights of the assembly had not been grossly outraged.

## ART. VII.—PROHIBITIONS.

### 1. ADJOURNMENTS.

1st. *Neither house, during the session of Congress, shall, without the consent of the other, adjourn for more than three days; nor,*

2d. *To any other place than that in which the two houses shall be sitting. 20.*

### 2. ON MEMBERS.

No member of either house shall, during the time for which he was elected, be appointed to any office under the United States,

1st. *Which shall have been created during such time; nor,*

2d. *The emoluments whereof shall have been increased during such time. 22.*

## § 1.—ADJOURNMENTS.

1st. *As to Time.*—If there were no limitation as to the time for which either house, during the session of Congress, might adjourn without the consent of the other, a factious party-spirit controlling in either house might seriously interrupt legislation, or bring it to an untimely close.

2d. *As to Place.*—Were there were no restriction with regard to the *place* to which either house might adjourn without the consent of the other, mischief equally disastrous and embarrassing might be perpetrated. One house might compel the other to follow it from place to place for the very purpose of preventing legislation. This might be done by a minority taking advantage of the absence of a majority, as a minority has power to adjourn.

The duration of the sessions of Congress depends,

1st. On the Constitutional limitation, which can not extend beyond the period of two years.

2d. On the pleasure of the two houses, subject to the foregoing restriction.

3d. On the pleasure of the President of the United States, when the two houses can not agree on the time of adjournment.

## § 2.—ON MEMBERS.

1st. If a member of Congress were permitted to assist in creating an office, and then to resign his seat for the purpose of obtaining that office on being nominated to it by the President, it would throw wide

open the doors to executive corruption. Numerous lucrative offices might thus be created by legislation, with the understanding, express or implied, between the legislators and the Executive, that the offices so created should be distributed among those who were instrumental in creating them. The chairman of the Judiciary Committee might propose to the house of which he was a member the creation of a United-States judgeship in California, with a salary of ten thousand dollars a year; and, through his official influence, the bill might pass both houses of Congress. By pre-arrangement with the Executive, that office might be secured to the very man who had been the chief means of creating it, were he at liberty to resign his seat and take it.

2d. Also, by a system of "bargaining and selling," the salaries of certain offices might be greatly increased by mercenary legislation; and then those salaries might be bestowed on the very men who had been active in augmenting them, but for the restriction under consideration. We can not too much admire the wisdom, purity, and sagacity of the great and good men who formed the Constitution, in their efforts to withdraw as far as possible from the framework of our government all motives to selfish and dishonest legislation.

#### ART. VIII.—OFFICIAL OATH.

*Senators and representatives shall be bound by oath or affirmation to support the Constitution of the United States.* **81.**

§ 1. This oath is administered to the members, before taking their seats, by the Secretary of the Senate, or Clerk of the House of Representatives. He who takes it appeals to the Supreme Being for the rectitude of his intentions. Such an oath is calculated to make a solemn impression on the mind of any candid and conscientious man.

§ 2. It seems fit and proper, therefore, that all who assume the important trust of legislation for their country should take upon themselves this solemn obligation. They assume grave responsibilities, the faithful discharge of which concerns the welfare of the whole people.

§ 3. If it is necessary to administer a solemn oath to a justice of the peace, a witness, a juror, or constable, to insure the faithful performance of his duties, it is far more befitting in cases of the most sacred public trust.

§ 4. Some persons are conscientiously opposed to taking an *oath* on any occasion whatever. Out of respect to the scruples of such persons, a solemn affirmation is administered instead of an oath.

## ART. IX.—SALARIES.

1. *The members shall receive a compensation for their services, to be ascertained by law; and,*
2. *The same shall be paid out of the treasury of the United States.* **21.**

§ 1. In the Constitutional Convention, there were quite a number of members opposed to allowing salaries to representatives and senators, but more especially senators. It was proposed to consider the *honor* of the position a sufficient reward; believing that this would secure the services of men of higher character and more distinguished ability. On the contrary, it was urged that this would savor too much of aristocracy, and prevent men of limited means, however worthy, from accepting seats in the national councils, and thus deprive the country of the benefits, in many instances, of able minds, for want of wealth.

§ 2. In England, the members of Parliament are not paid for their services. If a poor man is elected to the House of Commons, he is compelled to depend on the liberality of wealthy friends. The House of Lords is composed of the aristocracy of the realm, who, of course, stand in no need of salaries.

§ 3. But the majority of the Convention were in favor of salaries; and this view prevailed. It was thought best that the salaries of members should be paid from the United-States treasury, as that would be more likely to secure promptness of payment, and, consequently, promptness of attendance. Under the Confederation, the members were paid by their respective States. The pay was often slow, and the attendance tardy and reluctant.

§ 4. The salaries of members is to be ascertained (that is, fixed) by law. But who makes the law? The members themselves. The salaries have been advanced several times since 1789, at the opening of the first Congress under the present Constitution.

1st. From March 4, 1789, to March 4, 1795, inclusive, six dollars a day. For the same time, six dollars for every twenty miles' necessary travel in going and returning.

2d. From March 4, 1795, to March 4, 1796, inclusive, senators received seven dollars, and representatives six dollars a day, and travel-fees as before.

3d. From March 4, 1796, to Dec. 5, 1815, the pay of

members of either house was six dollars a day, and travel-allowance six dollars for every twenty miles.

4th. From Dec. 5, 1815, to March 4, 1817, the pay was fifteen hundred dollars a year, travel-fees as before, and proportional deduction of salary for absence for any cause but sickness. The President of the Senate and the Speaker of the House received double the pay of other members.

5th. From March 4, 1817, to the first Monday of December, 1856, the pay was eight dollars a day, and eight dollars for every twenty miles' travel. The President *pro tempore* of the Senate and the Speaker of the House each received double the pay of other members.

6th. From the first Monday of December, 1856, to 1866, the pay of members was three thousand dollars a year; the Speaker of the House to receive double pay, and the President *pro tempore* of the Senate the same as the Vice-President would have been entitled to,—six thousand dollars; the Vice-President, William R. King of Alabama, having died soon after his election. Mileage, or traveling-expenses, same as before.

7th. An act was passed July 28, 1866, raising the pay of members of Congress to five thousand dollars a year, and mileage as heretofore; the Speaker of the House, eight thousand dollars.



## CHAPTER IV. POWERS OF CONGRESS.

NOTE.—1. While it is intended to treat the departments of government by topics, it will be necessary to frequently refer to other subjects than the one under more immediate consideration. The powers conferred by the Constitution are intimately related to and dependent on each other. The legislative functions are so related to the executive and judicial, the judicial to the executive and legislative, and the executive to each of the others, that, in treating of either, reference must be had more or less to the others.

2. It is desirable, however (and that is the aim of this work), to group powers of kindred character, as far as possible, under the same general or specific titles. The arrangement of the powers specified in the Constitution is palpably defective, as has been noticed by our best writers on the subject. In discussing it, therefore, by topics, it is impossible to pay much attention to the order of that arrangement.

3. This want of order in the instrument is more particularly apparent, perhaps, in the powers of Congress, than in either of the other departments of the government. Single sentences and clauses are scattered here and there, detached from their proper connections, without any regard to their harmonious and necessary relationship. It is the purpose of the Analysis, as far as possible, to bring these fragmentary clauses and sentences into position with others to which they are related.

### ART. I.—FINANCES.

#### 1. RESOURCES.

1st. *To lay and collect taxes, uniform duties, imposts, and excises.* **26.** *But all direct taxes must be apportioned among the several States according to their respective numbers.* **5, 47.**

2d. *To borrow money on the credit of the United States.* **27.**

3d. *To dispose of the territory belonging to the United States.*

4th. *To dispose of other property of United States.* **76.**

2. DISBURSEMENTS.
  - 1st. *To pay the debts of the United States.*
  - 2d. *To provide for the common defense.*
  - 3d. *To provide for the general welfare.* **26.**

### 1.—RESOURCES.

§ 1. A tax is a sum of money levied on the property or inhabitants of a country for the support of the government. When levied on individuals, without any reference to the amount of property owned by them, it is called a capitation or poll tax. When levied on the property, it is to be done in proportion to its value, as ascertained by local officers called assessors.

§ 2. The power to lay and collect taxes belongs to every human government, without which the expenses thereof could not be defrayed. This is one of the means which it has of enabling it to perform its obligations to the country. No government could sustain itself without regular and reliable resources.

§ 3. The word “taxes” here, doubtless, means *direct* taxes, which are mentioned in two other places in the Constitution, and which are to be imposed on States according to their respective numbers, as ascertained by the census, or enumeration. They are to be apportioned among the several States in the same manner as representatives.

§ 4. Taxes are of two kinds,—direct and indirect. Direct taxes are such as may be levied on land and other real estate, and capitation-taxes, or taxes on individuals. Indirect taxes are such as are levied on articles of consumption, of which no person pays, except in proportion to the quantity or number of such articles which he may consume.

§ 5. Duties, imposts, and excises are also of the nature of indirect taxes. These must be uniform throughout the United States. This is to prevent giving any preference to the pursuits or interests of one State over those of another.

§ 6. The word “duties” refers to a kind of taxes levied on goods and merchandise imported or exported. In *our* country, an *export* duty is not permitted to be levied. The Constitution forbids it. The word “imposts,” under our government, is equivalent to “customs,” referring strictly to the duties on imports from foreign countries. It would also cover duties on *exports*, were such duties allowable.

§ 7. The word “excises” is applied more particularly to internal taxation; being levied on articles manufactured and consumed in the country, and also on various kinds of business. The money paid for licenses to sell liquors, or to deal in any other commodities, is called excises, or excise taxes.

§ 8. Duties on imports are of two kinds,—specific and *ad valorem*. A specific duty is a certain sum of money charged by law at the custom-house where goods are landed, according to quantity or weight, without any reference to the *value* of the articles weighed or measure; as a dollar on a yard of silk, a gallon of brandy, a bushel of wheat, or a pound of opium.

§ 9. “Ad valorem” is a word or phrase that signifies *according to the value of*. *Ad valorem* duties are levied on articles according to their value. An *ad valorem* duty of twenty per cent on a watch or diamond worth a hundred dollars would require the payment of twenty dollars.

§ 10. Duties are collected at the custom-house where the dutiable goods are landed. It is not easy to avoid the payment of specific duties, except by a process called *smuggling*; that is, by the owner’s concealing the articles, or landing them clandestinely, in order to avoid payment. In such case, however, he runs the risk of detection, and forfeiture of the goods to the government, and of subjecting himself to other penalties more or less severe.

§ 11. In the payment of *ad valorem* duties, there is considerable chance for the perpetration of fraud. The owner of the goods is required to swear to the accuracy and truthfulness of this invoices; that is, the bills of goods. The goods are estimated at their value where they are *purchased*, not where delivered.

A dishonest merchant might produce a false invoice, rating the goods below their cost value, so as to bring the duties to a lower standard. For instance, if he imported a thousand reams of paper costing him four dollars a ream, he might produce to the custom-house officer a false invoice or bill, rating the paper at two dollars a ream. If the *ad valorem* duty were twenty per cent, and the importer should succeed in his fraud, he would clear four hundred dollars.

§ 12. But the custom-house officer is not bound by the invoice, nor by the oath of the owner. If he believes there is a mistake, he has the goods appraised, and exacts duties according to their ascertained value. If *fraud* is proved, the goods are forfeited to the use of the United States; and the perpetrator of the fraud may be punished for it as well as for the perjury.

§ 13. The power to borrow money on the credit of the United States is classed among the government resources. It has often been found to be of great importance in sustaining the financial interests of the country. No country can sustain itself through a long and expensive war, simply on its ordinary income. All the great powers of the world have

found it necessary, at one time or another, to borrow money.

§ 14. In our wars with Great Britain and with Mexico, we found it necessary to borrow in large sums; but, in our more recent domestic war, we were compelled to run up our national debt to nearly three thousand millions. In time of war, it is sometimes necessary, in a few years, to anticipate the government income for a quarter or half a century.

§ 15. The cost of the civil war in this country on the part of the United States proper, saying nothing of the cost to the insurgent States, was for the

Years	1861-2	\$ 583,885,247.06
"	1862-3	788,558,777.62
"	1863-4	1,025,413,183.56
"	1864-5	<u>1,151,815,089.86</u>
		\$ 3,549,672,298.10

§ 16. We were compelled to borrow from year to year as follows:—

From	1861-2	\$ 529,692,460.50
"	1862-3	608,063,432.02
"	1863-4	622,388,183.56
"	1864-5	<u>544,978,548.93</u>
	Total	\$2,305,122,625.01

The debt was considerably increased beyond the above figures from 1865 to 1866.

§ 17. The right of ownership always implies the right of alienation. The right to dispose of the territory of the United States is to be understood here in a restricted sense. Congress has not the power to dispose of a State, for instance, by alienation.

The United States does not own a State in fee-simple, or in any sense implying an interest in its soil. Congress has the power to dispose of,

1st, Unorganized and unoccupied tracts or territories.

2d, Public lands in parcels to settlers, or to individuals desiring to purchase.

3d, To dispose of them in any other way for the promotion of the general welfare.

4th, To cede to States unoccupied lands lying within their boundaries, for literary or school purposes.

5th, To re-cede to States, for instance, from which they have been obtained, any lands, when the purposes for which they were obtained no longer exist.



§ 21. In most of the Western States, one section in each township has been granted to the State for common-school purposes. In Michigan, and perhaps in the other States, section sixteen is the one selected, locating the school-lands very near the centre of the township.

§ 22. For many years, the lands, after being surveyed, were subject to sale by auction, after which any that remained unsold were subject to purchase at private sale; the price in either case, a dollar and a quarter an acre. But in 1854 there was a change in the terms: any that were unsold after being in market ten years or upwards were held for actual settlers at a dollar an acre. Unsold lands, after being in market fifteen years or upwards, to actual settlers, seventy-five cents per acre; twenty years or upwards, fifty cents per acre; thirty years or upwards, twelve and one-half cents per acre. Under this act, however, no settler was allowed to purchase more than three hundred and twenty acres, or half a section.

§ 23. May 20, 1862, Congress passed an act, which was amended March 21, 1864, and further amended June 21, 1866, known as the Homestead Law. This law allows actual settlers, under certain restrictions, to obtain one hundred and sixty acres of land,—enough for a home,—for the trifling sum of five dollars. The chief restrictions are,—

1st. The applicant shall make affidavit that he or she is the head of a family; or,

2d. That he or she is twenty-one years of age or more; or,

3d. That he has performed service in the army or navy of the United States

4th. That the application is made for his or her exclusive benefit.

5th. That said application is made for the purpose of actual settlement and cultivation; and,

6th. That it is neither directly nor indirectly for the use or benefit of any person or persons whomsoever.

7th. Before obtaining a title, there must be five years of actual occupancy.

§ 24. The foregoing synopsis will give a fair idea of the object and intention of the law. The whole drift and scope of the act are, to encourage actual settlers to enter and cultivate the Western country. The theory of the advocates of this law is, that it is far better for the country, and more profitable to the government as a source of *revenue*, that these lands should be *given* away to millions of actual settlers and cultivators of the soil, than that they should be sold to speculators at what-

ever price, to remain untouched by the hand of industry, and unproductive for an indefinite future. Actual settlement will add immensely to the taxable property of the country.

§ 25. During the fiscal year ending June 30, 1866, public lands were disposed of as follows:—

Acres sold for cash	388,294.15
“ entered under the homestead acts	1,892,516.86
“ located with military warrants	403,180.00
“ approved to States as swamp-land	1,199,658.27
“ approved to States for railroads	94,596.99
“ located with agricultural college scrip	<u>651,066.60</u>
	4,629,312.87

During the same period 6,423,984.18 acres were offered for sale. The cash receipts from sales and other sources were \$824,645.08. The number of homestead entries exceeded that of the preceding year by more than sixty per cent.

The entire amount of the public domain at that time was one thousand four hundred sixty-five millions, four hundred sixty-eight thousand, eight hundred acres (1,465,468,800). Of this vast domain, four hundred seventy-four millions, one hundred sixty thousand, five hundred fifty-one acres had been surveyed (474,160,551).

§ 26. Congress is invested with power to dispose of other property of the United States. This, doubtless, includes every species of personal property. In time of war, especially, a vast amount of personal property accumulates in the hands of government, such as ships, horses, wagons, guns, clothing for soldiers, &c., which become useless in time of peace, and may be disposed of to the advantage of the public treasury.

## 2.—Disbursements.

### 1.—To pay the Debts.

§ 27. In the opinion of the most distinguished jurist who has written on the Constitution, Judge Story, the only purposes for which the burden of taxes, duties, imposts, and excises can be imposed, are to pay the debts and provide for the common defense and general welfare of the United States. The power of raising money through these means is for these definite and stipulated purposes.

§ 28. Another eminent writer on the subject holds that the power over these governmental resources is unlimited and absolute, without

any reference to the objects for which they are to be disbursed. By this reasoning, he would be obliged to vary the punctuation of these clauses so as to wholly disconnect that of obtaining money from that of paying it out. To justify this interpretation, it should read thus:—

1st. Congress shall have power to lay and collect taxes, duties, imposts, and excises,

2d. They shall have the power to pay the debts, and provide for the common defense and general welfare of the United States.

By reference to the original manuscript copy now preserved in the archives of the government at Washington, a true copy of which is found in this work, it will be seen that the punctuation of these clauses will not bear any such construction. The true construction seems to be, that Congress has these revenue powers *in order* to pay the debts and provide for the common defense and general welfare of the United States; that is, they are given for these express purposes, and no other.

§ 29. Every thing necessary for the welfare of the country is included in these powers of collecting money and disbursing it. We have seen that it may be necessary to borrow money; thus creating a public debt for the payment of which the public faith must be pledged. But public credit would be worthless, were there no authority to pay the debts thus contracted. This, it will be remembered, was a serious defect under the Confederation. The government was utterly powerless to maintain its credit at home or abroad.

§ 30. The Great Rebellion of 1861-65 would have been successful but for the public credit which enabled our government to anticipate its revenue for one or two generations. We have seen that its expenditures were more than two millions a day for four consecutive years. Nothing but the strong powers of the government over its finances enabled it to march triumphantly through that terrible trial.

§ 31. The national debts before the Rebellion sometimes looked formidable; but, from our present standpoint, they appear insignificant. In 1791, just after emerging from the Revolutionary War, it was less than eighty millions. In 1805, it was less than ninety millions. With all the expenses of the war of 1812 with Great Britain, it amounted, in 1816, to less than a hundred and thirty millions.

## 2.—*The Common Defense.*

§ 32. To provide for the common defense is one of the objects for which the various kinds of taxes may be imposed. Herein, as we have



already seen, the Confederation was sadly deficient. It could apportion to the several States their respective shares of men and money to be raised, but could not enforce the enlistment or drafting of a single soldier, or the raising of a dollar in money.

§ 33. A nation without the ability to protect itself from foreign invasion or domestic insurrection is destitute of one of the attributes of sovereignty essential to its independence. The army and navy are the organizations through which a nation demonstrates its strength in time of war. These will be considered when we come to examine the war-power of Congress.

### 3.—*General Welfare.*

§ 34. To provide for the welfare of its citizens is the first duty of every government. Unable to do this, it will soon fail to command the respect, homage, and loyalty of its subjects; and no government, especially republican in form, can long exist without the regard and affection of the people. It must live, if it live at all, in the hearts and affections of its citizens, not “pinned together with bayonets.” If there is a single sentence or clause in the Constitution more comprehensive of its purposes than any other, it is this one requiring Congress to make provision for the general welfare. Indeed, this is the one great object of its origin.

§ 35. There has been much discussion on the latitude of meaning of these two words, “general welfare.” The two great political parties of the country have long been divided on the subject. One party has insisted that the authority to provide for the general welfare gives power to establish a protective tariff, to expend the public money for internal improvements, to facilitate inter-State commerce in improving lake and river harbors, aiding in building railroads of especial public interest, giving away the public domain to actual settlers, and in promoting other enterprises having for their object the welfare of the nation at large. The other party has resisted this broad construction, insisting that the meaning of the words should be confined within more restricted limits.

## ART. II.—COMMERCE

TO REGULATE COMMERCE,—

1. *With foreign nations.*
2. *Among the several States.*
3. *With the Indian tribes.* **28.**

### 1.—WITH FOREIGN NATIONS.

§ 1. Congress did not possess the power to regulate commerce under the Confederation. The want of it involved the country in the most serious embarrassments. Foreign countries, and particularly Great Britain, cultivated a monopolizing policy injurious to this country, and destructive to its navigation. The General Government possessing no authority of this kind, the States attempted its exercise separately, each for themselves; which not only proved abortive, but engendered rival, conflicting, and angry disputes and regulations.

§ 2. There was no want of harmony in the Constitutional Convention on the proposition that Congress should have power to regulate commerce with foreign nations; but many members were in favor of requiring that no bill regulating or relating to commerce should be passed unless two-thirds of both houses voted in its favor. All were familiar with the defects of the former policy, and were in favor of vesting the power in Congress. If this were done, of course the States must surrender all claim to the right which they had so disastrously exercised.

§ 3. Judge Story says, that, in different States, “the most apposite and conflicting regulations existed.

“Each pursued its own real or supposed interests.

“Each was jealous of the rivalry of its neighbors.

“Each was successively driven to retaliatory measures. In the end, however, all their measures became utterly nugatory, engendering mutual hostilities, and prostrating all their commerce at the feet of foreign nations.”

### 2.—AMONG THE STATES.

§ 4. The disastrous experiences of the past had rendered it evident that the power to regulate foreign commerce and inter-State commerce ought to be in the same hands. Indeed, they could not safely be separated. The power to regulate foreign commerce, if vested in Congress, it was believed, might be so exercised as to compel foreign nations to abandon their selfish policy towards us, and oblige them to meet us on terms of reciprocity.

§ 5. But if the States were to be allowed to restrict each other, to cultivate rivalry of interests, and to foster the jealousies of the past, commerce must languish, and the whole country must suffer. If goods landed or manufactured in New York or Massachusetts could not be sold and conveyed into Pennsylvania or Connecticut without being burdened with State restrictions, not only would feuds be cultivated among the States, but foreign commerce would be seriously embarrassed, if not wholly destroyed. If a cargo of tea, having paid duties in New York, could not be sold into New Jersey without being subjected to State duties in the latter State, it would discourage importations, and strike a fatal blow at the national revenue.

§ 6. The power to regulate commerce among the States, as well as with foreign nations, was, therefore, wisely placed in the hands of Congress. It has established our prosperity on a solid and enduring basis, and raised our country from embarrassment and poverty to independence and wealth.

### 3. WITH THE INDIAN TRIBES.

§ 7. Under the Confederation, Congress had the power of “regulating the trade and managing all affairs with the Indians not members of any of the States, provided that the legislative right of any State within its own limits be not infringed or violated.” This did not give any rights to Congress over the matter, except outside the limits of States. Consequently, there was no uniformity of traffic with the Indians; and, this creating dissatisfaction among the tribes, frequent aggressions and depredations were the result.

§ 8. In the first draught of the Constitution by the Convention, there was no clause vesting this power in Congress; but, the draught being referred to the Committee on the Constitution, this clause was afterwards inserted and adopted. It was indispensable for three reasons:—

1st. Experience had proved that it was extremely hazardous to leave it with the States.

2d. Congress could much more easily command the confidence of the tribes than any State legislatures.

3d. It was necessary for the preservation of the rights, and for the defense of the territory, of the Indians themselves.

§ 9. This power of Congress extends to tribes living within or without the territorial boundaries of the States, and within or without the limits of the United States. Whether the tribes remain on their original

grounds within the States, inhabit unorganized territory, or roam at large over lands to which the United States have no claim, the trade and commerce with them are subject to the exclusive regulation of Congress.

### ART. III.—COMMERCIAL.

1. *To coin money.*
2. *To regulate the value thereof.*
3. *To regulate the value of foreign coin.*
4. *To fix the standard of weights and measures.* 30.
5. *To establish uniform laws on the subject of bankruptcies throughout the United States.* 29.

NOTE.—These provisions of the Constitution give powers to Congress over matters auxiliary to commerce, and which facilitate and promote its interests. *Commerce*, properly speaking, is the buying and selling or exchanging of commodities between individuals or communities. *Commercial* is an adjective which signifies pertaining to, or relating to, commerce. Perhaps it might not have been altogether improper had the powers under this title been grouped under this title *Commerce*. But there is a distinction between commercial *facilities* and commerce itself. The coining of money affords commercial *facilities*, though money is not an article of *commerce*.

#### 1.—TO COIN MONEY.

§ 1. This power is one of the ordinary prerogatives of sovereignty. It is exercised for the purpose of securing a proper circulation of genuine instead of base coin in commercial transactions. In order to insure its purity and uniformity of value, the coining of money is placed exclusively under the supervision of the Federal Government. Money is the common standard by which the value of all articles of merchandise and real estate is measured or determined. Were it left to the States to coin money, there would be no uniformity in the standard of value; depending, as it would, on State lines and boundaries.

§ 2. There are several advantages arising from uniformity in value of the money of the country; and these could not be secured were the power to coin it distributed among an indefinite number of States. The Continental Congress was empowered by the Articles of Confederation to exercise “the sole and exclusive right and power of regulating the alloy and value of coin struck by their own authority or by that of the States.”

But the country suffered great inconvenience for want of uniformity of coinage among the States. The advantages arising from placing this power exclusively in the hands of Congress are,—

1st. The facilitation of exchanges at home and abroad.

2d. The encouragement and stimulus which it imparts to commerce.

3d. The barrier which it erects against embarrassments arising from undue and forced scarcity.

4th. It insures uniformity of value, as it insures uniformity of alloy.

§ 3. The total coinage of money in this country, from 1849 to 1867, was eight hundred and seventy-four millions of dollars. This embraces nearly the entire period since the gold-fields of California came into the possession of the United States. Coin is manufactured at a place called “the Mint.” The Mint is located in the city of Philadelphia, having branches in New York, San Francisco, and Denver.

## 2.—TO REGULATE THE VALUE OF DOMESTIC COIN.

§ 4. This is a power conferred on Congress expressly by the Constitution, although it is *implied* in the power to coin money. This is especially for the purpose of securing entire uniformity of value, in order that it may pass from hand to hand in business transactions; obviating the necessity of a test being applied to each piece of money in each commercial transaction. Every piece of money is stamped in such a manner as to indicate its precise value.

## 3.—FOREIGN COIN.

§ 5. There was no provision in the Articles of Confederation for fixing the value of foreign coin. In the Constitution, this power is given to Congress. Without the power to regulate the value of foreign coin, it would be difficult to regulate the value of domestic coin.

§ 6. Were it not for this power, different States might attach different values to the same piece of foreign coin. Massachusetts might call a piece of English money, known as a sovereign, five dollars; and New York four dollars. A citizen of Massachusetts owing a citizen of New York five thousand dollars, to be paid in Boston, could compel the latter to accept a thousand sovereigns in payment, on which the citizen of New York would lose a thousand dollars if he used the money at home.

§ 7. This would unsettle the value of our own coin as between those two States, and so in all other States where these discriminations prevailed. Five thousand dollars American gold would be worth much less in New York

than in Massachusetts. Not only so, but foreign coin would cease to possess any fixed and definite value by which to determine the value of other things, and, in unsettling their value, would unsettle itself. In short, foreign coin would become an article of commerce the same as any other commodity. It would soon be the same with American coin. We see, therefore, that the power to regulate the value of *foreign* coin properly belongs with the power to coin money, and regulate its value, in order to prevent endless confusion, as well as the most serious embarrassments to the commercial interests of the country.

#### 4.—WEIGHTS AND MEASURES.

§ 8. The power to fix the standard of weights and measures was doubtless given, says Judge Story, “from like motives of policy, for the sake of uniformity and the convenience of commerce. Hitherto, however, it has remained a dormant power, from the many difficulties attendant upon the subject, although it has been repeatedly brought to the attention of Congress in most elaborate reports.

§ 9. “Until Congress shall fix a standard, the understanding seems to be that the States possess the power to fix their own weights and measures; or, at least, the existing standards at the adoption of the Constitution remain in full force. Under the Confederation, Congress possessed the like exclusive power.” But the exercise of the power was neglected.

#### 5.—BANKRUPT LAWS.

§ 10. The power to pass and establish uniform laws on the subject of bankruptcies is classed here as among the commercial interests of government. The author had some doubt, at first, about the propriety of placing it here; but on looking closely at the objects of this power, the origin and history of bankrupt laws in other countries, the views entertained by the fathers of the Constitution, a single paragraph in “The Federalist,” and the commentaries of that profound jurist, Judge Story, all doubts that it is commercial vanish.

§ 11. The power to pass laws on the subject of bankruptcies originally belonged to the States, as one of their prerogatives of sovereignty. Of course, laws passed on this subject by the States would lack uniformity, and consequently, in many instances, would work great injustice. A law of this character is regarded as indispensable to the commercial interests of the country.

§ 12. A bankrupt is one who owes more than he can pay. The objects of the law are twofold:—

First, to enable creditors to secure an appropriation of all the property of a debtor who fails to pay his debts; allowing the courts, in such cases, to give the debtor a complete discharge from all indebtedness.

Second, to relieve unfortunate debtors from their debts, and from liability to imprisonment, on their own application and surrender of all their property.

§ 13. An insolvent law must not be confounded with a bankrupt law. An insolvent law simply relieves from a liability to *imprisonment* for debt, on the surrender of the debtor's property to the creditors: it does not discharge the indebtedness itself. In such cases, the future property of the debtor may be seized for his debts, and appropriated to their payment. On the contrary, a discharge under a bankrupt law annihilates the debts themselves, and the creditors have no further claims.

§ 14. Insolvent laws were in existence forty or fifty years ago in many of the States, when imprisonment for debt was almost or quit universal throughout the country; but they were *State* laws. In several of the States, they are still in operation. Under the power to pass uniform laws on the subject of bankruptcies, a bankrupt law was passed in 1800, but repealed in 1803; another was passed in 1841, but repealed a year or two afterwards. A law of this kind is now in existence, passed March 2, 1867.

§ 15. The Supreme Court of the United States has decided that *insolvent* laws passed by the States are constitutional, but that *bankrupt* laws passed by the States are *not* constitutional; because such laws impair the obligation of contracts. Congress alone has this power.

#### ART. IV.—PENALTIES.

1. *To provide for the punishment of counterfeiting,*
  - 1st. *The securities of the United States.*
  - 2d. *The current coin of the United States. 31.*
2. *To define piracies and felonies committed on the high seas, and offenses against the law of nations.*
3. *Also to provide for punishing these crimes. 35.*
4. *To declare the punishment of treason. 70.*

#### 1.—COUNTERFEITING.

§ 1. The power to punish, or to *prescribe* the punishment as it is here to be understood, for counterfeiting the securities and current coin

of the United States, is a necessity growing out of the power of Congress to coin money and to regulate its value. The temptation to counterfeiting is very great; holding out the hope, as it does, of great rewards for comparatively little labor.

§ 2. Men of mechanical genius and skill, but wanting integrity, are to be found in every community, who are willing to take the risks of detection and punishment; hoping, however, to escape both. The finest artistic ingenuity is often prostituted to this purpose, and too often with success. Counterfeiting consists in making imitations of coin, bank-bills, or other securities, approaching so near to a likeness of the originals as to deceive a person of but ordinary experience.

§ 3. Without the power to attach severe penalties to crimes of this class, the securities and coin of the United States would soon become comparatively worthless; the country would be filled with spurious bills, bonds, and coin; and it would not be long before money would cease to be a medium of exchange among the masses, who are unskilled in detecting the base from the genuine.

## 2.—PIRACIES AND FELONIES ON THE HIGH SEAS.

§ 4. Congress is vested with power to define and punish piracies and felonies when committed on the high seas. A felony committed on the high seas is not necessarily an act of piracy. By common law, piracy can not be committed on land, unless it be on an island of the sea. Sir William Blackstone defines piracy at common law to consist in committing those acts of *robbery* and *depredation* on the high seas, which, if committed on land, would amount to felony.

§ 5. The same author says that piracy is an offense against the universal law of society. A pirate renounces all the benefits of society and government, and reduces himself afresh to the savage state of nature, and declares war against all mankind. By the statutes of England, however, various modified definitions have been given to this crime, essentially changing its common-law import. Statutes are often passed changing the common-law definitions of crimes.

§ 6. In pursuance of this power to define piracy, Congress has passed several acts on the subject. For instance, in 1820, the foreign slave-trade was made piracy, punishable by death. From the foundation of our government until 1808, the foreign slave-trade was lawful commerce. Congress has the power to enlarge or contract the definition of piracy from its common-law meaning.



§ 7. Felony is another word of common-law definition. The author last quoted defines it to be every species crime which at common law occasioned the forfeiture of the lands and goods of the criminal; and this happens most frequently in those crimes for which a capital punishment is or was inflicted.

§ 8. By the clause in the Constitution under consideration, Congress is at liberty to depart from the common-law meaning of the word "felony." Felony can hardly be said to be a crime; for it is a word of generic import, including a large number of crimes, such as murder, larceny, arson, burglary, &c. When committed on the high seas, it could not properly be left with the States to define it, as the jurisdiction of offenses not committed within State limits must necessarily be restricted to the Federal courts.

§ 9. The high seas are defined by Judge Story to "embrace not only the waters of the ocean which are out of sight of land, but the waters on the sea-coast below low-water mark, whether within the territorial boundaries of a nation or of a domestic State."

§ 10. The power to define offenses against the law of nations must be considered here as restricted to American citizens. There is a responsibility resting on every government, which it cannot ignore, with regard to the conduct of its own citizens. Governments are responsible in some sense to neighboring nations for all violations of the laws of nations by their citizens. Out of this responsibility may grow the issues of war.

### 3.—PUNISHING THESE CRIMES.

§ 11. The same considerations that render it proper for Congress to have the power of defining these crimes, also render it proper that they should have the power of annexing to them suitable penalties. Criminal law would be nugatory without penalties. On account of our relations to foreign neighboring nations, it seems in the highest degree proper that this power of defining and punishing offenses of the class herein specified should belong exclusively to the National Legislature.

### 4.—PUNISHMENT FOR TREASON.

§ 12. The Constitution defines the crime of treason, but leaves it with Congress to prescribe its punishment. In 1790, Congress affixed to this crime the penalty of death. In 1862, Congress passed another act, punishing treason with death, or imprisonment for not less than five years, and a fine of ten thousand dollars, and the slaves of the party convicted to be free. This act was passed before the abolition of slavery in the United States.

## ART. V.—POSTAL.

1. *To establish post-offices.*
2. *To establish post-roads.*

### 1.—POST-OFFICES.

§ 1. The power vested in Congress by the Constitution to establish post-offices and post-roads is presumed to include all other powers necessary to render them effective. Any plan that should leave the supervision of the post-office department in the hands of the several States would necessarily be inefficient.

§ 2. The several States, and the citizens thereof, are bound together by ties of interest, commerce, and affection, rendering it indispensable that they should have some reliable and uniform means of communication with each other. These benefits could not be derived from the adoption of as many different postal systems as there are States in the Union.

§ 3. Besides, the burdens would be unequal. It is far more expensive to transport the mails through the sparsely-populated regions of the West, South, and South-west, in proportion to the amount of matter conveyed and distance traveled, than it is through the more densely inhabited regions of the East and North. Yet it is in a high degree important to the whole country that the forest and the prairie be subjected to the hand of cultivation.

§ 4. And who will become pioneer, if he must be shut out from all communication with that world which he has left behind? Hardly one in a thousand of the hardy, industrious settlers who have peopled the Western and South-western States would have left their homes in the East to undergo the privations of new country, were there no facilities for the transmission of intelligence to and from the friends of other days.

