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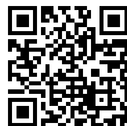

BAYARD'S

EXPOSITION OF THE CONSTITUTION

OF THE

United States.

De Bugé 56

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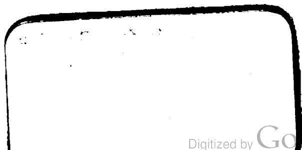

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A BRIEF EXPOSITION OF THE Constitution of the United States:

WITH AN

APPENDIX,

CONTAINING THE DECLARATION OF INDEPENDENCE AND THE ARTICLES OF CONFEDERATION.

AND A COPIOUS INDEX.

BY JAMES BAYARD.

PHILADELPHIA:
HOGAN & THOMPSON, 139½ MARKET STREET.
....
1833.

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Entered, according to the Act of Congress, in the year 1833, by JAMES BAYARD, in the Clerk's office of the District Court of the United States, for the Eastern District of Pennsylvania.

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PREFACE.

In a country like this, where all have a share in the government, every one should be acquainted with its structure and principles. The Constitution, by which the government is formed, and upon which depend the validity of laws, the union of the States, and the peace, dignity, and happiness of the nation, should be a part of the education of every citizen, whatever his situation or occupation. Although several works have been written on this subject, by men of great learning and ability, which are highly useful to professional men, and those who have the leisure and disposition to engage in this important study; it is believed, that nothing has been attempted in the way of a short and simple exposition of the principles of the Constitution, for the use of young persons, and such as may not have time or inclination for a more extended research. With this impression, the following Treatise was undertaken, at the suggestion of a friend, whose situation led him particularly to notice the want of such a book, in the instruction of youth. In compiling it, the author has relied principally upon the Federalist; the Commentaries of Chancellor Kent; the Treatises of Mr. Rawle and Mr. Sergeant, and the Reports of the Decisions of the Supreme Court. The sentiments, and in some cases, the language of these books are used without marks of quotation, because the nature of this work did not require it; but they may be readily observed by the professional reader.

The limits of the work would not permit an extensive discussion of the questions which have arisen, as to the construction of various parts of the Constitution. When doubts have been entertained as to the true meaning of any

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part of it, they are stated, and what is believed to be the correct interpretation given. In all cases decided by the Supreme Court, the judgment of that tribunal is the standard of construction; and, great care has been taken to avoid party questions as much as possible. As this Treatise is intended principally for the use of those who cannot be presumed to be acquainted with technical terms and phrases, the author has endeavoured to explain all such as would be likely to occasion any difficulty. The arrangement of the Constitution has been followed, both because it is good in itself, and because it will, probably, be the best mode of conveying instruction to those for whom this work is intended.

If it should be the means of introducing a more general acquaintance with the Constitution, or of leading the youth of the country to a more minute examination of its structure, by which they will acquire a knowledge of its excellencies, and a stronger attachment to the Union, the object of the author will be attained; and, he will congratulate himself upon the performance of his humble task.

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INTRODUCTION.

The Constitution of the United States is the first instance of a government, deliberately formed by the people for whose benefit it was intended. The origin of most other governments is lost in the obscurity of time; but enough of their history can be traced, to convince every one, that they arose from accident, and were moulded by circumstances, without any preconcerted plan by their original framers; and, generally, without any view to the happiness, or the interests of the governed. The earliest governments of which we have any knowledge, seem to have been of the patriarchal kind, which have degenerated into the despotism which now prevails on the continent of Asia. The ancient republics were formed by the expulsion of tyrants; when the people, under the dread of oppression, gave authority to persons chosen by themselves, or retained it in their own hands, without any settled plan, or well defined notions of the system they meant to establish. All the modern governments of Europe, have sprung from the feudal system; and bear evident marks of their feudal origin. The barbarous hordes which overran Europe, in the fourth and fifth centuries, were under the command of petty chieftains, who associated together for the purposes of conquest, and paid a temporary obedience to some distinguished leader. As they settled upon the conquered territories, their interest led them to form unions for mutual support and defence; and the chieftain who had led them successfully in war, was generally submitted to as the head of the nation, with the title of king. As his authority depended, principally, upon his personal power, his children seldom commanded the same influence; and the history of those ages present a continual series of contentions between the kings and their barons, in which the people were employed by each for their own aggrandisement; and the character of the government was determined by the success of the contending parties. In England, from peculiar circumstances,

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the people gradually rose to importance and power; and while, on the continent, the authority of the kings and the nobles almost universally prevailed, to the entire subjection of the great mass of the population; in that island the rights of the people were better understood, and the principles of a free government were established. From this source we derive our ideas of popular representation; but it was reserved for our immediate ancestors to give to the world an example of a government, deliberately framed by the people, for their own benefit; and entirely dependent upon them for its support. A short sketch of its history, will be the best introduction to an examination of its principles.

The English colonies in this country, though separated by territorial boundaries, and jealous of each other, in some respects; were always united by community of language, and of interest, and the feeling that they were subject to one common government. Drawn into the wars of the parent country, they were frequently exposed to the attacks of the French, and their savage allies, the Indians. This led to associations for common defence, and accustomed them to look to each other for mutual assistance. The first association of this kind, was formed as early as 1643, by the eastern colonies, who united under the name of the "United Colonies of New England," for their mutual defence against the Indian tribes, by whom they were surrounded. But it was not until near a century afterwards, that any general union was formed among the colonies. In 1722, there was a convention of the governors and commissioners of several of the provinces, held at Albany, in the province of New York, to make arrangements for the more effectual protection of the interior frontier; and in 1754, this plan of union among the colonies received the sanction of the British government, who invited them to send commissioners to the same place to consult upon the best means of defending America, in case of a war with France, which was then expected. The commissioners assembled accordingly; but they carried their views much further than was intended by the British government, and proposed a plan for a confederation of all the colonies, with a general council, to be

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chosen triennially, by the provincial assemblies; and a president, to be appointed by the crown. This plan, from different motives, was rejected, both by the governments of the colonies, and by that of England; and some of the most intelligent men of this country were of opinion that it would be impossible to reconcile the differences of the provinces so as to unite them in a common confederacy.

The importance, however, of such a union was acknowledged by all, and the idea of forming it was so familiar to our colonial ancestors, that when, a few years afterwards, the English parliament began to exercise an unreasonable authority over them, they readily consulted together on the means of defence, and took measures for a common resistance. In 1765, a congress of delegates, from nine colonies, assembled at New York, prepared a bill of rights, in which, among other things, the power of taxation, was declared to belong solely to their own colonial legislatures; and when it was found that the British ministers still persisted in their attempts to usurp the entire government of this country, the colonies united in sending delegates to Philadelphia, with the general authority "to meet and consult together for the common welfare." This was the first real continental Congress, and laid the foundation of subsequent permanent union. Although, without any coercive authority, they adopted resolutions, declaratory of what they deemed their unalienable rights, as English freemen; pointing out to their constituents the danger with which their rights were threatened by the proceedings of ministers; and binding them, by the most sacred ties of honor and patriotism, to renounce commerce with Great Britain, as the best means of guarding against her encroachments. The feeling which pervaded the country, gave the force of laws to these recommendations, and the colonies, animated by one spirit, embarked in the same cause of resistance to ministerial aggression.

In May, 1775, a Congress again assembled at Philadelphia, with instructions "to concert, agree upon, direct, order, and prosecute," such measures as they should deem best to obtain redress for American grievances. The whole nation was excited, and measures were taken for

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open and forcible resistance to the English authority, but the people were not yet prepared to throw off the colonial yoke, and renounce forever their dependence upon the parent State. It was not till next year, after blood had been shed, and preparations for war had been made on both sides, that the people became sensible that they must either submit at discretion to foreign government, or boldly assert their independence; and on the 4th of July, 1776, the Congress assembled at Philadelphia, issued that Declaration, which marks the era of our separate political existence. The new States were now engaged in war with a powerful enemy, and all their efforts were directed to bring it to a happy termination. For this purpose they contracted foreign alliances, and endeavoured to strengthen the union which already existed among themselves. During the continuance of the war, a sense of common danger, and the absolute necessity of co-operation in the glorious cause in which they were engaged, was a sufficient bond of union. But even then, the propriety of some closer connexion than this alone would produce, was so evident, that Congress undertook to prepare articles of confederation, by which the States might be more intimately united; and, in some degree, subject to one controlling power. This plan invested Congress with many of the powers of sovereignty, including the right to make peace and war, the direction of all military affairs, and all transactions with foreign governments. But they could make no laws for the government of individuals; possessed no revenue but what arose from the contributions of the States; could raise neither money nor troops, but by requisitions upon the State legislatures; and could exercise no power of any importance, without the assent of nine States. It was, in fact, but a "league of friendship" dependent, for its operation, upon the will of each of its members; and altogether unfit for a permanent government. The fundamental, and fatal defect of the system, was, that it was a confederacy of *States*, and an attempt to govern them in their collective or sovereign capacity. It had no means to enforce its decrees, and its power terminated in a requisition upon the States. Instead, therefore, of the mild but irresistible influence of laws upon

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individuals, there were only recommendations to State legislatures, conscious of their power, and tenacious of their dignity; who might refuse compliance with the requisitions, and could not be compelled to submission, unless by force of arms, and with the certainty of civil war. Imperfect as was this plan of government, it met with great opposition from the State legislatures, who were unwilling to relinquish any portion of their authority; and, at last, yielded only a reluctant assent from a sense of its necessity. It was not until the spring of 1781, that all the States agreed to the measure, and a short time was sufficient to prove its inefficiency. The evils of this confederacy are thus stated by Chancellor Kent, with equal truth and precision:

"Almost as soon as it was ratified, the States began to fail in a prompt and faithful obedience to its laws. As danger receded, instances of neglect became more frequent, and by the time of the peace of 1783, the disease of the government had displayed itself with alarming rapidity. The delinquencies of one State, became a pretext or apology for those of another. The idea of supplying the pecuniary exigencies of the nation, from requisitions on the States, was soon found to be altogether delusive. The national engagements seemed to have been altogether abandoned. Even the contributions for the ordinary expenses of the government, fell almost entirely upon the two States which had the most domestic resources. Attempts were very early made by Congress, and in remonstrances the most manly and persuasive, to obtain from the several States the right of levying, for a limited time, a general impost for the exclusive purpose of providing for the discharge of the national debt. It was found impracticable to unite the States in any provision for the national safety and honor. Interfering regulations of trade, and interfering claims of territory, were dissolving the friendly attachments, and the sense of common interest, which had cemented and sustained the union, during the arduous struggles of the Revolution. Symptoms of distress, and marks of humiliation, were rapidly accumulating. It was with difficulty that the attention of the States could be sufficiently excited, to induce them

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to keep up a sufficient representation in Congress, to form a quorum for business. The finances of the nation were annihilated. The whole army of the United States was reduced, in 1784, to eighty persons; and the States were urged to provide some of the militia, to garrison the western posts. In short, to use the language of the authors of the *Federalist*, 'each State, yielding to the voice of immediate interest, or convenience, successively withdrew its support from the confederation, till the frail and tottering edifice was ready to fall upon our heads, and crush us beneath its ruins.'"

Such was the state of the confederacy after the danger in which it had originated had passed away. But new, and even greater evils threatened the people of this country. Broken up into thirteen distinct governments, having different interests, and separated from each other by mutual jealousy; it was but too probable that they would be engaged in constant disputes, which would terminate in civil wars, and produce a state of things, in comparison with which their former subjection to England would have been a blessing. Unable to fulfil its engagements with foreign nations, or with its domestic creditors, the Union had lost its respect at home and abroad; its requisitions had become little better than a jest and a by-word throughout the country; the States habitually disregarded its authority; and it every where exhibited symptoms of a speedy dissolution.

The most urgent want was that of money to pay the debts, and defray the expenses of the government. To supply this, Congress proposed to the States to invest it with power to impose a duty of five per cent. upon all imported articles, for a limited time, but they refused; and this refusal sealed the fate of the confederacy. It has been a subject of congratulation since, that this power, so much desired at the time, was not granted. Had it been so, the government might have continued to maintain its feeble existence, and the country might have been, to this day, languishing under the baneful influence of an impotent union. But a brighter era dawned, and a new Union, which we hope will be lasting, arose from the ruins of the first.

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In 1785, commissioners were appointed by the two States of Maryland and Virginia, to meet at Alexandria, to form a compact between those States relative to the navigation of the Chesapeake Bay, and also to establish a tariff of duties on imports, to which those two States should conform. Their deliberations led them to extend their views to the other States; and they agreed to recommend to their respective legislatures the appointment of delegates, to meet those from other States, for the purpose of devising some general plan for the regulation of commerce, and raising a national revenue.

Accordingly, in the month of January, 1786, the legislature of Virginia appointed commissioners, who were to meet such as might be appointed by the other States, and consult upon some plan for establishing a uniform system in their commercial relations, which might be reported to the several States for their ratification and adoption. This appointment was notified to the other States, and Annapolis, in Maryland, was named as the place of meeting. This example was followed by some of the States, and commissioners from five of them met in Annapolis the ensuing September. It was soon perceived, that in order to produce any beneficial result, the representation ought to be more general, and the powers of the delegates more ample; and the convention therefore adjourned, after having agreed upon a report, to be made to the respective States, representing the necessity of a complete revision of the federal system, and recommending the appointment of deputies for this purpose, to meet in convention in Philadelphia on the second day of the ensuing May. This recommendation also received the sanction of Congress, who adopted a resolution on the 21st of February, 1787, declaring that "in the opinion of Congress, it was expedient that on the second Monday in May next, a convention of delegates, who shall have been appointed by the several States, be held in Philadelphia, for the sole and express purpose of revising the articles of confederation, and reporting to Congress, and the several legislatures, such alterations and provisions therein, as shall, when agreed to in Congress, and confirmed by the States, render the federal Constitu-

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tion adequate to the exigencies of government, and the preservation of the union."

Under this authority deputies from all the States, except Rhode Island, assembled in Philadelphia, in the month of May, and having chosen General Washington president of the Convention, proceeded to deliberate upon the objects of their meeting with closed doors. After a session of several months, during which time they were constantly occupied with the important subject entrusted to them, they agreed upon the present Constitution, which was transmitted to Congress, to be submitted to the people of the several States, for their ratification and adoption.

It was accompanied by a letter to Congress, written by General Washington, as president of the Convention, in which, after stating the necessity of a new organization of government, he says: "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. 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 upon 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."

The Constitution thus prepared, was submitted by Congress to the people of each State, assembled in conventions, called for this purpose. In this respect, it differed essentially from the former articles of confederation; which were formed and ratified by the State legislatures, without the intervention of the people; but the present government of the Union is founded on the broad basis of the will of the people, and derives all its authority from their ratification.

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After a minute examination of every article in the several State conventions, during a period of several months, in which time, the most distinguished men in the country were engaged in its consideration, and its greatest talents and ingenuity were exerted in the attack and defence, the Constitution was finally ratified by eleven States, and preparations were made for carrying it into operation on the 4th of March, 1789, when the new government was organized, and commenced its career under the direction of General Washington; who was unanimosly elected the first President. North Carolina and Rhode Island, the only dissenting States, at length agreed to adopt it, and in June, 1790, it comprised all the members of the original confederacy. The animosity of opposition soon subsided, public credit was restored, public confidence established; and the beneficial influence of the new system was felt in the promotion of national and individual prosperity, which has ever since continued to flourish under its protection.

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Constitution of the United States.

Preamble.

We, the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defence, 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.

Of the Legislature.

SECTION I.

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 II.

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.

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.

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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.

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

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

SECTION III.

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.

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 appointment until the next meeting of the legislature, which shall then fill such vacancies.

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.

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

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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.

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.

7. Judgment in case of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honour, 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 IV.

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 place of choosing senators.

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 by law appoint a different day.

SECTION V.

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 small 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 rule of its proceedings, punish its members for disorderly behaviour, and, with the concurrence of two-thirds, expel a member.

3. Each house shall keep a journal of its proceedings, and from time to time publish the same, excepting such

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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.

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.

SECTION VI.

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 or returning from the same; and for any speech or debate in either house, they shall not be questioned in any other place.

2. No senator or representative shall, during the time for which he was elected, be appointed to any civil office 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.

SECTION VII.

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.

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 objection at large on their journal, and proceed to re-consider it. If, after such reconsideration, two-thirds of that house shall agree to pass the bill, it shall be sent, together with the objection, to the other house, by which it shall likewise be re-considered,

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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.

3. Every order, resolution, or vote, to which the concurrence of the Senate and House of Representatives may be necessary, (except 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 VIII.

The Congress shall have power—

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

2. To borrow money on the credit of the United States:

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.

5. To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures:

6. To provide for the punishment of counterfeiting the securities and current coin of the United States:

7. To establish post offices and post roads:

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:

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9. To constitute tribunals inferior to the supreme court. To define and punish piracies and felonies committed on the high seas, and offences against the law of nations:

10. To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water:

11. To raise and support armies; but no appropriation of money to that use shall be for a longer term than two years:

12. To provide and maintain a navy:

13. To make rules for the government and regulation of the land and naval forces:

14. To provide for calling forth the militia to execute the laws of the union, suppress insurrections, and repel invasions:

15. 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:

16. 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, and to exercise like authority over all places purchased, by the consent of the legislature of the State in in which the same shall be, for the erection of forts, magazines, arsenals, dock yards, and other needful buildings:—and,

17. 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 any department or officer thereof.

SECTION IX.

1. 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

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may be imposed on such importation, not exceeding ten dollars for each person.

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

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

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

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.

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.

SECTION X.

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 a silver coin a tender in payment of debts; pass any bill of attainder, ex post faeto law, or law impairing the obligation of contracts; or grant any title of nobility.

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 neat 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 Con-

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gress, 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.

ARTICLE II.
Of the Executive.
SECTION I.

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:

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 and representatives to which the State may be entitled in the Congress; but no senator or representative, or person holding any office of trust or profit under the United States, shall be appointed an elector.

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 be a majority of the whole number of electors appointed; and if there be more than one who have such a 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

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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.

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.

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.

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.

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.

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SECTION II.

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 the 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 pardon for offences against the United States, except in cases of impeachment.

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.

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 III.

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.

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SECTION IV.

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.

Of the Judiciary.

SECTION I.

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, order 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 II.

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 ambassadors, 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.

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;

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but when not committed within any State, the trial shall be at such place or places as the Cougress may by law have directed.

SECTION III.

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 confession in open court.

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.

ARTICLE IV.

Miscellaneous.

SECTION I.

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

SECTION II.

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

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.

3. No person held to service or labour 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 labour; but shall be delivered up on claim of the party to whom such service or labour may be due.

SECTION III.

1. New States may be admitted by the Congress into this Union; but no new State shall be formed or erected

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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.

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 IV.

1. The United States shall guaranty 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 cannot be convened,) against domestic violence.

ARTICLE V.

Of Amendments.

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 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.

ARTICLE VI.

Miscellaneous.

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.

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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.

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.

ARTICLE VII.

Of the Ratification.

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.

Done in convention, by the unanimous consent of the States present, the seventeenth day of September, in the year of our Lord one thousand seven hundred and eighty-seven, and of the Independence of the United States of America, the twelfth. In witness whereof, we have hereunto subscribed our names.

GEORGE WASHINGTON,
President, and deputy from Virginia.

NEW HAMPSHIRE.
John Langdon,
Nicholas Gilman.

MASSACHUSETTS.
Nathaniel Gorman,
Rufus King.

CONNECTICUT.
William Samuel Johnson,
Roger Sherman.

NEW YORK.
Alexander Hamilton.

NEW JERSEY.
William Livingston,
David Bearly
William Paterson,
Jonathan Dayton.

PENNSYLVANIA.
Benjamin Franklin,
Thomas Mifflin,
Robert Morris,
George Clymer,
Thomas Fitzsimons,
Jared Ingersoll,
James Wilson,
Governeur Morris.

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DELAWARE.

George Read,
Gunning Bedford, jun.
John Dickinson,
Richard Bassett,
Jacob Broom.

MARYLAND.

James M'Henry,
Daniel of St. Tho. Jenifer,
Daniel Carrol.

VIRGINIA.

John Blair,
James Madison, jun.

NORTH CAROLINA.

William Blount,
Richard Dobbs Spaight,
Hugh Williamson.

SOUTH CAROLINA.

John Rutledge,
Chas. Cotesworth Pinckney,
Charles Pinckney,
Pierce Butler.

GEORGIA.

William Few,
Abraham Baldwin,

Attest, WILLIAM JACKSON, *Secretary.*

AMENDMENTS TO THE CONSTITUTION.