§ 5. The general superintendence and direction of the post-office department is under the care of the Postmaster-General. He has the establishing of post-offices, appoints most of the postmasters, and has the letting of the contracts for carrying the mails. For some of the larger offices, to the number of nearly a thousand, the appointments of postmasters is made on nomination of the President, by and with the advice and consent of the Senate.

§ 6. Few of the pupils, or even of the teachers, of the common schools of the present day, remember the days of dear postage. Until

1845, postage was much higher than at present. Letter postage was as follows:—

Each letter conveyed less than 30 miles	6 cts.
“ “ “ over 30 and less than 80 miles	10 cts.
“ “ “ “ 80 and less than 150 miles	12-1/2 cts.
“ “ “ “ 150 and less than 400 miles	18-3/4 cts.
“ “ “ “ 400 miles	25 cts.

§ 7. March 3, 1845, Congress passed an act reducing the rates of letter postage thus:—

Each letter or package weighing less than half an ounce, if carried less than 300 miles	5 cts.
Over 300 miles	10 cts.

§ 8. At the second session of the Thirty-first Congress, which convened Dec. 2, 1850, another act was passed, reducing still lower the price of letter postage, to take effect July 1, 1851. Under this act,—

Each letter prepaid, weighing not over half an ounce, and conveyed not over 3,000 miles, wholly within the United States 3 cts. When the same shall not be prepaid 5 cts.

For any distance exceeding 3,000 miles, double these rates.

Double weight (that is, one ounce), double charges; triple weight, triple charges; and so on; every additional weight of half an ounce or less to be charged with an additional single postage.

For letters sent to foreign countries, various rates were established (higher than these), the rates depending on the countries to which the letters are sent.

§ 9. When at first cheap postage was established, there was a great deficiency in the finances of the post-office department for several years. The income did not equal the expenses until 1861, when the mails were withdrawn from the insurgent States of the South. On account of the less expense of transporting the mails at the North in proportion to receipts, the post-office department exhibited a better financial condition after the mails were withdrawn from the Southern States.

§ 10. The report of the Postmaster-General, dated Nov. 26, 1867, shows that there were in operation in the United States, June 30, 1867, post-offices to the number of 25,162; and that the

Receipts from all sources during the year were	\$ 19,978,693.54
Expenditures for the same time	<u>19,235,483.46</u>
Receipts over expenditures	\$ 743,210.08

§ 11. It is encouraging to know, that, under the cheap-postage plan with which the American people are now favored, the post-office department is self-sustaining. The introduction of cheap postage encouraged and stimulated correspondence of all kinds to such extent as to produce this result. Some idea may be formed of the progress of the postal system in this country, when it is known, that, at the adoption of our Constitution in 1789, there were but seventy-five post-offices in the United States. Now, including offices soon to be opened at the South, which were closed during the Rebellion, there are not far from thirty thousand. In 1790, the receipts of the department were \$37,935; in 1867, almost twenty millions. The aggregate number of miles traveled in carrying the mail, in 1790, was 7,365; in 1867, almost seventy-two millions.

## 2.—POST ROADS.

§ 12. It has not been necessary, except in a few instances, that Congress should exercise their power to establish post-roads. In some cases, however, this power has been found necessary, and Congress has used it. But generally the roads already opened by the inhabitants of the country through which the mails are conveyed have been found sufficient. They are regularly selected, and declared, however, to be post-roads, before being used as such. The waters on our rivers and lakes, over which travel is public and regular, are, in many instances, established as post-roads in this way.

§ 13. June 30, 1867, there were 6,930 mail-routes in operation within the limits of the United States. The aggregate length of these mail-routes is 180,921 miles. The aggregate cost of carrying the mails over these routes for the year ending June 30, 1867, was \$8,410,184.00. The mails are carried by private individuals, or by railroad or steamboat companies, the contract being made with the Postmaster-General in behalf of the United States. He advertises for bidders, and lets the contract in each case to the lowest responsible bidder. Bonds are given by the mail-carriers to the government, with good and acceptable sureties, for the faithful execution of the contract. Those who are in immediate charge of the mails are sworn to the faithful discharge of their duties.

## ART. VI.—PATENT AND COPY RIGHTS.

*To provide for the progress of science and the useful arts by granting, for limited times,—*

*1st. To authors, the exclusive right to their respective writings.*

*2d. To inventors, the exclusive right to their respect discoveries.* **33.**

### 1.—COPYRIGHT.

§ 1. The power to make provisions for patent and copy rights did not belong to Congress under the Confederation; but, in the Constitutional Convention, there was no opposition to these provisions. The necessity of some law of this kind was not only conceded by that body, but by the universal acquiescence of the country.

§ 2. Few men who are wealthy are disposed to take the field of authorship, however competent they may be. This rule, however, has its exceptions. But the poor man, it will be admitted, can not afford to devote himself to the production of valuable books, if the fruits of his industry may be appropriated by others without reward.

§ 3. The States could not afford the necessary protection to authors; for their legislation could only cover their own respect territorial boundaries. Few books would be written requiring elaborate authorship, the sale of which, in the estimation of the author, was destined to be confined to the limits of a single State. That a man has the same right to the products of his brains that he has to the products of his hands will hardly be questioned.

§ 4. Judge Story says, “No class of men are more meritorious, or are better entitled to public patronage, than authors and inventors. They have rarely obtained, as the histories of their lives sufficiently establish, any due encouragement and reward for their ingenuity and public spirit. They have often languished in poverty, and died in neglect; while the world has derived immense wealth from their labors, and science and the arts have reaped unbounded advantage from their discoveries.”

§ 5. Under the laws of Congress, the steps are very simple to secure a copyright. A copyright may be secured to authors for books, maps, charts, musical compositions, cuts, and engravings, or for any other literary and scientific productions. The copyright extends for twenty-eight years: and if, at the end of that time, the author is still living, he may

obtain its extension for fourteen years longer; of, if dead, his living representatives may obtain its extension. The author, or he and his representatives, therefore, enjoy a monopoly of the sale of his productions for forty-two years.

§ 6. The steps to secure a copyright are these: Before publication, a printed copy of the work proposed to be published, or its titlepage, must be deposited in the office of the Clerk of the District Court of the United States in the district of the author's residence. Within three months after publishing the work, a full copy of the work must be delivered to the clerk aforesaid, which he transmits to the Secretary of State, to be kept in his office at the seat of government. Within the same period, a copy must be furnished to the Smithsonian Institute at Washington, and also one to the Congressional Library.

§ 7. The owner of the copyright must give notice to every reader of his work that he has secured the copyright according to act of Congress. This notice is printed on the titlepage, or on the page succeeding, in the following words:—

“Entered according to act of Congress, in the year \_\_\_\_, by (the author), in the Clerk's office of the District Court of the \_\_\_\_.”

These words must be published, or other words equivalent to them, in every edition of the work. The expense of securing a copyright is but trifling,—one or two dollars.

§ 8. An act of Congress passed Feb. 18, 1867, requires every proprietor of a book, pamphlet, map, chart, musical composition, print, engraving, or photograph, for which a copyright shall have been obtained, to deliver a printed copy of the same to the Congressional Library within one month after publication. Penalty for neglect, twenty-five dollars. The publication may be transmitted free of postage if the words “copyright matter” be plainly written on the outside; and postmasters shall give a receipt for the same if requested.

## 2.—PATENT-RIGHT.

§ 9. Patents are issued by the patent-office at Washington, giving the inventor of any new and useful machine, instrument, manufacture, or composition of matter, or any new and useful improvement of them, the monopoly in their manufacture and sale. This patent-right is secured to the inventor by the issue of what are called letters-patent. To obtain letters-patent the applicant must make a distinct specification, giving a full and complete description of his invention; and, in cases admitting of

drawings and models, these must be made, and all deposited with the Commissioner of Patents.

§ 10. The applicant's discovery or invention must not have been in use or on sale more than two years before making his application for letters-patent. The patent-office belongs to the Department of the Interior. The applicant must swear that he believes himself to be the original inventor of whatever he seeks to have patented.

§ 11. Examination is made at the patent-office, not only of that which is proposed to be patented, but of other models, drawings, and specifications deposited in the office, in order to ascertain whether there is any conflict of claims. If none are found, and that which is offered is regarded as patentable, letters-patent are issued under the seal of the Department, giving to the patentee, his heirs and assigns, the exclusive right to control the manufacture and sale of the patented article for fourteen years. Letters-patent cost the patentee thirty-five dollars, fifteen of which must accompany the application: twenty more must be paid on their issue.

## ART. VII.—WAR.

1. *To declare war.*
2. *To grant letters of marque and reprisal.*
3. *To make rules concerning captures on land and water.* **36.**
4. *To raise and support armies.* **37.**
5. *To provide and maintain a navy.* **38.**
6. *To make rules for the government and regulation of the land and naval forces.* **39.**
7. *To provide,*
  - 1st. *For organizing, arming, and disciplining the militia.*
  - 2d. *For governing such part of the militia as may be employed in the service of the United States.* **41.**
  - 3d. *For calling forth the militia,—*
    - First, *To execute the laws of the Union;*
    - Second, *To suppress insurrections;*
    - Third, *To repel invasions.* **40.**

### 1.—Declaration of War.

§ 1. A declaration of war is solemn, formal, and deliberate notice to all the world in general, and particularly to the citizens of both nations involved, that hostilities actually exist, or are about to commence. The nation declaring war generally recites in the declaration the wrongs and aggressions of which complaint is made; thus making a direct appeal to the great family of nations in justification of the measure. "A decent respect for the opinions of mankind," as well as for the rights of neutral nations who may have indirect interests in the conflict, could scarcely require less. A war between two powerful nations jars the commercial interests of every nation on the globe.

§ 2. The power to declare war is one of the prerogatives of the sovereign of Great Britain; and it belongs to the sovereigns of most other countries. Sir William Blackstone says that "the right of making war, which by nature subsisted in every individual, is given up by all private persons that enter into society, and is vested in the sovereign power. This right is given up, not only by individuals, but by the entire body of the people who are under the dominion of the sovereign."

§ 3. In this country, the will of the people is the sovereign; at least, this is our *theory*. Could that will be definitely ascertained *without delay*, the power to declare war should be vested in the people. But,



practically, the will of the people can be known through their representatives only, and hence the war-power is vested in Congress.

§ 4. In the Convention that formed the Constitution, there was a variety of opinion on the propriety of placing this power in the hands of Congress. One class of members was for vesting it in the Senate only; a second for vesting it in the president; a third favored the plan of conferring it on both Senate and President; a fourth was for giving it to Congress, and this proposition prevailed.

§ 5. Before a declaration of war can be made, the subject must receive the most solemn and deliberate attention of the representatives of the people in Congress assembled. A declaration of war is an exercise of the highest prerogative of national sovereignty; and its effects on other nations and individuals, as well as on the nations and individuals more immediately involved, are so direful and calamitous, that it can not be justified except as a last resort.

§ 6. When a formal and solemn declaration of war has been made by Congress, peace can be secured only through the negotiations of ambassadors or ministers representing the contending powers. After the ministerial or ambassadorial conference has agreed on the terms of peace, the power to accept or reject those terms on the part of the United States belongs to the President and Senate. As we have seen in considering the Senate-powers, it requires a majority of two-thirds of the members present to ratify any treaty, including a treaty of peace.

## 2.—Marque and Reprisal.

§ 7. The power to declare war doubtless implies the power to grant letters of marque and reprisal. Letters of this kind are sometimes issued by the government to prevent the necessity of a resort to war, though they are incident to the war-making power. They are frequently issued before a declaration of war. They are grantable by the law of nations, says Blackstone, whenever the subjects of one State are oppressed or injured by those of another, and justice is denied by that State to which the oppressor belongs.

§ 8. *Marque* signifies, as here used, a license from the government to pass beyond the limits or jurisdiction of one's own country; and *reprisal* signifies a taking in return. Letters of marque and reprisal are a commission from the government authorizing the bearer to pass beyond the boundaries of his own country for the purpose of capturing prizes of the enemy, consisting of their persons or goods. Whatever is so captured

is held under certain regulations until satisfaction shall be made to the government or individuals injured.

§ 9. This commission saves the bearer of it, and his crew, from the liability, if captured themselves, of being tried, convicted, and punished as pirates. In case it so happens in their conflicts that they are taken prisoners, they have the protection of their government that they shall be treated as prisoners of war; and, in case they should be treated otherwise, their own government would retaliate.

### **3.—Captures.**

§ 10. But it is necessary that rules should be adopted concerning captures made, whether on land or water. Congress is authorized by the Constitution to make these rules, which, when made, become laws the same as any other laws; and, for the purpose of enforcing them, courts of admiralty have been established, whose business it is to inquire into the legality of the course pursued in taking these prizes. Persons might go out in pursuit of prizes, having no authority, or, having authority, might capture from the ships of neutrals; or an illegal course might be pursued after capture, though the capture itself were legal.

§ 11. “The cognizance of all captures or prizes,” says Blackstone, “and their incidents, belong exclusively to the courts of the country to which the captors belong, and from whom they derive their authority to make their captures. The remedy for illegal acts of capture is by the institution of proper prize-proceedings in the prize-courts of the captors.”

### **4.—The Army.**

§ 12. The other war-powers vested in Congress would be utterly useless without the power to raise and support armies. Probably no power of Congress mentioned in the Constitution met with so strong opposition before the people as this one to raise and support armies. It was urged with great force and vehemence, that, being unlimited, it would be dangerous to the liberties of the people, and would finally result in the establishment of a military despotism.

§ 13. This clause refers to the regular or standing army. Congress had no such power under the Confederation. All they could do was “to agree on the number of land-forces, and to make requisition on each State for its quota, in proportion to the number of white inhabitants in such State.” True, these requisitions were to be binding on the States;

but the government must wait their convenience and disposition.

§ 14. The army is created by enlistments under the acts of Congress. The enlistment is for five years in the regular army. In November, 1866, this branch of the military service numbered a little over fifty-four thousand men.

## 5.—The Navy.

§ 15. The Articles of Confederation gave to Congress the power “to build and equip a navy.” But, in the Constitutional Convention, the words “to provide and maintain a navy” were accepted, as having greater breadth and appropriateness of meaning.

§ 16. The army consists of the entire number of ships of war belonging to a nation or people considered collectively. A navy is necessary for the protection of our fisheries, commerce, and navigation. We need it not only on the ocean, but on our lakes, and on several of our rivers, and this even in time of peace.

§ 17. But, in time of war, a navy becomes indispensable to a people whose geographical position is like ours. We have a long line of seaboard, through which we are exposed to the depredations of hostile fleets and invading armies. Located on that seaboard are some of our most important, flourishing, and populous cities. The possession of the chief commercial cities in any country by an enemy in time of war gives him a great advantage in the contest. He can exact contributions of the inhabitants for the support of his army.

§ 18. In the earlier years of our history, our navy found but little favor in the popular estimation. Judge Story says, “It was not until during the late war with Great Britain (1812), when our little navy, by a gallantry and brilliancy of achievement almost without a parallel, had literally fought itself into favor, that the nation at large began to awake from its lethargy on this subject, and to insist upon a policy which should at once make us respected and formidable abroad, and secure protection and honor at home.”

§ 19. According to the report of the Secretary of the Navy, dated Dec. 3, 1866, the total number of vessels in that department of the public service at that time was two hundred and seventy-eight. Of these, there were in commission and on active duty one hundred and fifteen vessels, carrying one thousand and twenty-nine guns.

§ 20. Nothing need be said to vindicate the policy and necessity of vesting in Congress the power to make rules for the government and regu-

lation of the land and naval forces. It naturally follows the power to raise and support armies, and to provide and maintain a navy. This clause was not in the first draught of the Constitution, as appears from the Madison Papers; but it was afterwards inserted as an amendment, without opposition.

### **7.—The Militia.**

§ 21. The next power of Congress to be considered is that of “providing for organizing, arming, and disciplining the militia.” The country could not safely rely solely on its standing army for any and every emergency that might arise. The Constitution, therefore, gives Congress jurisdiction over the militia of the several States, and this power of providing for organizing, arming, and disciplining them, as incidental to that jurisdiction. The States have the appointment of the officers over, and the training of, the militia, as we shall see when we come to treat of the rights of States; but this must be done as directed by Congress.

§ 22. Congress is authorized also to make provision for governing such part of the militia as may be employed in the service of the United States. Rigid discipline and government have always been found necessary in the army, whether constituted of regulars or militia. This government must be uniform to be salutary. To be uniform, it must emanate from a single source. It would not do, therefore, to leave the government of the militia in the employ of the nation in the hands of the several States in which they might enlist.

§ 23. There are three purposes for which Congress may provide for calling forth the militia of the several States:—

First, To execute the laws of the Union;

Second, To suppress insurrections;

Third, To repel invasions.

The organization of the militia is maintained at an expense comparatively trifling when the advantages to the country are considered. It saves the immense cost of a large standing army in time of peace. The nation must have the means at its command for carrying on a foreign war, as well as for maintaining its authority at home; and the following reasons favor the militia system:—

1st. Recent experience has demonstrated that but a few months of discipline are necessary to insure bravery, courage, and fortitude, in the field of conflict, on the part of the militia. They have crowned themselves with immortal honor, and have added unfading luster to the national reputation.

2d. An agricultural, manufacturing, and commercial community like ours will be unlikely to become involved in long and expensive wars at home or abroad. But few instances in our history have occurred when it has been necessary to call forth the militia of the several States in any considerable numbers and for any great length of time. Our history, thus far, has proved that it is more economical to keep up an extensive militia organization of the States than to keep a large standing army in the field.

3d. The President of the United States is commander-in-chief of the army and navy at all times, and of the militia of the several States when called into actual service of the government. He can not call forth the militia except under provisions made by Congress. Various acts of Congress have been passed, at different times, defining the emergencies under which the President may call forth the militia. He is to be sole judge of the necessity to call them forth. At the close of the late Rebellion, 1865, over one million of the militia were mustered out of service within a few months, and returned to the industrial pursuits of the country.

§ 24. It is believed that the standing armies of the world are now larger than they have been at any time since the great wars of the first Napoleon. The army of the United States now numbers nearly fifty-five thousand men. The annual cost of our army at present is nearly one hundred million dollars.

The army of France has been fixed at seven hundred and fifty thousand men in the "active" army, and five hundred and fifty thousand in the "passive;" the latter being called "the National Guard Mobile." Total, thirteen hundred thousand men available for war. A contingent of one hundred thousand men is annually available to recruit the army.

The British army numbers about two hundred thousand men, the larger part of which is at home; Ireland alone absorbing about twenty-five thousand troops.

The Prussian army numbers about six hundred thousand men.

The Italian army now numbers about two hundred and fifteen thousand, and is one of the finest in the world.

The Austrian army numbers about seven hundred thousand men. Its cavalry is very superior. The government raises its own horses, and thus secures the very best animals for service.

The Russian army numbers about eight hundred thousand men; and it could readily be increased, in case of war, to twelve hundred thousand. It is spread all over the empire, from the Baltic to the Caucasus.

The Spanish army is small, not exceeding eighty thousand men; but it is generally in excellent condition, and supplied with the best arms to be procured.

The number of men maintained in the standing armies of civilized nations is not less than thirty-six hundred thousand. All these vast numbers are snatched away from the pursuits of useful industry, and condemned to idleness and a vicious life; while the laboring masses are tasked for their support, and for the costly armaments they require.

#### ART. VIII.—JUDICIARY.

1. *To constitute tribunals inferior to the Supreme Court.* 34.
2. *To determine by law where the trials for crimes shall be held which are not committed within any State.* 68.
3. *May make exceptions and regulations in cases over which the Constitution gives the Supreme Court appellate jurisdiction.* 67.

§ 1. The Constitution *establishes* a Supreme Court; but it is left with Congress to organize that tribunal. The power is vested in Congress to establish tribunals inferior to the Supreme Court; and, as these tribunals constitute a part of the national judiciary, they will be considered in the chapter relating to that department of the government. This article is inserted here for the purpose merely of classifying the subject of it among the powers of Congress. These inferior tribunals consist of circuit and district courts.

§ 2. Congress has the power to determine by law where the trials of crimes shall be held which are not committed within any State. Although crimes committed within any State are to be tried in the State where they are committed, yet they may be committed on the high seas, or within the limits of unorganized Territories. This clause of the Constitution gives Congress the power to provide for such cases.

§ 3. The appellate jurisdiction of the Supreme court is subject to such exceptions and regulations as Congress shall, from time to time, establish by enactment. This power will be noticed in treating of the judiciary.

## ART. IX.—NATURALIZATION.

*To establish a uniform rule of naturalization.* 29.

§ 1. Naturalization is that legal process by which an alien or a foreigner becomes a citizen of the United States. Congress has exclusive control over this subject. Under the Confederation, this power did not belong to Congress, but to the States. In the Constitutional Convention, there was no opposition to giving it to Congress. Distributed among the several States, under the Confederation, it had been a source of great embarrassment, on account of the different conditions for naturalization required by the different States.

§ 2. An alien is one who is born in a foreign country. This definition does not apply to children born in foreign countries, whose parents are citizens of the United States, and are temporarily absent on the public business of the United States. Such children are considered as native-born.

§ 3. Under the Confederation, New York might require ten Years' residence of an alien before he could become naturalized; Pennsylvania might require six years, New Jersey three, and Connecticut one. Yet if a foreigner became naturalized in Connecticut, where but one year's residence was required, he might remove to New York in a year or two after naturalization, and claim all the privileges of citizenship in the latter State. For the free inhabitants of each State were "entitled to all the privileges and immunities of free citizens in the several States." Thus a citizen of any State was a citizen of any other State in which he might become a resident.

§ 4. Congress, having the whole control of this subject under the Constitution, passed a law in 1790 requiring two years' residence before a foreigner could become naturalized. In 1795, the act was amended, requiring five years' residence. In 1798, the period was extended to fourteen years: but it was reduced in 1802 to five years; since which there has been no alteration as to time, except with regard to soldiers. A soldier, having served one year in the U.S. army, and having obtained an honorable discharge, may become a citizen of the United States on making oath to these facts, and taking the oath of allegiance to our government.

§ 5. At any time after a foreigner has become a resident in this country, he may make his declaration of intention on oath, before a court of competent jurisdiction, to become a citizen of the United States.

The following is a declaration of intention now on file in the clerk's office for the county of Monroe, New York:—

STATE OF NEW YORK, }  
MONROE COUNTY, } SS

I, Patrick Flannigan, of the city of Rochester, Monroe County, New York, do declare, on oath, that it is my *bona-fide* intention to become a citizen of the United States, and to renounce for ever all allegiance and fidelity to every foreign prince, potentate, state, and sovereignty whatever, and particularly to the sovereign of Great Britain, of whom I am a subject.

PATRICK FLANNIGAN.

Subscribed and sworn to in open court }  
this thirtieth day of June, 1867. }  
CHARLES J. POWERS, *Clerk.*

Seal of  
the Court.

§ 6. Five years must have elapsed after a foreigner becomes a resident, and two years after declaration of intention as above, before he can become a citizen. The declaration of intention may be made any time within three years, or longer, after becoming a resident; but at least two years must intervene after declaration of intention before taking the oath of allegiance, which is the last step in order to become a citizen.

§ 7. The oath of allegiance must be preceded by the oath of other witnesses to the five years' residence and good character of the applicant. These witnesses must be citizens of the United States, and swear that they are well acquainted with the said applicant (Patrick Flannigan); that he has resided in the United States for five years last past, and for the last year in the State of New York; and that, during that time, he has behaved as a man of good moral character, attached to the principles of the Constitution of the United States.

§ 8. The oath of allegiance will then be administered to Patrick Flannigan, and will read substantially thus:—

"I, Patrick Flannigan, do solemnly swear that I will support the Constitution of the United States; and that I hereby renounce and abjure all



allegiance and fidelity to every foreign prince, potentate, state, and sovereignty whatever, and particularly to the Queen of England, of whom I am a subject. So help me, God.

“PATRICK FLANNIGAN.

“Sworn to in open court this sixth day of July, 1869, before me,

“CHARLES J. POWERS, *Clerk of Monroe County.*”

§ 9. When a foreigner becomes naturalized, his children under twenty-one years of age, if residents of the United States at the time, become citizens without further formality. If a foreigner makes his declaration of intention to become a citizen of the United States, and dies before the time to become naturalized, his wife and children may become citizens at that time on taking the necessary oath.

§ 10. By act of Congress passed in 1855, “persons heretofore born, or hereafter to be born, out of the limits and jurisdiction of the United States, whose fathers were or shall be at the time of their birth citizens of the United States, shall be deemed and considered, and are hereby declared to be, citizens of the United States; provided, however, that the rights of citizenship shall not descend to persons whose fathers never resided in the United States.

“Also any woman who might lawfully be naturalized under the existing laws, married, or who shall be married, to a citizen of the United States, shall be deemed and taken to be a citizen.”

## ART. X.—TERRITORY.

1. GOVERNMENT.—*To make all needful rules and regulations respecting the territory belonging to the United States. 76.*

2. SEAT OF GOVERNMENT.—*To exercise exclusive legislation in all cases whatsoever over such district (not exceeding ten miles square) as may, by cession of particular States and the acceptance of Congress, become the seat of government of the United States. 42.*

3. PUBLIC WORKS.—*Also over all places purchased by consent of the legislatures of the States in which the same shall be, for the erection, 1st, of forts; 2d, magazines; 3d, arsenals; 4th, dock-yards; and, 5th, other needful buildings. 42.*

4. ALIENATION.—*To dispose of the territory belonging to the United States. 76.*

5. NEW STATES.—*May admit new States into the Union. 75.*

## **1.—Government.**

§ 1. Ownership of territory by any government implies the right to govern it; and the right to govern implies the right to make all needful rules and regulations for that purpose. But the authors of the Constitution saw fit to incorporate into that instrument this power to govern, which is but in affirmance of well-known principles of law in such cases.

§ 2. It seems to be admitted by all political parties at the present day that the United States posses the right to acquire territory. The government has acted on this right from the beginning. By the liberality of the States owning it, the General Government had acquired that immense region known as the North-western Territory before the adoption of the Constitution. Since the adoption, our territory has been greatly extended in the acquisition of Louisiana, Florida, California, and the Russian possessions in America.

§ 3. It is the duty of Congress to make the necessary rules and adopt the necessary measures to govern this vast territory, until such time as, by the increase of its population, it shall be divided and erected into independent States, and admitted into the Union. More than a dozen States have already been formed from this acquired territory, and have been adopted as members of the National Union.

## **2.—Seat of Government.**

§ 4. Speaking of the powers of Congress over the seat of government, Judge Story says, "A moments consideration will establish the importance and necessity of this power. Without it, the National Government would have no adequate means to enforce its authority in the place in which its public functionaries should be convened. They might be insulted and their proceedings might be interrupted with impunity. And, if the State in which it were situated should array itself in hostility to the proceedings of the National Government, the latter might be driven to seek another asylum, or be compelled to a humiliating submission to the State authorities.

§ 5. "Nor let it be thought that the evil is wholly imaginary. It actually occurred to the Continental Congress at the very close of the Revolution, who were compelled to quit Philadelphia, and adjourn to Princeton, in order to escape from the violence of some insolent mutineers of the Continental army.

§ 6. "It is under this clause that the cession of the present District

of Columbia was made by the States of Maryland and Virginia to the National Government; and the present seat of the National Government was established at the city of Washington in 1800. That convenient spot was selected by the exalted patriot whose name it bears for this very purpose.”

The District of Columbia was a tract ten miles square. That part of it obtained from Virginia was re-ceded to that State in 1846: so that now the District is confined to the Maryland side of the Potomac.

§ 8. Before the year 1800, the seat of government was not permanently fixed at any place; and, being moved as it was from place to place, the public suffered great inconvenience. It had been temporarily established at the following places, at the following dates:—

Philadelphia, Sept. 5, 1774.

Philadelphia, May 10, 1775.

Baltimore, Dec. 20, 1776.

Philadelphia, March 4, 1777.

Lancaster, Penn., Sept. 27, 1777.

York, Penn., Sept. 30, 1777.

Philadelphia, July 2, 1778.

Princeton, June 30, 1783.

Annapolis, Md., Nov. 26, 1783.

Trenton, N.J., Nov. 1, 1784.

New York, Jan. 11, 1785.

### 3.—Public Works.

§ 8. If the National Government needs a site for the erection of a fort, magazine, arsenal, dock-yard, or any other building, there are two steps necessary to procure it: first, the consent of Congress; and, second, the consent of the legislature of the State in which the proposed site is. When the cession is made, the government comes into full possession; and now Congress may exercise over such place exclusive legislation.

§ 9. Unless the State of which such purchase is made reserves the right, no legal State authority can be exercised in such places, even to the serving of writs of any kind, civil or criminal. All judicial jurisdiction in such cases is national. If crimes are committed in such places, they must be tried in the United-States courts. Judge Story says, however, that the States have generally reserved in such cessions the right to serve all State processes, civil and criminal, upon persons found therein.

§ 10. The object of such reservations when they are made is, that these places shall not become retreats and asylums for fugitives from justice who may be guilty of crimes against State authority. Almost every State has more or less of these places within its limits subject to the jurisdiction of national authority.

#### 4.—Alienation.

§ 11. The power to dispose of the territory belonging to the United States has been discussed in another place, and therefore need not be repeated here. (See Art. I. Of Chap IV., Part II.)

#### 5.—New States.

§ 12. By reference to the Articles of Confederation, it will be seen that Canada was to be admitted into the Union by “acceding to the Confederation, and joining in the measures of the United States;” but no other (British) Colony was to be admitted unless such admission were agreed to by nine States. Nothing is to be found in those articles providing for the admission of new States into the Union. This was an important omission, as the events of our history since the adoption of the Constitution have proved.

§ 13. At the close of the Revolutionary War, there were immense tracts of vacant territory lying within the chartered limits of several of the States. The States, with this extensive domain, constituted, in part, the area of the Confederation. This vacant territory, as well as the territory of the States proper, had been wrested from British jurisdiction by the common efforts, sacrifices, treasure, and blood of the inhabitants of all the States engaged in the struggle.

§ 14. Several of the States were reluctant to ratify the Articles of Confederation, and refused to come into the Union unless this vacant territory should become the common property of the National Government. Congress earnestly urged the States holding this territory to surrender their claims for the common benefit of all the States.

§ 15. On the 10th of October, 1780, the Congress of the Confederation “*Resolved*, That the unappropriated lands that may be ceded or relinquished to the United States by any particular States, pursuant to a recommendation of Congress made 6th September of the same year, shall be disposed of for the common benefit of the United States, and be settled and formed into distinct republican States to become members of the Federal Union.”

§ 16. This resolution also suggested that the necessary and reasonable expenses should be re-imbursed which any State had incurred since the commencement of the Revolutionary War in subduing any British posts, or in maintaining forts or garrisons within the country and for its defense, or in acquiring any part of the territory that might be ceded or relinquished to the United States.

§ 17. In pursuance of these recommendations of Congress, New York, Virginia, Massachusetts, Connecticut, South Carolina, North Carolina, and Georgia made the desired surrender of their respective claims to the aforesaid vacant lands. New York took the lead in the noble and generous sacrifice, March 1, 1781; and was followed by the other States, one after another, at various dates, ending with Georgia, April 24, 1802.

§ 18. Since that time, our territory has been vastly extended by the purchase of the Louisiana tract (1803) of France; by the purchase of Florida of Spain (1819); the annexation of Texas in 1845; the addition of California, by treaty with Mexico, in 1848; and by the recent purchase of nearly five hundred thousand square miles of Russian territory in North America.

§ 19. It was foreseen by the authors of the Constitution, that this power to admit new States into the Union would soon become necessary; and it was accordingly vested in Congress.

Under this provision, the following States have already been admitted at the following dates respectively:—

VERMONT,	March 4, 1791.
KENTUCKY,	June 1, 1792.
TENNESSEE,	June 1, 1796.
OHIO,	Nov. 29, 1802.
LOUISIANA,	April 8, 1812.
INDIANA,	Dec. 11, 1816.
MISSISSIPPI,	Dec. 10, 1817.
ILLINOIS,	Dec. 3, 1818.
ALABAMA,	Dec. 14, 1819.
MAINE,	March 15, 1820.
MISSOURI,	Aug. 21, 1821.
ARKANSAS,	June 15, 1836.
MICHIGAN,	Jan. 25, 1837.
WISCONSIN,	May 29, 1848.
FLORIDA,	March 3, 1845.

IOWA,	Dec. 28, 1846.
TEXAS,	July 4, 1845.
CALIFORNIA,	Sept. 9, 1850.
MINNESOTA,	May 11, 1858.
OREGON,	Feb. 14, 1859.
KANSAS,	Jan. 29, 1861.
WEST VIRGINIA,	June 20, 1863.
NEVADA,	Oct. 31, 1864.
NEBRASKA,	———, 1867.

## ART. XI.—STATES.

### 1. ELECTIONS.

*May alter the times, places, and manner of holding elections for senators and representatives prescribed in the several States by the legislatures thereof, except as to the places of choosing senators. 15.*

### 2. ELECTORS OF PRESIDENT AND VICE-PRESIDENT.

*May determine,*

*1st. The times when the States shall choose their electors of President and Vice-President of the United States.*

*2d. Also the day on which the electors shall give their votes; which day shall be the same throughout the United States. 55.*

### 3. ACTS, RECORDS, JUDICIAL PROCEEDINGS.

*May by general law provide the manner in which the public acts, records, and judicial proceedings of the several States shall be proved, and the effect thereof. 71.*

### 4. IMPOSTS AND DUTIES.

*May revise and control any State laws in reference to laying any imposts or duties on imports or exports. 52.*

## 1.—Elections.

§ 1. It is left with the States to fix the times, places, and manner of holding their elections of senators and representatives in Congress; but, should they neglect to do this, Congress has jurisdiction over the whole subject, except as to the places of choosing senators. Each State can consult its own local convenience with regard to these elections; but it has no right to wholly neglect making the necessary provisions for holding them.

§ 2. Every government has the inherent right to provide for the perpetuity of its own existence. The Constitution could hardly contain a general election law applicable to the conveniences of all the States alike. The power here given to Congress is simply discretionary, not mandatory; and such a power must be vested somewhere. Judge Story says, "There were three ways in which it (this power) could be reasonably organized. It might be lodged either wholly in the National Legislature, or wholly in the State Legislatures; or primarily in the latter, and ultimately in the former." The last mode was adopted by the Convention.

§ 3. It is possible that a State might utterly refuse to provide for the election of senators and representatives. One State under the Confederation actually did withdraw its members from Congress to prevent the passage of important measures. What Rhode Island did then, another State might be disposed to repeat in substance, even if powerless to do it in the same manner. A State can not now *withdraw* its members; but it might attempt to prevent their *election*, and, but for the provision we are considering, might succeed in embarrassing legislation.

§ 4. The *places* of choosing senators are left unalterably with the legislatures of the several States. The power of Congress to dictate as to where they shall meet would be inconsistent with the necessary independence of the State legislatures. Congress has provided for the election of members of the House of Representatives by Congressional districts; and more recently they have exercised supervision to a limited extent over the manner of electing senators.

## 2.—Electors of President and Vice-President.

§ 5. The States have the choosing of electors of President and Vice-President; but Congress has the power to determine the time *when* the electors shall be chosen. In 1792, March 1, Congress passed an act requiring that the time for electing electors should be within thirty-four days preceding the first Wednesday in December of each year, when electors were to be appointed. Thus the States had a margin of over thirty days within which to hold their election of electors.

§ 6. But Jan. 23, 1845, Congress passed an act specifying the *day* on which electors should be elected throughout the United States. That day is the Tuesday next after the first Monday in the month of November of the year in which they are to be chosen.