Art. 1. 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.

Art. 2. 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.

Art. 3. 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 to be prescribed by law.

Art. 4. 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.

Art. 5. 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 ser-

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vice, in time of war or public danger; nor shall any person be subject for the same offence to be put twice in jeopardy of life or limb; nor shall be compelled, in any criminal case, to be 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.

Art. 6. 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 favour; and to have the assistance of counsel for his defence.

Art. 7. 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 jury shall be otherwise re-examined in any court of the United States, than according to the rules of the common law.

Art. 8. Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Art. 9. The enumeration in the Constitution of certain rights, shall not be construed to deny or disparage others retained by the people.

Art. 10. 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.

Art. 11. 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 another State, or by citizens or subjects of any foreign State.

Art. 12. §. 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 inhabi-

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tant 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 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 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 a 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.

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.

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A

BRIEF EXPOSITION, &c.

CHAPTER I.

THE PREAMBLE.

THE Constitution of a nation is the fundamental regulation that determines the manner in which the public authority is to be executed.* This may either be in writing, as in this country, or depend upon custom and long established usage, as in most other parts of the world. Our Constitution is, in a peculiar manner, the expression of the will of the people of the United States, as to the powers with which their government shall be invested, and the manner in which those powers shall be executed. It therefore deserves the careful consideration of every citizen.

The Preamble.

The object of a preamble, is, to state the parties to an instrument, and to declare, in general terms, its meaning. Although placed at the commencement, it is usually composed after all the rest has been completed, and, if properly framed, is of great use in leading to a right construction of it, especially of those parts which might otherwise appear doubtful.

The object of a preamble.

In an instrument prepared with so much care, as the Constitution of the United States, which occupied, for several months, the exclusive attention of many of the first men of the country, and was at last produced as the result of a com-

* Vattel, Bk. I. ch. iii. § 27.

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promise of conflicting interests, and finally adopted by thirteen distinct conventions, in which every clause was severely scrutinized, and every possible objection raised; we are to expect that every part has a meaning, and that nothing is redundant. Accordingly the preamble contains much important matter. In order to understand it fully, it is necessary to recollect the situation of affairs before it was adopted.

The imperfection of the Articles of Confederation.

The thirteen States were loosely connected together by a federal compact, in which they were regarded as independent sovereignties, and to which the people, as individuals, were not parties. The mutual jealousy of the parties to the old confederation appeared in the second article of the league, which declared, that, "each State retained its sovereignty, freedom, and independence, and every power, jurisdiction, and right, which was not, by that confederation, expressly delegated to the United States in Congress assembled." This bond, slight as it was, was sufficient to hold them together, during the struggle for independence, while they were striving for the same object, and united by a sense of common danger. But no sooner was this pressure removed by the restoration of peace, than the insufficiency of the connexion was sensibly felt. The States had different, and apparently clashing interests, which threatened a speedy dis-union. The government had no power, but what was derived from the respect of the community, and that was daily diminished by the impunity with which its authority was disregarded. It had incurred pecuniary responsibilities to its own citizens, and to foreigners, which it was unable to meet, without contributions from the States, which it had no means to enforce. It had no control over individuals: a requisition on the several States, terminated its legislative power; and it was almost entirely des-

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titute of executive or judicial authority. With no superior to restrain them, and no common tribunal to which to appeal, the States could not long continue united: internal dissention, and external violence, were alike to be apprehended, and anarchy, confusion, perhaps subjugation, might be the ultimate result. In this state of things, the Constitution was adopted by the People, acting in their sovereign capacity; and the preamble asserts their supremacy, and announces, in general terms, the objects of their action.

The source of the present government.

Many of the evils of the old confederation arose from its nature, as an association of sovereign States, and the tenacity of its members, in maintaining and adhering to their real or supposed rights. To eradicate this source of evil, the present Constitution commences with a declaration, that it is formed by "the People of the United States," and not, as the former confederacy, by the several States. Indeed it might well be doubted whether the State legislatures could form such a union, as the government of the United States. Their powers are defined in their respective constitutions; and are to be exercised by them, in the mode then prescribed, not delegated to a distinct and independent sovereignty, created by themselves. There is no doubt of their competency to form a league, such as the former confederation; but it is by no means clear, that they could create a new government, with extensive powers, acting directly upon the people, and essentially altering and controlling their own delegated authority. However this may be, the origin of the general government, the source of all its power, was a matter too important to be left in doubt, and it is therefore declared to be ordained and established by "the People of the United States."

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The objects of the Constitution.

Their design in establishing it is also stated. 1st. To form a more perfect union. 2d. To establish justice. 3d. To insure domestic tranquillity. 4th. To provide for the common defence. 5th. To promote the general welfare, and, 6th. To secure the blessings of liberty to themselves and their posterity.

The limits of this work do not permit a minute examination of each of these items; but it is evident that they were intended to remedy the evils experienced under a former confederation; and that they comprised every thing requisite, with the blessing of Divine Providence, to render a people prosperous and happy.

The general government not formed by, or dependent upon, the States.

It is evident, then, that the Constitution of the United States was established, not by the States in their sovereign capacities, but emphatically, as the preamble declares, by the people; the same people who, in their respective States, formed the State constitutions. There can be no doubt, that the people had a right to invest the general government with such powers, as they might deem proper, and to restrain the States from the exercise of any, which they might consider incompatible with the objects of the general compact; to make the powers of the State governments, in certain cases, subordinate to those of the nation, or to reserve to themselves those portions of sovereignty, which they might not choose to delegate to either. The Constitution was not, therefore, necessarily carved out of the existing State sovereignties; nor formed by a surrender of powers already existing in State institutions; for the powers of the States depend upon their own constitutions, and the people of every State had the right to modify and restrain them, according to their own views of policy or principle. It is also clear that the powers of the State governments, remain unaltered, except so

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far as they were granted to the government of the United States.

The government of the United States, thus formed by the people, can claim no powers which are not granted to it by the Constitution, either in express terms, or by necessary implication. But this instrument, like every other grant, is to have a reasonable construction, according to the import of its terms; and when a power is expressly given in general terms, it is not to be restrained to particular cases, unless that construction is rendered proper by the context, or by necessary implication. The words are to be taken in their natural and obvious sense; as they would be understood by a candid and unbiassed reader; and not in a sense unreasonably restricted or enlarged. The Constitution unavoidably deals in general language. It could not have been otherwise, without entering into details, altogether inconsistent with its character and objects. It was intended to endure for ages, and direct the government of a great nation in times and circumstances which could not be foreseen by its makers. Hence its powers are expressed in general terms, leaving the legislature from time to time, to adopt its own means in the attainment of legitimate objects, and to mould the exercise of its powers, as its own wisdom and the public interests may require.

The government can exercise no powers not given by the Constitution.

With this general view of the origin and intention of the Constitution, we proceed to the examination of its several parts.

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CHAPTER II.

THE LEGISLATURE.

The government is distributed by the Constitution into three great departments; the Legislative, the Executive, and the Judicial; all co-ordinate, and of equal authority, in their proper sphere; though mutually interwoven, and, in some measure, dependent upon each other.

The first article establishes the legislative department, and declares that "all legislative powers hereby granted, shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives." The very words of this section remind the Legislature that it is limited in its powers.* It can exercise none but such as are "hereby granted;" and every attempt to exceed these prescribed limits, is fruitless, for the act would be without foundation, and therefore void.

Powers of government limited.

De Lolme mentions it as a remarkable circumstance in the English system, that, while in other nations, the government is supposed to possess originally, and by itself, all manner of lawful authority, and its rightful powers are supposed to be unlimited, so far as there are no visible barriers set up against it, in England the reverse obtains; and the liberty of the subject, not the authority of the government, is unbounded, except by express law. With whatever justice this remark can be made of a State, whose parliament is held to be "omnipotent," and can, confessedly, pass any laws, not in themselves contradictory and impossible; the people of this country enjoy the full benefit of living under a government of their own forming, and retaining

* Rawle on the Constitution, p. 29.

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all the liberty which they have not delegated to that government for their own advantage. Instead of having the undefined, and undefinable powers of the British parliament, the Congress of the United States possesses no power not granted by the Constitution; and with the people resides the right to enlarge or diminish the sphere of authority which they have prescribed.

Division of Legislature into two bodies.

The Legislature is divided into two separate bodies, independent of each other; whose joint assent is necessary to the enactment of any law; and whose legislative powers, with one exception, which we shall notice hereafter, are the same. Experience teaches that it is not safe to entrust the legislative power to a single assembly; particularly if it consist of many members. Such assemblies are peculiarly liable to act under the influence of sudden excitement. Passion, prejudice, personal influence, party intrigue, and even caprice, have often governed their decisions; and the history of all nations, ruled by such an assembly, whether of the whole people, as at Athens, or of a select few, as in Venice, affords abundant proof that neither the liberty nor the happiness of the community, can be safely entrusted to such hands.

In the early experiments of self government in this country, the attempt was made by the States of Georgia and Pennsylvania, whose first legislatures consisted of a single house; but the instability and improvidence which marked their proceedings, soon convinced the people of those States of the inexpediency of the arrangement; and in the constitutions subsequently adopted, they imitated the example of the other States, and of the general government, by dividing the legislature into two branches.

The principal object of this separation is to prevent the effects of strong temporary excitement. It is not so probable, that a law will be

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adopted hastily, or without good reason, when it is subjected to the deliberate examination and discussion of two separate houses, sitting in different places, selected in different modes, and, in some measure, jealous of each other's proceedings. The two principal requisites of good legislation are, wisdom in adopting, and stability in maintaining laws; and these are best attained by a separation of the legislative department. There was, moreover, another reason for the separation, peculiar to this country. The several States claimed to be considered as independent sovereignties, and as such, to have a share in the general government. This is effected by the composition of the Senate, as will be seen hereafter.

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CHAPTER III.

OF THE HOUSE OF REPRESENTATIVES.

How composed.

The second section of this article treats of the House of Representatives, which "consists 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." This is generally called the popular branch of the legislature; not that all our institutions are not essentially popular, but by way of distinction from the Senate, which, more immediately emanates from the States.

The mode of choosing members.

The members of this House are chosen by the people directly, and the only qualifications required for the exercise of this right, are those prescribed by the people themselves, in the several States; in some of which a certain amount of property is necessary, and in others none. To remove all ground for complaint against the general government, on this score, the citizens of each State are to elect members of Congress, subject only to those restrictions they have thought proper to adopt in reference to their local legislature.

The time for which they are chosen.

The time for which the members of this House are chosen, is that which was considered as the best medium between too great frequency of election, which occasions instability, and too long a period of service, which renders the representative forgetful of his dependence on the people, and lessens their influence over the measures of government. Two years is supposed sufficient to allow the member to become acquainted with the situation and interests of the country. Less time would not afford him the opportunity of being useful: more, might lead him to abuse his power. By

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this means, the people can control the legislature, by changing its members, if they think their interests require it; or, if satisfied, they can re-elect the same persons as long as they approve of their conduct.

The qualifications of members.

The only qualifications required for a representative, are, that he shall be twenty-five years of age, and at least seven years a citizen of the United States; and, at the time of his election, an inhabitant of that State in which he shall be chosen.

The House is thus open to every one of mature age, who has been a citizen of the country long enough to lose his attachment to the land of his birth, (if he be a foreigner) and have his interests completely identified with those of this nation. With these requisites he must depend upon his talents or his abilities to procure the votes of his fellow citizens.

The provision that he should be an inhabitant of the State in which he is chosen, is intended to secure representatives with a proper degree of knowledge of the wants of their constituents, and interest in their welfare; by preventing strangers of intriguing or imposing powers from being selected. At the same time, it is to be remembered, that every member, when elected, is to legislate for the nation, and not for his immediate constituents only; and therefore, though it is highly useful, that the situation and the wants of each particular district be known, and considered in the national councils; yet the members are to legislate for the good of the whole, even if their own interests, or those of their immediate constituents, must be thereby sacrificed.

It is only in this way that the general good can be promoted, and the ultimate advantage of the particular districts secured; any other principle would make the members of this House

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mere organs of local policy, and short-sighted selfishness; not the representatives of a great nation. Happily the occasions of such a conflict between local and general interests, occur but seldom; and far more rarely than people are apt to imagine; for it is generally true, that private and individual interests are identified with the general good; however, temporary excitement, or interested policy, may, for a time, prevent its being perceived and acknowledged by all.

The appointment of Representatives.

The appointment of representatives was one of the greatest difficulties the framers of the Constitution had to encounter. The smaller States claimed a right, as independent sovereignties, to an equal share in the general government; while the larger ones insisted upon having an influence proportioned to the number of their inhabitants. It was long, before either would recede from their pretensions on this point; but the contest finally terminated in a compromise, by which the larger States were allowed their just share of influence in one House, and the equality of the smaller States was recognised and admitted in the other.

The representation of slaves.

In settling the ratio of representation, another difficulty arose, respecting the slaves, who form so large a portion of the inhabitants of some of the States. To compute them among the numbers represented, would be giving them an importance to which their character did not entitle them; or, rather, would be introducing a representation of property, contrary to the general tenor of the Constitution; to omit them altogether, in the computation, would be to reduce the influence of the southern States, in a manner to which they would never consent. As a medium between these, it was agreed that five slaves should be accounted as three citizens, in

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arranging the representation, and the apportionment computed accordingly.

Direct taxes apportioned.

To counterbalance, in some degree, this concession to the southern States, direct taxes are to be apportioned by the same rule as representation; so that the same cause which increases their influence in the national Legislature, subjects them to the necessity of making larger contributions to the national treasury, when that mode of taxation is resorted to.

The census.

The enumeration is made by law, throughout the Union, every ten years; and the ratio of representation is fixed by act of Congress, as may be deemed expedient; with this limitation, that every State shall have at least one representative.

The principle of representation.

It is a mistake to suppose that the advantage of representation depends upon numbers. The true principle is, that the legislators, and those connected with them, shall be affected by the laws they make, in the same manner as the rest of the community. Without this, there can be no true representation; with it, most of the advantages of the system may be enjoyed, though the mode of choosing the representatives be very imperfect. In England, many of the most important benefits of representative government are attained, though the members of Parliament are chosen by a comparatively small part of the people; while Ireland is oppressed, notwithstanding her hundred members in the House of Commons, because the majority are not affected by the laws regulating that unfortunate island. The same must have been the case with this country, if we had been admitted to representation in the British Parliament; any number of members we could have sent, would have constituted but a small minority, whose

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voice would have been drowned in the overwhelming clamours of an interested majority, and whose efforts would have been ineffectual to restrain the course of European policy. The nominal representation might have amused the people with the idea of liberty, but would not have prevented their being in fact slaves to a foreign power, who would, unhesitatingly, sacrifice them to the promotion of its own interest.

The number of Representatives.

The representative body should be sufficiently numerous to secure an acquaintance with the local interests of every part of the Union, and comprise a sufficient number for all the purposes of information, discussion, and diffusive sympathy with the wants and wishes of the people. Any thing beyond this, neither promotes deliberation, nor increases the public safety. Numerous assemblies of men, however carefully selected, are apt to be swayed, more by passion, than by reason; and it has been truly said, "had every Athenian citizen been a Socrates, every Athenian assembly would still have been a mob."

The Constitution provides that "the number of representatives shall not exceed one for every thirty thousand; but each State shall have at least one representative." An actual enumeration, (called "taking the census," from the Roman method of enrolling citizens,) is made every ten years, and the ratio of representation is then settled by act of Congress. By an act passed the 22d day of May, 1832, it is now fixed at one for every forty-seven thousand seven hundred. In settling the ratio, the States are considered separately, and the fraction that may remain in any State beyond the established ratio, is not taken into account, in the allotment of members.*

* By the act of 22d May, 1832, the number of representatives after the 3d March, 1833. are as follows, viz. Maine, 8;

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Delegates from Territories.

The Territories, not yet sufficiently populous to entitle them to admission into the Union, as States, are allowed to have delegates in Congress, who can take part in the discussions, but are not permitted to vote.

Vacancies supplied.

When a vacancy happens in the representation of any State, by death, or other cause, the executive authority of that State issues a writ of election, to the proper district, whereupon another member is chosen.

Officers of the House.

The House of Representatives chooses all its own officers. The Speaker is always one of the members, and presides over the House while in session. This House has also the sole power of impeachment, the nature and effect of which will be considered hereafter.

New Hampshire, 5; Vermont, 5; Massachusetts, 12; Connecticut, 6; Rhode Island, 2; New York, 40; New Jersey, 6; Pennyslvania, 28; Delaware, 1; Maryland, 8; Virginia, 21; North Carolina, 13; South Carolina, 9; Georgia, 9; Alabama, 5; Mississippi, 2; Louisiana, 3; Missouri, 2; Tennessee, 13; Kentucky, 13; Ohio, 18; Indiana, 7; Illinois, 3.

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CHAPTER IV.

THE SENATE.

How composed.

The Senate is composed of two Senators from each State, chosen by the Legislature thereof, for six years; and each Senator has one vote. In a government, partly national, and partly federal, it was right that the separate existence and dignity of the confederating sovereignties should be recognized; and, "as the result of a spirit of amity and mutual concession," this is effected by their equal suffrage in the Senate. Under the old confederation, each State had one vote in Congress, whatever might be the number of its representatives; but by the present Constitution, each State has two votes in the Senate, and a number in the other House proportioned to its population.

How Senators chosen.

The Senators are to be chosen by the *Legislatures* of the several States; which would seem to imply that it must be done by a separate vote of the two Houses, as they act in their ordinary legislative capacity. But in some of the States, the choice is made by a joint vote of the members of the two Houses; by which means the weight of the smaller House in the election, is, in a great measure, lost. The practice has, however, been sanctioned by time, and as the Legislature has the constitutional right to prescribe the *manner* of electing Senators, perhaps no valid objection can be made to it.*

Consequence of refusal of States to elect Senators.

If all the States, or a majority of them, should refuse to elect Senators, the legislative powers of the Union would be suspended. In this manner the existence of the general Government is

* 1 Kent. Comm. 211.

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dependent upon the will of the State Legislatures. But, from the construction of the Senate, this destructive result can only be effected by a general combination of the States, for a series of years; for the refusal of a minority of the States to elect Senators, would not render the Senate less capable of performing its functions. The temporary dissatisfaction of one or more States would not impede the operations of government: and it would be in vain to attempt a provision against a general and permanent combination. Should that ever occur, it will be an expression of the will of the people that the Union must be dissolved.

The Senate a permanent body.

The Senate is made a permanent body, in order that it may be a check upon the more popular branch of the Legislature; and be better adapted for the performance of the peculiar and important duties assigned to it.

The classing of Senators.

To secure this, the Senators are chosen for six years; and so arranged, that one-third shall go out of office every second year; so that there is never a complete change at one time, but always a majority of former members. This arrangement has been so made, that the two Senators from any one State, do not go out of office at the same time. This permanency of the Senate is also intended to give stability to the measures of government, since this body can always prevent, though it cannot, by itself, introduce any change in the laws; and the Senators, from their number, the mode of their selection, and thier longer term of service, are presumed to be less liable to sudden excitement, than the members other House.

The qualifications of Senators.

The qualifications are the same as for the other House, except that a more advanced age, and a longer period of citizenship are required. A

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Senator must be at least thirty years of age, and nine years a citizen. The nature of the senatorial trust, requiring, in many particulars, greater maturity of judgment, more extensive information, and an entire devestiture of all foreign interest, renders this distinction very proper. It was also expected, that their being chosen by the State Legislatures, would secure the selection of men, in every way qualified for this important station.

Vacancies supplied.

If any vacancy occur, it is to be supplied by the proper State Legislature; but if that be not in session, the executive of the State is authorized to make a temporary appointment, until the next meeting of the Legislature.

The Vice President of the United States President of the Senate.

The Vice President of the United States is President of the Senate; but he has no vote, except when they are equally divided. As this sometimes occurs, and generally on questions of importance, it is thought to give great advantage to the State of which the Vice President may be a citizen. But it should be recollected that this high officer is chosen by the people of the United States; and when acting as a legislator, as well as when performing any other duty, he ought to divest himself of all party or local prepossession or influence.

The other officers.

The other officers of the Senate are chosen by themselves; 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. As this may occur, by the death of the President, at any time, it is usual for the Vice President to absent himself from the Senate, a few days before the conclusion of each session, when a President *pro tem.* is chosen, in anticipation of such an emergency.

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The Senate a court of impeachment.