§ 7. The time when the electors are to give their votes for President and Vice-President shall be the same throughout the United States. By

act of Congress, that day is the first Wednesday in December after their election. The place is left for the several State legislatures to designate; and they generally direct it to be done at the State capital.

§ 8. The provisions of Congress fixing a day for the election of electors which shall be the same throughout the United States, as well as the day on which the electors shall give their votes, has a tendency to prevent “bargaining and selling,” and the formation of political combinations to defeat the will of the people.

### 3.—Acts, Records, Judicial Proceedings.

§ 9. When a judgment is rendered by any State court in proper form from which no appeal has been taken to any higher court within the time allowed for appeals, that judgment is conclusive ever after, between the parties to it, as to the matters in controversy. That judgment will be received in evidence when offered in any other court within the limits of the State within which it was rendered.

§ 10. But, before the ratification of the Articles of Confederation, there was no uniformity of practice in regard to this *subject as between the different Colonies*, or as between the different States. In the Articles of Confederation, there was a clause on the subject of the *credit* to be given by one State to the acts, records, &c., of other States; but no power was given to Congress to direct as to the method of proof in such cases, and the effect thereof.

§ 11. The power to provide for the manner of proving the acts, records, and judicial proceedings of the several States is vested in Congress, though the faith and credit to be given between State and State is mandatory in the Constitution. Under this power, Congress has passed laws defining the manner in which they shall be authenticated, and the effect to be given to their authenticity.

§ 12. A judgment obtained in a court of competent jurisdiction in one State is valid in every other State in the Union. As between nations foreign to each other, there is no uniform rule on the subject; or, at most, a foreign judgment is only what the law calls *prima-facie* evidence in the case, not conclusive. In other words, the matter involved is re-examinable.

§ 13. But, while the Constitution in another place requires that full faith and credit shall be given in this matter as between the States, endless embarrassment would ensue but for the exercise of this legislative authority by Congress over the State courts.



§ 14. By act of May 26, 1790, Congress the mode by which records and judicial proceedings should be authenticated, and declared that they should have such faith given to them in every court within the United States as they had by law or usage in the courts of the State from whence the records were taken.

#### 4.—Imposts and Duties.

§ 15. In another place, it will be seen that States are prohibited from laying nay impost or duties on imports or exports without the consent of Congress, except what may be necessary for the execution of their inspection-laws. If States should attempt to lay burdensome inspection-duties, Congress has the power to pass acts of revision, and, in case it becomes necessary, to control the whole subject.

§ 16. The subject of impost and duties, we have seen, is exclusively under the control of Congress; and, should a State attempt by some indirect method to lay duties or impost, Congress has the higher right to control and revise its legislation. The State of Maryland passed a law in 1821, requiring all importers of goods, and other persons selling the same by wholesale, to take out a license costing fifty dollars. This was regarded as an indirect method of laying State duties, and was decided by the Supreme Court of the United States to be unconstitutional.

#### ART. XII.—EXECUTIVE VACANCY

1. *May by law provide for the case of removal, death, resignation, or inability both of President and Vice-President.*

2. *May be law declare what officer shall then act as President, until,*

- 1st. *Such disability be removed; or,*
- 2d. *A President shall be elected.* **57.**

§ 1. There was a strong feeling in the Constitutional Convention, during its earlier labors, against the proposition to have a Vice-President of the United States. Until this proposition found favor among the members, the plan was that the President of the Senate should succeed the President of the United States in case of the death, resignation, or inability of the latter to perform the duties of his office. But the Vice-Presidency was finally accepted as a feature of the plan.

§ 2. Congress, in the exercise of its power to provide for the va-

cancy of the executive chair by the death, removal, or inability of both the President and Vice-President, has enacted that the President *pro tempore* of the Senate, and, in case there shall be no President of that body, then the Speaker of the House of Representatives, shall act as President until the disability be removed, or a President shall be elected.

### ART. XIII.—APPOINTMENTS.

*May by law vest the appointment of such inferior officers as they shall think proper,—*

1. *In the President alone;*
2. *In the courts of law; or,*
3. *In the heads of departments.* **61.**

§ 1. This power of vesting appointments, it will be observed, is restricted to *inferior* officers. But what are *inferior* offices or officers? The Constitution does not discriminate. Such as Congress sees fit to style inferior officers need not the sanction of the Executive or the Senate to render their appointments valid. The heads of departments, it is generally conceded, are not of this class. They have the power over the appointments of the clerks in their respective offices. But there is great danger that a corrupt favoritism may be the result of the abuse of this power. It has long been used to punish and reward political opinion. To obtain an office, a man's political views must coincide with the appointing power. This is a flagrant abuse of official authority.

§ 2. The Postmaster-General wields a patronage, the estimate of which is most fearful if dispensed as a political bribe throughout the country. The question is too seldom asked, whether the applicant for a village post-office is honest, capable, and faithful to the Constitution; but, on the contrary, his fitness for office, in thousands, of instances, is tested by his fidelity to party. So extensive has been the practice of distributing official favors to political partisans during the last thirty years, that, with rare exceptions, a man's political sentiments could be inferred by the office he held. Public offices ought not to be distributed as rewards for political opinions.

## ART. XIV.—CONSTITUTIONAL AMENDMENTS.

1. *Shall propose amendments to the Constitution whenever two-thirds of both houses of Congress shall deem it necessary; or,*

2. *On application of the legislatures of two-thirds of the several States, Congress shall call a convention for proposing amendments.*

3. *May prescribe either of two modes of ratifying the proposed amendments.*

1 st. *By State conventions; or,*

2d. *By the State legislatures. 78.*

§ 1. Congress has no power to alter or amend the Constitution; but they can take the initiatory steps. They can submit propositions to the States for this purpose, whenever, in the estimation of two-thirds of the members of both houses, amendments become necessary.

§ 2. No human government can be perfect; and the Constitution of the United States was but an experiment, which, in its original form, might not prove successful. It was wise, therefore, to make provisions in the instrument itself for its amendment. A Constitution suited to the necessities of this generation may not be adapted to the wants of the next. But it was well to guard against the hasty adoption of amendments, without allowing sufficient experience under the original instrument to test the utility of its provisions. The powers of Congress over this subject are quite limited. The proposition for amendments may originate with Congress, or with the legislatures of two-thirds of the several States. When it originates with the States, instead of amendments being proposed by *Congress*, that body calls a convention to propose them.

§ 3. Congress has the power of directing whether the proposed amendments to the Constitution shall be ratified by State conventions or by State legislatures. Thus far, there have been adopted fourteen Articles of Amendment. These have all originated with Congress, and have been ratified by State legislatures. There is one clause of the Constitution unamendable except by the consent of the State interested, which reads thus: "No State, without its consent, shall be deprived of its equal suffrage in the Senate." This is for the protection of the smaller States in the national councils.

As Congress takes no part in the *ratification* of proposed amendments, that subject belongs in another place. (See Chap. IX., Art. I., Part II.)

## ART. XV.—SLAVERY.

1. *Shall have power to enforce the abolition of slavery by appropriate legislation.* 98.

2. *While the foreign slave-trade was lawful (until 1808), Congress had the power to impose a tax or duty, not exceeding ten dollars, on each slave imported.* 44.

### 1.—Its Abolition.

§ 1. The Constitution as it came from the hands of its authors in 1787, and as it was ratified by the people of the several States, recognized slavery as a State institution. True, the word “slave,” or “slavery,” is not in the instrument. These words were carefully and intentionally omitted. In the thirteenth Article of Amendments, the word “slavery” appears for the first time in the Constitution; and that article abolishes the institution throughout the United States and their territories.

§ 2. Section second of the thirteenth Article of Amendments gives Congress legislative authority over the subject. As four or five millions of men, women, and children, were suddenly transferred from slavery to freedom, it was presumed that national legislation would become necessary to protect them in their new condition. Congress has already exercised this power in the passage of several statutes on the subject. This matter will receive further attention in considering State prohibitions.

### 2.—Foreign Slave-Trade.

§ 3. The provision of the Constitution relating to this subject reads as follows:—

“The migration or importation of such persons as any of the States now existing shall think proper to admit shall not be prohibited by the Congress prior to the year one thousand eight hundred and eight; but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person.”

At the time of the formation of the Constitution, all the States held slaves, except one; and the foreign slave-trade was lawful among all nations of the world.

§ 4. At the time of the adoption of the Constitution, the general opinion prevailed that slavery would gradually diminish until it would become extinct in all the States. This opinion was based on the supposition that free labor would ultimately be found to be more profitable than

slave labor, and that slaves would soon become valueless. At that time, it must be remembered, cotton was not the leading article of commerce which it has become during the present century.

§ 5. At that time, the processes of separating the seed from the cotton, spinning the cotton into yarn, and weaving the yarn into cloth, were so slow and clumsy compared with the methods of doing the same things at the present day, that this article did not promise to become a leading fabric with which to clothe the world. But little cotton was worn, and that little was expensive. A vast expenditure of labor was required to convert it from the raw material into cloth.

§ 6. But, near the close of the last century, three inventions, each contributing to the same end, produced a wonderful revolution in the mechanical processes of converting cotton into cloth. The cotton-gin by Eli Whitney of Connecticut, the spinning-jenny by Sir Richard Arkwright, and the power-loom by Edmund Cartwright, both of England, have accomplished this great change. By means of these inventions, the products of human industry in the manufacture of cotton goods have been multiplied more than a hundred-fold.

§ 7. The facilities for the manufacture of cotton goods being thus multiplied, the goods were greatly reduced in price, the all for them in the markets of the world was proportionally extended, and, of course, the demand for the raw material was correspondingly increased. This demand increased the call for slave-labor, this call enhanced the price of slaves, and all combined advanced the slave-holding interests of the South. Of course, all these changes were unforeseen by the authors of the Constitution.

§ 8. Congress passed a law prohibiting the foreign slave-trade after the first day of January, 1808; imposing mild penalties of fine and imprisonment for its breach. But the slave-trade had become profitable, and the law was frequently disobeyed. In 1820, Congress passed a law making the foreign slave-trade piracy, punishable by death. In 1865, slavery was abolished by a Constitutional amendment, as has been stated.

## ART. XVI.—GENERAL LAW-MAKING.

*Shall have power to make all laws which shall be necessary and proper for carrying into execution the powers vested by the Constitution,—*

1. *In the government of the United States; or,*
2. *In any department thereof; or,*
3. *In any officer thereof.* **43.**

§ 1. This general power to make laws, able commentators say, is merely a specification of what would have been *implied* even had the provision for the Constitution been omitted; for the granting of any power implies consent on the part of the grantor, that the necessary means may be adopted to render that power effective. This reasoning, however, does not prove that this provision is mere surplusage; for there were several powers granted in the Articles of Confederation, which, for want of others to render them effective, were but a mockery.

§ 2. As it is impossible to specify in the fundamental law of a nation *all* the powers which at some time it may be indispensably necessary to exercise for the common good, this provision seems to be among the wisest to be found in the Constitution. Had the attempt been made to enumerate affirmatively all laws *necessary* and *proper* which Congress might pass, it must have resulted in failure. As Judge Story says, it would have rendered necessary “a complete digest of all laws on every subject to which the Constitution relates. It must have embraced all future as well as all present exigencies, and been accommodated to all times and all occasions, and all changes of situation and character.”

## ART. XVII.—MEETING

1. *Shall assemble at least once in every year; which meeting shall be on the first Monday in December, unless,*
2. *They shall appoint a different day.* **16.**

§ 1. In England, the sovereign has the sole power to convene and dissolve the two houses of Parliament: he can call them together at any time he sees fit. So the President of the United States can convene either or both houses of Congress on extraordinary occasions. But, if it should so happen that the President was essentially at variance with Congress, had he the power to prevent their meeting, he would be likely to exercise that power, and perhaps to the detriment of the nation. A bad President might prefer to have no Congress during his administration. In such case, there would be a practical demonstration of the necessity of this provision.

§ 2. Again: it seems necessary that the Constitution should contain some such provision, as, otherwise, the two houses might not agree in reference to the time of assembling. By this provision, if they can not agree on any other time, they must meet the first Monday of December. The place of meeting is not designed, and probably for two reasons: First, the seat of the National Government had not been established at the time when the Constitution was formed; and, second, war or pestilence might at times interfere with the meeting at any place that might be named in the Constitution.

# CHAPTER V. LAW-MAKING

## ARTICLE I.—PROCEEDINGS.

*A bill may become a law through any one of the three following processes:—*

### FIRST PROCESS.

- 1. The bill shall pass both houses of Congress.*
- 2. It shall then be presented to the President.*
- 3. If he approve, he shall sign it. 24.*

### SECOND PROCESS.

- 1. The bill shall pass both houses of Congress.*
- 2. It shall then be presented to the President.*
- 3. If he disapprove it, he shall return it, with his objections, to that house in which it originated.*
- 4. That house shall enter objections at large on their journal.*
- 5. They shall proceed to reconsider it; and if, after such reconsideration, two-thirds of the house shall agree to pass it,*
- 6. It shall be sent, with the objections, to the other house.*
- 7. The other house shall reconsider the bill.*
- 8. If approved by two-thirds of that house, it shall become a law.*
- 9. The votes of both houses shall be determined by the yeas and nays in all such cases.*
- 10. The names of the persons voting for and against the bill shall be entered on the journal of each house respectively. 24.*

### THIRD PROCESS.

- 1. The bill shall pass both houses of Congress.*
- 2. It shall then be sent to the President.*
- 3. He neglects to approve and sign it.*
- 4. He also neglects to return it to the house in which it originated.*
- 5. It becomes a law at the end of ten days (Sundays excepted), unless Congress, by adjournment within that time, prevents its return. 24.*



§ 1. A bill, as here used, is the draught of a proposed law. It may be introduced by any one of several methods.

1st. It may be introduced, with the leave of the house, by any member.

2d. It may be introduced by order of either house; or,

3d. It may be introduced by the report of a standing or select committee.

§ 2. A standing committee is one that is appointed to continue during the session or term of the body from which it is chosen. To this committee is usually referred all that class of subjects which appropriately comes within its jurisdiction. Its name is usually suggestive of its business; as the Committee on Agriculture, Committee on Finance, Committee on Military Affairs, Committee of Ways and Means, Judiciary Committee; and so on. A subject may be presented, however, that does not appropriately belong to any standing committee. Such matter is usually referred to a committee appointed expressly for this purpose, which is called a select committee. All deliberative and legislative bodies have their committees usually appointed by the presiding officer; though they are not always so appointed: it is sometimes done by the assembly.

§ 3. A bill in Congress must receive three several readings before it is put upon its final passage. No bill can be read more than once on the same day without the special permission of the house. The vote is taken on its third reading. The arguments for and against the bill, if any, are made before its third reading, or between its third reading and the taking of the vote. If the bill passes, it is signed by the presiding officer, and sent to the other house. If it passes the other house, the presiding officer of that house signs it; after which, it is sent to the President of the United States of his approval or disapproval.

§ 4. At any time during the pendency of a bill, amendments to it may be proposed, and passed by either house. Either house may concur in or reject the amendments made to a bill by the other, or may reject the bill altogether. But, at any stage of the proceedings, amendments being attached to a bill in one house must be sent to the other for approval or disapproval. The President has no power to attach amendments.

§ 5. The first process of law-making, as described in the Analysis, is the simplest; only requiring that a bill shall pass both houses of Congress, and receive the signature of the President. In such cases, only a numeri-

cal majority of each house is necessary. The bill may pass either or both houses without the formality of taking the yeas and nays, unless they shall be called for by one-fifth of the members present.

§ 6. The second process of law-making is the one in which the President's veto, as it is commonly called, is interposed. To become a law in opposition to the President's objections, more formality is required than in the first process of law-making; and, instead of merely a numerical majority of each house, it requires a two-third majority, after his veto, to pass the bill. The voting *must* be done in the second process by yeas and nays, even though one-fifth of the members do not call for them; and the names of persons voting for and against the bill must be recorded. These requirements are not matters of legislative discretion, but of Constitutional provision, and therefore imperative.

§ 7. The word *veto* is borrowed from the Latin language, and signifies, *I forbid*. The President's negative on the bills passed by Congress is called his veto. As we have already seen, his veto is qualified, not absolute. The sovereign of Great Britain has an absolute negative on the bills of Parliament, though he has not exercised it for nearly two hundred years.

§ 8. There was an earnest effort in the Constitutional Convention, on the part of some of the leading members, to vest in the Executive an unqualified negative, or veto, on all bills passed by Congress. Some of the most illustrious names in that illustrious body gave up this proposition with great reluctance. But for Dr. Franklin's opposition, perhaps it would have been carried. He said he had some experience of this check on the Executive in the legislature of Pennsylvania. The negative of the governor was constantly made use of to export money. No good law whatever could be passed without a private bargain with him.

§ 9. An increase of his salary, or some donation, was always made a condition; till at last it became the regular practice to have orders in his favor, on the treasury, presented along with the bills to be signed, so that he might actually receive the former before he should sign the latter. It was held by the proponents of the absolute negative to be dangerous in the extreme to allow one man to check the will of the whole. No one man could be found so far above all the rest in wisdom as to render it safe to clothe him with such August power. The Constitutional provision as it now stands passed the Convention by the vote of eight States against two,—afterwards unanimously.

§ 10. This executive power, on the other hand, may operate as a

salutary check on hasty legislation. Factious, precipitate, and even unconstitutional legislation, arising from temporary excitement and party zeal, might disgrace the halls of Congress. The Executive, not having participated in the rivalry of debate, and being quietly retired from the scenes of political strife, may be presumed to be better qualified to pronounce correct judgment than those who were active in the contest.

§ 11. The third process of law-making differs from the first and second only with regard to the action, or rather *inaction*, of the President. He simply neglects to sign the bill within ten days, Sundays excepted, after receiving it. In such case, it becomes a law if Congress remains in session during that period; but, if Congress adjourns before the expiration of that time, the law is defeated. This last provision is for the purpose of taking it out of the power of Congress to give validity to their acts merely by adjournment.

## ART. II.—ORDERS, RESOLUTIONS, AND VOTES.

*Every order, resolution, or vote, to which the concurrence of the Senate and House of Representatives may be necessary, except on a question of adjournment,*

1. *Shall be presented to the President of the United States.*
2. *It shall be approved by him before the same shall take effect; or being disapproved by him,*
3. *It shall be passed by the two houses of Congress, by two-thirds of each, according to the rules and limitations prescribed in case of a bill. 25.*

Were it not for this provision, Congress might exert their power in the form of orders, resolutions, or votes; thus preventing the President from interposing his veto. They could thus substantially legislate in these forms without the sanction of the Executive, and without the necessity of a two-third majority of each house. As it now stands, the President has the same power of disapproval of an order, resolution, or vote, that he has to negative an act passed in the ordinary forms of legislation; and, if he disapproves them by the interposition of his veto, they must be re-passed by the yeas and nays, and by the same formalities as required in the second process for the passage of a bill.

# CHAPTER VI. PROHIBITIONS ON THE UNITED STATES.

## ARTICLE I.—HABEAS CORPUS.

*The privilege of the writ of habeas corpus shall not be suspended unless when the public safety may require it.*

1. *In cases of rebellion.*
2. *In cases of invasion.* **45.**

§ 1. In legal parlance, a writ is an instrument in writing, under seal, issued by authority of the king, president, governor, judge, or other magistrate, directed to a public officer or a private individual, commanding him to do or not to do some particular thing therein specified, over which the officer issuing it has jurisdiction.

§ 2. It sometimes happens in the administration of law and government that a person is wrongfully imprisoned, or restrained of his liberty, before trial and final sentence by a court of competent jurisdiction. Sometimes, also, persons may be wrongfully restrained of their liberty without even so much as the forms of law; as by improperly holding a child in custody, or locking a person in a room. More usually, however, it is done by a perversion of the forms of law.

§ 3. The remedy in such cases is by a writ of habeas corpus, as it is called; taking its name from the command in the writ to produce the body of some person named therein, who, it is alleged, is illegally restrained of his liberty. Habeas corpus signifies "*have you the body.*" The proceedings in such cases are substantially in this manner:—

For instance, William Jackson is imprisoned in Monroe-county jail, New York.

1st. He, or some person in his behalf, makes affidavit that he is wrongfully restrained of his liberty in the jail aforesaid by some person, say John Brown, the jailer.

2d. This affidavit is made before a court of competent jurisdiction, and a writ of habeas corpus is asked of the court.

3d. The writ is issued, of course, commanding John Brown to

bring the body of William Jackson before the court on a day mentioned in the writ, and to make return on the writ why he, Brown, holds Jackson in custody or under restraint.

4th. The writ is served by some competent officer by reading it to Brown, and giving him a certified copy if requested.

5th. On the day named in the writ, for its return, Brown appears in court with Jackson, and Brown shows the court by documentary or other legal proofs his right to the custody of Jackson.

6th. If the reasons for holding the prisoner are deemed legally insufficient by the court, the prisoner is set at liberty: if, on the other hand, they are regarded as valid, the prisoner is remanded back to prison.

7th. This proceeding under a writ of habeas corpus does not determine the guilt or innocence of the prisoner, but simply whether he is rightfully or wrongfully restrained of his liberty at the time of inquiry. Excessive bail may have been required of him, and he may have been unable to procure it, though he might have offered a reasonable sum. The papers on which he was committed may be defective in form or substance. A man may be guilty, yet illegally imprisoned.

§ 4. Every American citizen, if restrained of his liberty before conviction, has the right to avail himself of the advantages of proceeding by habeas corpus to ascertain the legality of his imprisonment. The only exceptions to this rule are, 1st, when the privilege of the writ is suspended by proper authority in a time of insurrection or invasion; 2d, when a person has been committed for contempt of court; and, 3d, when the imprisonment is by final judgment of a competent court.

§ 5. In cases of rebellion or invasion, it may be necessary to temporarily suspend the privilege of this writ. Rebellion here means an uprising of the citizens of a country against its authority. The power of suspension of the privilege of this writ was vested by Congress in the President of the United States during the Great Rebellion from 1861 to 1865. Invasion, as used in the Constitution, means the entry of a hostile force of a foreign nation into our territory.

## ART. II.—DIRECT TAXES.

*No capitation or other direct tax shall be laid unless in proportion to the census.* **5, 47.**

NOTE.—The subject of taxation is discussed quite fully in treating of the powers of Congress, and need not be repeated here.

**ART. III.—EXPORT DUTIES.**

*No tax or duty shall be laid on articles exported from any State. 48.*

The intention of this prohibition is to prevent taxing the interests of any State to its detriment, and giving undue advantages to others. The productions of some of the States are very different from those of others; and, were export duties allowed to be enforced, the burdens of taxation would be very unequal. The staple production of some States is cotton; of others, rice; of others, tobacco; of others, sugar; and of others, articles of manufacture which are used chiefly for home consumption. Some States are interested in the coast fisheries, others in whaling, and still others in navigation and commerce. It would be impossible to so adjust export duties, were they allowed, as to distribute the burdens equally.

**ART. IV.—INTER-STATE COMMERCE**

1. *No preference shall be given by any regulation of commerce or revenue to the ports of one State over another.*

2. *Nor shall vessels bound to or from one State be obliged to enter, clear, or pay duties in another. 48.*

Another Congress is invested with power to regulate commerce among the States, yet that power is coupled with these prohibitions: No preference shall be given to the ports of one State over another; nor shall entrance or clearance fees, or the payment of duties, be required *in an intermediate State* while vessels are passing from one State to another. A vessel bound to Philadelphia from Liverpool, in passing Boston or New York, can not be compelled to enter, clear, or pay duties in either of the last two ports named. The duties must be paid in Philadelphia, the port to which the vessel is bound.

**ART. V.—PUBLIC MONEY.**

1. *No money shall be drawn from the treasury but in consequence of appropriations made by law.*

2. *A regular statement and account of the receipts and expenditures of all public money shall be published from time to time. 49.*

3. *No appropriation of money to raise and support armies shall be for a longer term than two years.* **37.**

§ 1. The Congress of the United States is made not only the guardian of the public interests generally, but of the public treasury in particular. Even when it is settled by judicial decision that a specific sum is due to a creditor, the money can not be drawn therefor until Congress shall have passed upon the validity of the claim, and ordered an appropriation. The whole matter is subject to the critical review and decision of Congress. The object of this provision is to secure strict faithfulness in the public expenditures. Neither the executive, nor the judiciary, nor the heads of departments, nor the officers of the army or navy, nor even members of Congress themselves, can draw a dollar of the public money except by appropriations made by law.

§ 2. The requirement that a regular account and statement of the receipts and expenditures of the public money shall be published from time to time puts a most salutary check on the possible profusion and extravagance of the National Legislature. The people have the right to know how, and for what purposes, their is expended. The heads of the departments must make an annual exhibit of their transactions respectively.

§ 3. The fear that the army might possibly become a power too formidable to be consistent with the rights and liberties of the people led to this Constitutional limitation of army appropriations. It is necessary to raise and support armies even in time of peace; but not a dollar can be appropriated for this purpose without the sanction of Congress. And, lest Congress may be extravagant in this direction, or the administration acquire too much power over the army, they are forbidden to make appropriations extending beyond the period of two years. A Congress lasts for but two years; and, should they be profuse in their appropriations of army money, the people will be likely to correct the error in their election of the succeeding Congress.

#### **ART. VI.—NOBILITY. —NOBILITY.**

*No title of nobility shall be granted by the United States.* **50.**

The government instituted in this country at the close of the Revolutionary War, and which took definite shape in the Constitution of the United States, was intended to be characterized for republic simplicity.

The theory of our institutions is, *all citizens are equal before the law*. Orders of nobility are forbidden, in accordance with this theory. Alexander Hamilton says, "This may truly be denominated the corner-stone of republican government; for, so long as titles of nobility are excluded, there can never be serious danger that the government will be any other than that of the people."

#### ART. VII.—PENALTIES.

1. *No bill of attainder shall be passed.*
2. *No ex post facto law shall be passed.* 46.
3. *No attainder of treason shall work,*
  - 1st. *Corruption of blood; nor,*
  - 2d. *Forfeiture, except during the life of the person attainted.* 70.

§ 1. A bill of attainder, which is here forbidden, is a phrase borrowed from England. It is a special act of the legislative body, inflicting capital punishment on a person for high crimes, without having been first convicted before a judicial tribunal. A person against whom such an act is passed is rendered infamous, and is said to be attainted, or stained and disgraced. The person so attainted forfeited all his property, real and personal, to the Crown; and, by operation of law, his blood became so corrupted, that he could neither inherit any thing from his ancestry, nor transmit by hereditary descent to his heirs, lineal or collateral.

§ 2. An act of the legislature convicting a person of any crime, and inflicting any punishment short of death, is called a bill of pains and penalties. The Constitution of the United States humanely forbids the passage of any bill of attainder.

§ 3. An *ex post facto* law is one that is retro-active, and which makes an act criminal which was not so when committed. It has to do entirely with past transactions, and of a criminal nature. The Supreme Court of the United States has defined an *ex post facto* law to be one "which renders an act punishable in a manner in which it was not punishable when it was committed." For instance, from 1808 to 1820, the foreign slave-trade was punishable by fine and imprisonment. After 1820, it was punishable by death. Had the law of 1820 punished the infractions of the law which were committed in 1818 with death, it would have been an *ex post facto* law. Laws which mitigate the punishment, how-



ever, are not regarded as *ex post facto*; for they are in favor of the accused.

§ 4. It would be grossly and manifestly unjust, as well as unpardonably cruel, to visit a crime with a severer penalty than was attached to it at the time of its commission; yet laws of this kind have been passed in some of the European States.

§ 5. Treason is defined by the Constitution, and its punishment is left with Congress to provide for; but, whatever penalty may be attached to this crime, “no attainder of treason shall work correction of blood, or forfeiture, except during the life of the person attainted.” The crime of treason in England—that country from which we have largely borrowed many features of our institutions—was punishable by death in the most horrid and revolting forms. Not only so, but the criminal’s blood became so corrupted by fiction of law, that all powers of transmission were destroyed. His lineal and collateral kindred were compelled to suffer for his offenses.

§ 6. Our Constitution is more consonant with justice and humanity, in that it takes it out of the power of Congress to punish the innocent for the crimes of the guilty. In affirmance of this Constitutional provision forbidding the working of corruption of blood and of forfeiture, except during the life of the person attainted, Congress has by law declared that “no conviction or judgment for any capital or other offenses shall work corruption of blood, or any forfeiture of estate.”

#### ART. VIII.—FOREIGN SLAVE-TRADE.

*The importation of slaves was not to be prohibited,*

1. *By Congress, prior to 1808 (44); nor,*
2. *By any amendment to the Constitution prior to that time. 78.*

§ 1. Slavery has existed in every age of the world, not merely among the barbarous and savage nations, but among the most refined, civilized, and even Christian nations. Captives in war were sold as slaves, and were regarded and treated as property. This was considered as a favor to the captive, as his doom was slavery or death. If the captor saved the captive’s life, this was viewed as a mercy to the prisoner; for which he was to be reduced to perpetual servitude.

§ 2. It was but a slight remove from slavery to the slave-trade. The strong and powerful soon came to regard it as their right to prey on the weak and defenseless. Among the ancients, slavery finally became a regular

branch of commerce. Even in modern times and between Christian nations, treaties have been formed for the purpose of facilitating commerce in this species of property.

§ 3. But, towards the close of the eighteenth century, the slave-trade began to excite a spirit of disapprobation; and the conviction fastened itself on the consciences of men, that this traffic in human beings was repugnant to the principles of Christian obligation. Many of the great and good men who formed the Constitution of the United States shared in this conviction. In that Convention, the foundation was laid to put a final stop to this outrage on the rights of humanity, by vesting in Congress the power to prohibit the traffic by citizens of the United States after 1807. Although the provision is expressed in negative terms, that Congress shall *not* prohibit the practice *prior to that time*, yet, in legal parlance, it has all the effect of an affirmation that Congress may prohibit it after that time.

§ 4. Before the Declaration of Independence, as early as August, 1774, Virginia and North Carolina had resolved by their legislative assemblies to discontinue the importation of slaves. The first Continental Congress passed a similar resolution, which was to take effect from and after the first day of December of the same year.

§ 5. After the adoption of the Constitution, March 22, 1794, and May 10, 1800, acts were passed by Congress prohibiting the citizens of the United States, and residents within them, from engaging in the transportation of slaves from the United States to any foreign place or country, or from one foreign place or country to another, for the purposes of traffic. It will be observed that these acts prohibited our citizens from all participation in the foreign slave-trade except by direct *importation* into the United States. Thus Congress did all they possibly could under the Constitution at that time to interdict this inhuman traffic.

§ 6. By act of March 2, 1807, Congress prohibited, under severe penalties, the importation of slaves into the United States from and after Jan. 1, 1808. By another act, passed April 20, 1818, the penalties of the act of March 2, 1807, were increased in severity. Another act was passed March 3, 1819, authorizing national armed vessels to be sent to the coast of Africa to prevent citizens or residents of the United States from engaging in the slave-trade. This act authorized the seizure and confiscation of any vessels found engaged in this business. Another act of Congress, passed May 15, 1820, made the foreign slave-trade piracy, and punishable by death.

§ 7. The reader should bear in mind that these various acts of Congress have nothing to do with the slave-trade as between the several States. That matter was regulated by the States themselves, and some of them passed laws on this subject. They did this before the final abolition of slavery, which was done by amendment of the Constitution of the United States in 1865.

§ 8. A few words may not be out of place here in reference to the progress of other nations on this subject. The following facts are gathered from one of the lectures of the late Chancellor Kent on the law of nations. The first British statute that declares the slave-trade unlawful was passed in March, 1807. This was a great triumph of British justice. Afterwards, by act of Parliament, March 31, 1824, the slave-trade was declared to be piracy.

§ 9. Almost every maritime nation in Europe has deliberately and solemnly, either by legislative acts or by treaties and other formal engagements, acknowledged the injustice and inhumanity of the trade, and pledged itself to promote its abolition.

§ 10. By treaty between Great Britain and France, May 30, 1814, Louis XVIII. Agreed that the traffic was repugnant to the principles of natural justice; and he engaged to add his efforts at the ensuing Congress to induce all the powers of Christendom to decree the abolition of the trade, and that, on the part of the French Government, it should definitely cease in the course of five years.

§ 11. The ministers of the eight principal European powers who met in Congress at Vienna, Feb. 8, 1815, solemnly declared, in the face of Europe and the world, that the African slave-trade had been regarded by just and enlightened men in all ages as repugnant to the principles of humanity and of universal morality; that the public voice in all civilized countries demanded that it should be suppressed; and that the universal abolition of it was conformable to the spirit of the age and the generous principles of the allied powers. In March, 1815, the Emperor Napoleon decreed that the slave-trade should be abolished; and in July of the same year, after Napoleon's downfall, Louis XVIII. gave directions that this odious and wicked traffic should from that time cease.

§ 12. Denmark, in 1792, abolished the foreign slave-trade, and the importation of slaves into her colonies, to take effect in 1804. In December, 1817, Spain prohibited the purchase of slaves on any part of the coast of Africa after May 31, 1820. In January, 1818, Portugal made the like prohibition as to the *purchase* of slaves on any part of the coast of Africa north of the equator.

§ 13. In 1821, there was not a flag of any European State which could legally cover this traffic to the north of the equator; and yet, in 1825, the importation of slaves covertly continued, if it was not openly countenanced, from the Rio de la Plata to the Amazon, and through the whole American archipelago.

§ 14. By a convention between England and Brazil in 1826, it was made piratical for the subjects of Brazil to be engaged in the slave-trade after the year 1830. In the treaty of Sept. 10, 1822, between Great Britain and the Imaun of Muscat, the latter agreed to abolish the slave-trade for ever in his dominions. By the treaty of the 23d of October, 1817, between Great Britain and the King of Madagascar, it was agreed that there should be throughout the dominions of the latter an entire cessation of the sale or transfer of slaves.

§ 15. These treaty stipulations have not, in all instances, been faithfully kept; nor have the laws passed by the nations of Europe and America, interdicting this traffic, in all cases been successfully enforced: but they demonstrate the moral sense of the nations of Christendom on the subject.

§ 16. The provision prohibiting any amendment to the Constitution of the United States, which should forbid the importation of slaves before 1808, was one of the results of a compromise of this whole matter of slavery. It was feared by those States that had a large commercial interest in the foreign slave-trade, that, although Congress was forbidden to intermeddle with the subject before 1808, some amendment to the Constitution might be adopted to their prejudice unless forbidden. To allay that fear, this prohibition was inserted.

#### ART. IX.—REPUDIATION.

1. *Nothing in the Constitution shall be construed so as to prejudice any claim,*

1 st. *Of the United States; nor,*

2d. *Of any particular States.* **76.**

2. *All debts contracted, and engagements entered into, before the adoption of the Constitution, shall be as valid against the United States under the Constitution as under the Confederation.* **79.**

§ 1. Although these two clauses refer each to a different class of subjects, the spirit of them is the same. They are intended to give an

assurance to the people who are asked to adopt the new Constitution, that good faith shall be observed on the part of the proposed new government in all matters relating to the vested rights of States as well as of individuals, and also of the United States. As the government was about to undergo a great change, it was proper to incorporate these provisions into the fundamental law of the land, so as to quiet all fear that repudiation in some form might be attempted.

§ 2. The first of these provisions relates to conflicting claims and unsettled titles to some parts of the Western territory. That subject has been considered in Art. X., Chap. IV., Part II., in treating of the powers of Congress over territory, and more particularly with reference to new States, and their admission into the Union. The intention of this clause is to give assurance that the adoption of the Constitution shall in no way affect the validity of any claims to these lands, but that the rights of parties interested shall be the same as they were under the Confederation.

§ 3. The second clause, referring to debts, contracts, and engagements made by the United States under the Confederation, is intended to give assurance to the creditors of the proposed new government that all just claims against the Confederation will be recognized and liquidated under the Constitution. Judge Story says that this can scarcely be deemed more than a solemn declaration of what the public law of nations recognizes as a moral obligation, binding on all nations, notwithstanding any changes in their forms of government.

## ART. X.—FREEDOM.

### 1. CIVIL.

1st. *Congress shall make no law abridging,*  
1st. *The freedom of speech; nor,*  
2d. *The freedom of the press; nor,*  
3d. *The right of the people peaceably to assemble and petition the government for a redress of grievances. 83.*

2d. *The right of the people to keep and bear arms shall not be infringed. 84.*

### 2. RELIGIOUS.

1st. *No religious test shall ever be required as a qualification to any public office or trust under the United States. 81*

2d. *Congress shall make no law,*

- 1st. *Respecting an establishment of religion; or,*
- 2d. *Prohibiting the free exercise thereof.* **83.**

§ 1. The subjects of this article are, freedom of speech, freedom of the press, freedom of petition, freedom to bear arms, and freedom of religious sentiment. These are among the most sacred rights of human society; and Congress is strictly forbidden to interfere with them. But one of these rights, that relating to a religious test as a qualification to office, is in the Constitution as at first adopted. The others are in the amendments.

§ 2. When the Constitution was before the people, objections were made to it on the ground that it did not contain any formal and distinctive bill of rights. Several of the State Conventions that ratified it suggested certain amendments that should make definite acknowledgment of the rights of the people, which were not specified in that document. These proposed amendments were commended to the attention of Congress, and most of them have since been adopted. Among the number are those specified in this article.

§ 3. Some of these amendments are negative in form, and others affirmative. Those under consideration are such as relate to the individual rights of the citizen, civil and religious, with which the government is forbidden to interfere. They are prohibitions on the United States, relating to personal freedom.

§ 4. *Freedom of speech*, with which Congress is prohibited from interfering, does not mean to shield the citizen from legal responsibility for what he may utter. True, a man may say what he pleases; but he is responsible for the *abuse* of this liberty. He has no right to slander the reputation of another. Private reputation is a subject of protection by the laws of the land. You may slander a man in various ways, notwithstanding this liberty of speech. If you charge him with the commission of a crime which is indictable, and which would subject him, if true, to infamous punishment, this is slander. Charging a man with a breach of public trust is slander. A man can be slandered in reference to his trade or business by declaring him to be incompetent, or by saying of a merchant, for instance, that he is failing circumstances, when he is not.

§ 5. A slander becomes a libel when communicated by pictures or signs, or writing, printing, or painting. It is then calculated to make a deeper impression, may have a wider circulation, and is the more aggravating, because it may be presumed to be done with full deliberation. A

matter may be libelous if written or printed, which, legally, would not be slanderous if spoken. Expressions which hold a man up to ridicule, or tend to degrade him in the esteem of society, are libelous if written or printed. *Freedom of the press*, referred to in this article, does not exonerate a man from legal responsibility when he *abuses* that freedom. Libel is an indictable offense, and may be punished criminally. Slander is not indictable; but the author of it may be prosecuted for private damages by the injured party.

§ 6. We are not to infer, because Congress is forbidden to interfere with the freedom of the press, that the press can do no wrong is above the reach of law, and that it is a shield for every abuse. A writer may publish what he pleases; but, if he publishes that which is mischievous or illegal, he is responsible for the publication.

§ 7. The right of the people to meet in peaceable assemblage, and to petition the government for a redress of grievances, shall not be infringed. In despotic governments, the people are sometimes denied this right, under the pretense that the assemblies are conspiring against the welfare of the government, and are insurrectionary and riotous in their aims. It is the inestimable birthright of every American citizen to petition the government against the infliction of wrong and injustice.

§ 8. The right of the people to keep and bear arms, with which the General Government is herein prohibited from interfering, refers to an organization of the militia of the States. There have been fears expressed, that the liberty of the people might be destroyed by the perverted power of a formidable standing army. But here is the check to any such danger. The militia, that might be called out at any time on a month's notice, would outnumber, twenty to one, any standing army in time of peace that will ever be tolerated in the United States. Large standing armies might indeed be dangerous in the republican government, but for a much stronger force distributed throughout the ranks of the people.

§ 9. A man's religious views are not to be questioned when appointed or elected to any office under the Government of the United States. This, it must be remembered, does not apply to *State* officers. In some of the States, religious tests have been applied; but the Constitution of the United States wisely prohibits inquiry into the religious sentiments of any man, preliminary to his induction into office. Were it otherwise, the political would soon be merged in the ecclesiastical questions of the day; and, ultimately, Church and State might become united.

This clause prohibiting religious tests for office is the only place in which the word “religious” occurs in the Constitution. It was introduced for the purpose of effectually silencing all attempts at an alliance of Church and State in the National Government.

§ 10. In the very first Article of Amendments to the Constitution, Congress is prohibited from making any law respecting an establishment of religion, or from interfering with its free exercise. Congress is not allowed in any way to intermeddle with the religious institutions of the country. Our fathers felt extreme dread of every thing in the line of religious establishments of State. They felt that religion was chiefly a matter of personal concern between the individual and his Maker. They were familiar with the history of religious intolerance in those European States where the ecclesiastical power had become superior to the civil. They were well satisfied that the interests of a pure and holy religion demand no alliance with the civil power. Many of the authors of the Constitution were themselves men of strong religious convictions; so that we are not to attribute the clauses on this subject, either in the Constitution or its amendments, as arising from indifference or hostility to the interests of religion.

§ 11. Judge Story says, “It was also obvious, from the numerous and powerful sects existing in the United States, that there would be perpetual temptations to struggles for ascendancy in the national councils, if any one might thereby hope to found a permanent and exclusive national establishment of its own; and religious persecutions might thus be introduced to an extent utterly subversive of the true interests and good order of the Republic. The most effectual mode of suppressing the evil, in the view of the people, was to strike down the temptation to its introduction.



## CHAPTER VII. RELATING TO OFFICERS

### ART. I.—INELIGIBILITY.

1. UNITED-STATES OFFICERS.— *No person holding any office of trust or profit under the United States shall,*

*1st. Be appointed an elector of President and Vice-President, 54; nor,*

*2d. Be a member of either house of Congress during his continuance in office. 22.*

2. CONGRESSMEN.— *No senator or representative shall,*

*1st. Be appointed an elector of President and Vice-President, 54; nor,*

*2d. During the time for which he was elected, be appointed to any civil office under the United States,*

*1st. Which shall have been created during such time; nor,*

*2d. The emoluments whereof shall have been increased during such time. 22.*

§ 1. The object of the foregoing provision, which excludes persons who hold any office under the General Government from being appointed electors of President and Vice-President of the United States, was to prevent combinations and intrigues between pre-existing officials and the candidates for the two highest offices in the gift of the people. This clause requires that the electors shall come direct and fresh from the people, untrammelled by existing official relations.

§ 2. The clause forbidding membership of either house to officers under the General Government has been noticed in treating of the eligibility of senators and representatives, and need not be discussed here.

§ 3. Senators and representatives, although not officers of the United States, are excluded from being electors of President and Vice-President. The same reasons, however, why United States officers should not be electors, bear with increased force against members of Congress assuming that trust. (See Executive Department.)

§ 4. The Constitution forbids the appointment of members of Con-

gress to any civil offices created, or the emoluments whereof have been increased, during the terms for which such members were elected. The object of these provisions is apparent. It is to forbid the creation of offices with tempting salaries, or the increase of the salaries of offices already in existence, with the design of obtaining those salaries on the part of those who should assist in creating or increasing them. (See appendix to Analysis D.)

## ART. II.—FOREIGN PATRONAGE.

*No person holding any office of profit or trust under the United States shall, without the consent of Congress, accept of any present, emolument, office, or title, of any kind whatever, from any king, prince, or foreign State. 50.*

§ 1. According to the theory of our government, American citizenship confers equality. Democracy abhors titular distinctions. The chief purpose of this clause is to forbid the acceptance of these distinctions and bribes, in whatever form they may be tendered by foreign powers, which, if received by an officer under our government, might seduce him from the faithful discharge of duty to his own country.

§ 2. A private citizen, it will be observed, does not come under this prohibition; nor does an officer under any State government. It is, perhaps, to be regretted that this prohibition was not extended farther, so as to include all American citizens. Were a costly present to be made by the Emperor of France or the Queen of England to the President of the United States, he would not be at liberty to accept it on his own account, though he might in behalf of the people, and have it preserved in the archives of the nation, as it might seem rude to decline it.

## ART. III.—THE PRESIDENT.

1. *The compensation for the services of the President of the United States shall neither be increased nor diminished during the period for which he shall have been elected.*

2. *He shall not receive within that period any other emolument from the United States, or any State. 58.*

This article will receive attention when we come to the discussion of the Executive Department.

#### **ART. IV.—IMPEACHMENT.**

1. *The President, Vice-President, and all civil officers of the United States, shall be removed from office on impeachment for and conviction of treason, bribery, or other high crimes or misdemeanors.* **64.**

2. *Judgment in cases of impeachment shall not extend further than,*

1st. *To removal from office; and,*

2d. *Disqualification to hold and enjoy any office of honor, trust, or profit under the United States.*

3. *The party convicted shall nevertheless be liable and subject to indictment, trial, judgment, and punishment according to law.* **14.**

The subject of impeachment has been fully presented in the first and second chapters of Part II. Of this work. It will be found in Art. IX. Of Chap. I., and Art. X., Chap. II.

## CHAPTER VIII. RIGHTS OF STATES.

### ARTICLE I.—REPRESENTATION.

1. *Each State shall have at least one representative.* 5.
2. No amendment shall be made to the Constitution depriving any State, without its consent, of its equal suffrage in the Senate. 78.

§ 1. The first paragraph of this article is one of the clauses of the fifth paragraph of the Constitution, as it is numbered for convenience of reference. With the clause with which it stands in connection, it reads thus: "The number of representatives shall not exceed one for every thirty thousand; but each State shall have at least one representative." It is not here declared that there *shall be one representative* for every thirty thousand, but that the proportion shall not *exceed* that.

§ 2. At the taking of the first census, in 1790, it was ascertained that the State having the least number of inhabitants, Delaware, contained over fifty-nine thousand. In 1860, the population of that State was a little over a hundred and twelve thousand; not enough, however, to give it one representative, were it not for this clause, which says that "each State shall have at least one representative;" for in 1860 the ratio of representation was fixed at one member for 127,316 inhabitants.

§ 3. The authors of the Constitution foresaw that the population of this country would rapidly increase for ages after their labors were done, and that many new States would be added to the Union. They also saw that it would not do to provide for increasing the number of members in the House of Representatives in proportion to the increase of population; for, in such case, that body would soon become inconveniently large for the purposes of legislative deliberation. Within one hundred years from the adoption of the Constitution, our country will number nearly one hundred millions. Were the House of Representatives, then, to have one member for every thirty thousand, it would have 3,333 members.

§ 4. When the time arrives that the United States shall number two hundred and fifty millions, the House of Representatives will probably be constituted on the basis of not over one member to a million of inhabit-

ants. There will be many States, probably, at that time, which will not contain more than two or three hundred thousand each. Especially will this be true of the younger and the smaller of the older States. But these States must have at least one representative each, or they must be unrepresented in the national councils. Hence the necessity of this provision, that “each State shall have at least one representative.”

§ 5. There are several States now in the Union, which, but for this provision of the Constitution, would not be entitled to representation in the House. They have not the necessary number of inhabitants; but they each have one member on account of this clause.

§ 6. The second clause of the article under consideration refers to equality of State representation in the Senate. When, in the Constitutional Convention, the smaller States consented that population might become the basis of representation in the *House*, it was upon the express condition that there should be equality of representation in the *Senate*. So tenacious were the smaller States on this point, that they insisted on and obtained this Constitutional provision. No majority of the States, however large, can change this clause of the Constitution so long as a State which loses its full representation thereby refuses its consent to such change. The provision is for the protection of the smaller States.

## ART. II.—PRIVILEGES OF CITIZENSHIP.

*The citizens in each State shall be entitled to all the privileges and immunities of citizens of the several States. 72.*

The purpose of this clause is to create a general national citizenship. Perhaps it does not so properly come under the rights of *States* as the rights of *citizens* derived *from* the States. A person being a citizen in one State of the Union may remove to any other without prejudice to his social, pecuniary, or political rights in his new home. He may purchase, hold, convey, and inherit property, and enjoy all other rights arising from citizenship, the same as though he were born or naturalized in the State to which he emigrates. These are rights in the enjoyment of which he can not only claim the protection of the United States, but of the States from which and to which he removes. (See appendix to Analysis B.)

**ART. III.—STATE AMITY.**

*Full faith and credit shall be given in each State to the acts, records, and judicial proceedings of every other State. 71.*

This provision confers at once a right on States and a right on individuals; and it imposes obligations on States: 1st. A State has the right to demand of another State that its acts, records, and judicial proceedings, shall be respected, and that full faith and credit shall be given them. 2d. Individuals may demand the same, when that demand is necessary to the vindication of their rights. And 3d, States on whom such demands are properly made are under obligations to heed and respect them. A judgment rendered by a court in Ohio, for instance, would be conclusive in New York, provided the courts of Ohio would hold it conclusive.

The manner of proving such acts, records, and judicial proceedings, and the effect to be given to their authenticity, is, as we have seen, exclusively under the direction of Congress.

**ART. IV.—NEW STATES.**

1. *No new State shall be formed or erected within the jurisdiction of any other State;*
2. *Nor shall any State be formed by the junction of two or more States, or parts of States, without the consent of the legislatures of the States concerned.*

§ 1. The first paragraph above was inserted by the Constitutional Convention to quiet the fears of the larger States that their territory might be dismembered for the purpose of increasing the number of States. The second quiets the fears of the smaller States, that a junction of States might take place without their consent.

§ 2. No new State has ever been formed within the limits of the Union by the junction of two or more States. One new State has been formed, however, by the dismemberment of another. On the passage of the Ordinance of Secession by the Virginia Convention, a convention of the western counties of the State was held at Wheeling May 11, 1861, and on the 17th unanimously deposed the then State officers, and organized a State government.

§ 3. Nov. 26, 1861, a convention representing the western counties of the State assembled in Wheeling, and formed a constitution for

West Virginia. This constitution was submitted to the people May 3, 1862, and adopted by them by a nearly unanimous vote. The division of the State was sanctioned by the legislature of the new State, May 13, 1862, and ratified by Congress Dec. 31, 1862. West Virginia was admitted into the Union June 20, 1863.

#### **ART. V.—ELECTIONS.**

*The times, places, and manner of holding elections for senators and representatives shall be prescribed in each State by the legislature thereof, subject to the revision of Congress, except as to the places of choosing senators. 15.*

This clause gives the regulation of the election of senators and representatives primarily to the legislative authority of the several States. Should they fail to exercise it, however, or exercise it improperly, the interests of the country would justify the interposition of Congress. (See powers of Congress, Art. XI., Part II.)

#### **ART. VI.—MILITIA OFFICERS.**

1. *The appointment of the militia officers is reserved to the States respectively.*

2. *Also the training of the militia according to the discipline described by Congress. 41.*

§ 1. As the National Government is to depend on the several States for the militia, it seems proper that the officers who are to train and discipline them should be appointed by the States. This arm of power of national security is in some sense a local police force, a means of State defense, for the proper organization and discipline of which the several States are responsible to the national authority.

§ 2. But, in order that there may be uniformity of organization and discipline, it is left with Congress to prescribe the mode. In case of invasion by a foreign power, or a wide-spread rebellion, the militia of States distant from each other may be placed side by side in the same army. Hence the necessity of uniformity of discipline, and its being under the direction of a single power, instead of being distributed among the several States. The States respectively have the training of the militia; but Congress prescribes the mode of discipline.

## ART. VII.—FEDERAL PROTECTION.

1. *The United States shall guarantee to every State in the Union a republican form of government.*
2. *Shall protect each State against invasion;*
3. *Also against domestic violence,*
  - 1st. *On the application of the legislature of the State; or,*
  - 2d. *On application of the State Executive when the legislature can not be convened. 77.*

§ 1. The United States is one great political family, and each State is a member of that family; and each member has the right of protection from invasion without or insurrection within. The want of a provision similar to this was a serious defect in the Articles of Confederation. This is one of those State rights that give assurance of the stability and solidity of the State governments, as well as the perpetuity of the Federal Union. In every age of the world, and among all nations, there have been designing, intriguing, ambitious demagogues, ready to originate the most wicked schemes for the overthrow of the governments under which they lived. Human nature is much the same in every age; and but for this guaranty on the part of the United States, and this right on the part of the States, the form of a State government, at some unlucky moment, and under the sway of vile intriguers, might be changed from a republic to a monarchy.

§ 2. The States have the right of Federal protection from foreign invasion. They have no right to declare war, nor even to engage in it as States, unless the danger is so imminent as not to admit of delay. For the surrender of this right, it is but reasonable that the National Government should pledge its power to defend them.

§ 3. Perhaps there is more danger under a republican form of government, than under any other, of outbreaks of domestic violence. Enjoying, as the people do, a grater degree of freedom under this than under other forms of government, that freedom is correspondingly more liable to be abused. Our own history has demonstrated this tendency. Several times it has been found necessary to call out the Federal troops to protect the States from internal dissensions, and to crush open and high-handed defiance of State laws. The Federal authority may be invoked for this purpose by the legislature of the State, if in session, in which the insurrection occurs. If the legislature is not in session, and can not be readily convened, the Governor of the State may call on the President of the United States for the necessary aid.



## ART. VIII.—FUGITIVES.

1. FROM JUSTICE.—*A person charged in any State with treason, felony, or other crime, who shall flee from justice, and be found in another State, shall, on demand of the executive authority of the State from which he fled, be delivered up, to be removed to the State having jurisdiction of the crime. 73.*

2. FROM SERVICE.—*No person held to service or labor in one State under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor may be due. 74.*

§ 1. The several States are political neighbors to each other. By the first of the foregoing provisions, if the laws of a State have been outraged by the commission of a grave crime, and the criminal flees to a neighboring State, it is the right of the State whose laws have been violated to pursue the criminal, and bring him back for trial. No State has the right to become an asylum for criminals. This would afford a direct encouragement to hardened depravity.

§ 2. By an act of Congress, passed Feb. 12, 1793, provision was made for enforcing this clause of the Constitution. To secure the return of a fugitive from justice, according to that act, the following steps must be taken:—

1st. The Executive of the State in which the crime is committed must make demand for the return of the criminal on the Executive of the State to which the criminal has fled.

2d. The demand must be accompanied with a copy of the indictment against the criminal; or,

3d. By an affidavit made before a magistrate, charging the person demanded with having committed the crime, and having fled from justice.

4th. The copy of the indictment, or the affidavit, must be certified by the governor or chief magistrate making the demand, to be authentic.

5th. When this is done, it is the duty of the Executive of the State to which the person has fled to cause the accused to be arrested and secured.

6th. It is the duty of the Executive causing the arrest to give notice thereof to the Executive making the demand, or to his agent.

7th Following these proceedings, the person charged with the crime is delivered over for trial to the State authorities from which he fled.

§ 3. The clause relating to *fugitives from service* refers to slaves exclusively. An act was passed by Congress to enforce this provision of the Constitution, Feb. 12, 1793, and was amended Sept. 18, 1850; and both the act and amendment were repealed June 28, 1864. In 1865, an article of amendment to the Constitution was ratified by a sufficient number of States to render it a part of that instrument, for ever abolishing slavery in the United States and its territories. The clause which we are now considering is, therefore, no longer operative.

### ART. IX.—RESERVATIONS.

1. *The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.* 92.

2. *The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people.* 91.

§ 1. The first paragraph above is intended as a general rule of interpretation, to be applied to the Constitution in cases of doubtful right, as between State and United-States authority. The powers of the National Government are limited, being conferred and enumerated by the people of the United States. The powers not enumerated are reserved to the States or the people. But this must be understood with some qualification. All the means of carrying into execution the powers of the National Government are not *expressed* in the Constitution, nor *could* they be. For instance, the power to provide for the general welfare is *expressed*; but no attempt is made in that instrument to define all the *means* that may be adopted to secure that object.

§ 2. Again: The power to regulate commerce with foreign nations, among the States, and with the Indian tribes, is *expressed* in the Constitution; but all *means* that may become necessary to make this power effective are not enumerated, nor could they be by any possible human forecast. A power conferred always implies the right to adopt the necessary means to make that power effective, though they are not specified.

§ 3. When this amendment was considered in Congress, there was an effort made to insert the word "expressly" before the word "delegated:"

so that it would read, “the powers not *expressly* delegated to the united States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.” But, after thorough discussion, this word “expressly” was stricken out.

§ 4. The second paragraph of Art. IX., the learned commentator, Judge Story, says, “was manifestly introduced to prevent any perverse or ingenious misapplication of the well-known maxim, that an affirmative in particular cases implies a negative in all others; and, *e converso*, that a negation in particular cases implies an affirmation in all others.” In other words, it does not follow, nor is this construction to be tolerated, that, because certain rights are admitted as belonging to the people, all other rights are surrendered to the government. Such are retained as are not expressly or by necessary implication vested elsewhere or taken away.

## CHAPTER IX. STATE SUBORDINATION.

### ARTICLE I.—ORIGIN OF STATE OBLIGATIONS.

1. CONSTITUTION.—*The ratification of the conventions of nine States was declared to be sufficient for the establishment of the Constitution between the States so ratifying the same.* **82.**

AMENDMENTS.—*Whenever amendments to the Constitution are proposed in accordance with the terms of that instrument, they become valid, to all intents and purposes, as a part of it,—*

1st. *When ratified by the conventions of three-fourths of the several States; or,*

2d. *By the legislatures of three-fourths thereof.* **78.**

§ 1. The Constitution, as has been seen, was framed by a Convention of delegates from nearly all the States, which met in Philadelphia in May, 1787. When their labors were done, the proposed Constitution was submitted to Congress, with the recommendation that it should be submitted for ratification to State Conventions constituted of delegates chosen by the people of the several States.

§ 2. But it was presumed that there might be considerable hesitation and delay on the part of some of the States in ratifying the Constitution. This had been the case with the Articles of Confederation. Hence this provision, that nine States (over two-thirds) accepting the Constitution should be sufficient for its establishment as between those States. Had a unanimous ratification by the States been required before the new government could go into operation, the delay might have been several years longer than it was; for States, like individuals, are influenced by example. But, finding that success was made sure at an early day, in less than three years after the adjournment of the Constitutional Convention, every State gave its adhesion to the new government.

§ 3. The origin of the obligations of the States to the General Government is founded in their assent to the Constitution of the United

States. Before ratifying the Constitution, the States were at liberty to make their choice: they could come into the Union, or stay out. Should they refuse their assent to the terms of national association, they would each be an independent political division, having all the attributes and prerogatives of sovereign States. But, having accepted the terms of Union, they became subordinate to the national authority.

§ 4. The same remarks apply, and with equal truth and force, to the amendments that have been or that may be made to the Constitution. But there is this difference with regard to the amendments,—that a State may be bound by them *without* its express or contemporaneous assent, provided the terms of the original instrument have been complied with in adopting them. It devolves on Congress, or on the State legislatures, to take the initiatory steps in making amendments to the Constitution of the United States, as we have seen in Art. XIII., Chap. IV., Part II., of this work. But, when those steps have been properly taken, it requires but three-fourths of the conventions or legislatures of the several States to render the amendments valid, to all intents and purposes, as a part of the Constitution. Even though the other one-fourth of the several States shall not agree to the amendments, the amendments are just as binding on *them* as on the States yielding their assent on account of the conditions of the Constitution relating to amendments.

## ART. II.—SUPREMACY OF UNITED-STATES AUTHORITY.

1. *The supreme law of the land shall be,—*
  - 1st. *The Constitution of the United States.*
  - 2d. *All laws made in pursuance thereof.*
  - 3d. *All treaties made, or which shall be made, under the authority of the United States.*
2. *The judges in every State shall be bound thereby, notwithstanding any thing in the constitution or laws of any State to the contrary.* **80.**

§ 1. The clause in the Constitution from which this article in the Analysis is taken says, "This Constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every State shall be

bound thereby, any thing in the constitution or laws of any State to the contrary notwithstanding.”

§ 2. Here is a solemn declaration of the binding and supreme authority over all State authority,—

- 1st. Of the Constitution of the United States;
- 2d. All laws made in pursuance of it; and
- 3d. All treaties made under it.

In case of collision of authority between the United States, acting constitutionally, and any particular State, the former is supreme. Without this provision, the authors of the Constitution were of the opinion that it would have been radically defective.

§ 3. If the United-States authority were not supreme, the authority of the States must be so. Were the State supreme, the National Government would be characterized by all the weakness and imbecility of the Confederation. Every principal power of the new Constitution would have proved a failure.

§ 4. The clause and powers under consideration met with earnest opposition while the Constitution was before the people for discussion. Alexander Hamilton, one of the writers of the articles in “The Federalist,” says, “But it is said that the laws of the union are to be the *supreme law* of the land. What inferences can be drawn from this? Or what would they amount to if they were not to be supreme? It is evident they would amount to nothing. A law, by the very meaning of the term, includes supremacy. It is a rule which those to whom it is prescribed are bound to observe. This results from every political association.”

§ 5. A treaty has been defined to be a solemn and binding bargain between two or more parties competent to contract, the parties being nations. But it is something *more* than a contract. It has not only all the force of a contract as between the parties concerned, but all the binding authority of a *law* on the subjects or citizens of the contracting parties. The issues of peace and war often depend on the faithful or unfaithful observance of treaties. No nation would be willing to make a treaty with us which should be binding on them, but which our own citizens were at liberty to disregard at pleasure. The national faith is pledged in treaties, and there must be home authority to enforce their obligations on the citizen and subject.

### ART. III.—OFFICIAL OATH.

1. *The members of the several State legislatures shall be bound by oath or affirmation to support the Constitution of the United States.*

2. *All executive officers of the several States shall be bound in like manner.*

3. *Also all judicial officers of the several States.* **81.**

§ 1. By reference to the clause of the Constitution from which this article is taken, it will be seen that senators and representatives are included among those who are to take the oath to support the Constitution of the United States. Their oath of office was considered in treating of the “provisions common to both houses.” No one doubts the propriety of requiring an oath or affirmation of this character of those immediately concerned in the administration of the National Government; but, while the Constitution was before the people for ratification, strong objections were made to requiring that a similar obligation should be taken by State officers.

§ 2. Why, then, should the legislative, executive, and judicial officers of the several States be obliged to take on themselves this solemn obligation? Because the members and officers of the State governments have an essential agency in giving effect to the Federal Constitution. The election of the President and Senate will depend, in all cases, on the legislatures on the several States.<sup>1</sup> In many cases, the election of the House of Representatives maybe effected by their agency.

§ 3. The judges of the State courts will frequently be called upon to decide upon the Constitution and laws and treaties of the United States, and upon rights and claims growing out of them. Decisions ought to be, as far as possible, uniform; and uniformity of obligation will greatly tend to such a result. The executive authority of the several States may be often called upon to exert powers or allow rights given by the Constitution, as in filling vacancies in the Senate during the recess of the legislature; in issuing writs of election to fill vacancies in the House of Representatives; in officering the militia, and giving effect to laws for calling them out; and in the surrender of fugitives from justice.<sup>2</sup>

<sup>1</sup> *The Federalist*, No. 44.

<sup>2</sup> *Story on the Constitution*, §1,445.

## CHAPTER X. STATE PROHIBITIONS

### ARTICLE I.—STATE RELATIONS.

1. *No State shall enter into any treaty, alliance, or confederation, 51 ; nor,*

2. *Into any agreement or compact with another State, or with a foreign power, without the consent of Congress. 52.*

§ 1. Both of these provisions, in substance, were in the Articles of Confederation. The Constitution of the United States was established for the government of the people *as one nation*, and not for the government of the individual States. But, that the objects of the National Government might be secured without embarrassment, it was necessary to impose restrictions on the States. Were the States at liberty to treat with foreign powers or neighboring States, they might enter into such arrangements as would interfere with those made by the General Government at home and abroad.

§ 2. If the States were permitted to enter into treaties with foreign powers, the authority of the General Government on the same matter would be at an end. One State might enter into such engagements as would materially conflict with the interests, not only of the General Government, but of the other States. This would endanger, and perhaps destroy, the peace and harmony of the whole Union. Foreign powers might secure an advantage over *all* the States by securing the *favor of one* State. In time of war, such advantage might be used to the destruction and overthrow of the whole country and its institutions.

§ 3. If States were permitted to enter into compacts or agreements with each other, they might make such arrangements as would wholly neutralize the powers of Congress to regulate commerce among the States. These compacts and agreements between the States might be so extended as that one half the number would be arrayed against the other half. Endless domestic discord would result by consequence.



## ART. II.—COMMERCIAL.

1. *No State shall coin money; nor,*
2. *Emit bills of credit; nor,*
3. *Make any thing but gold and silver coin a tender in payment of debts; nor,*
4. *Pass any laws impairing the obligation of contracts. 51.*

§ 1. These are all commercial prohibitions. The power to coin money is confided to the General Government. Were the States invested with it, the effect would be “to multiply expensive mints, and diversify the forms and weights of the circulating coins.” This would destroy all hope of uniformity of currency, and would seriously cripple and embarrass the interests for commerce.

§ 2. By bills of credit, as here used, is meant engagements to pay money, circulating as money, for payment of which the State is pledged. As the power to coin money is denied to the States, certainly they should not be allowed to issue a paper medium to take the place of gold and silver.

§ 3. At the close of the Revolutionary War, and for some years afterwards, the whole country was flooded with a nearly worthless paper currency. True, it was issued under the direction of Congress; but it was done with the expectation that the States would each provide for the redemption of their respective proportions of this paper currency. The first issue was in 1775, and to the amount of three millions. Congress asked the States to provide for its redemption; but it was never done. This paper money depreciated constantly, notwithstanding Congress passed the most stringent laws to sustain it,—even going so far as to denounce those who should refuse to receive it at par as “enemies to the liberties of the United States.”

§ 4. Four years after the first issue, the amount of paper circulation was upwards of one hundred and sixty millions; and, a few years after that, it was extended beyond three hundred and fifty millions. The States still failed to comply with the requisitions of Congress to make provisions for the redemption of this “Continental currency,” as it was called. One dollar in gold or silver was worth from forty to a hundred dollars of these paper promises; and finally the Continental currency became so utterly worthless, that it ceased altogether to circulate.

§ 5. These were the experiences that led the authors of the Constitution to insert this clause, prohibiting the States from emitting bills of

credit. It should be stated here, that the States themselves also had largely issued bills of credit, which had become worthless. "It was, therefore, the object of the prohibition," as Judge Story says, "to cut up the whole mischief by the roots, because it had been deeply felt throughout all the States, and had deeply affected the prosperity of all."

§ 6. The States are also forbidden to pass any laws making any thing but gold and silver coin a tender in payment of debts. This prohibition has the same general object in view as the preceding clauses. It is intended to give uniformity and stability to the currency of the country, and to establish confidence in commercial transactions. Before the adoption of the Constitution, laws of various kinds had been passed by some or all of the States, requiring creditors to take worthless, or nearly worthless, property in payment of debts, at exaggerated and fictitious appraisement.

§ 7. Though a *State* can not make any thing but gold and silver a tender in payment of debts, yet this prohibition does not apply to the General Government. A large part of the present paper circulation of the United States, as well as for several years past, is legal tender. But this is *national* currency.

§ 8. The States are also prohibited from passing any law impairing the obligation of contracts. But Congress has this authority, and has lately passed a uniform bankrupt law, that is, uniform throughout all the States; the same in one State as in another. A contract may be defined, an agreement between two or more parties competent to contract, based on a sufficient consideration, each promising to do or not to do some particular thing possible to be done, not enjoined or prohibited by law.

1st. The parties must be competent to contract; that is, of proper age, sound mind, not under duress, nor alien enemies.

2d. There must be sufficient consideration, though this need not always be a *money* consideration. Previous moral or legal obligation may be sufficient; or the promise of one party may be sufficient ground for the promise of the other.

3d. The thing to be done must be *possible*. A contract to build a city in a day would be void for impossibility.

4th. The thing to be done must not be such as the law already enjoins, as that the party promises to properly observe the Sabbath or to provide for his family.

5th. It must not be something forbidden by the laws of the land; as committing burglary, robbery, assault and battery, or arson.

§ 9. When a legal contract is made, no State has the right to pass any laws to defeat it. The legislature has no right to interfere with the intention of the parties, so as in any way to defeat it, or to impose new conditions. But the legislature may change the method of *enforcing* a contract. For instance, suppose, by a law of New Jersey, a man who owes a debt, and can not pay it, may be imprisoned: New Jersey may pass a law abolishing imprisonment for debt; and that law may open the door of every jail in the State, and set every debtor free. This is not a law impairing the obligation of contracts; for imprisonment is not payment. The debtor so released from prison is still under legal obligation to pay.

### ART. III.—WAR.

1. *No State shall grant letters of marque and reprisal, 51; nor*
2. *Without the consent of Congress, keep troops, or ships of war, in time of peace; nor,*
3. *Engage in war, unless,*
  - 1st. *Actually invaded; or,*
  - 2d. *In such imminent danger as will not admit of delay. 52.*

§ 1. This article, with its divisions and subdivisions, embraces all the restrictions imposed on the States by the Constitution in reference to making war. The power of making war, and of making treaties of peace, belongs exclusively to the General Government.

§ 2. The establishment of an army or navy by a State in times of peace might be a cause of jealousy between neighboring States, and provoke the hostilities of foreign neighboring nations. Still, a State may be so situated that it may become indispensable to possess military forces to resist an expected invasion or insurrection. The danger may be too imminent for delay; and, under such circumstances, a State would have a right to raise troops for its own safety, even without the consent of Congress.<sup>1</sup>

For an explanation of letters of marque and reprisal, see Art. VII., Chap. IV., Part II.

<sup>1</sup> Story on Const. §1,404.

**ART. IV.—PENALTIES.**

1. *No State shall pass any bill of attainder; nor,*
2. *Any ex post facto law.* **51.**

The terms *bill of attainder* and *ex post facto* law were explained in Chap. VI., Art. VII., Part II. The explanation need not be repeated here.

Bills of attainder and *ex post facto* laws are contrary to the first principles of the social compact, and of every principle of sound legislation. Congress is forbidden to pass them, as we have seen; and for the same, if not for stronger reasons, the prohibition is extended to the States.

**ART. V.—NOBILITY.**

*No State shall grant any title of nobility.* **51.**

In Chap. VI., Art. VI., we have seen that the United States are forbidden to grant any title of nobility. States are under the same prohibition, and for similar reasons. It would be absurd to provide against the exercise of this power by the General Government, and yet leave the States at liberty to exercise it.<sup>2</sup>

<sup>2</sup> Story on Const. §1,404.

**ART. VI.—DUTIES.**

1. *No State shall, without the consent of Congress,*
  - 1st. *Lay any duty of tonnage; nor,*
  - 2d. *Any imposts, or duties on imposts or exports, except what may be absolutely necessary for executing its inspection-laws.*
2. *The net produce of all duties and imposts laid by any State on imposts or exports shall be for the use of the treasury of the United States.* **52.**

§ 1. Tonnage-duty is a tax or duty laid on ships or vessels in proportion to their cubical contents expressed in tons. A ton pressed by measure is forty-two cubic feet. States are forbidden by the Constitution to lay any duties of this kind without the permission of Congress. In refer-

ence to the subject of duties generally, it was the intention of the authors of the Constitution to place it entirely under the supervision and control of Congress. In the Convention that formed the Constitution, there was strong opposition to this prohibition on the States; and it finally passed that body by the close vote of six States against four. One State, being divided, gave no vote. There was a constant, earnest struggle against the surrender of State powers to the General Government.