All impeachments are tried before the Senate, which is constituted a court for this purpose. This is in imitation of the English Constitution, by which the House of Peers is the court of impeachment. Considering the nature, and the object of impeachments, the Senate appears to be the most proper tribunal that could have been selected. When sitting in this capacity, the members are on oath or affirmation. When the President of the United States is tried, the Chief Justice shall preside. This is obviously proper; since, in case of his conviction, the Vice President would succeed to his office, and therefore, might not be considered as entirely unbiassed. The concurrence of two-thirds of the Senators present is necessary to a conviction. Judgment, in cases of impeachment, extends only to removal from office, and disqualification to hold any office of honor, trust, or profit, under the United States; but the party convicted is, nevertheless, liable to indictment, trial, judgment, and punishment, according to law, in the same manner as other persons committing the same offences.

The election of Senators and representatives regulated by the States.

The Legislature of each State is authorized to prescribe the time, place, and manner, of holding elections for Senators and representatives; but Congress may, at any time, by law, make, or alter such regulations, except as to the *places* of choosing Senators. It was right that each State should have the opportunity of regulating its elections, in such manner as might be most convenient: but as the neglect, or the improper use of the privilege might impede the operations of government, if not totally destroy it, (by leaving it without a Legislature,) Congress has the right to make the necessary provisions for elections, if the respective States do not do so. The exception as to the *places* of choosing Senators, is introduced, because it would not be proper to give

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to Congress the control of the place of the session of the State Legislatures, by whom the Senators are chosen.

The meeting of Congress.

The Congress must assemble at least once in every year; and the first Monday in December is fixed by the Constitution, as the day of meeting, unless some other day be appointed by law.

The powers of each House separately.

Each House is the judge of the elections, returns, and qualifications of its own members; and a majority of each, constitutes a quorum to do business; but a smaller number may adjourn from day to day, and be authorized to compel the attendance of absent members, in such manner, and under such penalties, as the House may provide. Each House may also determine the rules of its proceedings; punish its members for disorderly behaviour; and, with the concurrence of two-thirds, expel a member. These powers are obviously necessary for the preservation of purity and order; and the correct transaction of business; and could be confided no where else so appropriately, as to the respective Houses of Congress.

The right to punish contempts.

Each House has, moreover, the right to punish contempts, committed by persons not members, either by disorderly conduct in the House, or the infraction of their privileges elsewhere. This power is not expressly given by the Constitution, but it has been exercised repeatedly by the House of Representatives, and the Supreme Court has decided that it is necessarily implied, and of vital importance to the safety, character, and dignity of the House.* The necessity of its existence, is founded on the principle of self-preservation; and the punishment is limited to imprisonment, which can continue no longer

* Anderson v. Dunn, 6 Wheat. 204.

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than the power which imprisons. The imprisonment will terminate on the adjournment, or dissolution of Congress.

The Journal.

Each House must keep a journal of its proceedings, and from time to time publish the same, excepting such parts, as may, in their judgment, require secrecy. The people have thus the means of knowing what is done; and, on questions of interest, they may know the opinion of each individual of the Legislature, by the record of their votes, which is to be made in the journal, at the desire of one-fifth of those present.

Adjournment.

To prevent improper delay in the transaction of business, neither House, during the session of Congress, can, without the consent of the other, adjourn for more than three days; nor to any other place than that in which Congress shall be sitting.

Compensation of members.

The senators and representatives receive a compensation for their services, ascertained by law, and paid out of the national treasury. Under the old confederation, the members of Congress were paid by their respective States; and it was proposed that the same should be done in the new organization. But that would have rendered the national Legislature dependent upon the several States, who could have controlled its proceedings, by withholding the subsistence of its members. Besides, they might have been unequally provided for, and, thereby, more exposed to improper motives. The plan adopted, by which their equality and independence are secured, is evidently the most correct.

Privileges of members.

They are, in all cases, except treason, felony, and breach of the peace, privileged from arrest, during their attendance at their respective Houses, and in going to, and returning from the

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same; and they cannot be questioned in any other place, for any speech, or debate, in either House. These provisions are necessary to secure the uninterrupted attendance of the members, and that entire freedom of discussion which every measure ought to undergo. They are more the privileges of the people who are represented, and whose rights are to be determined upon, than of the individuals to whom they are granted.

Exclusion from office.

It was proposed in the Convention, to exclude the members of Congress from taking any office during their term of service, or within a year afterwards; but that might deprive the nation of the services of some of the most able men, at times when they might be most wanted. The danger of corruption was thought to be sufficiently avoided, by prohibiting their appointment to any civil office under the authority of the United States, which shall have been created, or the emoluments of which shall have been increased, during the time for which they may have been elected; and no person holding any office under the United States, shall be a member of either House, during his continuance in office.

Military offices.

It will be observed that the prohibition of appointment does not extend to military offices, which the public good may require to be created, and filled upon sudden emergencies; but no officer, either civil or military, can be a member of Congress.

Revenue bill.

As the members of the House of Representatives are chosen more immediately by the people, and, from the shortness of their term, are more under their control, they are supposed to represent, more directly, the wants and the feel-

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ings of the people; and, therefore, the right of originating bills for raising revenue, is entrusted solely to them. The right of imposing taxes is of the greatest importance, since the existence of government depends upon it, and the liberty of a nation is secured so long as it retains this power in its own hands.

In England, the people were long the vassals of the king and nobles, and their rights so little regarded, that they had no share in the government; but they emerged from this state of vassalage, as they acquired the power of controlling the revenue, which they have now obtained so completely, that the peers are not allowed even to amend a money bill; they must reject it, or adopt it as it has been framed by the Commons. It is only the corruption of the House of Commons which prevents them from being perfectly free. In this country, where both Houses are chosen by the people, and have a common interest with them, it was unnecessary to restrict the Senate so much in this particular. They cannot originate bills for raising revenue, but they may propose, and concur with amendments, as on other bills. This is the only privilege which is possessed by the House, in its legislative character, that is not equally shared by the Senate. In all other legislative acts they are perfectly equal, and a complete check upon each other.

Manner of passing bills, &c.

The ordinary mode of passing laws is, briefly, as follows.* One day's notice of a motion for leave to bring in a bill, in cases of a general nature, is required. Every bill must have three readings previous to its being passed; and these readings must be on different days; and no bill can be committed, or amended, until it has been twice read. Such little checks in the forms of doing business, are prudently intended to guard

* 1 Kent's Comm. p. 224.

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against surprise or imposition. In the House of Representatives, bills, after being twice read, are committed to a committee of the whole House, when the Speaker leaves the chair, and takes part in the debate, as an ordinary member, and a chairman is appointed by him, to preside in his stead. When a bill has passed one House, it is transmitted to the other, and goes through a similar form; though, in the Senate, there is less formality, and bills are often committed to a select committee, chosen by ballot.

Manner of passing bills, &c.

In each House, standing committees are appointed at the commencement of every session, to continue during the session; who each have charge of a particular subject, such as "foreign affairs," "the ways and means," &c. and to whom is referred all business that may occur relating to their particular departments, to prepare it for the consideration of the House, and frame and report bills if necessary. If a bill, after having been passed by one House, be altered or amended in the House to which it is transmitted, it is then returned to the House in which it originated, and if the two Houses do not agree, they appoint committees to confer together on the subject.

If both Houses persist in their opinion, the bill is lost; if they agree, it is passed by both Houses, and then transmitted to the President of the United States for his approbation. If he approve of the bill, he signs it. If he do not, it is returned, with his objections, to the House in which it originated, and that House enters the objections at large on their journal, and proceeds to reconsider the bill. If, after such reconsideration, two-thirds of that House agree to pass the bill, it is sent, together with the objections, to the other House, by which it is likewise reconsidered, and, if approved by two-thirds of that House, becomes a law. But, in all such cases, the votes of both Houses are determined by yeas

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Manner of passing bills, &c.

and nays; and the names of the persons voting for, and against the bill, are entered on the journals. If any bill be not returned by the President, within ten days, (Sundays excepted,) after it shall have been presented to him, the same becomes a law, equally as if he had signed it; unless Congress, by adjournment in the mean time, prevent its return, and then it does not become a law. These regulations, so far as they relate to the proceedings of the two Houses, are rules of convenience, adopted by themselves, entirely subject to their control, and sometimes waived, when occasion requires it. But those relating to the transmission to the President, and the proceedings thereon, are prescribed by the Constitution, and must be pursued.

The President's veto.

This control of the President over the acts of Congress, called his *veto*, from the Latin word *veto*, (I forbid,) used by the Roman tribunes, to prevent the passage of laws by the Senate, was incorporated into our institutions, after much discussion and great opposition. It is intended, partly as an additional security against the enactment of improper laws, through haste or inadvertence; but principally, as a defence to the Executive, against the encroachment of the legislature.*

The power of making laws is pre-eminent, and, when exercised by the people, is almost irresistible. All history attests the propensity of the legislature to encroach upon, and bring under subjection, the other departments of government; and, as it apparently, if not really, expresses the public will, they are generally obliged to yield to it. But in a government of limited powers, that, as well as the other departments, is to be kept within the bounds prescribed by the will of the people, expressed in the Constitution. To

* Federalist, No. 73.

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The President's veto.

effect this, it was necessary to do something more than define its authority on paper. Some actual check must be provided; and this is done, so far as the Executive is concerned, by the qualified negative of the President. The king of England has an absolute negative; but, for more than a century, it has not been exercised, the influence of the crown being always sufficient to arrest any obnoxious measure, in its passage through parliament. The qualified veto of the President, answers every salutary purpose of an absolute one, since it is less violent in its operation, and it is not to be presumed that two-thirds of both houses of Congress, on re-consideration, with the reasons of the President in opposition to the bill, spread upon their journals, will ever concur in an unconstitutional measure. Of course, it was expected that the power would be used with great care, and only on important occasions. The Federalist says, "The primary inducement to conferring the power in question upon the Executive, is, to enable him to defend himself; the secondary, is, to increase the chances in favor of the community against the passing of bad laws, through haste, inadvertence, or design."*

Orders, resolutions, and votes.

Every order, resolution, or vote, to which the concurrence of both Houses is necessary, (except on a question of adjournment,) must go through the same process, and be subject to the same regulations, prescribed in the case of a bill. The President has no right to interfere with the sessions of Congress, unless, as will be hereafter noticed, in case of a disagreement of the two Houses; in this respect, differing materially from the constitution of England, where the king has the right to adjourn, and to dissolve the parliament, at his pleasure.