§ 2. Nor are States allowed to lay duties of any kind, except what may be absolutely necessary for executing their inspection-laws; and even these, as we have seen in another place, are under the supervision and control of Congress. This is because to the hands of Congress is committed the regulation of commerce, not only with foreign nations, but among the States. The restraint on the power of the States over imports and exports is enforced by all the arguments which prove the necessity of submitting the regulation of trade to the Federal councils.<sup>1</sup> Inspection-laws are not, strictly speaking, regulations of commerce. Their object is to improve the quality of articles produced by the labor of the country, and to fit them for exportation or for domestic use. These laws act upon the subject before it becomes an article of commerce.<sup>2</sup>

The whole power to lay duties and imposts on imports and exports, and to lay a tonnage-duty, is, doubtless, properly considered a part of the taxing power; but it may also be applied as a regulation of commerce.<sup>3</sup>

<sup>1</sup> The Federalist, No. 44

<sup>2</sup> Kent's Com., Lect. 19.

<sup>3</sup> Federalist, No. 7, 22.

## ART. VII.—SLAVERY.

*Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist,*

1. *Within the limits of the United States; nor,*
2. *In any place subject to their jurisdiction.* **97.**

§ 1. Slaves were merely *things* in contemplation of the laws by which they were held in bondage in the States. Yet there were these exceptions to this definition: they were capable of committing crimes, and were punishable therefor; and they were counted at the rate of five

for three in enumerating the representative population of the States. They were subject to sale like other personal property. They could not take property by descent or purchase, and whatever they had belonged to their owners. They could make no lawful contracts, had no civil rights, and might be sold on execution for the payment of the master's debts.

§ 2. As long as slavery existed in this country, it was a *State* institution, not *national*. At the time of the adoption of the Constitution, there were thirteen States, in twelve of which slavery existed. The authors of the Constitution recognized this condition of things, and did not propose to interfere with it in any manner whatever, except to bring the *foreign slave-trade* under the control of Congress from and after the year 1808. Congress could not interfere with it in the States; and, when abolished, it had to be done by an amendment to the Constitution.

§ 3. In 1620, a Dutch vessel brought a cargo of slaves from Africa to Virginia; and this was the beginning of slavery among the English Colonies on this continent. It existed along the banks of the Hudson as early as 1626. Slavery is mentioned in the Massachusetts laws between 1630 and 1641. Domestic slavery having thus commenced, it continued to increase throughout the United States while they were yet Colonies of Great Britain. It continued to exist among all the Southern States until it was abolished by the Constitutional Amendment of 1865. It had already become extinct in the Eastern and Northern States.

§ 4. In Pennsylvania, by an act of March 1, 1780, and in New Jersey, by acts of Feb. 14, 1784, and Feb 24, 1820, passed for the gradual extinction of slavery, it was removed from them; and all children born of slave-parents after the 4th of July, 1804, were declared free. In Massachusetts, it was judicially declared, soon after the Revolutionary War, that slavery was virtually abolished by their constitution, and that the children of female slaves, though born prior to their constitution, and as early as 1773, were born free.

§ 5. In Connecticut, statutes were passed in 1784 and in 1797, which gradually extinguished slavery in that State. In 1830, there were but twenty-five slaves in Connecticut. In Rhode Island, no person could be born a slave after March 1, 1774. In New Hampshire and Vermont, slavery was abolished by their respective constitutions. It was incorporated into the ordinance of the United States north-west of the River Ohio, that there should be neither slavery nor involuntary servitude in the said territory, otherwise than for the punishment of crimes.<sup>1</sup>

§ 6. March 6, 1820, an act of Congress was passed, known as the

Missouri Compromise, being one of the conditions on which Missouri was admitted into the Union as a slaveholding State. By this act, "all that territory ceded by France to the United States, under the name of Louisiana, which lies north of thirty-six degrees and thirty minutes north latitude, not included within the limits of Missouri, was to be free territory." In May, 1854, this compromise was substantially repealed.

§ 7. Down to 1850, the city of Washington was an extensive slave-market. Slaveholders from all parts of the slaveholding States came there for the purpose of buying or selling slaves. Sept. 20, 1850, an act of Congress was passed prohibiting the traffic in slaves within the limits of the District of Columbia. April 16, 1862, slavery was wholly abolished within the District of Columbia; and, by the same act, it was abolished throughout the territories belonging at that time to the United States, and which might thereafter be acquired by them. The next great move was the amendment to the Constitution, which is the subject of this article, prohibiting the States and Territories within the United States from giving sanction to this institution. The final downfall of American slavery dates from the year of our Lord 1865.

<sup>1</sup> Kent's Com., Lect. 32, and notes.

## CHAPTER XI. PERSONAL RIGHTS.

### ART. I.—DOMICILE.

1. *No soldier shall in time of peace, be quartered in any house without the consent of the owner; nor,*
2. *In time of war, but in a manner to be prescribed by law. 85.*

§ 1. The place most sacred to every citizen is that one which he calls his *home*. In the language of the law-books, a man's house is his castle. The enjoyment of it, uninterrupted, is among the most sacred of personal rights. Arbitrary rulers, even in time of peace, are prone to trespass on this right, and in the very mode here forbidden. The complaint is made in the Declaration of Independence, that the King of Great Britain has been guilty of quartering large bodies of armed troops among us.

§ 2. But it may sometimes be necessary, not only for the protection of particular localities and districts, but perhaps for the protection of individual dwellings, that troops shall thus be temporarily quartered in time of war. This would not be regarded as an encroachment, however, by any reasonable man, but rather as cause for gratitude to his country. That this right may not be abused by government officials, it must be done strictly according to law in such case made and provided.

### ART. II.—SECURITY.

1. *The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated.*
2. *No warrant shall issue but upon probably cause, supported by oath or affirmation,*
  - 1st. *Particularly describing the place to be searched; and,*
  - 2d. *The person or things to be seized. 86.*



This article is substantially an affirmation of a well-known principle of the common law. It had been the doctrine for ages before this amendment was attached to the Constitution; but it was so frequently violated to suit the caprice of rulers and their pliant officials, that it had become reduced to a mere parchment theory. The requirements of this amendment are of the most reasonable character. Any thing less would be inconsistent with American liberty. No warrant of a general character can be issued; or, if issued, it would be powerless for the arrest of a citizen, or for the seizure of his property. To be valid, it must specify with reasonable certainty the person or persons to be apprehended, or the things to be seized; and the warrant must be supported by oath or affirmation, so that, if false, the person at whose instance it is issued may be indicated and convicted of perjury.

### ART. III.—JUDICIAL.

1. *No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising,*

1st. *In the land or naval forces; or,*

2d. *In the militia, when in actual service in time of war or public danger.*

2. *No person shall be subject for the same offense to be twice put in jeopardy of life and limb.*

3. *No one shall be deprived of life, liberty, or property, without due process of law.*

4. *Private property shall not be taken for public use without just compensation.* **87.**

§ 1. A capital crime is one that subjects the offender to the penalty of death. An infamous crime is one that exposes the criminal to the abhorrence and detestation of mankind, and to ignominious punishment more or less severe. These crimes and punishments are of such grave character, that before a person shall be exposed even to a trial for the one, or a liability to the other, the most careful and deliberate steps must be taken. He must first be indicted by a grand jury.

§ 2. An indictment is a written accusation or a formal charge made against a person for the commission of a crime, and is made by a grand jury on oath. The proceedings of the grand jury are usually secret; the

party accused not being called on to defend himself before them, nor even allowed the opportunity to do so. If they find a bill of indictment against him, they deliver it to the court under whose jurisdiction they are acting, when a warrant is issued for the arrest of the person so indicted. Before the court, he has an opportunity to defend himself on trial. A grand jury is a body of men, twenty-three in number, selected, according to the forms of law, to inquire in behalf of the people into the commission of any crimes within their county or district.

§ 3. In the proceedings before a grand jury, witnesses are called by the attorney who acts for the people, and these witnesses testify as to what they know in reference to the grounds of any accusations which may be brought before the jury against any person. The prosecuting attorney draws the indictment according to the forms of law; and if twelve of the grand jury, after hearing the testimony, think there is sufficient evidence against the party accused to put him on his trial, the foreman of the jury indorses on the bill of indictment the words, "A true bill," and signs his name under the indorsement.

§ 4. If crimes are committed in the army or navy, or in the militia, when in actual service in time of war or public danger, there is another method of trying the criminal. It is done by court-martial, or by military commission, without going through with the formalities of an indictment.

§ 5. A person having been once tried for a crime, whether found guilty or not guilty, if the jury agree on a verdict at all, can not be put on his trial a second time for the same offense. But this statement must be taken with the qualification that the accused does not himself apply for a new trial. If he applies for a new trial, and obtains it, in contemplation of law, the former trial being one in which error has been committed, is considered a mis-trial, and is regarded as no trial: so a second trial on the same indictment, where the jury fails to agree on the first trial, is but a *continuation* of the trial.

§ 6. Without due process of law, no person shall be deprived of life, liberty, or property. The first object of human government is protection of the citizen. This clause is inserted for the purpose of giving assurance that life, liberty,

and property shall be held sacred in the eye of the law, and that the citizen shall not be deprived of either except through all the forms and substance of the regular administration of justice.

§ 7. But the public good, which is always paramount to private interest, often requires the appropriation of private property for the ends of

government, or for the greater good of the greater number. Where the public interests require it, private property may be taken by rendering a just compensation. What is just compensation in such cases is to be ascertained by such process of investigation as shall be fixed by law. It may be necessary to project a railroad, a military road, or to construct a canal; or it may become necessary to appropriate private property for the support of an army. This may be done by authority of law, but not without just compensation to the owner of the property.

#### ART. IV.—CRIMINAL ACTIONS.

*In all criminal prosecutions,—*

1. ACCUSATION.—*The accused shall be informed of the nature and cause of the accusation.*

2. TRIAL BY JURY.—*He shall enjoy the right to a speedy and public trial,*

*1st. By an impartial jury.*

*2d. The jury shall be of the State and district wherein the crime shall have been committed.*

*3d. The district shall have been previously ascertained by law. 88.*

3. WITNESSES.— 1. *No one shall be compelled in any criminal case to be a witness against himself. 87.*

*2d. He shall have compulsory process for obtaining witnesses in his favor.*

*3d. He shall be confronted by the witnesses against him. 88.*

4. COUNSEL.—*He shall have the assistance of counsel for his defense. 88.*

5. BAIL.—*Excessive bail shall not be required.*

6. FINES.—*Excessive fines shall not be imposed.*

7. PUNISHMENTS.—*Cruel and unusual punishments shall not be inflicted. 90.*

§ 1. In this article is an outline of the rights of a party on trial for a criminal offense. In the first place, he is to be informed of the nature and cause of the accusation against him. This appears in the indictment, which is a written accusation made by the grand jury, on oath, at the suit of the government. The indictment must charge the time, place, and nature and circumstances of the offense with clearness and certainty; giv-

ing the accused full and definite notice of the charge, so that he may make his defense with all reasonable knowledge and to the best of his ability.

§ 2. The trial shall be speedy; that is, there shall be no unnecessary delay. This is for the convenience of the accused. Long delays may cause difficulty in obtaining witnesses, who may become scattered over the country, and located at remote points; and the prisoner may find it difficult to procure bail, and thus be subjected to protracted imprisonment waiting for his trial. The trial must be public, thereby insuring fairness and impartiality, as the proceedings are open to the inspection and criticisms of the community.

§ 3. And the trial is by jury. This does not mean the *grand* jury, but another, called a *petit* jury, consisting of twelve good and lawful men, against whom, and each of whom, no valid and legal objection can be raised. This jury must be impartial; that is, it must be constituted of persons who have not already made up their minds on the guilt or innocence of the party accused. The *grand* jury accuses the party implicated: the *petit* jury tries the accusation; and, in order to convict the accused, there must be entire unanimity of the petit jury in favor of his guilt.

§ 4. The jury shall be selected from the State or district in which the crime shall have been committed: and the district shall have been previously ascertained by law; that is, the district must have been previously *determined* by law. When we come to a discussion of the judiciary of the United States, we shall see that the States are divided, for convenience, into circuits and districts by act of Congress. The selection of the jury from the State or district in which the crime is committed is supposed to secure fairness and impartiality on the trial.

§ 5. By our Constitution, a man can not be *compelled* to testify against himself; and this is in affirmance of a well-settled principle of common law. It is well known that in some countries not only are criminals compelled to give evidence against themselves, but are subjected to the rack or torture in order to procure a confession of guilt; presuming that innocence would vindicate itself by a stout resistance, or that guilt would make open confession: as if a man's innocence were to be tried by the harness of his constitution, and his guilt by the sensibility of his nerves!<sup>1</sup>

§ 6. To secure impartiality of trial, and to give a fair opportunity of defense, the accused shall have compulsory process for obtaining witnesses in his favor. Several centuries since, in England, the practice in

criminal trials was to deny the accused the liberty of having witnesses to testify in his favor.

Afterwards, the rigor of this tyrannical rule was so modified as to allow witnesses to testify in favor of the accused, but not under oath; thus weakening their credibility. The practice now, however, is general to allow the accused to make as full and complete a defense as in his power. Under our Constitution, if the accused is destitute of the means of procuring the attendance of witnesses in his favor, he may have compulsory process for this purpose, even at the expense of the government.

§ 7. He shall be confronted by the witnesses against him. The accused and all witnesses appear face to face in open court. If a witness is of a corrupt and mercenary disposition, this salutary provision may have a tendency to check his recklessness in giving testimony.

§ 8. The accused shall have the assistance of counsel for his defense. By counsel is meant a professional lawyer, attorney, or advocate. To an American citizen, accustomed to seeing nearly every cause in court, civil and criminal, in the hands and under the direction of attorneys, it seems almost needless that such a clause as this should be made a constitutional provision. But, in capital cases at common law, the prisoner was denied this right unless some matter of law should arise proper to be debated. He could not have the benefit of professional assistance in the examination of witnesses, or in making his defense before the jury.

§ 9. It was not until the year 1836 that prisoners were allowed to be defended by counsel in England, except in cases of treason, which is the gravest of crimes, and misdemeanors which are among the minor offenses. Under our Constitution, and most of the State Constitutions, if the accused is unable to employ counsel for want of means, counsel is assigned him by the court: so careful is the law in this country of the rights of an American citizen.

§ 10. Excessive bail is forbidden. The meaning of the word "bail" here is, to set free, liberate, deliver from arrest, or out of custody, to the keeping of other persons, on their undertaking to be responsible for the appearance, at a certain day and place, of the person bailed. He who becomes surety for the appearance of another at court is supposed to have the custody of that person. The writing given in such cases is called the bail-bond. The person who becomes surety promises in the bond to pay a certain sum of money therein named if the person bailed shall fail to appear as therein specified.

§ 11. A person accused of a crime punishable by death is not usually

bailable: the only cases of this kind where bail is taken are those in which the proof of guilt is slight. All other crimes, except those punishable capitally, are bailable. But intriguing, oppressive magistrates have sometimes, in other countries, required enormous bail, or bail in excessive and enormous sums. Bail, being merely surety that the accused will appear before the court, and stand his trial and is consequences, should not be excessive; and our Constitution wisely and humanely forbids it.

§ 12. Excessive fines are likewise forbidden. A fine is a pecuniary penalty imposed by a court upon a person for a criminal offense, or breach of law. The fine is imposed after trial and conviction. A malignant and vindictive magistrate might impose cruel and excessive fines, as the history of criminal jurisprudence in other countries proves, were it not for this constitutional prohibition.

§ 13. Nor shall cruel and unusual punishments be inflicted. This needs no comment, except the remark that history shows that despots in the dark ages taxed their fiendish ingenuity to invent punishments the most horrid, cruel, and revolting. And this prohibition is for the purpose of avoiding all possibility of a repetition of such cruelties in this country.

<sup>1</sup> Black. Comm., vol. iv. p. 326

## ART. V.—CIVIL ACTIONS.

In suits at common law where the value in controversy shall exceed twenty dollars,

1. *The right of trial by jury shall be preserved.*

2. *No fact tried by a jury shall be otherwise re-examined in any court of the United States than according to the rules of the common law.* **89.**

§ 1. The common law includes those principles, usages, and rules of action, applicable to the government and security of person and property, which do not rest for their authority upon any express and positive declaration of the will of the legislature. It grew into use among our English ancestry by gradual adoption; receiving from time to time the sanction of the courts of justice, without any legislative act or interference. It was the application of the dictates of natural justice and of cultivated reason to particular cases.

A statute law is the will of the legislature in writing.<sup>1</sup>

§ 2. In paragraph 68 of the Constitution, provision is made for the trial of *criminal* cases by jury; but nothing is said there or elsewhere in that instrument, as it came from the hands of its authors, about trial by jury in *civil* cases. Those who assailed the Constitution when it was before the people for ratification claimed that this omission was intended to and did abolish trial by jury in civil cases. Hence this amendment was adopted at an early day, which put the matter at rest. This amendment, however, refers only to cases in the common-law courts, not to courts of admiralty and maritime jurisdiction, nor to cases of equity, in which the courts determine both the law and the fact. If the matter in controversy be less than twenty dollars, a jury trial can not be claimed, being a matter of too little importance to warrant the expense of a jury trial.

§ 3. When a matter in controversy has once been fairly adjudicated, that adjudication is a bar to any further judicial examination or proceedings, except according to the forms and usages of the common law. There must be an end somewhere to human controversy, and that end must be determined by legal principles and usage. The rules of common law here spoken of, under which matters of fact may be re-examined, refer to a *continuation* of the investigation by a successful motion for a new trial, on cause shown, or by writ of error, or by an appeal to another and higher tribunal. The parties have the right to exhaust all legal remedies before the controversy is to be considered as judicially settled; but these remedies must be pursued according to common-law usage.

<sup>1</sup> Kent's Comm., Lect. 21

**ART. VI.—TREASON.**

1. DEFINITION.—*Treason against the United States shall consist only,*

1st. *In levying war against them; or,*

2d. *In adhering to their enemies, giving them aid and comfort.*

2. CONVICTION.—*No person shall be convicted of treason unless,*

1st. *On the testimony of two witnesses to the same overt act; or,*

2d. *On confession in open court.* **69.**

§ 1. Under the common law of England, and under an old English statute as far back as the time of Edward III., there were seven distinct crimes that came under the head of treason. To imagine the king's death, to counterfeit the king's seal, or to counterfeit the king's coin, was treason. The English jurists were sometimes puzzled to determine precisely what was treason.

§ 2. The Constitution of the United States, therefore, wisely gives a concise definition of this crime as against the General Government. Our Constitution recognizes no such offense as *constructive* treason, as was the case with the ancient common law of England. There are but two ways that treason can be committed against the United States, and these are defined with such precision as to leave no room for cavil or doubt. Levying war against the United States, or adhering to their enemies, giving them aid and comfort, is treason.

§ 3. Very early in our history, the Supreme Court of the United States had occasion to define what is to be understood by the phrase, "levying war." On that occasion, the court said, "However flagitious may be the crime of conspiring to subvert by force the government of our country, such conspiracy is not treason. To conspire to levy war, and actually to levy war, are distinct offenses. The first (levying war) must be brought into open action by the assemblage of men for a purpose treasonable in itself, or the fact of levying war can not have been committed.

§ 4. "It is not the intention of the court to say that no individual can be guilty of this crime who has not appeared in arms against his country. On the contrary, if war be actually levied, that is, if a body of men be actually assembled for the purpose of effecting by force a treasonable purpose, all those who perform any part, however minute, or however



remote from the scene of action, and who are actually leagued in the general conspiracy, are to be considered as traitors; but there must be an actual assembling of men for the treasonable purpose to constitute a levying of war.”

§ 5. The Constitution is humane to the accused, in requiring the strictest proof for the establishment of his guilt. There must be two witnesses, at least, to the same overt act, unless the prisoner make confession in open court. Confessions out of court, though testified to by any number of witnesses, are not sufficient. Confessions (out of court) are said to be the weakest and most suspicious of all testimony; ever liable to be obtained by artifice, false hopes, promises of favor, or menaces; seldom remembered accurately or reported with due precision, and incapable in their nature of being disproved by other negative evidence.<sup>1</sup> There must, as there should, be a concurrence of two witnesses to the same overt act, that is, *open* act of treason, who are above all reasonable exception.<sup>2</sup>

The power of Congress to declare the punishment of treason was noticed in Chap. IV., Art. IV., Part II.

<sup>1</sup> Black. Comm., 4 v., 357

<sup>2</sup> Story on Const., §1,802.

## ART. VII.—OFFICIAL IMMUNITIES.

### Freedom

1. FROM ARREST.—*Members of Congress shall in all cases, except treason, felony, and breach of the peace, be privileged from arrest,*

1st. *During attendance at their respective houses;*

2d. *While going to and returning from the same.*

2. OF SPEECH.—*For any speech or debate in either house, they shall not be questioned in any other place. 21.*

§ 1. Although freedom from arrest is here classed under the title of “Personal Rights,” as it relates to members of Congress, yet it is as much the right of their constituencies, and of the houses of which they are members, as it is the right of the members themselves. It is an *official* immunity. It is a right universally accorded to members of legislative bodies in all countries, and in all the States of this Union. They can

be arrested for crime only. Blackstone says, "It has immemorially constituted a privilege of both houses of the British Parliament."

§ 2. Thomas Jefferson says, "It seems absolutely indispensable for the just exercise of the legislative power in every nation purporting to possess a free Constitution of government, and it can not be surrendered without endangering the public liberties as well as the private independence of the members." Of course, an arrest of a member of Congress would prevent the performance of his duties in the house of which he was a member. His constituency would be left without representation. The public interests, which are always considered paramount to private, must suffer for want of attention. The privilege is considered not that of the member or of his constituents only, but a privilege of the house also.

§ 3. And, for the purpose of securing entire freedom of discussion, no member of either house can legally be questioned elsewhere for any thing which he may see fit to utter in debate in his place as a member; that is, he can not *legally* be called to account before the courts, no matter how much he may slander private character. Of course, this is a right which may be, and sometimes is, abused. But the public interests may require the most critical and searching examinations into personal and official qualifications of individuals proposed as candidates for public stations of grave responsibility. Members should be allowed to perform these duties without fear of future personal retribution.

## CHAPTER XII. EXECUTIVE DEPARTMENTART.

### I.—IN WHOM VESTED

*In a President of the United States of America.* 53.

§ 1. Under the Confederation, there was no such officer as a President of the United States. There was an Executive Committee of thirteen, one from each State, having no power except during the recesses of Congress. Congress possessed the executive power while in session. Alexander Hamilton says in "The Federalist," "There is hardly any part of the system [of government], the arrangement of which could have been attended with greater difficulty; and there is none which has been inveighed against with less candor, or criticized with less judgment." These remarks were made while the Constitution was before the people for deliberation.

§ 2. Energy in the Executive is one indispensable characteristic in the definition of good government; for the duty of this department is to see that the laws are faithfully and promptly executed. A feeble Executive implies a feeble execution of the government. A feeble execution is but another phrase for a bad execution; and a government ill executed, whatever it may be in theory, must be a bad government in practice.<sup>1</sup>

§ 3. It was a subject of much and earnest debate in the Convention that formed the Constitution, whether this department should be placed in the hands of one, or in the hands of several. No subject was more thoroughly discussed in that body. It was maintained that energy would be most likely to be secured by unity of executive, and that wisdom would be most likely to be secured by a plurality; and that the latter would be most likely to command the confidence of the people.

§ 4. As the executive prerogative is limited to the faithful execution of the laws after they shall have been duly enacted and promulgated, it was

doubtless most judicious that the executive power should be vested in a single individual. It gives a stronger sense of personal responsibility. No discretion is submitted to the executive officer as to the wisdom or expediency of the law. What has once been declared to be law, under all the cautious forms of deliberation prescribed by the Constitution, ought to receive prompt obedience.<sup>2</sup>

<sup>1</sup> Federalist, no. 72.

<sup>2</sup> Kent's Comm., lect. 13.

## ART. II.—TERM

*He shall hold his office during the term of four years.* **53.**

§ 1. This was a subject on which there was a great variety of opinion in the Convention. There were those who favored the proposition that the Executive should hold his office for life, or during good behavior. At one stage of the proceedings, seven years was fixed as the duration of the term. The term of four years was finally fixed upon as a compromise; for there were members in favor one year, others in favor of two, and others three years.

§ 2. The term of four years is intermediate between the term of office of the Senate and that of the House of Representatives. In the course of one presidential term, the House is, or may be, twice re-composed, and two-thirds of the Senate changed or re-elected.<sup>1</sup> The executive term should not be so short as to be constantly changing from one incumbent to another, giving the government no opportunity to test by experience the policy of its measures; nor, on the other hand, should it be so *long* as to allow an obstinate and corrupt Executive, should the country unfortunately be cursed with one, to bring on wide-spread mischief and disaster.

§ 3. The Presidential term commences on the fourth day of March next after the President's election; and in case of his death, removal, or resignation, during his term, the person who succeeds to the duties of the office serves the unexpired portion of the term only.

<sup>1</sup> Story on the Const. §1,438.

### ART. III.—ELIGIBILITY.

1. *He must have attained to the age of thirty-five years.*
2. *Must have resided within the United States fourteen years.*
3. *He shall be a natural-born citizen; or,*
4. *A citizen of the United States at the time of the adoption of the Constitution.* **56.** (See appendix D.)

§ 1. The age required was regarded as necessary to give the candidate for this office sufficient time to demonstrate his character, and to enable his fellow-citizens to judge of his fitness for the high position of chief executive of a great nation. The mental faculties are usually in full vigor at this age; and opportunities must have been afforded for long public service, and for varied and large experience in the public councils.

§ 2. Fourteen years' residence in the United States is intended not only to give opportunity for an extensive acquaintance on the part of his fellow-citizens with the candidate for this office, but also to furnish *him* with the requisite knowledge of the wants and institutions of the country. Besides, it may be presumed that a citizen whose residence has been chiefly abroad may not only be deficient in affection for his own country, but may have become partial to the institutions of other countries with which he has long been familiar.

§ 3. The Constitution requires that the President shall be a natural-born citizen of the United States, or a citizen at the time of the adoption of the Constitution. This is an important restriction, when we consider the sacredness of the trust committed to the charge of the office, as this qualification of birth cuts off all those inducements from abroad, to corruption, negotiation, and war, which have frequently and fatally harassed the elective monarchies of other countries.<sup>1</sup>

§ 4. But, through the bloody struggle of the American Revolution, our fathers were greatly assisted by the aid of many citizens who were natives of other countries. They had espoused our cause, fought and bled in our interests, had become naturalized citizens, and had proved their attachments to our institutions beyond all doubt. It would have been ungenerous and ungrateful to have excluded this class of citizens from all possibility of attaining to any office, however exalted, under a government which they had sacrificed so much to establish. Hence this saving clause of the Constitution, that, if a person was a citizen of the United States at the time of the adoption of that instrument, he became eligible to the Presidency. But, by the lapse of time, this clause has become practically obsolete.

§ 5. The President is eligible to re-election without limitation: thus far, however, there has never been a second re-election. In the Constitutional Convention, there was a strong feeling in favor of a provision prohibiting a re-election; but this gave way when it was decided to limit the term to four years.

<sup>1</sup> Kent's Comm. Lect. 13.

## ART. IV.—ELECTION.

### 1.—ELECTORS.

1st. *Each State shall appoint electors of President and Vice-President in such manner as the legislature thereof may direct.*

2d. *The number of electors shall equal the number of senators and representatives to which the State may be entitled in Congress.* **54.**

§ 1. In the Convention that formed the Constitution, the original scheme for electing the President was by the two houses of Congress, or by the National Legislature, whether that should be composed of one or two houses. This plan was adopted by eight States for, to two against it. Afterwards it was voted by six States against three, one being divided, to choose the President by electors to be appointed by the several States.

§ 2. It was then decided, by eight States to two, that the electors should be appointed by the legislatures of the several States. After this, the plan of electing the President by Congress was restored by a vote of seven States against four. Subsequently it was again changed to the mode of electing by electors, by a vote of nine States against two. Leaving it to the legislature to direct as to the manner of appointing electors was carried by a vote of ten States against one.

§ 3. The election of the electors of President and Vice-President, with a single exception, is now confided to the people of the several States.<sup>1</sup> Thus the sense of the people operates in the choice of the Chief Magistrate with much more certainty than it would were the choice of electors confided to a pre-existing body. The immediate election of the President and Vice-President is committed to men chosen for that specific purpose. A small number of persons selected by their fellow-citizens from the general mass will be most likely to possess the information and discernment requisite to so complicated an investigation.<sup>2</sup> We have seen in Chap. VII., Part II., of this work, that no senator, representative, or other person holding a place of trust or profit under the United States, can be an elector of President and Vice-President.

§ 4. The number of electors corresponds with the number of senators and representatives to which the States are respectively entitled in Congress. Thus each State has about the same influence in the election of President and Vice-President that it has in the national councils.

<sup>1</sup> In South Carolina, electors are elected by the State legislature.

<sup>2</sup> Federalist, no. 68.

## 2.—PROCEEDINGS OF ELECTORS.

1st. *They shall meet in their respective States.*

2d. *They shall vote by ballot for President and Vice-President of the United States, at least one of whom shall not be an inhabitant of the same State with themselves.*

3d. *They shall name in their ballots,*

1st. *The person voted for as President; and,*

2d. *The person voted for as Vice-President.*

4th. *They shall make distinct lists of all persons voted for,*

1st. *As President;*

2d. *As Vice-President; and the number of votes for each.*

5th. *The electors shall sign and certify the lists.*

6th. *They shall transmit the lists sealed to the seat of government of the United States.*

7th. *The lists shall be directed to the President of the Senate.* **94.**

§ 5. This matter of the meeting of the electors in their respective States is a mere matter of form. No discussion of the merits of the candidates for President and Vice-President takes place; and, indeed, none is expected. The electors are chosen wholly with reference to particular persons who have been put in nomination at a convention called for that purpose; and the electors are pledged to vote for these nominees, and are in no sense at liberty to vote otherwise. The object of appointing electors was, by the authors of the Constitution, to give opportunity for deliberation, and for cautiously analyzing the characters of candidates for these high trusts; but this object has been wholly defeated by the practices of the political parties arrayed against each other.

§ 6. Hence the meeting of the electors, as before stated, is a mere matter of form. Nothing is left to the electors but to cast their votes according to previous pledges; and any exercise of an independent judgment would be treated as political usurpation, dishonorable to the individual, and a fraud on his constituents.<sup>1</sup>

§ 7. Congress, it will be remembered, has the power to determine when the States shall choose the electors, and to appoint the day on which they shall give their votes; which day must be the same throughout the United States. March 1, 1792, the year of Gen. Washington's second election, Congress passed an act on this subject, declaring that the electors shall be appointed within thirty-four days preceding the first Wednesday in December of each year when electors were to be appointed. This act did not specify *the day* on which they should be appointed. It specified the day, however, for the electors to give their votes; which is the first Wednesday in December next after their election.

§ 8. But Jan. 23, 1845, Congress passed another act, amendatory of the first, fixing the day on which electors should be elected throughout the United States. That day is the Tuesday next after the first Monday in the month of November of the year in which they are chosen. The day on which the electors are to give their votes was not changed by this amendment, but remains the first Wednesday of December next after their election.

§ 9. By this act, each State may provide by law for filling vacancies, if any occur, when the electors meet to give their electoral votes. The States may each provide by law also for appointing electors *afterwards*, if an election of electors on the day prescribed by Congress results in a failure to elect one or more of the electors.

§ 10. By this act of March 1, 1792, the electors of each State are to meet at such place as the legislature thereof may designate, and give their votes by ballot for President and Vice-President. They are then to make and sign three certificates of all the votes by them given, and they are to seal them up.

They are to certify on each certificate that a list of the votes of their States respectively for President and Vice-President is contained therein.

They shall appoint a person to take charge of and deliver one of the same certificates to the President of the Senate at the seat of government before the first Wednesday of January then next ensuing.

Another of the certificates is to be forwarded forthwith by mail to the President of the Senate at the seat of government.

The third certificate is to be delivered to the judge of the district court in which the electors assemble.

<sup>1</sup> Story on the Constitution §1,463.



### 3.—PROCEEDINGS IN CONGRESS.

1st. *The President of the Senate shall open all the certificates in the presence of both houses of Congress.*

2d. *The votes shall then be counted.*

3d. *The person having the greatest number of votes for President shall be [declared elected] President, if such member be a majority of the whole number of electors appointed. 94.*

§ 11. It will be observed, that although the lists of persons voted for as President and Vice-President are directed to the President of the Senate, yet he must open them in the presence of *both* houses. This gives dignity and insures fairness in the proceeding. The votes are counted by tellers appointed for that purpose by the House and the Senate. The proceeding takes place in the House of Representatives the second Wednesday of February.

§ 12. No person can be declared elected who does not receive a *majority* of the whole number of electors appointed. Usually there are but two candidates in the field, each placed in nomination by the political party with whose principles he is identified; but it has sometimes happened that three or more were placed in nomination. In such cases, it might be quite likely that no candidate would receive a full majority of all the electoral votes. Such was the case in 1825, at the election for the tenth Presidential term. Four candidates were in the field, neither of whom received a majority of all the electoral votes: so there was a failure to elect a President by the people. The Constitution has made provision for such cases by referring the election to the House of Representatives as a last resort.

### 4.—HOUSE OF REPRESENTATIVES.

1st. *If no person have such majority, then the House of Representatives shall choose immediately the President.*

2d. *He shall be chosen from the persons having the highest numbers, not exceeding three, on the list of persons voted for as President.*

3d. *The election in such cases shall be by ballot.*

4th. *The vote shall be taken by States.*

5th. *The representation from each State shall have one vote.*

6th. *A quorum for this purpose shall consist of a member or members from two-thirds of the States.*

7th. *A majority of all the States shall be necessary to a choice. 94.*

§ 13. When the people fail to elect a President through their electors, it would seem proper that the choice should devolve on the House of Representatives. This seems to be the most appropriate body, as the members of which it is constituted are chosen by the popular voice, and are the more immediate representatives of the people. But, when the election takes place in the house, the selection must be made from the persons already voted for by electoral vote. The house is not at liberty to take up a new candidate, and their selection must be confined to those receiving the highest numbers, not exceeding three, on the list of persons voted for as President. This provision is made for the purpose of excluding from the list all such persons as receive but a small number of the electoral votes.

§ 14. The vote must be taken by ballot and by States; each State having but one vote. The mode of voting by States, if the choice should fall to the House of Representatives, was but a just compensation to the smaller States for their loss in the primary election. When the people vote for the President, it is manifest that the large States enjoy a decided advantage over the small States; and thus their interests may be neglected or sacrificed. To compensate them for this, in the eventual election by the House of Representatives, a corresponding advantage is given to the small States. It was, in fact, a compromise.<sup>1</sup>

There is no injustice in this; and, if the people do not elect a President, there is a greater chance of electing one in this mode than there would be by a mere representative vote according to numbers, as the same divisions would probably exist in the popular branch as in their respect States.<sup>2</sup>

It may be remarked here that this was the mode of passing laws under the Confederation.

§ 15. But the house can not proceed to the election of a President unless at least two-thirds of the States are represented on the floor. A majority can transact the ordinary business of legislation; but the election of a Chief Magistrate of the nation was regarded by the authors of the Constitution as a matter of such grave interest to the country, that they did not hesitate to insert this provision with unanimity. A majority of all the States is necessary to a choice, not a majority of the States present by representation; that is, not a majority of the *quorum*, but a majority of *all the States*.

§ 16. It may occur, however, that even the House of Representatives shall fail to elect a President of the United States within the time

limited for such election by the Constitution. They have three candidates, neither of whom, perhaps, may receive a majority of all the States. They may continue to vote on the question, however, until the fourth day of the March next following the commencement of their effort. But their trial may result in a failure. In such case, the Vice-President shall act as President, as in case of the death or other constitutional disability of the President. (See the next chapter.)

§ 17. The present method of electing a President of the United States, which we have been considering, is in accordance with the provisions of the 12th Article of Amendments to the Constitution. This amendment was proposed by Congress in October, 1803; and was ratified so as to become a part of the Constitution before September, 1804. In the copy of the Constitution found in this work, it is marked as paragraph 94. The original article, of which paragraph 94 is an amendment, is not numbered; but it is still printed with copies of the Constitution, and is known as clause 3, section 1, of Art. II. It is inserted merely to show what it *was*. The article and amendment differ in several important particulars.

1st. By the original article, the electors voted each for two persons *as President*. By the amendment, the electors vote for two persons, but designating one as *President*, and the other as *Vice-President*.

2d. By the original article, two persons might each receive a majority of the whole number of electors appointed. By the amendment this is impossible, as each elector votes for only one person as President, and one as Vice-President.

3d. If more than one person had a majority of the electoral votes, and each an equal number, the election went into the House of Representatives on those two names.

4th. If two candidates received each a majority of all the electoral votes, but one of whom received a larger vote than the other, the one receiving the highest vote was elected.

5th. If no person received a majority of all the electoral votes, the election went to the House of Representatives; and, from the five highest on the list, they were to make the election. By the amendment, it is from the *three* highest on the list.

6th. In every case, after the choice of the President, the person having the greatest number of votes of the electors, whether that number were a majority or not, was to be the Vice-President.

7th. If two or more received an equal number, and being highest on the list, the election went into the Senate on these two or more names. Thus the Vice-President could not be elected until after the election of the President.

8th. By the original article, the Senate was to elect the Vice-President by ballot: this is not required under the amendment.

9th. Under the amendment, the Vice-President acts as President if the House of Representatives fail to elect a President before the fourth day of March then next following, when the right to do so shall devolve on them; but, under the original article, no Vice-President could be elected until after the President should be elected.

§ 18. In 1801, Thomas Jefferson was elected President by the House of Representatives; and, in 1825, John Quincy Adams also. These are the only instances in our history of the election of a Chief Magistrate by the House of Representatives. The protracted contest in the house in 1801 between Thomas Jefferson and Aaron Burr, candidates for the Presidency, led to the adoption of the 12th Article of Amendments. The number of electoral votes for each of these two candidates was equal, each having a majority of the whole number. In accordance with the provisions of the original article for electing a President, the election went into the house. There, through thirty-five ballotings, the results were uniform; Jefferson receiving the votes of eight States, Burr of six, and two being divided. There were sixteen States in the Union at that time. On the thirty-sixth ballot, Jefferson received the votes of nine States, giving him a majority of the whole.

§ 19. Jefferson was declared elected President; and Burr, receiving the next highest number of votes, was declared elected Vice-President. The whole country was violently agitated during the contest, which lasted several weeks. Before the next Presidential election occurred, the amendment was adopted which rendered it impossible that another contest of such exciting interest should occur, as a Vice-President can be elected under the amendment without any reference to the election of President; and he would perform the duties of President, as we shall see in the next chapter.

§ 20. But one President has been elected by the House of Representatives, as before stated, under the amendment. This was the case of John Quincy Adams in 1825, a brief history of which is given in Chap. I, Art., IX., Part II., of this work.

<sup>1</sup> 2 Elliot's Debates, 364.

<sup>2</sup> Rawle on Const., chapt. v. p. 54.

## ART. V.—OATH OF OFFICE.

*Before he enter on the execution of his office, he shall swear or affirm,*

1. *That he will faithfully execute the office of President of the United States; and,*

2. *That he will to the best of his ability preserve, protect, and defend the Constitution of the United States.* **59.**

There is little need of comment on this clause. No man can well doubt the propriety of placing a President of the United States under the most solemn obligations to preserve, protect, and defend the Constitution. It is a suitable pledge of his fidelity and responsibility to his country, and creates upon his conscience a deep sense of duty, by an appeal at once, in the presence of God and man, to the most sacred and solemn sanctions which can operate upon the human mind.<sup>1</sup>

<sup>1</sup> Story on Const. §1488.

## ART. VI.—HOW REMOVABLE.

*He shall be removed from office on impeachment for and conviction of treason, bribery, and other high crimes and misdemeanors.* **64.**

(The subject of impeachments is treated in Chap. I., Art. IX., an Chap. II., Art. X., Part II.)

## ART. VII.—SALARY.

*He shall receive for his services, at stated times, a compensation which shall neither be increased nor diminished during the term for which he shall have been elected.* **58.**

§ 1. Without this clause, the Executive would be dependent for his support on the will of Congress. By securing their favor, his salary might be greatly enlarged; and, by incurring their displeasure, it might be greatly diminished. If Congress were allowed a discretionary power over the salary of the Executive (as men of high station are not always beyond the reach of temptation), his approbation of legislative measures might sometimes

depend on the liberality of legislative appropriations. There are men who could be influenced by no such mercenary motive; but, on the other hand, instances of historic notoriety, even in this country, might be cited in proof of the purchase of Executive favor through the seductive allurements of pecuniary considerations.

§ 2. As the Executive salary is in the beginning of his term, so it must remain to the end. Congress has no power to alter it, by increase or diminution, to take effect before a new election and a new period of service shall begin. The first year of Washington's first term, Sept. 24, 1789, the President's salary was fixed at twenty-five thousand dollars a year. Feb. 18, 1793, an act was passed permanently establishing the President's salary at this sum. But he has the White House, which is the Executive Mansion, rent free. The house is also furnished for him and taken care of, the grounds cultivated, his fuel and light provided, and many other things at the expense of the public treasury.

## ART. VIII.—POWERS AND DUTIES.

### 1.—MILITARY.

1st. *He is commander-in-chief of the army and navy of the United States.*

2d. *Also of the militia of the several States when called into the actual service of the United States.* **60.**

§ 1. It is not to be inferred from this article that the President is actually to take command in person in case of war. This is not the intention; though he has the power, were he so disposed. It might be proper that the President should actually place himself at the head of an army in the field, were he known to be an experienced and skillful military commander. Such has not been the practice, however, either in our foreign or domestic wars, or in our border warfare with the Indians.

§ 2. Though the President does not take the field in person, there is in a sense in which he takes command of the army and navy. He directs the application of the military force in the execution of the laws, in maintaining peace at home, and in resisting foreign aggression. There duties are of an executive character, and are properly vested in the President, that unity of plan, promptitude, activity, and decision, may be secured.

§ 3. For the same reasons, the Executive is made commander-in-chief of the militia of the several States when called into the actual ser-

vice of the United States. The standing army is constituted of but a few thousands at most; while, if necessary, the militia may be called forth by the million. In order that there may be unity of action, uniformity of training and discipline, and concern of purpose, it is necessary that regulars and militia should be subordinate to a single head.

## 2.—CIVIL.

1 st.—DEPARTMENTS.

*He may require the written opinion of the principal officers in each of the executive departments on any subject relating to the duties of their respective offices. 60.*

§ 4. The authors of the Constitution inserted this power from abundance of caution; and some of them considered it as a mere redundancy in the plan, as the right for which it provides would result itself from the office. The powers and duties of the various executive departments will be further considered in Chap. XV. of Part II.

## 2d.—REPRIEVES AND PARDONS.

*He shall have power to grant reprieves and pardons for offenses against the United States, except in cases of impeachment. 60.*

§ 5. Reprieve is the temporary suspension of the execution of sentence, especially the sentence of death. Pardon is the remission of a penalty, an a release of the offender from punishment. Reprieves may become necessary or expedient on account of doubts of guilt, arising from the discovery of new testimony after sentence, and before execution; or considerations of public policy may require a like interference. The same reasons might justify the grant of a full pardon. Discretionary power over such cases should be vested somewhere, "as the law can not be framed on principles of compassion to guilt." The chief executive magistrate should be allowed to hold a court of equity in his own breast, to soften the rigor of the general law in such criminal cases as may merit an exemption from punishment, or as may properly plead for temporary delay of execution of sentence.

§ 6. In monarchical countries, this prerogative belongs to the sovereign. It can not be denied, that, in a republic, it should be vested in the hands of the chief executive magistrate, if the power is to be exercised at all. In the administration of human government, the exercise of the

benign power of reprieve and pardon may often become necessary from motives of humanity and good policy. “The criminal code of every country partakes so much of necessary severity, that, without an easy access to exceptions in favor of unfortunate guilt, justice would wear a countenance too sanguinary and cruel.”

### 3d.—Treaties.

*He shall have power, by and with the advice and consent of the Senate, two-thirds of the members present concurring, to make treaties. 61.*

(The word “treaty” is defined in Chap. II., Art. X., Part II.)

§ 7. In forming treaties, the entire plan, with all its conditions and stipulations, is settled through the President on the part of the United States; the President acting through the agency of ambassadors and foreign ministers duly accredited by our government. The entire proposed treaty, in outline and detail, with all necessary drawings, maps, and documents, is submitted to the Senate by the President. The Senate discusses it in secret mission.

§ 8. Secrecy and dispatch being essential to success in the negotiation of treaties, it would be unsafe to trust the preliminaries to a body constituted of a large number of persons. The hazard of extensive publicity would be imminent; and such publicity in the early stages of the proceeding would be likely to defeat the enterprise. It would not be strange should it encounter the intrigues and interferences of jealous and interested neighboring nations. No treaty can be complete, on the part of our government, until ratified by the Senate.

### 4th.—APPOINTMENTS.

He shall nominate, and, by and with the advice and consent of the Senate, appoint,

1st. *Ambassadors, other public ministers, and consuls;*

2d. *Judges of the Supreme Court;*

3d. *All other officers of the United States whose appointments are not otherwise provided for in the Constitution, and which shall be established by law. 61.*

§ 9. The President has the exclusive power of selection of the officers named in this article, though his first choice may not be confirmed by



the Senate. In such case, he may select again and again until his nominee shall be confirmed. The Senate has no power of selecting: they can only at on such names as shall be presented by the Executive. In Art. XII., Chap. IV., Part II., we have seen that Congress has the power to vest the appointments of such inferior officers as they think proper, either in the President alone, the courts of law, or the heads of departments. That power is generally regarded as somewhat modifying the power given in this article, though it does not define what classes are to be considered as "inferior officers." Congress early came to the decision, however, that "inferior officers" did not include the heads of departments.

§ 10. When nominations are made by the President, they are presented to the Senate in writing; and this body acts upon them in secret mission, and under the injunction that discussions on their merits or the qualifications of the nominees shall be *kept* secret. A numerical majority of the Senate decides the question of confirmation or rejection of the candidate nominated. If the nominee is confirmed, or the nomination ratified, the President issues a commission accordingly, unless, in the mean time, he has concluded to decline it, which he is at liberty to do; in which case, he may make another nomination.

§ 11. The responsibility of the Senate and the President is distinct. He can never be compelled to yield to their appointment of a man unfit for office; and, on the other hand, they may withhold their advice and consent from any candidate, who, in their judgment, does not possess due qualifications for office. But it is not expected that the Senate will ordinarily fail of ratifying the appointment of a suitable person for the office.<sup>1</sup>

§ 12. The power of removal from offices filled by the united authority of President and Senate has, for the most part, been conceded to the President alone. Grave doubts of the propriety of this, however, have been expressed by prominent and distinguished statesmen from the earliest period of our history, under our present Constitution. Many have contended, that, since the Constitution is silent on the subject, it should require the same power to remove that it does to appoint, especially while the Senate is in session.

§ 13. March 2, 1867, an act of Congress was passed, regulating the tenure of certain civil offices. By this act, persons holding or appointed to any civil office by and with the advice and consent of the Senate shall be entitled to hold such office until a successor is appointed in like manner and duly qualified. The heads of executive departments,

and also the Attorney-General, shall hold their offices respectively for and during the term of the President by whom they may have been appointed, and for one month thereafter, subject to removal by and with the advice and consent of the Senate. The President, for cause shown, can suspend, during the recess of the Senate, any civil officers thus appointed, until the next meeting of that body, and until such suspension be acted upon by them. Judges of the United-States courts are excepted from the operation of this provision.

§ 14. In such case, it is made the duty of the President, within twenty days after the meeting of the Senate, to report to the Senate such suspension, with the evidence and reasons for his action in the case. If the Senate concurs, the President may remove the officer, and appoint a successor. If the Senate does not concur, the suspended officer resumes his office, and receives again the official salary and emoluments.

§ 15. An *ambassador* is a minister of the highest rank, employed by government to represent it, and to manage its interests, at the court or seat of government of some other power. The word "minister," as used in the Constitution, has nearly the same signification as "ambassador," especially minister plenipotentiary. A *consul* is a person commissioned to reside in a foreign country, as an agent or representative of a government, to protect the rights, commerce, merchants, and seamen of the State, and to aid in any commercial, and sometimes in diplomatic, transactions with such foreign country.

<sup>1</sup> Story on Const. §1,531

#### 5th. VACANCIES.

*He shall have the power to fill all vacancies that may happen during the recess of the Senate, by granting commissions which shall expire at the end of their next session.* **62.**

§ 16. Vacancies are liable to occur during the recesses of the Senate, as that body is not in perpetual session; and, unless there were some power to fill the vacancies, of course the interests of the country might suffer. While the Senate is in session, the President has no such authority. All appointments made under this clause expire at the end of the next session of the Senate; and it is held that if the President nominates to the same office one whom he has appointed, and the Senate ratifies the nomination, it is a new appointment, for which a new commission

must be given, and for the faithful performance of the duties of which new bonds must be filed.

### 6th. MESSAGES.

1st. *He shall from time to time give Congress information of the state of the Union; and,*

2d. *Shall recommend to their consideration such measures as he shall judge necessary and expedient.* **63.**

§ 17. This clause is on the subject usually known as the messages of the President. He enjoys sources of information on all subjects, foreign and domestic, far superior to those belonging to any other branch of government. Out of the first part of this clause has come the practice of delivering to Congress the annual messages; and out of the second, the practice of delivering occasional special messages. On account of his intimacy with the heads of departments, he may be presumed to be in possession of valuable information regarding the workings of the laws, the systems of trade, finance, and the operations of the judiciary, military, naval, and civil establishments of the Union. It is in the highest degree proper that information on these matters, in the most practical form, should be communicated to Congress, and that the President should recommend such measures as he may deem necessary for the correction of any defects which may have become apparent.

§ 18. The practice in this time of Washington and John Adams was for the President, at the opening of each session of Congress, to meet both houses in person, and deliver a speech to them, containing his views on public affairs, and his recommendations of measures. On other occasions, he simply addressed written messages to them, or either of them, according to the nature of the message. To the speeches thus made a written answer was given by each house; and thus an opportunity was afforded by the opponents of the administration to review its whole policy in a single debate on the answer. That practice was discontinued by President Jefferson, who addressed all his communications to Congress by written messages; and to these no answers were returned.<sup>1</sup> Jefferson's innovation has been followed by all succeeding Presidents.

<sup>1</sup> Rawle on Const., ch. 16.

**7th. CONGRESS.**

1st. *On extraordinary occasions, he may convene either or both houses of Congress.*

2d. *In case of disagreement between them with respect to the time of adjournment, he may adjourn them to such time as he shall think proper.* **63.**

§ 19. Events may occur, entirely unforeseen by the Congress at its last session, imperiling the interests of the country, and requiring the immediate convocation of that body. An event of this kind transpired in the month of April, 1861, from the date of which hostilities became general between the North and the South. President Lincoln summoned Congress to meet the fourth day of the following July. That the power to call a meeting of Congress should be vested *somewhere*, there can be no doubt; and that it should be committed to the discretion of the Executive, all agree.

§ 20. It might be barely possible that Congress should fail to agree on the time of adjournment; and, should such an exigency arise, there can be no doubt that the Executive is the most suitable third party to interfere for the peaceable termination of the controversy. In England, the sovereign always prorogues the parliament.

**8th. RECEPTION.**

*He shall receive ambassadors and other public ministers.* **63.**

§ 21. The President, by and with the advice and consent of the Senate, *appoints* ambassadors, other public ministers, and consuls, to represent the interests of the United States in other countries; but he *receives* these classes of agents and representatives of other countries *without* the advice and consent of the Senate. Although this clause does not include *consuls expressly*, yet the power is *inferred*, both from other parts of the Constitution and from the general nature of executive duties. Consuls are not diplomatic but commercial agents.

§ 22. The reception of ambassadors and other public ministers is a recognition of the national character and standing of the countries which they represent. Their reception may, therefore, become a very nice and delicate question with the Executive. The Executive is not obliged to receive an ambassador or public minister, even though he comes clothed

with proper authority from a nation with whom we are at peace, and which is recognized among the great family of nations. A refusal is not a just cause of war, nor even of offense in the national sense; though it might be deemed an unfriendly act were it not accompanied by friendly explanations.

§ 23. A refusal is sometimes made on the ground of the bad character of the minister, or his former offensive conduct, or of the subject of the embassy not being proper, or convenient for discussion. But a much more delicate occasion is when a civil war breaks out in a nation, each party claiming the sovereignty of the whole, and the contest has not yet been settled between the contending parties. In such a case, a neutral nation may very properly withhold its recognition of the supremacy of either party, and refuse to receive a minister from either.<sup>1</sup> Suppose Great Britain had recognized the seceded States during the Great Rebellion as an independent nation, the United States would probably have called home their own minister from that country, and war might have been the result.

<sup>1</sup> Kent's Comm., Lect. 2.

#### 9th. EXECUTION OF THE LAWS.

*He shall take care that the laws are faithfully executed.* 63.

§ 24. This refers to the laws of the United States, and not to the laws of the several States. When a law has once been passed by all the formalities of the Constitution, it is the solemn duty of the President of the United States to enforce its execution, until it is either repealed, or declared by competent authority to be unconstitutional. He has no discretion, but must not only render obedience to the law himself, but must enforce its execution on all others. Were he to refuse, he would be guilty of a high misdemeanor, and might be removed from office by impeachment, and otherwise punished according to law.

§ 25. He has ample power to execute the laws, as, for this purpose, the whole army and navy are placed at his command, and under his control; and, if need be, he can call forth the militia of the several States to crush any armed resistance to the laws of the land.

## 10th COMMISSIONS.

*He shall commission all officers of the United States. 63.*

§ 26. A commission is a formal certificate of appointment issued by the proper authority. In this case, it is signed by the President of the United States, and sealed by the Secretary of State with the great seal of the United States. The commission recites the powers conferred, with definite certainty; and it is usually delivered to the person whose appointment is made by it, though *delivery* is not necessary to the validity of the appointment.

## CHAPTER XIII. VICE-PRESIDENT.

### ARTICLE. I.—ELIGIBILITY.

*No person constitutionally ineligible to the office of President shall be eligible to that of Vice-President of the United States. 96.*

§ 1. This clause is in the twelfth Article of Amendments. It was not in the original instrument; and there was no necessity for it, the qualifications of the President being defined therein. There was no such thing as a candidate for the Vice-Presidency; but both candidates were for the Presidency.

§ 2. As the Vice-President may be called upon to act as President, the former should have the same qualifications as the latter. Three times since the adoption of the Constitution, the Vice-President has become acting President on account of the death of the President. John Tyler succeeded to the Presidency in 1841, by the death of President Harrison; Millard Fillmore in 1850, by the death of President Taylor; and Andrew Johnson in 1865, by the death of President Lincoln.

### ART. II.—ELECTION.

1. IN CONGRESS. The person having the greatest number of votes for Vice-President shall be the Vice-President if such number be a majority of all the electors appointed. 95.

2. IN SENATE.

1st. If no person have a majority as Vice-President, then, from the two highest numbers on the list of persons voted for as such, the Senate shall choose a Vice-President.

2d. A quorum for this purpose shall consist of two-thirds of the whole number of senators.

3d. A majority of the whole number of senators shall be necessary to a choice. 95.

§ 1. The first part of this article refers to the proceedings in Congress on opening and counting the electoral votes for President and Vice-

President of the United States. It will be remembered, that, if no person receives a majority of all the electoral votes for President, the election of that officer devolves on the House of Representatives. But the house does not elect the Vice-President if there is a failure to elect that officer by the majority of the electoral votes. In such case, the Senate elects the Vice-President. The only instance of this kind in our history was the election of Richard M. Johnson in 1837.

§ 2. As just stated, the Senate chooses the Vice-President if no candidate for that office receives a majority of all the electoral votes. The Vice-President is not now, as formerly, a competitor for the office of President. There is scarcely a possibility that the Senate can fail to elect the Vice-President, as they must confine their votes to the two highest candidates on the list of persons voted for as such by the electors. The only chance is, that *possibly* the Senate might be equally divided, and that there might be no Vice-President in the chair to give the casting vote; but such a contingency is quite too improbable to merit serious discussion, especially as the Senate would be at liberty to repeat the trial to elect until they should be successful.

§ 3. As the Vice-President is the President of the Senate, it seems proper that the Senate should elect this officer in case of failure to elect by the electors. The proceeding is judiciously guarded in requiring two-thirds of all the members of the Senate to be present, and in still further requiring the majority of *all* the senators to secure an election.

### ART. III.—OATH OF OFFICE.

*He shall be bound by oath or affirmation to support the Constitution of the United States. 81.*

The same reasons apply for requiring the Vice-President to act under the solemn obligations of an oath or affirmation that apply to all other Federal officers and to the members of the National Council.

### ART. IV.—TERM

*He shall hold his office during the term of four years. 53.*

The same reasons that governed in fixing the Presidential term at four years apply with equal force to the term of the Vice-President. (See Chap. XII., Art. II., Part II.)



## ART. V.—POWERS AND DUTIES.

1. *He shall be President of the Senate, but have no vote unless they be equally divided.* 11.

2. *In case of the removal of the President from office, or of his death, resignation, or inability to discharge the powers and duties of said office, the same shall devolve on the Vice-President.* 57.

3. *If the House of Representatives shall not choose a President, whenever the right of choice shall devolve on them, before the fourth day of March next following, the Vice-President shall act as President.* 94.

§ 1. The duties of the Vice-President as President of the Senate are such as usually devolve on the presiding officer of legislative bodies. He is to preside over the deliberations of the Senate, enforce the rules of order, maintain due decorum among the members, and decide all questions of parliamentary practice. He submits all motions duly made to the Senate, puts to vote all questions brought forward for discussion and decision, and makes known the result. He also has the appointment of the standing committees; and it is his duty to see that the other officers of the house faithfully discharge their duties.

§ 2. Whenever the Vice-President succeeds to the Presidency, or becomes acting President, he performs all the duties of that officer as though he were originally elected to that office. Doubts have been entertained by persons entitled to great confidence, that the acting President who reaches that office through the Vice-Presidency is in fact *President*. But Congress has uniformly recognized the Executive, in such cases, as President to all intents and purposes; making no distinction whatever between him and a President originally elected as such by the people. In the articles of impeachment presented against Andrew Johnson, he was described as *President of the United States*; and the committee expressly stated that they had thoroughly and critically discussed the propriety of this description of his official title. So it may be regarded as settled by the highest authority, and that a Vice-President becoming *acting* President is President in fact.

## CHAPTER XIV. JUDICIAL DEPARTMENT.

### ART. I.—WHERE VESTED.

*The judicial power of the United States shall be vested,*

1. *In one Supreme Court; and,*
2. *In such inferior courts as Congress may from time to time ordain and establish.* **65.**

§ 1. "To establish justice" was one of the principal objects to be attained by the formation of the Constitution. This has no reference to the State judiciaries, but to the creation of a national judicial tribunal. Under the Confederation, there was no national judicial department. The dispensation of justice through the State courts was capricious and uncertain. They were influenced by local interests, and therefore their decisions were various and conflicting.

§ 2. The Constitutional Convention was unanimously in favor of establishing a Supreme Court, although at first there was some diversity of opinion on the propriety of the plan of including inferior tribunals. But, after thorough and exhaustive discussion, the proposition received the unanimous approval of the Convention.

§ 3. The establishment of inferior tribunals would seem to result necessarily from the establishment of a Supreme Court. Recourse could not be had to the Supreme Court in all cases which might properly be subjects of Federal adjudication. It would be out of the power of any single court to dispose of the immense amount of business that would be sure to demand their attention.

Without inferior tribunals easy of access, the sanctuary of justice would be closed to the great majority of American citizens. Under the authority to establish inferior tribunals, each State or district can have a Federal court or courts of its own; competent to the adjudication of all matters of Federal jurisdiction within its limits.

§ 4. The judges of the Supreme Court at present are one chief justice, and nine associate justices, any six of whom constitute a quorum. The number of judges at the organization of the court in Septem-

ber, 1789, was six,—one chief justice, and five associate justices. March 3, 1837, the number was extended to nine,—one chief justice, and eight associate justices. March 3, 1863, the number was extended to ten,—one chief justice, and nine associate justices. This court holds one term a year in the city of Washington, beginning the first Monday of December.

§ 5. The United States are divided, for judicial purposes and convenience, into ten circuits, and these circuits are subdivided into districts. Each of the judges of the Supreme Court presides at a circuit court, assisted by the district judge of the district court in which the circuit court is held. Two circuit courts are held annually in most of the circuits.

§ 6. The first circuit consists of Maine, New Hampshire, Massachusetts, and Rhode Island. The associate justice is Nathan Clifford of Portland, Me., who was appointed in 1858.

The second consists of New York, Vermont, and Connecticut. Associate justice, Samuel Nelson of Cooperstown, N.Y.; appointed in 1845.

The third consists of New Jersey and Pennsylvania. Associate justice, Robert C. Grier of Philadelphia; appointed in 1846.

The fourth consists of Delaware, Maryland, Virginia, West Virginia, and North Carolina. Chief justice, Salmon P. Chase of Ohio; appointed in 1864.

The fifth consists of South Carolina, Georgia, Florida, Alabama, and Mississippi. Associate justice, James M. Wayne, Savannah, GA.; appointed 1835.

The sixth circuit consists of Louisiana, Texas, Arkansas, Kentucky, and Tennessee. Associate justice, Noah M. Swayne, Columbus, O.; appointed in 1862.

The seventh consists of Ohio and Michigan. Associate justice, David Davis of Bloomington, Ill.; appointed in 1862.

The eighth consists of Illinois and Indiana. Associate justice, Samuel F. Miller of Keokuk, Io.; appointed in 1862.

The ninth consists of Wisconsin, Minnesota, Iowa, Missouri, and Kansas. Associate justice, Stephen T. Field of California.

The tenth consists of California and Oregon. Associate justice, \_\_\_.

§ 7. As already stated, in addition to the Supreme Court, Congress has established ten circuit courts; being one circuit for each of the judges of the Supreme Court. The circuit courts are “inferior courts” in the Constitutional sense, and are established by Congress, although the pre-

siding judge of each circuit is also a judge of the Supreme Court. There are several districts in each circuit, each having a district court, over which the district judge presides.

§ 8. There is also a Supreme Court in the District of Columbia, having a chief justice and three associate justices. The Attorney-General appears in the Supreme Court of the United States, in behalf of the government, to protect its interests. There is also a United States district attorney appointed for each district in which circuit and district courts are held, to attend, in behalf of the United States, to all business in court that concerns the government.

§ 9. Each court has a clerk, appointed by the presiding judge; also a marshal, appointed by the President with the concurrence of the Senate. The marshal is the ministerial officer of the court, serving its writs, precepts, and executing

its orders, and transacting such business and performing such duties as usually devolve on the sheriff in State courts.

Then there are four classes of Federal courts:—

1st. The Supreme Court of the United States, established by the Constitution, but organized by Congress.

2d. The circuit courts of the United States, established and organized by Congress.

3d. The district courts of the United States, established and organized by Congress.

4th. The Supreme Court of the District of Columbia, also established and organized by Congress.

## ART. II.—JUDGES.

### 1. HOW ADOPTED.

*By the President of the United States, by and with the advice and consent of the Senate. 61.*

### 2. OATH OF OFFICE.

*The judges shall swear or affirm that they will support the Constitution of the United States. 81.*

### 3. TENURE OF OFFICE

*The judges of the Supreme and inferior courts shall hold their offices during good behavior. 65.*

### 4. HOW REMOVABLE.

*They shall be removed on impeachment for and conviction of*

*treason, bribery, and other high crimes and misdemeanors.* **64.**

5. SALARY.

*The judges shall, at stated times, receive for their services a compensation, which shall not be diminished during their continuance in office.* **65.**

§ 1. The mode of appointing the judges has been noticed in treating of the executive powers. The power is expressly given to the President in the Constitution, by and with the advice and consent of the Senate, to appoint the judges of the Supreme Court; but nothing is said therein about the method of appointing the judges of the inferior courts. There is no question, however, with regard to the judges of the circuit courts; for they are judges of the Supreme Court also.

§ 2. But whether the judges of the district courts, and the Supreme Court of the District of Columbia, are inferior officers in the Constitutional sense, so that Congress may provide for their appointment, has never been settled by adjudication. But, thus far, the uniform practice has been to regard them *not* as inferior officers; but their appointments have been made by the President, with the concurrence of the Senate, the same as judges of the Supreme Court. The oath of office of all Federal judicial officers is the same as that of officers of the other departments of government.

§ 3. There are several reasons why the tenure of office of the judges should be made permanent and secure, depending only on their good behavior.

1st. That they may be independent and fearless in the discharge of their responsible duties, it is necessary that they should hold by the will of no man, or set of men. They must feel dependent on no earthly power for their continuance in office. After appointment, were they in any manner dependent on executive, legislative, or popular favor, the scales of justice might be doubtfully balanced, and confidence in the judiciary would be seriously disturbed.

2d. This independence could hardly be expected from judges who hold their offices by a temporary tenure. Periodical appointments, however regulated, or by whomsoever made, would, in some way or other, be fatal to their necessary independence.

3d. If the power of making them were committed either to the executive or legislature, there would be danger of an improper complaisance to the branch which possessed it; if to both, there would be an

unwillingness to hazard the displeasure of either; if to the people, there would be too great a disposition to consult popularity, to justify a reliance that nothing would be consulted but the Constitution and the laws.<sup>1</sup>

§ 4. The subject of removal of Federal officers by impeachment has been fully considered in other places in this work. The judges of the Supreme and inferior courts are subject to removal for impeachable offenses.

§ 5. Provision is wisely made, that, as the judge's salary is at the time he enters on the duties of his office, so it shall continue to be throughout his official existence, unless Congress shall see fit to increase it. In other words, it can not be diminished. To allow the legislative authority control over their support; and to control their support is to control their will.

The salary of the chief justice is \$6,500 a year; that of the associate justices is \$6,000 each. In the tenth circuit, constituted of California and Oregon, the associate justice has \$1,000 a year allowed in addition to this salary, for traveling-expenses.

<sup>1</sup> Federalist, no. 78

### ART. III. JURISDICTION.

#### LIMITATION.

The judicial power of the United States shall extend to all cases of law and equity arising,

1 st. *Under the Constitution of the United States;*

2 d. *Under the laws of the United States; and,*

3 d. *Under treaties made, or which shall be made, under their authority.* **66.**

§ 1. By judicial power, as here used, we are to understand the power of the national courts in the administration of justice. The word "power" refers to jurisdiction, or the authority of the court, over causes which must include the *subject-matter* as well as the *parties* concerned.

The subject matter of a cause in court is the *thing* or question to be decided: the *parties* are the persons or corporations legally interested in the decision of the court on the subject-matter.

§ 2. The word "law" is generally understood, as defined by law-writers, to be the supreme power of the State, through its legislature,

commanding what is right, and prohibiting what is wrong. The word “equity,” as applied to judicial proceedings, does not mean contrary to law; but it reaches cases to which the law can not be applied by reason of its universality. The object of equity jurisprudence is to supply the deficiencies of the courts of law, and to render the administration of justice more complete, by affording relief where the courts of law, in consequence of imperfections of their machinery or of their too rigid adherence to peculiar forms, are incompetent to give it, or to give it with effect.<sup>1</sup>

§ 3. The judicial power of the United States extends to all cases of law and equity arising under the Constitution and laws thereof, and to treaties made under their authority. But there are two kinds of jurisdiction, original and appellate. Original jurisdiction is jurisdiction of a cause from its beginning. If a party can *begin* his suit in the circuit court, for instance, we say the circuit court has original jurisdiction in the case. If he can not bring his case into that court until it has been first tried in some lower court, then we say the circuit court has appellate jurisdiction. Some kinds of causes can be commenced in either of two different courts. Such courts, in such cases, are said to be courts of *concurrent* jurisdiction; that is, either court has jurisdiction of such a cause. If there is but one court in which a case can be brought, that court is said to have *exclusive* jurisdiction. The Supreme Court of the United States has original or appellate jurisdiction in all cases arising under the Constitution and laws of the United States, and under treaties, as aforesaid.

<sup>1</sup> Blackstone.

## 1. ORIGINAL.

The Supreme Court shall have original jurisdiction,

- 1 st. *In all cases affecting ambassadors;*
- 2 d. *Other public ministers, and consuls;*
- 3 d. *In controversies between two or more States;*
- 4 th. *Between a State and citizens of another State;*
- 5 th. *Between a State and foreign States, citizens, or subjects;*
- 6 th. *Between the citizens of a State and foreign States, citizens, or subjects. 66, 67.*
- 7 th. *But the judicial power of the United States shall*

*not be construed to extend to any suit in law or equity commenced or prosecuted,*

1st. *Against one of the United States by citizens of another State; or,*

2d. *By citizens or subjects of a foreign State.* **93.**

§ 4. There are but two classes of cases in which the Supreme Court of the United States has original jurisdiction: and these are, first, those affecting ambassadors, other public ministers, and consuls; and, second, those cases in which a State shall be a party. But, as will be seen by reference to the Analysis in this article, there are several cases in which a State may be a party, either as plaintiff or defendant.

§ 5. The ambassadors, other public ministers, and consuls, alluded to, refer to those representing or acting for *foreign* governments. By the law of nations, these classes of officials are not amenable to the laws of the country to which they are accredited agents. The country in which they reside is under obligation to protect them, and their rights and privileges are regulated by the law of nations. This being the case, the national courts only should be allowed to take cognizance of matters affecting their interests, which should be decided by the highest tribunal of the land.

§ 6. In controversies between two or more States, there is no tribunal before which there could be a peaceable and impartial determination of questions, except the Federal courts. Of course, the courts of neither of the States litigant could be regarded as disinterested; and they have no common judicatory between them.

§ 7. Controversies may arise between a State and the citizens of a neighboring State. It is manifestly more proper that the State should prosecute its demands before a Federal court than to proceed in the courts of the State to which the

defendants belong. The State courts would be liable to the charge of partiality, and obnoxious to suspicion and censure, decide whichever way they might.

§ 8. Controversies arising between States of the Union and foreign States, citizens, or subjects, can more properly be referred to the national courts than to the courts of the States interested as parties. The decisions in all such cases ought to carry with them that confidence sure to be inspired by national authority.

§ 9. The same reasons apply to controversies between the citizens of



a State and foreign States, citizens, or subjects. In the course of complicated and extensive commercial transactions, foreigners or foreign States may find it necessary to appeal to our courts for relief or satisfaction.