* Federalist, No. 73.

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CHAPTER V.

THE POWERS OF CONGRESS.

Powers of Congress.

The powers of Congress, so far as they are expressly given by the Constitution, are enumerated in the eighth section of the first article. These powers have been the subject of great diversity of opinion, and are very differently construed, according to the inclination of persons to the belief, that they ought to be taken liberally, or rigidly restricted to the very letter.

In a government framed by the people, and exercised by their own delegates, entirely dependent upon themselves, it might be supposed that little danger need be apprehended from the usurpation of the rulers; yet such is the jealousy of freedom, that no people have manifested greater apprehension on this subject, than those of the United States. Not only are the powers of government limited by the Constitution, but the conduct of those who have been chosen to manage it, is strictly scrutinized, so that there is little probability of their exceeding the authority confided to them.

With regard to the powers of Congress, it may be remarked generally, that they extend to all transactions with foreign nations, and to all such domestic regulations as could not, with propriety, be made by the individual States. Some of them are so plainly expressed, as to be at once easily understood; others may require some explanation.

To levy taxes.

The power of taxation is necessarily incident to every independent government, without which it cannot exist. The want of this, was peculiarly felt under the old confederation, and was one of the principal causes of the formation of the present Constitution. It is therefore given to Con-

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gress, by the first clause of this section, in the most ample manner, to be exercised to any extent they may deem necessary; provided only, that all duties, imposts, and excises, shall be uniform throughout the United States.

To levy taxes.

Direct taxes, which are of two kinds, viz. capitation, or poll tax, and taxes upon land, are, (as already stated,) to be apportioned among the several States, according to their population, estimated in the manner prescribed for representation. To do this, the amount to be raised is first ascertained, and then the quota of each State is fixed by the rule mentioned in the Constitution, and may be collected either by requisitions from the State governments, or by levying upon the individual citizens, as may be deemed most advisable. But the method of indirect taxation, by means of duties upon articles of consumption, has been preferred, and has hitherto been found sufficient for the support of the general government.

Direct taxes.

Some have supposed that the authority "to provide for the common defence and general welfare of the United States," is a distinct power, granted by this clause. But it will hardly bear that construction, and, from the whole sentence it is evident, that the intention was, to state the object of the power of raising money, viz. "to pay the debts, and provide for the common defence and general welfare of the United States."

To provide for common defence and general welfare.

The necessity of raising large sums of money, by means of loans, in cases of war, or other great emergency, rendered it evidently proper that Congress should have power "to borrow money on the credit of the United States," which is given in this section.

To borrow money.

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To regulate commerce.

The exclusive regulation of commerce with foreign nations, and among the several States, and with the Indian tribes, is also confided to Congress. This was obviously proper; as the management of all concerns with foreign nations, and a general superintendence over domestic affairs, constitute the peculiar province of the national government, and were the principal objects of its establishment. In this manner, security from foreign aggression, and harmony among the members of the Union, are provided for.

Protective duties.

Under this clause, and the previous one, authorising the imposition of duties, laws have been passed for the protection of domestic manufactures, by imposing high duties upon foreign commodities. This has been practised from the commencement of the present government; but, of late, it has been strenuously opposed, as unconstitutional, by some, who maintain that the power "to lay and collect duties," was intended only for the purposes of revenue, and that the power to "regulate commerce," does not give the right to destroy it. A law, therefore, which imposes duties for the purpose of protection, and not of revenue, and tends to destroy commerce with foreign nations, by excluding their productions, is, in their opinion, contrary to the meaning of the Constitution, and, for that reason, void. To this, it is replied, that the authority to impose duties, &c. is given expressly "to provide for the common defence and general welfare," as well as "to pay the debts" of the Union; and that the regulation of commerce, necessarily includes the right to lessen, or even to destroy any part of it, if required, for the good of the whole. The contemporary exposition of this part of the Constitution, by the first Congress, which contained many of its original framers, gives great weight to this construction; and the constitutional *right* to impose protective duties, appears to be clearly esta-

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blished, whatever may be thought of its policy. The Supreme Court has decided, that Congress may lay a general embargo, although commerce may be thereby interrupted for an indefinite time.*

Protective duties.

Congress has always exercised the right of regulating the intercourse with the Indian tribes, even where they reside within the limits of a particular State. The former articles of confederation, gave to Congress the right 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." The present Constitution has omitted the restrictive proviso, and given to Congress the exclusive regulation of commerce with the Indian *tribes*, wherever they may be situated. Individual Indians may be members of the several States, and as such, subject to their control; but while united as tribes, they are recognized as a separate people, and, as such, treated with, by the federal government.

Intercourse with Indian tribes.

As the citizens of each State have all the privileges of citizens of the United States, Congress has the power "to establish a uniform rule of naturalization." This power is, from its nature, exclusive; for if the several States could legislate on this subject, they might require very different qualifications for citizens; and aliens would become citizens of the United States upon very unequal terms, according to the laws of the particular States in which they might be naturalized. By the acts of Congress on this subject, free white aliens may become citizens of the United States, after a residence of five years in the country, upon complying with certain requisites,

To establish a uniform rule of naturalization.

* Serg. Const. Law, p. 306.

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To establish a uniform rule of naturalization.

among which, are a renunciation of all allegiance to every foreign power, particularly that of which they were formerly citizens or subjects, and a declaration, on oath or affirmation, that they will support the Constitution of the United States.

Expatriation.

The fact of receiving foreigners upon these terms, would seem to be an admission of the right of expatriation, by which a man may, at any time, release himself from allegiance to the country of his birth. This question has been several times agitated in our courts, but never positively decided, though it appears to be the prevailing opinion that such a right does not exist, unless with the consent of the nation, expressed by some positive law on the subject.* This is founded on the presumption of an implied compact between a community, and its members, of protection on one part, and allegiance on the other, which neither party can destroy, without the consent of the other. However this may be, it is perfectly clear, that a person has no right to expatriate himself without a real change of residence, under circumstances of good faith. It cannot be asserted as a cover for fraud, or as a justification for the commission of treason, or other crime against the country, or for a violation of its laws, when this appears to be the intention of the act.†

Bankrupt laws.

The power to enact "uniform laws on the subject of bankruptcies," is highly useful in a commercial country, and is therefore given to Congress. But although many advantages might arise from the rules on this subject being uniform throughout the United States, the power is not exclusive in its character; and therefore, in the absence of a general bankrupt law, the several States have the right to pass bankrupt laws for

* Serg. Const. Law, p. 318.

† 7 Wheaton's Rep. p. 348.

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themselves, which will regulate contracts subsequently made; but they cannot thereby impair is the obligation of existing contracts, since that is forbidden by the Constitution.* Congress passed a temporary bankrupt law in the year 1800, which was suffered to expire in a very few years. Should another be adopted, the State laws would be void, so far as inconsistent with it.

Bankrupt laws.

The coinage of money, and the regulations of its value, have always been considered as incidents of sovereignty; and in an extensive country like this, it is evidently of great importance that the laws in relation to it, be the same throughout the Union; Congress, therefore, has the exclusive control of this subject. As connected with the coinage and regulation of money, Congress has the right "to provide for the punishment of counterfeiting the securities and current coin of the United States."

To coin money.

Congress has power to fix the standard of weights and measures; the general interest requiring that they should be uniform throughout the whole country.

Weights and measures.

The power "to establish post offices and post roads," is expressly given to Congress, as a matter of general interest, and, therefore, properly within their province.

To establish post offices and roads.

From this grant, and some others, particularly those giving to Congress the superintendence of commerce and war, and the disposition of the territory, and other property of the United States, is derived the authority of the federal government to make internal improvements, in the States, with their assent, by means of roads and canals. This authority has been much controverted, but though strongly opposed by some, it

Internal improvements.

* Ogden v. Saunders, 12 Wheat. 213.

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Internal improvements.

has been constantly exercised, and appears to be sanctioned by general opinion. This power, as now understood, extends to lay out, construct, and improve military, and post roads, through the several States, with their assent; and also to cut canals, with the assent of the respective States through which they may pass, for promoting, and giving security to internal commerce, and for the more safe and economical transportation of military stores, &c. in time of war; leaving, in all these cases, the jurisdictional right over the soil, in the respective States.* That the power is highly beneficial, and, from its nature, can be efficiently exerted, only by the general government, is very apparent. It would be much to be regretted if it did not exist.

To promote the progress of science.

Under the power "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," Congress has passed laws for granting patents for inventions, and copyrights for literary productions. This was formerly done by the several States, but as the grant of one State, could not secure the enjoyment of a patent or copyright in the other States, it was obviously proper that they should be protected by the authority of the Union.

To establish courts.

The Supreme Court is established by the Constitution; but Congress is authorized "to constitute tribunals inferior to the Supreme Court." This power was necessary to provide for the growing wants of the country, and adapt its judicial institutions to existing circumstances. In the exercise of it, Congress may confide certain powers to the State Courts, but they are not obliged to exert them. If they do, it must be subject to the supervision of the Supreme Court

* Serg. Const. Law, p. 326.

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of the United States. This subject will be more fully explained, when we come to examine the judiciary department. As Congress has power to institute inferior tribunals, it also claims the right to destroy them, contrary to the general spirit of the Constitution, as the judges of those courts are, thereby, rendered dependent upon the will of the legislature.

To establish courts.

The right "to define and punish piracies and felonies committed on the high seas," is necessarily connected with the regulation of foreign commerce, and therefore properly granted to Congress; particularly as the jurisdiction of the States is confined to their territorial limits, and every thing beyond, is vested in the national government. Piracy is defined to mean "robbery on the high seas,"* whether committed by a single individual, or by a whole ship's crew. Felony is a more general term; and the authority to declare what should be considered felonies, is necessarily given to Congress. The power to define, as well as to punish, is expressly mentioned. This power is exclusive in its character, because it applies to subjects, over which the States have retained no control. By the phrase "high seas," is meant, not only the ocean out of sight of land, but waters on the sea-coast, below the boundaries of low-water mark, although in a roadstead or bay, within the jurisdiction or limits of one of the States, or of a foreign government.†

To define and punish piracy, &c.

The definition and punishment of "offences against the law of nations," is also committed to Congress, both, because the power is general in its character, and because, as the United States are alone responsible to foreign nations for all that affects their mutual intercourse, they ought

Offences against the law of nations.

* The United States v. Smith, 5 Wheat. p. 160.
† Serg. Const. Law, p. 334.