§ 10. It must be noticed particularly, however, that no State can be prosecuted by the citizens of another State, or a citizen of any foreign State. The State may be *plaintiff* against an individual, but can not be made *defendant* at the suit of a citizen of another State, or a citizen of a foreign State.

It is inherent in the nature of sovereignty not to be amenable to the suit of an individual *without its consent*. This is the general sense and the general practice of mankind; and this exemption, as one of the attributes of sovereignty, is now enjoyed by the government of every State in them the Union.<sup>1</sup>

§ 11. The Constitution gives the Supreme Court original jurisdiction in all cases in which a State shall be a party; and this was construed during the few years after the adoption of the Constitution to authorize suits *against* States brought by individuals. Many suits were brought to enforce claims held by individuals against the States. This led to the adoption of the eleventh Article of Amendments to the Constitution, paragraph 93 of that instrument, which is in these words:—

“The judicial power of the United States shall not be construed to extend to any suit in law or equity commenced or prosecuted against one of the United States by citizens of another State, or by citizens or subjects of any foreign State.”

§ 12. How is a person to obtain relief, then, in case he has a claim against a State? In the first place, it is presumed that no wise government will withhold justice from its citizens. The citizen to whom the State may be indebted can petition the legislature direct for redress, unless some other means have been instituted by the State. In some of the States, courts of claims have been established for the same purpose, into which the citizen can bring his claim, by petition or otherwise, for adjudication; and, if he shows the State to be indebted to him, the legislature will make provision for payment.

§ 13. In 1855, a court of claims was established, by act of Congress, to hear and determine claims against the United States. The demand is presented to the court by petition, setting forth specifically its origin and nature; and the party is allowed to prove it by the same rules of evidence that are usually adopted in courts of justice. If a claim is established, Congress makes provision for its payment. An attorney, called the

solicitor of the United States, appears in behalf of the government before this court.

§ 14. These are all the cases in which the Supreme Court of the United States has original jurisdiction. And, as already stated, they are all included in two classes: first, such as affect ambassadors, other public ministers, and consuls; and, second, all those cases in which a State shall be a party.

<sup>1</sup> Federalist, No. 81.

## 2. Appellate.

*The Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations, as the Congress shall make,*

*1st. In all cases of admiralty and maritime jurisdiction.*

*2d. In controversies to which the United States shall be a party;*

*3d. Between citizens of different States;*

*4th. Between citizens of the same State claiming lands under grants of different States.*

§ 15. What is meant by appellate jurisdiction has already been explained. By cases of admiralty and maritime jurisdiction, reference is had to the power to try and determine, on appeal, all causes originating on the high seas, or on rivers, ports, or harbors communicating with the sea, and out of the reach of ordinary courts of justice. Admiralty causes must arise wholly on the sea or on waters immediately communicating with the sea, and not within the jurisdiction of any country. On the high seas, all nations claim a common right and a common jurisdiction; and therefore causes originating there should come exclusively under the jurisdiction of the national courts. They can not be brought, however, in the first instance, into the Supreme Court of the United States, but may be appealed into that court after having been commenced and tried by a district court of the United States, which, by a law of Congress, is an admiralty court.

§ 16. The subjects for adjudication which properly come into courts of admiralty are, captures in war made on the high seas, captures in foreign ports and harbors, captures made on land by naval forces, and captures made in the rivers, ports, and harbors of the captor's own country.

If an American commissioned with letters of marque and reprisal shall make captures as aforesaid, it is his duty to bring them into the court for adjudication. If the court shall decide that the things in controversy were lawfully captured, and according to the usages of war and law of nations, they are awarded to the captors. If the decision is that they were unlawfully seized, they will be awarded by the court to the owners with damages for detention.

§ 17. The ordinary admiralty and maritime jurisdiction also embraces all civil and criminal cases of a maritime nature. The *district* courts of the United States, however, as courts of admiralty and maritime jurisdiction, are limited to the trial of crimes and offenses for which but moderate punishment is inflicted. The graver and higher crimes are referred to the *circuit* courts as courts of admiralty.

§ 18. Controversies in which the United States shall be a party are to be adjudicated in the Federal courts. Cases in which the whole people are interested should not be left to the decision of a State court. The United States must bring suit, however, in the first instance, in the interior courts,—that is, in the district or circuit courts,—and can not reach the Supreme Court except by appeal.

§ 19. Unless this power were given to the United States, the enforcement of all their rights, powers, contracts, and privileges, in their sovereign capacity, would be at the mercy of the States. They must be enforced, if at all, in the State tribunals; and there would not only not be any compulsory power over those courts to perform such functions, but there would not be any means of producing uniformity in their decisions.<sup>1</sup>

§ 20. By act of Congress, a citizen of one State may bring suit against a citizen of another in the circuit court of the United States in civil matters, provided the matter in controversy exceeds five hundred dollars exclusive of costs. An alien may sue or be sued in this court also for the same amount.

And these courts have original jurisdiction also in matters relating to the United States revenue and to copyrights, being cases that arise under the laws of the United States. In all these cases, the Supreme Court has appellate jurisdiction only.

An appeal may be taken from the district court to the circuit court, and from the circuit to the Supreme Court, under certain restrictions and limitations.

§ 21. Controversies between citizens of the same State, claiming lands under grants of different States, must be adjudicated in the United-

States courts. State courts can not be supposed to be unbiased in cases of this nature. Claims to lands under grants of different States, founded on adverse pretensions of boundary, would almost forbid the possibility of judicial fairness, candor, and impartiality on the part of the State courts of either granting State. The State laws may have even prejudged the question, and tied the courts down to decisions in favor of the grants of the State to which they belonged. And, where this has not been done, it would be natural that the judges, as men, should feel a strong predilection for the claims of their own government.<sup>2</sup> And, at all events, the providing of a tribunal, having no possible interest on the one side more than the other, would have a most salutary tendency in quieting the jealousies and disarming the resentments of the State whose grant should be held invalid.<sup>3</sup>

§ 22. The following is a list of the Chief Justices of the United States from the establishment of the Supreme Court in 1789 to 1868, with the dates of appointment:—

JOHN JAY, New York, Sept. 26, 1789. Resigned.

JOHN RUTLEDGE, South Carolina, July 1, 1795. Mr. Rutledge was appointed during the recess of the Senate, presided over the Supreme Court one term, was nominated Dec. 10, 1795, and rejected by the Senate.

WILLIAM CUSHING, Massachusetts, Jan. 27, 1796. Declined.

OLIVER ELLSWORTH, Connecticut, March 4, 1796. Resigned.

JOHN JAY, New York, re-appointment, Dec. 19, 1800. Declined.

JOHN MARSHALL, Virginia, Jan. 31, 1801. Died July 6, 1835.

ROGER B. TANEY, Maryland, March 15, 1836. Died 1864.

SALMON P. CHASE, Ohio, Dec. 6, 1864.

<sup>1</sup> Story on Const., § 1,674.

<sup>2</sup> Federalist, No. 80.

<sup>3</sup> Story on Const., § 1,696.

## CHAPTER XV.

### ART. I.—PRESIDENTS OF THE UNITED STATES.

1. GEORGE WASHINGTON, of Virginia, inaugurated April 30, 1789. Term expired March 4, 1793. Re-elected. Second inauguration, March 4, 1793.

JOHN ADAMS, of Massachusetts, entered on the duties of his office as Vice-President, and President of the Senate, April 21, 1789, but did not take the oath of office until June 3, 1789. Re-elected. Took the oath of office, Dec. 2, 1793.

2. JOHN ADAMS, of Massachusetts, inaugurated President of the United States, March 4, 1797.

THOMAS JEFFERSON, of Virginia, took the oath of office as Vice-President, March 4, 1797.

3. THOMAS JEFFERSON, of Virginia, inaugurated President of the United States, March 4, 1801.

AARON BURR, of New York, took the oath of office as Vice-President, March 4, 1801.

THOMAS JEFFERSON re-elected. Inaugurated March 4, 1805.

GEORGE CLINTON, of New York, took the oath of office as Vice-President, March 4, 1805.

4. JAMES MADISON, of Virginia, inaugurated President, March 4, 1809.

GEORGE CLINTON took the oath of office as Vice-President, March 4, 1809.

JAMES MADISON re-elected. Inaugurated March 4, 1813.

ELBRIDGE GERRY, of Massachusetts, took the oath of office as Vice-President. Entered on the duties of President of the Senate, May 24, 1813.

5. JAMES MONROE, of Virginia, inaugurated President, March 4, 1817.

DANIEL D. TOMPKINS, of New York, took the oath of office as Vice-President, March 4, 1817.

JAMES MONROE re-elected President, and DANIEL D. TOMPKINS as Vice-President, from March 4, 1821.

6. JOHN QUINCY ADAMS, of Massachusetts, son of the second President of the United States, inaugurated President, March 4, 1825.

JOHN C. CALHOUN, of South Carolina, took the oath of office as Vice-President, March 4, 1825.

7. ANDREW JACKSON, of Tennessee, inaugurated President, March 4, 1829.

JOHN C. CALHOUN, of South Carolina, took the oath of office as Vice-President, March 4, 1829.

ANDREW JACKSON re-elected. Inaugurated March 4, 1833.

MARTIN VAN BUREN, of New York, took the oath of office as Vice-President, March 4, 1833.

8. MARTIN VAN BUREN, of New York, inaugurated President, March 4, 1837.

RICHARD M. JOHNSON, of Kentucky, took the oath of office as Vice-President, March 4, 1837. The only Vice-President of the United States ever elected by the Senate.

9. WILLIAM HENRY HARRISON, of Ohio, inaugurated President, March 4, 1841.

JOHN TYLER, of Virginia, took the oath of office as Vice-President, March 4, 1841.

President Harrison died April 4, 1841,—just one month after his inauguration.

JOHN TYLER took the oath of office as President of the United States, April 6, 1841.

10. JAMES KNOX POLK, of Tennessee, inaugurated President, March 4, 1845.

GEORGE MIFFLIN DALLAS, of Pennsylvania, inaugurated and took the oath of office as Vice-President, March 4, 1845.

11. ZACHARY TAYLOR, of Louisiana, inaugurated President, March 5, 1849.

MILLARD FILLMORE, of New York, took the oath of office as Vice-President, March 5, 1849.

President Taylor died July 9, 1850; having been in office one year, four months, and five days.

MILLARD FILLMORE took the oath of office as President of the United States, July 10, 1850.

12. FRANKLIN PIERCE, of New Hampshire, inaugurated President, March 4, 1853.

WILLIAM R. KING, of Alabama, took the oath of office as Vice-Presi-

dent, March 4, 1853. Died April 18, 1853. Office vacant remainder of the term.

13. JAMES BUCHANAN, of Pennsylvania, inaugurated President, March 4, 1857.

JOHN C. BRECKINRIDGE, of Kentucky, took the oath of office as Vice-President, March 4, 1857.

14. ABRAHAM LINCOLN, of Illinois, inaugurated President, March 4, 1861.

HANNIBAL HAMLIN, of Maine, took the oath of office as Vice-President, March 4, 1861.

ABRAHAM LINCOLN re-elected. Second inauguration, March 4, 1865.

ANDREW JOHNSON, of Tennessee, took the oath of office as Vice-President, March 4, 1865.

ABRAHAM LINCOLN assassinated April 14, 1865, and died the next morning, April 15.

ANDREW JOHNSON took the oath of office as President of the United States, April 15, 1865.

ULYSSES S. GRANT, of Illinois, inaugurated President, March 4, 1869.

SCHUYLER COLFAX, of Indiana, took the oath of office as Vice-President, March 4, 1869.

## ART. II.—STATE DEPARTMENT.

§ 1. The department of State was created by act of Congress, Sept. 15, 1789. Before that, it was called the department of Foreign Affairs, having been created as such by act of July 27, 1789. This department is under the charge of the Secretary of State; and the business-affairs of it are divided into several branches, each branch having a principal clerk at its head.

§ 2. This department has charge of the correspondence with the diplomatic agents of the government in foreign countries, and with the agents of foreign nations received and accredited by the United States. All communications with commissioners relating to boundary treaties, and all diplomatic instructions, issue from this department; and a faithful record of them is kept, as well as a record of similar documents received from foreign powers.

§ 3. All the acts and resolutions of Congress are filed by the President in this department; and their publication in newspapers or in book

form, and their distribution throughout the country, belong to the State Department; also all treaties and other business with the Indian tribes. There is an office connected with this department, in which the translation of documents from other languages into English is the principal business.

§ 4. There is a clerk of pardons and passports connected with this department. The petitions and papers are filed with this clerk, on which pardons are founded. Passports are prepared by him, and a record of them kept, which are issued by the department of State. The statistics relating to the foreign commerce of the United States are filed and preserved in this department, under the direction of a superintendent of statistics.

§ 5. The heads of all the executive departments are nominated and appointed by the President, by and with the advice and consent of the Senate. The following is a catalogue of the Secretaries of State, beginning with the first year under our Constitution:

Name.	Residence.	When Appointed.
THOMAS JEFFERSON,	Virginia	Sept. 26, 1789
EDMUND RANDOLPH,	Virginia,	Jan. 2, 1794
TIMOTHY PICKERING,	Massachusetts,	Dec. 10, 1795.
JOHN MARSHALL,	Virginia,	May 13, 1800.
JAMES MADISON,	Virginia,	March 5, 1801.
ROBERT SMITH,	Maryland,	March 6, 1809.
JAMES MONROE,	Virginia,	Nov. 25, 1811.
JOHN Q. ADAMS,	Massachusetts,	March 3, 1817.
HENRY CLAY,	Kentucky,	March 8, 1825.
MARTIN VAN BUREN,	New York,	March 6, 1829.
EDWARD LIVINGSTON,	Louisiana,	May 24, 1831.
LOUIS MCLANE,	Delaware,	May 29, 1833.
JOHN FORSYTH,	Georgia,	June 27, 1834.
DANIEL WEBSTER,	Massachusetts,	March 5, 1841.
HUGH S. LEGARE,	South Carolina,	May 9, 1843.
ABEL P. UPSHER,	Virginia,	June 24, 1843.
JOHN C. CALHOUN,	South Carolina,	March 6, 1844.
JAMES BUCHANAN,	Pennsylvania,	March 5, 1845.
JOHN M. CLAYTON,	Delaware,	March 7, 1849.
DANIEL WEBSTER,	Massachusetts,	July 20, 1850.
EDWARD EVERETT,	Massachusetts,	Dec. 9, 1852.



WILLIAM L. MARCY,	New York,	March 7, 1853.
LEWIS, CASS,	Michigan,	March 6, 1857.
JEREMIAH S. BLACK,	Pennsylvania,	Dec. 17, 1860.
WILLIAM H. SEWARD,	New York,	March 5, 1861.
ELIHU B. WASHBURNE,	Illinois,	March 5, 1869.
HAMILTON FISH,	New York,	March 11, 1869.

### ART. III.—TREASURY DEPARTMENT.

§ 1. The Treasury Department dates from 1789. It is under charge of the Secretary and Assistant Secretary of the Treasury. This department has charge of all moneys paid into the treasury of the United States; has the general supervision of the fiscal transactions of the government; attends to the collection of the revenue, the auditing and payments of accounts, or other disbursements; and sees to the execution of the laws relating to the commerce and navigation of the United States.

§ 2. This department also has charge of the coast survey, the mint and coinage of money, the light-house establishments, the erection of marine hospitals and custom-houses. By act of Congress, Mary 10, 1810, it is made the duty of the Secretary of the Treasury to prepare and report to Congress, at the opening of every regular session, the financial condition of the United States, to furnish estimates of the revenue and disbursements of the treasury, and to give information in reference to the most economic means of furnishing money to meet the claims against the government.

§ 3. There are a chief clerk, controller, second controller, commissioner of customs, six auditors, and a large number of other assistants of various positions and titles, employed in this department, having their respective duties to perform. The first controller prescribes the mode of keeping and rendering accounts for the civil and diplomatic service, as well as the public lands.

The second controller prescribes the mode of keeping and rendering the accounts of the army and navy, and of the Indian and Pension Bureaus.

The commissioner of the customs prescribes the mode of keeping and rendering the accounts of the customs revenue and disbursements, and for the building and repairing the custom-houses, &c.<sup>1</sup>

The business of the sixth auditor relates chiefly to the interests of the Post-office Department.

§ 4. The following is a list of the Secretaries of the Treasury, beginning with the organization of our present form of government:—

Name.	Residence.	When Appointed.
ALEXANDER HAMILTON,	New York,	Sept. 11, 1789.
OLIVER WOLCOTT,	Connecticut,	Feb. 3, 1795.
SAMUEL DEXTER,	Massachusetts,	Dec. 31, 1800.
ALBERT GALLATIN,	Pennsylvania,	Jan. 26, 1802.
GEORGE W. CAMPBELL,	Tennessee,	Feb. 9, 1814.
ALEXANDER J. DALLAS,	Pennsylvania,	Oct. 6, 1814.
WILLIAM H. CRAWFORD,	Georgia,	March 5, 1817.
RICHARD RUSH,	Pennsylvania,	March 7, 1825.
SAMUEL D. INGHAM,	Pennsylvania,	March 6, 1829.
LUIS MCLANE,	Delaware,	Aug. 8, 1831.
WILLIAM J. DUANE,	Pennsylvania,	May 29, 1833.
ROGER B. TANEY, <sup>2</sup>	Maryland,	Sept. 23, 1833.
LEVI WOODBURY,	New Hampshire,	June 27, 1834.
THOMAS EWING,	Ohio,	March 5, 1841.
WALTER FORWARD,	Pennsylvania,	Sept. 13, 1841.
GEORGE M. BIBB,	Ohio,	June 15, 1844.
ROBERT J. WALKER,	Mississippi,	March 5, 1845.
WILLIAM M. MEREDITH,	Pennsylvania,	March 7, 1849.
THOMAS CORWIN,	Ohio,	July 20, 1850.
JAMES GUTHRIE,	Kentucky,	March 7, 1853.
HOWELL COBB,	Georgia,	March 5, 1857.
PHILIP F. THOMAS,	Maryland,	Dec. 12, 1860.
JOHN A. DIX,	New York,	Jan. 11, 1861.
SALMON P. CHASE,	Ohio,	March 5, 1861.
WILLIAM P. FESSENDEN,	Maine,	July 1, 1864.
HUGH MCCULLOCH,	Indiana,	March 7, 1865.
GEORGE S. BOUTWELL,	Massachusetts,	March 11, 1869.

<sup>1</sup> Lanman's Congressional Dictionary.

<sup>2</sup> Rejected by the Senate.

#### ART. IV.—WAR DEPARTMENT.

§ 1. This department has charge of all business growing out of the military affairs and interests of the government. It keeps the record of

the army, issues military commissions, directs the movements of troops, and superintends their payment. It also has the custody of all military stores, clothing, arms, and equipments. It supervises the construction of all military structures, and conducts all works of military engineering.

§ 2. The War Department is in the charge of the Secretary of War, who is assisted by one regular assistant and two temporary assistants, and a large number of clerks, one of whom is called the chief clerk. This department is also divided into several branches called bureaus, taking their several names from the offices in which the business of each is transacted.

§ 3. The commanding-general's office has the arrangement of all the military forces, the superintendence of the recruiting service, and the discipline of the army. The adjutant-general's office keeps the records and rolls of the army: from this office the military commissions are sent out, and all orders emanating from headquarters. The quartermaster-general's bureau has charge of the supply-system, control of the barracks, and furnishes the clothing and transportation of the army.

§ 4. The disbursements of money to the army are made through the paymaster-general's office; the purchase and issue of rations, through the commissary-general's office: surgical and medical supplies and attendance, the management of the sick and wounded soldiers, and the care of military hospitals, are under the surgeon-general's direction. There is an engineer's bureau, having the direction of all matters connected with the engineer corps of the army, and also the care of the military academy at West Point. There is a topographical bureau, which has the superintendence of surveys made for military purposes and for purposes of internal improvement; and there is also an ordnance bureau, having charge of the arsenals and armories, the manufacture of arms, implements of war, and the keeping of all ordnance-stores.

§ 5. The following is a list of the Secretaries of War from the organization of this department:—

Name.	Residence.	When Appointed.
JOHN KNOX,	Massachusetts,	Sept. 12, 1789.
TIMOTHY PICKERING,	Massachusetts,	Jan. 2, 1795.
JAMES MCHENRY,	Maryland,	Jan. 27, 1796.
SAMUEL DEXTER,	Massachusetts,	May 13. 1800.
ROGER GRISWOLD,	Connecticut,	Feb. 3, 1801.
HENRY DEARBORN,	Massachusetts,	March 4, 1801.

WILLIAM EUSTIS,	Massachusetts,	March 7, 1809.
JOHN ARMSTRONG,	New York,	Jan. 19, 1813.
JAMES MONROE,	Virginia,	Sept. 26, 1814.
WILLIAM H. CRAWFORD,	Georgia,	March 2, 1815.
ISAAC SHELBY,	Kentucky,	March 5, 1817.
JOHN C. CALHOUN,	South Carolina,	Dec. 16, 1817.
JAMES BARBOUR,	Virginia,	March 7, 1825.
PETER D. PORTER,	New York,	May 26, 1828.
JOHN H. EATO	Tennessee,	March 9, 1829.
LEWIS CASS,	Ohio,	Aug. 1, 1831.
JOEL R. POINSETT,	South Carolina,	March 7, 1837.
JOHN BELL,	Tennessee,	March 5, 1841.
JOHN C. SPENCER,	New York,	Oct. 12, 1841.
JAMES M. PORTER,	Pennsylvania,	March 8, 1843.
WILLIAM WILKINS,	Pennsylvania,	Feb. 15, 1844.
WILLIAM L. MARCH,	New York,	March 5, 1845.
GEORGE W. CRAWFORD,	Georgia,	March 7, 1849.
CHARLES M. CONRAD,	Louisiana,	Aug. 15, 1850.
JEFFERSON DAVIS,	Mississippi,	March 5, 1853.
JOHN B. FLOYD,	Virginia,	March 6, 1857.
JOSEPH HOLT,	Kentucky,	Jan. 18, 1860.
SIMON CAMERON,	Pennsylvania,	March 5, 1861.
EDWIN M. STANTON,	Pennsylvania,	March, 1862.
EDWIN M. STANTON,	Removed	August, 1867.
ULYSSES S. GRANT,	Illinois, appointed <i>ad interim</i>	August, 1867.
EDWIN M. STANTON,	Restored January,	1868.
JOHN A. SCHOLFIELD,	MISSOURI,	MAY 29, 1868.
John A. Rawlins,	Illinois,	Mar. 11, 1869.

#### ART. V.—NAVY DEPARTMENT.

§ 1. Originally, by act of Congress, Sept. 15, 1789, the Navy Department was included with the War Department, and both branches were called the War Department. They were separated, however, April 30, 1789; when the navy division was established as a distinct department,

§ 2. The Navy Department was divided Aug. 21, 1842, at which time it was re-organized into five bureaus:—

1. Bureau of navy-yards and docks.
2. Bureau of construction, equipment, and repair.

3. Bureau of provisions and clothing.
4. Bureau of ordnance and hydrography.
5. Bureau of medicine and surgery.

§ 3. Under the general direction of the President of the United States, the Secretary of the Navy has control of every thing connected with the naval establishment, and the execution of the laws relating to it. All instructions to the subordinate officers of the navy, the enlistment and discharge of seamen, and orders to all the different bureaus, are issued by authority of the Secretary of the Navy.

§ 4. The first officers of the different bureaus are styled the chiefs of the bureaus. As in the bureaus of other departments, there are a large number of clerks employed in these. The bureau of navy-yards and dock-yards has charge of these yards, and all wharves, buildings, and machinery belonging to them; and also of the naval asylum.

§ 5. The second bureau named has charge of the building and repairs of all vessels of the navy, and every thing connected with their outfit and completion. The third sees to the provisions, supplies, and clothing of the seamen; and the fifth bureau attends to every thing relating to medical stores, the treatment of the sick and wounded, and the management of the hospitals.

§ 6. The following is a list of the names of the Secretaries of the Navy since its organization as a distinct department, with the dates of their appointments:—

Name.	Residence.	When Appointed.
GEORGE CABOT, <sup>1</sup>	Massachusetts,	May 8, 1798.
BENJAMIN STODDART,	Maryland,	May 21, 1798.
ROBERT SMITH,	Maryland,	Jan. 20, 1802
JACOB CROWNINGSHIELD,	Massachusetts,	March 2, 1805.
PAUL HAMILTON,	South Carolina,	March 7, 1809.
WILLIAM JONES,	Pennsylvania,	Jan. 12, 1813.
BENJ. W. CROWNINGSHIELD,	Massachusetts,	Dec. 17, 1814.
SMITH THOMPSON,	New York,	Nov. 30, 1818.
SAMUEL L. SOUTHARD,	New Jersey,	Dec. 9, 1823.
JOHN BRANCH,	North Carolina,	March 9, 1829.
LEVI WOODBURY,	New Hampshire,	May 23, 1831.
MAHLON DICKINSON,	New Jersey,	Dec. 9, 1823.
JAMES K. PAULDING,	New York,	June 20, 1838.
GEORGE E. BADGER,	North Carolina,	March 5, 1841.

ABEL P. UPSHER,	Virginia	Sept. 13, 1841.
DAVID HENSHAW,	Massachusetts,	July 24, 1843.
THOMAS W. GILMER,	Virginia,	Feb. 15, 1844.
JOHN Y. MASON,	Virginia,	March 14, 1844.
GEORGE BANCROFT,	Massachusetts,	March 10, 1845.
JOHN Y. MASON,	Virginia	Sept. 9, 1846.
WILLIAM B. PRESTON,	Virginia,	March 7, 1849.
WILLIAM A. GRAHAM,	North Carolina,	July 30, 1850
JOHN P. KENNEDY,	Maryland,	July 22, 1852
JAMES C. DOBBIN,	North Carolina,	March 7, 1853.
ISAAC TOUCEY,	Connecticut,	March 6, 1857
JACOB THOMPSON,	Mississippi,	March, 1857.
GIDEON WELLES,	Connecticut,	March 5, 1861.
ADOLPH E. BORIE,	Pennsylvania,	March 5, 1869.

<sup>1</sup> Declined.

## VI.—POST OFFICE DEPARTMENT.

§ 1. The Post-office Department was established by act of Congress, Sept. 22, 1789. It is under the general direction of the Postmaster-General. For convenience, the business is distributed through several bureaus. The appointment office is in the care of the first Assistant Postmaster-General. To his bureau are referred all questions relating to the names, establishment, and discontinuance of post-offices, and the appointment and removal of postmasters. In offices where the salary of the postmaster is a thousand dollars a year or over, the appointments are made by the President, by and with the advice and consent of the Senate. Instructions to postmasters, and the distribution of blanks and stationery for the use of the department, are from this bureau. This branch has charge of the steamship lines on the ocean, and also of all international postal affairs.

§ 2. The second Assistant Postmaster-General has charge of the contract-office. He lets the contracts for carrying the mail; direct in regard to the mode of conveyance, and the time of arrival and departure of the mails on each route; fixes on the offices of distribution; and advertises for bids for carrying the mails on all routes open to competition.

§ 3. The third Assistant Postmaster-General has the supervision of

the financial interests and business of the department, except what comes more properly under the care of the auditor. The postage-stamps and stamped envelopes for prepayment of postage are issued from this bureau. All quarterly returns from the post-offices throughout the United States are made to the third Assistant Postmaster-General. He also has charge of the dead-letter office.

§ 4. The bureau of the chief clerk attends to the reports of the arrivals and departures of the mails, noting all failures and delinquencies on the part of contractors, and prepares all cases for the action of the Postmaster-General. This bureau provides the mail bags and the mail locks and keys. The three Assistant Postmasters-General are appointed by the Postmaster-General. The following is a list of the Postmasters-General from the establishment of the department to 1868, with dates of appointment:—

Name.	Residence.	When Appointed.
SAMUEL OSBOOD,	Massachusetts,	Sept. 26, 1789.
TIMOTHY PICKERING,	Massachusetts,	Nov. 7, 1794.
JACOB HABERSHAM,	Georgia, F	eb. 25, 1795.
GIDEOHN GRANGER,	Connecticut,	Jan. 26, 1802.
RETERN J. MEIGS,	Ohio,	March 17, 1814.
JOHN MCLEAN,	Ohio,	Dec. 9, 1823.
WILLIAM T. BARRY,	Kentucky,	March 9, 1829.
AMOST KENDALL,	Kentucky,	May 1, 1835.
JOHN M. NILES,	Connecticut,	May 25, 1840.
FRANCIS GRANGER,	New York,	March 6, 1841.
CHARLES A. WICKLIFFE,	Kentucky,	Sept. 13, 1841.
CAVE JOHNSON,	Tennessee,	March 5, 1845.
JACOB COLLAMER,	Vermont,	March 7, 1849.
NATHAN K. HALL,	New York,	July 20, 1850.
SAMUEL D. HUBBARD,	Connecticut,	Aug. 31, 1852.
JAMES CAMPBELL,	Pennsylvania,	March 5, 1853.
AARON V. BROWN,	Tennessee,	March 6, 1857.
JOSEPH HOLT,	Kentucky,	March 14, 1859.
MONTGOMERY BLAIR,	Maryland,	March 5, 1861.
WILLIAM DENNISON,	Ohio,	Sept. 24, 1864.
ALEXANDER W. RANDALL,	Wisconsin,	July 25, 1866.
JOHN A. J. CRESWELL,	Maryland,	March 5, 1869.

## **ART. VII.—INTERIOR DEPARTMENT.**

§ 1. This department was created by act of Congress, March 3, 1849, and has charge of much of the government-business that previously devolved on several of the other departments. The Secretary of the Interior is at the head of this department, and he has one assistant secretary. The business of it is distributed through the bureaus of the public lands, pensions, Indian affairs, patents, and agriculture.

§ 2. The principal officer in charge of the Bureau of Public Lands is called the Commissioner of the General Land-Office. He has charge of the survey and sale of the public lands, their legal transfer according to the laws of Congress, whether under the homestead act, military bounty act, grants for school-purposes, or internal improvements.

§ 3. The chief officer of the Pension Bureau is called the Commissioner of Pensions. He attends to the adjudication of pension claims against the United States, whether due to the soldiers of the Revolution or of the late wars, and whether due in land or money. The principal officer of the Indian Bureau is called the Commissioner of Indian Affairs, who attends to all government-matters connected with the Indian tribes.

§ 4. The Bureau of the Patent Office is under the direction of the Commissioner of Patents, who attends to all business on the part of the government in reference to the issue of letters-patent to inventors. There is a commissioner of agriculture, who has supervision of all the national interests in agriculture.

§ 5. By the act of 1849, organizing the Department of the Interior, the supervision of the accounts of the United-States courts, were transferred from the treasury to this department. The Secretary of the Interior has supervision of the marshals and others in taking the census of the United States; also of the lead and other mines of the United States, and of the accounts of the agents therefor.

§ 6. He likewise exercises supervisory power over the commissioners of the public buildings, including the Capitol and Department buildings; and over the board of inspectors and warden of the penitentiary of the District of Columbia.

§ 7. The Secretary of the Interior appoints the chief clerk and all other clerks of his department; and the commissions of all officers under the control and direction of the Secretary of the Interior are made out and recorded in the Department of Interior, and the seal of the department is affixed thereto.

§ 8. The Secretary of Interior is charged with receiving, arranging,



safe-keeping, and with the distribution of, all printed journals of the two houses of Congress, and all other books of whatever nature printed and purchased for the use of government, except such as are printed or purchased for the use of Congress or for the particular use of any of the other departments. He is required to set apart a suitable room in the patent-office for their safe keeping.

The following is a list of the Secretaries of this department from its organization to the present time, 1868, with the dates of appointment:—

Name.	Residence.	When Appointed.
THOMAS EWING,	Ohio,	March 7, 1849.
ALEXANDER H.H. STUART,	Virginia,	Sept. 12, 1850.
ROBERT MCCLELLAND,	Michigan,	March 7, 1853.
JACOB THOMPSON,	Mississippi,	March 6, 1857.
CALEB B. SMITH,	Indiana,	March 5, 1861
JOHN P. UPSHER,	Indiana,	Jan. 8, 1863.
JAMES HARLAN,	Iowa,	May 15, 1865.
ORVILLE H. BROWNING,	Illinois,	July 27, 1866.
JACOB D. COX,	Ohio,	March 5, 1869.ART.

### VIII.-ATTORNEY-GENERAL'S OFFICE.

§ 1. By act of Congress, Sept. 24, 1789, there is to be appointed an attorney-general of the United States, who shall be sworn to the faithful execution of his office. He may appoint an assistant at a salary of \$ 3,500 a year.

§ 2. The duties of his office may be classified under the following heads:—

1st. He shall prosecute and conduct all suits in the Supreme Court in which the United States shall be concerned.

2d. He shall give advice and opinions on questions of law when required by the President of the United States.

3d. He shall give legal advice and opinions, when requested by the heads of any of the departments, touching any matter that concerns their departments.

4th. He shall advise with and direct the solicitor of the treasury as to the manner of conducting suits, proceedings, and prosecutions.

5th. He is charged with the general superintendence and direction of all United-States district attorneys and marshals; and they are

required to report to him an account of their official proceedings, and the state and condition of their respective offices, at which times and in such manner as he may direct.

6th. All applications to the President for pardons in cases of conviction under the laws of the United States are referred to the Attorney-General for examination and his opinion.

7th. He oversees and conducts the transfer to all lands purchased by the United States as sites for the erection of public works for government use. He sees to the examination of the titles in such cases.

§ 3. The Attorney-General is authorized to employ a chief clerk at a salary of \$2,200 a year; two clerks, one a "pardon clerk," and the other an "opinion clerk," at salaries of \$1,800 a year each; and several other clerks with salaries varying from \$1,200 to \$1,600 a year each.

§ 4 The following is a list of the Attorneys-General from the institution of this office in 1789 to 1868, with the date of appointments:—

Name.	Residence.	When Appointed.
EDMUND RANDOLPH,	Virginia,	Sept. 26, 1789.
WILLIAM BRADFORD,	Pennsylvania,	Jan. 28, 1794.
CHARLES LEE,	Virginia,	Dec. 10, 1795.
THEOPHILUS PARSONS, <sup>1</sup>	Massachusetts,	Feb. 20, 1801.
LEVI LINCOLN,	Massachusetts,	March 5, 1801.
ROBERT SMITH,	Maryland,	March 2, 1805.
JOHN BREKENRIDGE,	Kentucky,	Dec. 25, 1805.
CAESAR A. RODNEY,	Pennsylvania,	Jan. 20, 1807.
WILLIAM PINKEY,	Maryland,	Dec. 11, 1811.
RICHARD RUSH,	Pennsylvania,	Feb. 10, 1814.
WILLIAM WIRT,	Virginia,	Dec. 15, 1817.
JOHN M. BERRIEN,	Georgia,	March 19, 1829.
ROGER B. TANEY,	Maryland,	Dec. 27, 1831.
BENJAMIN F. BUTLER,	New York,	June 24, 1834.
FELIX GRUNDY,	Tennessee,	Sept. 1, 1838.
HENRY D. GILPIN,	Pennsylvania,	Jan. 10, 1840.
JOHN J. CRITTENDEN,	Kentucky,	March 5, 1841.
HUGH S. LEGARE,	South Carolina,	Sept. 13, 1841.
JOHN NELSON,	Maryland,	Jan. 2, 1844.
JOHN Y. MASON,	Virginia,	March 5, 1845.
NATHAN CLIFFORD,	Maine,	Dec. 23, 1846.
ISAAC TOUCEY,	Connecticut,	June 21, 1848.