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Offences against the law of nations.

to have the right to declare what shall constitute such crimes, and prescribe the suitable punishments. Offences against the law of nations are not accurately ascertained, and defined, in any public code recognized by the common consent of nations. In respect to these, there is a peculiar fitness in giving the power to define, as well as to punish.

To declare war.

To "provide for the common defence" is one principal object of the Union, and, therefore, the power "to declare war," and all the powers connected with it, are granted to Congress. In most governments, this power is vested in the Executive; particularly in monarchies, where it is generally possessed by the sovereign. But the plan adopted by our Constitution, appears much preferable. War is a dreadful evil, which is sometimes necessary, but ought never to be undertaken without great caution; and then, only with the consent of the people, who are principally interested. The records of the world show that it has too often originated in personal motives, of avarice, ambition, and even caprice. To secure us, as far as possible, from improper war, the power to declare it is given to Congress, who represent the people, and who, it is presumed, will not engage in it needlessly, and without the sanction of public opinion.

But a formal declaration does not always precede a war; which may exist without it, and be either partial, or general, according to circumstances. We may also be involved in war by the conduct of the Executive, without the agency of Congress. The intercourse with foreign nations, and the direction of the naval and military force being entrusted to the President, he may, at any time, involve the nation in war. The only restraint provided by the Constitution, is the fear of impeachment, and the power of Congress to withhold supplies.

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Letters of marque and reprisal are commissions to seize the persons and property of the members of a nation which has committed some injury, and refuse to make satisfaction. The fact of issuing these does not necessarily produce war, but it generally leads to it; and the power of granting them is properly given to Congress, as an incident to the general power of declaring war. With this, also, is connected the power to "make rules concerning captures, on land and water."

Letters of marque and reprisal.

Congress has unlimited power "to raise and support armies." Great fears were entertained lest this power should be abused; and many persons wished to have some restriction prescribed by the Constitution. But as it is impossible to foresee what may be done by foreign nations, or what degree of force may be required to resist the enemies of the country; it was necessary to enable Congress to exert the whole energy of the nation. Many thought that, at least, the government ought not to be permitted to maintain standing armies in time of peace. But such a restriction would have been highly impolitic. It has been the practice of nations, for centuries, to support standing armies; and any one who remained unprovided, would be exposed to considerable danger, not only of sudden attack, but also, from the superior skill of its enemies. Although our situation at present, at a distance from other nations, renders it improbable that we shall be suddenly attacked; it is, nevertheless, necessary to prepare for defence: and this can only be done by anticipating, in some measure, the necessities of war. Soldiers must be enlisted, and officers trained, and accustomed to military duty. Besides, it would be great folly to prevent the government from raising troops, and preparing them for service, until war actually commenced, when advantages might be lost, and much injury suffered from the want of them.

To raise and support armies.

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To raise and support armies.

The danger to be apprehended from a standing army, is not to be compared to the evils which might arise from the want of it, in a country like this, where the government is so completely under the control of the people. To secure the nation against the abuse of this power, it is provided that "no appropriation of money for that use, shall be for a longer term than two years." By this means, no permanent provision for the support of an army can be made; the subject must be brought before the Representatives of the people, at short intervals of time; and they themselves may be changed, if they give cause to suspect that the liberty of the country is endangered.

To provide and maintain a navy.

A navy is, necessarily, permanent in its character, requiring a series of years for its construction, and a constant expense for its preservation. But while it is our strongest bulwark of defence, there is no danger of its being used as an engine of domestic oppression. The power, therefore, "to provide and maintain a navy," is given to Congress, without any limitation as to the time for which appropriations of money for its support may be made.

To make rules for land and naval forces.

The power to make rules "for the government and regulation of the land and naval forces," follows, of course, the right of maintaining armies and navies.

The militia.

As a part of the military power, vested in the Union for the common defence against foreign enemies, and to enable it, in case of necessity, to enforce the laws at home, Congress is authorized "to provide for calling forth the militia, to execute the laws of the Union, suppress insurrections, and repel invasions. For this purpose, it has complete control over all the militia, while in the service of the United States, except that the

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appointment of officers is reserved to the States respectively, who are to train their militia according to the discipline prescribed by Congress. The object of this last provision is to secure uniformity of action, so necessary in all military affairs.

The militia.

Exclusive legislation over seat of government.

The next enumerated power is that "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." This power is obviously requisite, for the security and dignity of the government. Without it, the members of the general government would have been dependent upon a State for protection; and its authority might be insulted, and its proceedings interrupted, without its having adequate means of redress. The extent to which this district is limited by the Constitution, is so small, that no danger can arise to the Union, from the exclusive jurisdiction of Congress.

District of Columbia.

The effect of this grant upon the District of Columbia, which has been ceded by the States of Virginia and Maryland for the seat of the national government, was probably not adverted to by the framers of the Constitution. Not being a State, it has no members in the Senate, nor any representative in the other House; but is, nevertheless, subject to be taxed, and in all other respects governed by the Legislature of the Union. To compensate, however, for these, it derives peculiar advantages from the location of the government there, which has greatly contributed to its prosperity.

Forts, magazines, &c.

The necessity of the exclusive authority of Congress over all places purchased by the consent of the legislature of the State in which the same

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Forts, magazines, &c.

shall be, "for the erection of forts, magazines, arsenals, dock-yards, and other useful buildings," is evident. The public money expended on such places, and the public property deposited in them, require that they should be exempt from the authority of any particular State. Nor would it be proper for the places on which the security of the entire Union may depend, to be in any degree dependent on a particular member of it.

General clause.

The enumeration of the powers of Congress, is closed with that "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 any department or officer thereof." This clause created great alarm, and was supposed by some to invest Congress with supreme and almost unlimited authority; and, on this ground, great opposition was made to it, by the opponents of the new Constitution; both among the people at large, and in the conventions, called in the several States, to determine upon its adoption. But a little reflection must convince every unprejudiced mind, that it is, in fact, nothing more than an expression of what must, necessarily, have been implied without it.

Implied powers.

The grant of certain powers, however limited, must include the means of executing them; and it would be absurd to suppose that a government, created by the will of the people, and invested with great and important powers, on the due execution of which the happiness and prosperity of the nation vitally depend; should be left destitute of the means of carrying them into effect; and the intention of its establishment be entirely frustrated. It is, no doubt, a government of limited powers; and can exercise no authority, not delegated by the Constitution. But the meaning of this instrument is to be ascertained

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Implied powers.

by a fair and reasonable construction of its terms, according to their natural, and obvious sense, without unnecessary restriction or enlargement. The nature of the Constitution requires that only its great outlines should be marked; its important objects designated; and the minor ingredients which compose those objects be deduced from the nature of the objects themselves. If it contained an accurate detail of all the subdivisions, of which its great powers will admit, and of all the means by which they may be carried into execution; it would partake of the prolixity of a legal code, and would, probably, never be understood by the public. Almost every power mentioned in the Constitution, draws after it others, not expressed, but necessary to its exercise.* If these principles be correct, as they undoubtedly are, this clause was not necessary to enable Congress to exercise implied powers; but was added, by way of caution, that the least doubt might not exist on the subject. Like the rest of the Constitution, it is to be fairly interpreted. The word "*necessary*," does not import an absolute, physical necessity, so strong, that the powers of government cannot be exercised without it. The word itself admits of degrees of comparison, which the framers of the Constitution showed themselves to be perfectly aware of, when, in a subsequent section, the States are prohibited from laying any imposts, except what may be "*absolutely necessary*" for executing their inspection laws.† Besides, this rigid construction would destroy the effect of the word "*proper*," which is also used, and implies a choice among means which must be proper, if absolutely necessary. As used here, it means needful, requisite, essential, conducive to, and gives to Congress the choice of the means, best

* M'Culloch *v.* The State of Maryland, 4 Wheat. 407.
† 4 Wheat. 414.

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Implied powers.

calculated to exercise the powers they possess.* These powers were given for the welfare of the nation. They were intended to endure for ages to come, and to be adapted to the various circumstances of human affairs. To prescribe the specific means, by which government should, in all future time, execute its power; and to confine the choice of means, to such narrow limits, as would not leave it in the power of Congress to adopt any which might be appropriate, and conducive to the end, would have been most unwise, and pernicious; because, it would be an attempt to provide, by immutable rules, for exigencies, which, if foreseen at all, must have been seen dimly; and would deprive the legislature of the capacity to avail itself of experience, or to exercise its reason, and accommodate its legislation to circumstances.

A national bank.

As an instance of the exercise of implied power, may be mentioned, the establishment of a national bank. No authority for this purpose is expressly given by the Constitution; but such an institution is so useful to government, in the collection, transportation, and disbursement of its funds, and in the general management of the revenue, that it may be considered an essential instrument in the prosecution of the fiscal operations of the government. As such, the Supreme Court has pronounced its establishment to be within the scope of the constitutional powers of Congress.† This instance has been selected, because its consideration before the Supreme Court, led to a very full discussion of the meaning of this part of the Constitution. Many other cases might be adduced, in which the same kind of power has been exercised.

* 4 Wheat. 418.
† M'Culloch *v.* The State of Maryland, 4 Wheat. 316.

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CHAPTER VI.

LIMITATIONS OF THE POWERS OF CONGRESS.

Most governments claim the possession of all powers not expressly reserved from them; but that of the United States is founded upon a different principle; it can exercise none which is not conferred by the Constitution, either expressly, or by necessary implication. That instrument, therefore, contains but few restrictions on the powers of Congress. It was, however, expedient to introduce some, by way of positive exception, or qualification of the powers enumerated; and also, to secure by express reservation, the rights of the States, and of individuals, in some particulars, which, otherwise, might possibly have been infringed by the general government.

Importation of slaves.

The first exception of this kind, is that by which Congress is forbidden to prohibit "the migration or importation of such persons, as any of the existing States should think proper to admit, prior to the year one thousand eight hundred and eight." The word "slaves" is never mentioned in the Constitution; the same sensibility on that subject, existed then, as now, in the southern portion of the Union; but some of the politicians of that day, thought the introduction of that unfortunate class essential to the prosperity, if not to the existence of the southern States; and, therefore, would not consent to allow Congress to exercise the right, they would otherwise possess, under the general power of regulating commerce, to put an immediate end to this inhuman traffic. The result was a compromise, by which the power of Congress was restricted to a limited period. To the honour of our country, a law was passed, which went into operation on the first day of January, 1815, prohibiting the slave

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The importation of slaves.

trade under severe penalties; and, by subsequent laws, it is declared to be piracy, and those engaged in it are to be punished with death.