REVERDY JOHNSON,	Maryland,	July 20, 1850.
CALEB CUSHING,	Massachusetts,	March 7, 1849.
JEREMIAH S. BLACK,	Pennsylvania,	March, 1857.
EDWIN M. STANTON,	Pennsylvania,	December, 1860.
EDWARD BATES,	Missouri,	March 5, 1861.
JAMES SPEED,	Kentucky,	Dec. 2, 1864.
HENRY STANBERY,	Ohio,	July 23, 1866.
WILLIAM M. EVARTS,	New York,	July 15, 1868.
E. ROCKWOOD HOAR,	Massachusetts,	March 5, 1869.

<sup>1</sup> Declined.

§ 5. There is one principal messenger employed in each of the offices of the secretaries of the departments, at a salary of \$900 a year; and there is one principal messenger in each of the bureaus of the several executive departments, at a salary of \$840 a year. There are also other messengers and assistant messengers in each of the departments, at a salary of \$700 a year.

§ 6. The heads of the departments, with the Attorney-General, are the President's Constitutional advisers, and constitute his cabinet; each having a salary of \$8,000 a year. Each of the executive departments has an official seal, which is annexed to all public documents issuing from their respective offices.

## ART. IX.—SPEAKERS OF THE HOUSE OF REPRESENTATIVES.

The following is a list of the Speakers of the House of Representatives, from the adoption of the Constitution to 1868, with dates of appointment:—

Name.	Residence.	When Appointed.
FRED A. MUHLENBERG,	Pennsylvania,	April 1, 1789.
JONATHAN TRUMBULL,	Connecticut,	Oct. 24, 1791.
FRED A. MUHLENBERG,	Pennsylvania,	Dec. 2, 1793.
JONATHAN DAYTON,	New Jersey,	Dec. 7, 1795.
JONATHAN DAYTON,	New Jersey,	May 15, 1797.
GEORGE DENT, <sup>1</sup>	Maryland,	April 20, 1798.
GEORGE DENT,	Maryland,	May 28, 1798.

THEODORE SEDGWICK,	Massachusetts,	Dec. 2, 1799.
NATHANIEL MACON,	North Carolina,	Dec. 7, 1801.
NATHANIEL MACON,	North Carolina,	Oct. 17, 1803.
NATHANIEL MACON,	North Carolina,	Dec. 2, 1805.
JOSEPH B. VARNUM,	Massachusetts,	Oct. 26, 1807
JOSEPH B. VARNUM,	Massachusetts,	May 22, 1809.
HENRY CLAY,	Kentucky,	Nov. 4, 1811.
HENRY CLAY,	Kentucky,	May 24, 1813.
LANGDON CHEVES,	South Carolina,	Jan. 19, 1814.
HENRY CLAY,	Kentucky,	Dec. 4, 1815.
HENRY CLAY,	Kentucky,	Dec. 1, 1817.
HENRY CLAY,	Kentucky,	Dec. 6, 1819.
JOHN W. TAYLOR,	New York,	Nov. 15, 1820.
PHILIP P. BARBOUR,	Virginia	Dec. 3, 1821.
HENRY CLAY,	Kentucky,	Dec. 1, 1823
JOHN W. TAYLOR,	New York,	Dec. 5, 1825.
ANDREW STEVENSON,	Virginia,	Dec. 3, 1827.
ANDREW STEVENSON,	Virginia,	Dec. 7, 1829.
ANDREW STEVENSON,	Virginia,	Dec. 5, 1831.
ANDREW STEVENSON,	Virginia,	Dec. 2, 1833.
HENRY HUBBARD,	New Hampshire,	May 19, 1834.
JOHN BELL,	Tennessee,	June 2, 1834
JAMES K. POLK,	Tennessee,	Dec. 7, 1835
JAMES K. POLK,	Tennessee,	Sept. 4, 1837.
ROBERT M. T. HUNTER,	Virginia,	Dec. 16, 1839.
JOHN WHITE,	Kentucky,	May 31, 1841.
JOHN W. JONES,	Virginia,	Dec. 4, 1843.
GEORGE W. HOPKINS,	Virginia,	Feb. 28, 1845.
JOHN W. DAVIS,	Indiana,	Dec. 1, 1845.
ROBERT C. WITHROP,	Massachusetts,	Dec. 6, 1847.
ARMISTEAD BURT, <sup>2</sup>	South Carolina,	June 19, 1848.
ARMISTEAD BURT, <sup>2</sup>	South Carolina,	June 20, 1848.
HOWELL COBB,	Georgia,	Dec. 22, 1849.
LINN BOYD,	Kentucky,	Dec. 1, 1851.
LINN BOYD,	Kentucky,	Dec. 5. 1953.
NATHANIEL P. BANKS,	Massachusetts,	Feb. 2, 1856.
JAMES L. ORR,	South Carolina,	Dec. 7, 1857.
WILLIAM PENNINGTON,	New Jersey,	Feb. 1, 1860.
GALUSHA A. GROW,	Pennsylvania,	July 4, 1861.

SCHYLER COLFAX,	Indiana,	Dec. 7, 1863.
SCHYLER COLFAX,	Indiana,	Dec. 4, 1865.
SCHYLER COLFAX,	Indiana,	Dec. 4, 1867
JAMES G. BLAINE,	Maine,	Mar. 4, 1869.

<sup>1</sup> Elected pro tempore during sickness of the Speaker.

<sup>2</sup> First appointed, on account of sickness of Speaker, for one day; than for the remainder of the session.

### ART. X.—PRESIDENTS *PRO TEMPORE* OF THE SENATE.

Name.	Residence.	When Appointed.
JOHN LANGDON,	New Hampshire,	April, 1789.
Richard Henry Lee,	Virginia,	April, 1792.
JOHN LANGDON,	New Hampshire,	May, 1792
JOHN LANGDON,	New Hampshire,	March, 1793.
RALPH IZARD,	South Carolina,	May, 1794.
HENRY TAZEWELL,	Virginia,	February, 1795.
SAMUEL LIVERMORE,	New Hampshire,	May, 1796.
WILLIAM BINGHAM,	Pennsylvania,	February, 1797.
William Bradford,	Rhode Island,	July, 1797.
Jacob Read,	South Carolina,	November, 1797.
THEODORE SEDGWICK,	Massachusetts,	June, 1798
JOHN LAWRENCE,	New York,	December, 1798
JAMES ROSS,	Pennsylvania,	March, 1799.
SAMUEL LIVERMORE,	New Hampshire,	December, 1799.
URIAH TRACY,	Connecticut,	May, 1800.
JOHN E. HOWARD,	Maryland,	November, 1800.
JAMES HILLHOUSE,	Connecticut,	February, 1801.
ABRAHAM BALDWIN,	Georgia,	December, 1801.
STEPHEN R. BRADLEY,	Vermont,	December, 1801.
JOHN BROWN,	Kentucky,	October, 1803.
JESSE FRANKLIN,	North Carolina,	March 1804.
JOSEPH ANDERSON,	Tennessee,	January, 1805.
SAMUEL SMITH,	Maryland,	December, 1805.
STEPHEN R. BRADLEY,	Vermont,	December, 1808.
JOHN MILLEDGE,	Georgia,	January, 1809.
ANDREW GREGG,	Pennsylvania,	January, 1809.

JOHN GAILLARD,	South Carolina,	February, 1810.
JOHN POPE,	Kentucky,	February, 1811.
William H. Crawford,	Georgia,	March, 1812.
JOSEPH B. VARNUM,	Massachusetts,	December, 1813.
JOHN GAILLARD,	South Carolina,	April, 1814.
JAMES BARBOUR,	Virginia,	February, 1819.
JOHN GAILLARD,	South Carolina,	January, 1820.
NATHANIEL MACON,	North Carolina,	May, 1828.
SAMUEL SMITH,	Virginia,	July, 1832.
LITTLETON W. TAZEWELL,	Tennessee,	December, 1832.
HUGH L. WHITE,	Tennessee,	December, 1832.
GEORGE POINDEXTER,	Massachusetts,	June, 1834.
JOHN TYLER,	Virginia,	March, 1835.
WILLIAM R. KING,	Alabama,	July, 1836.
SAMUEL L. SOUTHARD,	New Jersey,	March, 1841.
WILLIE P. MANGUM,	North Carolina,	May, 1842.
DAVID R. ATCHISON,	Missouri,	August, 1846.
WILLIAM R. KING,	Alabama,	July, 1850.
DAVID R. ATCHISON,	Missouri,	December, 1852.
JESSE D. BRIGHT,	Indiana,	June, 1856.
BENJAMIN FITZPATRICK,	Alabama,	June, 1857.
BENJAMIN FITZPATRICK,	Alabama,	December, 1859.
JESSE D. BRIGHT,	Indiana,	June 12, 1860.
BENJAMIN FITZPATRICK,	Alabama,	June 27, 1860.
Solomon Foot,	Vermont,	March, 1861.
LAFAYETTE S. FOSTER,	Connecticut,	March, 1865.
BENJAMIN F. WADE,	Ohio,	March, 1867.
HENRY B. ANTHONY,	Rhode Island,	March, 1869.

# GLOSSARY

NOTE.—*The author is indebted to JOHN M. DUNNING, Esq., attorney and counselor at law, Rochester, N.Y., for the following carefully-complied glossary of legal terms and phrases.*

## A.

**ACCOMPLICE.** An associate or confederate in crime, not actually present at its commission.

**ACKNOWLEDGMENT.** 1. A declaration or avowal of one's own signature or act to a written instrument, as a deed or mortgage, before a proper officer, to give it legal validity. 2. The certificate of the officer on the instrument, that such a declaration has been made.

**ACT.** 1. The formal declaration or expression of the will of the people, as made by their legal representatives, acting in a legislative capacity. 2. A law passed by legislative authority. A statute.

**ADMINISTRATOR.** A person lawfully appointed, with his assent, by an officer having jurisdiction, to manage and settle the estate of an intestate, or person who dies leaving no last will and testament, or of a person who dies leaving a last will and testament, but with no competent executor to carry the same into execution. One to whom letters of administration are granted.

**ADMINISTRATRIX.** A female administrator.

**ADMIRALTY.** 1. The power or officers appointed for the management of naval affairs. 2. The name of a jurisdiction which takes cognizance of suits or actions which arise in consequence of acts done upon or relating to the sea. In the United States, all cases of admiralty and maritime jurisdiction are vested in the district courts of the United States.

**AFFIDAVIT.** A statement in writing, prefaced by the name of the State, and the county, or city, or town, or other municipal division, over which the officer's jurisdiction before whom it is made extends, and signed by the person making the statement, and made an oath or affirma-

tion before a person authorized by law to administer oaths and take affirmations.

**AFFIRMATION.** A solemn declaration made by a person who conscientiously declines to take an oath, but having the same legal and binding obligation as an oath, with like penalties for perjury attached, and to be administered with like formalities.

**AGENCY.** The office or business of a person acting for or intrusted with the affairs of another. The person so acting is called the agent: the one acted for is called the principal.

**ALIAS.** Otherwise called.

**ALIBI.** Elsewhere. A person accused of a crime, pleading and proving that he was somewhere else than where the crime was committed, at the time of its commission, pleads and proves an alibi.

**ALIEN.** One born in another country than the one where he resides; not possessing, therefore, the rights of citizenship where he resides.

**ALIMONY.** An allowance made by a court to a wife out of her husband's estate. This may be done temporarily, as while a suit for divorce is pending; or it may be done for life, as where a divorce is granted.

**ALLEGIANCE.** The duty of fidelity which a person owes to his government for the protection which it affords him. Loyalty, fealty.**AMBASSADOR.** A person appointed by a sovereign state, government, or prince, duly authorized to represent his government at the seat of, and manage its interests with, the government to which he is sent.

**AMNESTY.** An act of oblivion of past offenses, granted by the government, expressly or impliedly, either before or after conviction, to those who have committed offenses in times of war, or to those who have been guilty of any neglect or crime; destroying the criminal act.

**ARBITRATOR.** Umpire, referee. A person chosen, by parties who have a controversy, to determine and settle their differences.

**ARREST.** The taking or apprehending of a person by the authority of law.

**ARSON.** The willful and malicious burning of a dwelling-house or out-house of another person.

**ASSASSIN.** One who kills, or attempts to kill, a person by surprise or secret assault.

**ASSAULT.** An unlawful attempt or offer to beat another, accompanied by a degree of violence, but without touching the person; as with the fist, or a deadly or dangerous weapon.



**ATTACHMENT.** A seizure or taking of the person or property by virtue of a legal process issued by a court of competent jurisdiction, or by a judge thereof, and directed to and executed by the sheriff or other proper officer. A writ.

**ATTAINDER.** The stain, forfeiture, and corruption of blood, which arise on a person being condemned for certain crimes.

## B.

**BAIL.** The security given for the release of a prisoner from the custody of an officer. The persons who become responsible for the appearance of the prisoner when demanded by the officer or by the court.

**BAILEE.** The person to whom goods are committed in trust for a specified object. He has a temporary possession, and a qualified interest in them, until the object is accomplished.

**BAILMENT.** A delivery of goods in trust for some special object or purpose, on a contract, expressed or implied, that the trust shall be faithfully executed and the goods re-delivered on fulfilling the conditions attached.

**BAILOR.** One who delivers goods to another in trust for a particular purpose.

**BALLOT.** A piece of paper or other thing used in voting. The act of voting with balls or tickets.

**BANKRUPT.** A person who is unable to pay his debts, and of whom it has been so declared by a court. One who fails in business, and becomes insolvent.

**BEQUEST.** A gift of personal property by a last will and testament. A legacy.

**BOND.** A writing signed and sealed, by which a person binds himself, his heirs and assigns, to pay a certain sum of money on or before a future day appointed, on the failure of certain conditions therein stated.

**BURGLARY.** The breaking and entering into a dwelling-house or other building of another person, with intent to commit a felony, whether the felonious purpose be accomplished or not.

## C.

**CABINET.** The constitutional advisers of the chief executive officer of a State or nation, taken collectively. For instance, in the United States, the Secretary of State, and several other officers, are called cabinet officers.

**CENSUS.** An official registration of the inhabitants of a country, the value of their estates, and other general statistics of public interest.

**CHECK.** A written order, usually drawn on a banker, for the payment of a sum of money therein specified.

**CLIENT.** The employer of an attorney or counselor at law to transact professional business, usually in the course of judicial proceedings.

**CODICIL.** A supplement, or addition, to a will, forming a part thereof, and executed with the same formalities.

**COMMERCE.** The exchange of merchandise or commodities between different places, countries, or communities.

**CONCURRENT.** Joint and equal. Existing together, and operating on the same objects. With equal authority.

**CONFISCATION.** The act of the government in appropriating the property of an individual, as a penalty, to the public use.

**CONSANGUINITY.** Relation by blood. Relationship of persons descended from a common ancestry, distinct from relationship by marriage.

**CONSIGNEE.** A person to whom goods or other things are sent, in trust, for sale or superintendence. A factor.

**CONSIGNMENT.** The act of consigning goods or other things. The goods or property sent to a consignee.

**CONSIGNOR.** A person who makes a consignment.

**CONSPIRACY.** An unlawful combination of persons for any purpose.

**CONSTABLE.** An officer of the peace having power, and bound, to execute the warrants and other processes of judicial officers.

**CONSTITUENT.** A person who appoints another to act for or represent him. A Congressman's constituency are the people of his district.

**CONSTITUTION.** The fundamental law of a country, whether expressed in a written document, or implied in the institutions and usages of the government.

**CONTRABAND.** Merchandise or traffic prohibited in time of war.

**CONTRACT.** An agreement between two or more parties competent to contract, based on a sufficient consideration, promising to do or not to do certain things possible to be done, which things are not prohibited by law.

**CONVERSION.** An unlawful or wrongful appropriation, by one person, of the personal property of another.

**CONVEYANCE.** The legal transfer of the property of one person to another. An instrument in writing by which this is done.

**CONVICT.** A person found guilty of a crime by a court of competent jurisdiction.

**CONVICTION.** The act of convicting by the verdict of a jury and judgment of a court.

**COPARTNER.** A person who is jointly concerned with others in any business-transactions. A member of a partnership.

**COPARTNERSHIP.** A joint interest between two or more persons in pecuniary or business matters.

**CORONER.** An officer whose duty it is to summon a jury to inquire into the cause and manner of sudden or suspicious death, produced by violence or otherwise. In certain cases, he acts as sheriff.

**CORPORATION.** A body politic or corporate, composed of many individuals, formed and authorized by law, and empowered to act in many respects as a single person, capable of suing and being sued, holding property, conveying the same, and transmitting it to their successors.

**CORPORATOR.** A member of a corporation.

**COUNSEL.** One who gives legal advice professionally. Advice and aid given in legal proceedings.

**COUNSELOR.** A person authorized by law to give legal advice professionally, and to manage causes in court.

**COURT.** One or more persons sitting for the trial of causes in a judicial capacity.

**COVENANT.** A contract in writing, usually under seal, though not necessarily.

**COVENANTEE.** The person to whom a covenant is made.

**COVENANTOR.** The person who makes the covenant.

**CRIME.** An offense against the laws of the land, to which a penalty is attached.

**CRIMINAL.** A person who has been judicially adjudged guilty of a crime.

#### D.

**DEBT.** A sum of money due.

**DEBTOR.** A person who owes another a debt.

**DECREE.** A decision, order, sentence, or judgment, by a court or magistrate.

**DEED.** An instrument in writing, under seal in due form of law, conveying title.

**DEFAULTER.** One who is deficient in his accounts. One who fails to appear in court when properly called.

**DEFENDANT.** A person against whom suit is brought in a court.

**DEFENSE.** The conveyance of an estate in fee, or for a limited period specified.

**DEMURRER.** An admission of facts as stated by the opposite party, but a denial of the legal consequences which that party claims.

**DEPONENT.** A person who makes a deposition or affidavit.

**DEPOSITION.** Testimony committed to writing, under the proper legal forms, to be afterwards used on the trial of a cause.

**DESCENT.** Transmission by succession or inheritance.

**DEVISE.** A disposition of real property by will.

**DEWISEE.** A person to whom a devise is made.

**DEVISOR.** The person who makes a devise.

**DISFRANCHISEMENT.** Deprivation of the rights of citizenship; as of voting, or holding office.

**DIVORCE.** A legal dissolution of the marriage-contract.

**DOMICILE.** An abode or mansion. Permanent residence.

**DONATION.** A gift.

**DONEE.** The person who makes a gift.

**DOWER.** The right of the widow to the use of a certain portion of the real estate of which her husband was seized during marriage.

**DURESS.** A state of compulsion induced by fear or restraint.

## **E.**

**EDICT.** An order issued by a sovereign to his subjects.

**EJECTMENT.** A process of dispossession or expulsion.

**ELECTOR.** One who has the right to vote; also one chosen to cast the vote of his constituency for the President and Vice-President of the United States.

**EMBARGO.** A detention of ships and vessels, by order of government, from sailing out of port; generally on account of impending war or public danger.

**EMBEZZLEMENT.** Fraudulent appropriation to one's own use of personal property intrusted to him by another for a particular purpose.

**EMBLEMENTS.** The produce or fruits of land sown or planted.

**ENDOWMENT.** A permanent provision for the support of a person or an institution.

**EQUITY.** Definition of, Part II, Chap. XIV, Art. III, Sect. 2.

**ESTATE.** The interest which one has in property of any kind.

**EXECUTION.** A judicial writ empowering an officer to carry a judgment into effect. The signing and sealing of a legal instrument, as a deed or will.

**EXECUTOR.** The person to whom the execution of a will is entrusted by the testator.

#### F.

**FEAULTY.** Fidelity to one's government. Loyalty. Allegiance.  
**FEE.** An unconditional estate of inheritance transmissible to heirs.  
**FELON.** One who has been convicted of felony.  
**FELONY.** A heinous crime punishable by imprisonment or death.  
**FINE.** A sum of money imposed by a court for commission of crime.  
**FORECLOSURE.** The process of enforcing collection of a mortgage.  
**FORGERY.** Fraudulently making or altering a writing, or making a thing in imitation of another, with intent to deceive or defraud.  
**FRATRICIDE.** A murderer of a brother or sister.  
**FRAUD.** Deliberate deception for the purpose of obtaining unfair and unlawful advantage in business-matters.  
**FREEHOLD.** An estate in real property, for life or in fee.  
**FREEHOLDER.** The owner of a freehold.

#### G.

**GOVERNMENT.** The manner in which sovereignty is exercised. The administration of the laws.  
**GRAND JURY.** A body of men, not less than twelve, nor more than twenty-three, summoned according to the forms of law, attending upon court for the purpose of inquiring into the commission of crimes within their jurisdiction. They find indictments against criminals, and present them to the court.  
**GRANT.** A transfer of property by deed or writing.  
**GRANTEE.** The person to whom a grant is made.  
**GRANTOR.** The person who makes a grant.  
**GUARDIAN.** One who has the lawful supervision of the person and business-affairs of an infant or other incompetent person.

#### H.

**HABEAS CORPUS.** Literally, you may have the body. A writ having for its object to bring a party before a court or judge, especially with a view to inquire into the cause of a person's imprisonment or detention by another. If the person is found to be unlawfully restrained of his liberty, he will be discharged; if not, he will be remanded to prison or custody.  
**HEIR.** One who receives, inherits, or is entitled to, the possession of

any property after the death of its owner. One to whom property descends by inheritance.

**HOMESTEAD.** One's dwelling-place, with that part of his real estate immediately surrounding it.

**I.**

**ILLEGAL.** Contrary to law. Unlawful.

**IMPEACHMENT.** An arraignment of a public officer, under a written formal accusation of corruption in office, or of crimes and misdemeanors for which he ought to be removed from office.

**IMPORTS.** Goods and chattels brought from foreign countries in the course of trade.

**IMPOSTS.** Taxes or duties imposed; more especially on imports.

**INALIENABLE.** Not transferable.

**INCHOATE.** That which is not yet complete or finished.

**INDICTMENT.** A written accusation of crime against a person, made by a grand jury in due form of law.

**INFORMER.** One who informs the judicial authorities against a person who has violated some penal statute.

**INHERITANCE.** A continuing right in an estate to a person and his heirs. A right transmitted by operation of law.

**INJUNCTION.** A writ granted by a competent court or judge thereof, commanding a person to do some specific act mentioned in the writ.

**INQUEST.** A judicial inquiry. An official examination.

**INSOLVENCY.** A condition of inability to pay one's debts.

**INSURGENT.** A person who rises in revolt against the authority of government or law.

**INTESTATE.** A person who dies without making a will.

**J.**

**JUDGE.** A judicial magistrate above the grade of justice of the peace.

**JUDGMENT.** A judicial determination of a court or a judge, on the facts and issues tried in a case.

**JUDICIAL.** Pertaining to courts of justice.

**JUDICIARY.** That branch of government represented by the courts, giving interpretation and application to the laws.

**JURAT.** The certificate of the officer at the end of an affidavit, showing when and before whom it was made.

**JURISPRUDENCE.** The science of law.  
**JURIST.** One well versed in the science of the laws of the land.  
**JUROR.** One who serves on a jury.  
**JURY.** A body of men summoned and sworn in court, to make inquest, or to give verdict on the facts of a cause as they appear from the evidence.  
**JURY-BOX.** The place where the jury sits during the trial of a cause.

## L.

**LANDLORD.** The owner of lands or houses leased to tenants.  
**LARCENY.** The unlawful taking and carrying away and appropriating the personal property of another. Stealing.  
**LAW.** A rule of action prescribed by the supreme power of a State, commanding what is right, and prohibiting what is wrong.  
**LAWFUL.** That which is not prohibited by law.  
**LEASE.** The temporary letting of real estate by the owner to the use of another.  
**LEGACY.** A gift of personal property by will. A bequest.  
**LEGAL.** Lawful. Permitted by law.  
**LEGATEE.** One who assists in making the laws.  
**LEGISLATOR.** One who assists in making the laws.  
**LEGISLATURE.** The body of men who enact or repeal the laws.  
**LESSEE.** The person to whom property is leased.  
**LESSOR.** The person who leases property to another.  
**LEVY.** The seizure of property on execution or tax-warrant.  
**LIBEL.** A defamatory writing. A published defamation. A malicious publication expressed in print, writing, by pictures, effigies, or other signs, tending to injure the memory of the dead or the reputation of the living, and to expose them to public hatred, contempt, or ridicule.  
**LIEN.** A legal claim on property, for which the property is liable.  
**LITIGANT.** A person engaged as a party in a lawsuit.  
**LITIGATION.** A legal contest between parties in court.  
**LUNACY.** Insanity broken by intervals of reason.  
**LUNATIC.** A person affected by lunacy.

## M.

**MAJORITY.** The full age required by law to manage one's own business-affairs.  
**MALEFACTOR.** One who has committed a crime. A criminal.  
**MALFEASANCE.** The doing of that which the party has no legal right to do.

**MALICIOUS.** With wicked and unlawful intentions.

**MANSLAUGHTER.** The unlawful killing of a person, without malice expressed or implied.

**MARSHAL.** A ministerial officer in attendance at the United-States courts, whose duty it is to serve the processes of the courts, and to do such duties as usually devolve on the sheriffs of State courts.

**MINOR.** A person of either sex under twenty-one years of age.

**MISDEMEANOR.** Any indictable crime less than a felony.

**MISFEASANCE.** A trespass, or any other affirmative wrong.

**MISNOMER.** The mistaking of the true name of a person.

**MISPRISION.** Concealment of a crime.

**MORTGAGE.** A conditional conveyance of property, usually as security for the payment of a debt.

**MORTGAGEE.** The person to whom a mortgage is given.

**MORTGAGOR.** One who makes a mortgage.

## N.

**NATION.** The whole people of a country united under one government.

**NATIVE.** A person born within the limits of a country. A citizen or inhabitant by birth.

**NATURALIZATION.** That process by which an alien becomes a citizen.

**NEGOTIABLE.** Transferable from one to another, with or without indorsement.

**NEUTRALITY.** The act of taking no part between two nations at war with each other.

**NONSUIT.** A judgment given against a plaintiff when he fails, with or without trial, to prove his action.

**NUISANCE.** That which incommodes or annoys.

**NUNCUPATIVE.** Oral or verbal; that which is not written.

## O.

**OATH.** A solemn affirmation or declaration, before a competent tribunal or officer, to tell the truth, appealing to God for the truth of what is asserted.

**OBLIGATION.** A bond with a condition annexed, and a penalty for non-fulfillment.

**OBLIGEE.** The person to whom another is bound.



**OBLIGOR.** The one who gives a bond to another.  
**OFFENSE.** An open violation or transgression of a law.  
**OFFICER.** One lawfully invested with a civil or military office.  
**ORDINANCE.** A rule established by authority.  
**OUTLAW.** A person excluded from the benefit of law.

## P.

**PARDON.** An act of grace or favor from the sovereign authority, remitting the penalty for crimes committed by subjects. An amnesty is a general pardon to a large number.

**PARTNER.** An associate in business transactions under a contract of partnership.

**PARTNERSHIP.** An association of two or more persons in business matters under contract.

**PASSPORT.** Official authority to travel from place to place by land or water, especially in foreign countries.

**PAUPER.** A person so poor as to be unable to maintain himself, depending on charity for support.

**PAWN.** A chattel given in pledge for the fulfillment of a promise to do something, or pay money.

**PAWNEE.** The person who receives a pawn.

**PAWNOR.** The person who deposits a pawn.

**PENALTY.** Penal retribution. Punishment for a crime.

**PENSION.** An allowance paid by government, for past services, to officers, soldiers, and sometimes to authors and artists.

**PERJURY.** Knowingly swearing falsely to matters material, in the court of judicial or other proceedings authorized by law, before an officer competent to administer an oath.

**PLAINTIFF.** The party who commences a suit in a court.

**PLEADINGS.** The statement in a logical and legal form of the facts which constitute the plaintiff's cause of action, and the defendant's ground of defense.

**POLICY.** The writing or instrument in which a contract of insurance is embodied, whether on property or life.

**PRIMA FACIE.** Upon the first appearance.

**PRISON.** A place of custody or confinement of a person against his will. A jail.

**PRISONER.** A person restrained of liberty against his will.

**PROSECUTOR.** One who institutes a suit in a court of law or equity.

**PUNISHMENT.** A penalty inflicted by a court on a criminal.

**R.**

**REAL.** Pertaining to things fixed and permanent, as real estate.

**REALTY.** The permanent nature of real property. Real estate.

**REBEL.** A person who revolts from the government to which he owes allegiance, by openly opposing it, or taking up arms against it.

**RECEIVER.** A person appointed by a court to receive and hold in trust money or other property which is the subject of litigation, pending the suit.

**REFEREE.** One to whom matters in controversy are referred, by agreement of the parties or otherwise, for decision.

**RELEASE.** A giving up in due form some right or claim.

**RENT.** A certain periodical profit issuing out of the use of lands and tenements.

**REPLEVIN.** The name of an action at law for recovering the possession of goods and chattels wrongfully taken or detained.

**REVERSION.** The return of an estate to the grantor or his heirs, after the grant is determined.

**S.**

**SEIZIN.** The possession of an estate in freehold.

**SERGEANT-AT-ARMS.** The officer of a legislative body who serves processes, and executes the orders of that body. Their constable.

**SHERIFF.** The chief ministerial officer of a county to whom is intrusted the execution of the laws.

**SOLICITOR.** An attorney in a court of equity.

**SOLVENCY.** Ability to pay all of one's debts.

**SPECIALTY.** A contract, or obligation by deed, under seal.

**STATUTE.** An act passed and completed by the law-making power.

**SUBORNATION OF PERJURY.** Procuring or inducing a person to take a false oath constituting perjury.

**SUBPOENA.** A legal writ of process used for summoning a witness into court.

**SUIT.** The attempt to secure redress by appeal to a court.

**SUMMONS.** A writ issued by a court, at the instance of the plaintiff, citing or warning the defendant to appear at a certain time, to answer to claims preferred against him by the plaintiff.

**SURETY.** One who becomes responsible for another.

**SURROGATE.** An officer who presides over the probate of wills, and the settlement of the estates of deceased persons.

## T.

**TENANT.** One who has temporary occupation or possession of lands or tenements, the title of which is in another by permission of the owner.

**TENDER.** An offer to pay money, deliver specific articles, or to perform service, according to the conditions of a contract.

**TENURE.** The manner, act, or right of holding property, especially real estate, whether by exclusive title or by lease.

**TESTATOR.** One who leaves a valid will at death.

**TESTATRIX.** A female testator.

**TESTIMONY.** The statements of witnesses under oath or affirmation.

**TITLE.** That which gives the right to exclusive possession.

**TONNAGE.** A tax or duty on ships or vessels in proportion to their capacity or their actual cubical contents.

**TORT.** Wrong or injury to one's property or rights, for which an action will lie.

**TRAITOR.** One who violates his allegiance, and betrays his country. A person guilty of treason.

**TREASON.** An attempt to overthrow the government to which one owes allegiance. In the United States, the levying of war against the government, or adhering to its enemies, giving them aid and comfort.

**TREATY.** A compact, league, agreement, or contract between two or more nations or sovereigns, executed in legal form.

**TRESPASS.** An unlawful act committed with force and violence by one person on the property or right of another.

**TRUSTEE.** One who holds or is intrusted with property for the benefit of others, or for corporate bodies.

## U.

**UNALIENABLE.** Not capable of sale, transfer, or release.

**UNCONSTITUTIONAL.** Contrary or not agreeable to the Constitution.

**USE.** The benefit or profit of lands and tenements, usually held by a trustee for the benefit of another.

**USURY.** A premium paid or promised for the use of money, beyond the rate of interest established by law. Illegal interest.

**V.**

**V.** This letter is often put for versus, or against, in legal documents.

**VENDEE.** The purchaser, or person to whom a thing is sold.

**VENUE.** The place or county in which an act or fact is alleged to have been committed.

**VERDICT.** The unanimous decision of a jury, as reported to the court, on matters submitted to them in the trial of a cause civil or criminal.

**VERIFICATION.** The act of proving to be true; confirmation.

**VETO.** A Latin word, signifying I forbid. It is applied to the refusal of the executive to sign a bill passed by the legislature.

**VICINAGE.** Contiguous or neighboring places.

**VIVA VOCE.** Literally, by the living voice, or orally.

**VOID.** Of no legal or binding force whatever, and incapable of confirmation or ratification.

**VOIDABLE.** Capable of being avoided and adjudged invalid.

**VOTE.** The means employed to express one's choice, preference, or will, either at elections, in legislative bodies, or in the course of other proceedings; sometimes done by balls, sometimes by written ballot, or by the voice.

**VOTER.** One who votes, or has the legal right to vote.

**W.**

**WARD.** An infant placed by authority of law under the care of a guardian.

**WARRANT.** A writ authorizing the arrest of a person to be brought before the officer issuing the same, or some other officer of concurrent jurisdiction. It is directed to the sheriff or other officer authorized to make arrests. This is its usual application.

**WARRANTEE.** The person to whom land or other property is warranted.

**WARRANTOR.** The person who makes a warranty.

**WARRANTY.** An engagement that a certain fact regarding the subject of a contract is or shall be as expressly or impliedly promised by the warrantor.

**WILL.** The legal declaration of a person, in view of death, as to the manner in which he would have his property disposed of after that event. The instrument making this declaration.

**WITNESS.** A person who testifies in a court, on oath or affirmation,

as to his knowledge of the facts in issue between the parties. One who subscribes to a piece of writing to authenticate it.

**WRIT.** An instrument in writing, issued by a court or magistrate, commanding the performance or non-performance of some act by the person to whom it is directed; as a writ of entry, execution, injunction, summons, &c.

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Note that the original text for this book was typeset in a small font on relatively small pages. The text was brilliant but hard to read.

This “e-book” has been typeset in a larger font on larger pages to enhance the text’s “readability”. As a result, this reproduction is not identical to the original work’s format and page numbering. For example, while the Index in the original text began on page 331, in this “e-book,” this Index begins here on page 326. Thus, because this “e-book’s” pages are larger, the resulting format has approximately 2% fewer pages than the original.

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I regret the imprecision, but the task of recreating a new and precisely accurate index for the entire book would take more time than I can currently afford.

Alfred Adask  
December 7, 2000 A.D.

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THE END.

**BLACKBOARD EXERCISES,**

AND

**KEY TO TOWNSEND'S**

**ANALYSIS OF THE CONSTITUTION  
OF THE UNITED STATES,**

AND

**ANALYSIS OF CIVIL GOVERNMENT.**

ARRANGED BY

THE AUTHOR OF THOSE WORKS.

-----

NEW YORK:  
**IVISON, BLAKEMAN, TAYLOR & CO.**

*Analysis of Civil Government*

Entered, according to Act of Congress, in the year 1869, by  
CALVIN TOWNSEND,  
In the Clerk's Office of the District Court of the United States for  
the Northern District of New York.

NOTE.—The large figures in the following Blackboard Exercises refer to paragraphs in the Constitution of the United States, printed in the author's work entitled "Analysis of Civil Government."

It is recommended that the teacher require the pupil to commit thorough to memory the following Blackboard Exercises, so that he can place them on the board with perfect readiness; and also that the pupil be required to become entirely familiar with the Constitutional explanations referred to by the large figures, as well as with the annotations in Part II. Of the author's work on Civil Government.

It is hoped that the teacher will not disregard this recommendation. It is the *only* method of teaching this subject with thoroughness.



# BLACKBOARD EXERCISES

PREAMBLE.—This should be fully explained in one or two lessons. It would be well to write it out in full on the blackboard, and explain it, clause by clause, before proceeding to further consider the analysis of the Constitution. (See author's "Analysis of Civil Government," p. 109)

## BLACKBOARD EXERCISE, NO. I.

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