Habeas corpus.

The writ of *habeas corpus* has always been regarded as the greatest safeguard of individual liberty. It is so called from these two Latin words being prominent in the writ, when all law-proceedings were in that language. It is issued by a judge, upon the application of any one who is restrained of his liberty, or any person on his behalf, and directed to the person detaining him; commanding him, under a severe penalty, to bring before the judge, or the court, the person detained, and to state the cause of his detention. An opportunity is thus given of public examination into the merits of the case, before an impartial tribunal; and the prisoner is set at liberty, if unjustly confined. The privilege of this writ is secured by the Constitution, and Congress is prohibited to suspend it, "unless when in case of rebellion, or invasion, the public safety may require it." In such emergencies, it may sometimes be necessary to imprison suspected or dangerous persons, without a public examination, and individual security must yield to general safety.

Bills of attainder.

The next restriction is, that "no bill of attainder, or ex post facto law, shall be passed." Bills of attainder are acts of the legislature, declaring persons guilty of crimes, of which they could not be convicted in the ordinary course of justice, either from a deficiency of testimony, or because they had violated no existing law, and inflicting the punishment of death. Such acts are, to the last degree, tyrannical and oppressive, and have generally resulted from a state of high political excitement, when party feeling, and vindictive resentment, have triumphed over justice, and humanity. Several instances of such bills are re-

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Bills of attainder.

corded to have been passed by the English parliament, and some illustrious men have been the victims.

Ex post facto laws.

The phrase "*ex post facto law*," as here used, has been held to be a technical expression, applicable only to criminal cases. In this sense, it means every law that declares an act criminal, which was innocent when done; or that aggravates a crime, and makes it greater than when it was committed; or inflicts a greater punishment than the law annexed to the crime when committed; or alters the rules of evidence, and receives less, or different testimony, than the law required at the time of the commission of the offence: in short, any law which renders an act punishable, in a manner in which it was not punishable, when it was committed.* All such laws are inconsistent with liberty, and the spirit of our institutions, and are expressly forbidden by the Constitution.

Direct taxes.

The next paragraph merely restricts Congress in express terms to the mode of imposing direct taxes, prescribed in a previous section; that is, in proportion to the census already directed to be taken.

Equality of commercial privileges.

The fifth restriction secures the perfect equality of the States, in all commercial concerns. The general government having the entire regulation of foreign commerce, might, by its arrangements, give a preference to particular ports, to the injury of others; to which it might be induced, by some apparent advantage, or the superior influence of the larger States. But this is expressly prohibited. The prohibition of duties upon "exports," is of a similar character. The natural and artifi-

* Calder v. Bull, 3 Dall. 386. Fletcher v. Peck, 6 Cranch, 138. Serg. Const. Law, 356.

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Equality of commercial privileges.

cial productions of the States are different. A tax laid upon the exportation of any one of these articles, though it might be general in its terms, would operate only on the States producing it. Thus an export duty on cotton, or grain, or manufactures, would act unequally upon different portions of the Union. Such taxes are, therefore, altogether prohibited.

The last clause of this paragraph, provides against an inconvenience, which might otherwise be felt by those ports which are so situated, that vessels in going to, or from them, must pass by, or through parts of other States. Thus, Baltimore can be approached from the ocean, only by passing through part of Virginia; and vessels must sail between New Jersey and Delaware, to reach Philadelphia. Vessels going to, or from, such ports, might be made to enter and pay duties in the other States, but for the declaration, "nor shall vessels, bound to or from one State, be obliged to enter, clear, or pay duties, in another."*

The treasury.

The rule that "no money shall be drawn from the treasury, but in consequence of appropriations made by law," and that "a regular statement and account of the receipts and expenditures of all public money, shall be published from time to time," is a useful check upon public expenditure, and affords the people an opportunity of knowing how the public money is disposed of.

Titles of nobility.

Titles of nobility are utterly inconsistent with our republican manners, and institutions, and are, therefore, prohibited by the Constitution. And to preserve the government, in all its branches, entirely free from foreign influence, no officer, in any department of it, is permitted to accept of any present, emolument, office, or title of any

* Serg. Const. Law, 356.

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kind whatever, from any foreign power, without the express consent of Congress. It is the custom, in many countries, to make valuable presents to the officers of foreign nations, with whom business is transacted; and instances have occurred, of ministers of state, and even princes being bribed, by such means, to sacrifice the interests of their country. Our Constitution provides, as far as possible, against all such practices, by forbidding the acceptance of any present whatever.

Titles of nobility.

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CHAPTER VII.

LIMITATIONS OF THE POWERS OF THE INDIVIDUAL STATES.

As the State governments possessed many powers, under the former confederation, the exercise of which would interfere with the operations of the general government, or be contrary to the spirit of the new Constitution, it was necessary to impose restrictions upon the States in such particulars.

No State to make treaties.

All other confederacies, of which history gives us any account, have suffered from combinations, formed by their members, either among themselves, or with foreign power, according to the dictates of jealousy, ambition, or a spirit of insubordination. Our Constitution, therefore, declares, that "no State shall enter into any treaty, alliance, or confederation." This does not forbid any civil contracts between the States, which convenience may require, but those political compacts from which danger is to apprehended.

Nor grant letters of marque.

Under the Articles of Confederation, the several States had a right to grant letters of marque and reprisal, after a declaration of war by the Union. But this would interfere with the proper control of the national government, over all matters relating to war, and might occasion serious inconvenience. The power is, therefore, entirely taken away from the States.

Nor coin money.

The coinage of money, and the regulation of what shall be used in the payment of debts, are matters of general concern, peculiarly within the province of the general government; and, therefore, the States are not allowed to control them.

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Bills of credit.

The several States, as well as the United States, had long been in the habit of issuing paper money, called "bills of credit." The necessities of the war occasioned the emission of such quantities of these bills, that they lost their value, and, in some instances, became utterly worthless. This depreciation caused much distress, which was felt throughout the nation, and the new Constitution takes from the States the power to "emit bills of credit," but leaves it with the general government, to be exercised in case of necessity. The prohibition has been supposed, by some, to extend to all kinds of paper money, which would render it doubtful whether the States can authorize banks to issue notes, as that would be doing, through the medium of these institutions, what they are prohibited from doing, directly, themselves. But "bills of credit" were a particular species of paper-money, well known at the time of the formation of the Constitution, and the reasonable construction seems to be, that, by using this phrase, it was intended to designate the particular class mentioned.

Laws impairing the obligation of contracts.

The State legislatures, like Congress, are prohibited to pass any bill of attainder, or ex post facto law; or to grant any title of nobility. To these, is added with regard to the States, that they can pass no "law impairing the obligation of contracts." This is an important restriction, and has given rise to many interesting questions before the Supreme Court of the United States. It probably had a particular reference to laws on the subject of bankruptcy, which impair the obligation of contracts, by releasing the debtor from the payment of his debts, on certain conditions, and which Congress is expressly authorized to enact. It has also been decided, that the States may pass such laws, subject to this restriction.*

* Ogden v. Saunders, 12 Wheat. 213.

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Laws impairing the obligation of contracts.

Whether Congress have power to pass a law, other than a bankrupt law, which would violate an existing contract, may well be questioned; but the States certainly have not. An agreement between two States,* a charter of incorporation,† and a law by which title to property has been acquired,‡ are contracts within the meaning of this clause, and equally protected from violation or change, with the ordinary contracts between individuals.

Imposts.

Imposts, or duties upon articles imported into the United States, have always been the principal source of the revenue of the federal government. This was anticipated at the time of the formation of the Constitution, and therefore, they were reserved exclusively for the benefit of the Union. No State shall, without the consent of 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 Congress. Under this clause, it has been held, that any State tax, which would operate directly upon foreign commerce, is void; but after articles introduced from abroad, have become mixed with the property of the country, they may be taxed as other property.§ With this exception as to imposts, the right of the States to impose taxes, is co-extensive with that of the Union, provided that if Congress lay a tax upon a particular subject, a State cannot afterwards tax the same article, as that would interfere with the right of the general government; and no State has a right, by

* Green *v.* Biddle, 8 Wheat. 92.
† Dartmouth College Case, 4 Wheat. 518.
‡ Fletcher *v.* Peck, 6 Cranch, 87.
§ Brown *v.* The State of Maryland, 12 Wheat. 441, 442.

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taxation, or otherwise, to control the exercise of any authority under the federal government.

Imposts.

Other restrictions.

It is further declared, that no State shall, without the consent of Congress, lay any duty on 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. The reason and propriety of these restrictions are so obvious, that they require no comment.

Reserved rights of the States.

The question as to the extent of the jurisdiction of the States, and how far they are controlled by the Constitution of the Union, is an interesting and important one; and it seems now to be well settled that they retain all the rights of sovereignty which they had before the adoption of the Constitution, except in three cases; namely, 1st, Where the Constitution, in express terms, grants an exclusive authority to the Union; 2d, Where it grants an authority to the Union, and prohibits the States from exercising the like authority; and 3d, Where it grants an authority to the Union, to which a similar authority in the States would be absolutely and totally contradictory and repugnant.*

As to the first two, there can be no doubt that the jurisdiction of the States is taken away; but it is sometimes questionable whether the grant of a particular power to the Union, is inconsistent with the exercise of the same power by the States, or whether their authority is concurrent. The doctrine adopted by the Supreme Court is, that the mere grant of a power to Congress does not imply a prohibition to the States, to exercise the same power; the States retain concurrent authority with Congress, and may legislate upon the sub-

* 1 Kent's Com. 363.

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Reserved rights of the States.

ject in the absence of congressional acts. But if Congress exercise its power, the States cannot enter upon the same ground, and provide for the same objects.

Concurrent powers.

Thus Congress has power to provide for organizing, arming, and disciplining the militia. This does not prevent the State from legislating upon the subject, if Congress do not. But if it do act upon this subject, the States have no right to do any thing further in relation to it. The same may be said of bankruptcy, naturalization, and other subjects, over which the authority of Congress, and the State Legislatures, is concurrent. The most important instance of concurrent authority, is that of taxation. In all cases, except duties on imports, the States have the right to impose taxes; but if Congress lay a tax upon any article, the right of the States, as to that article, is suspended; and if Congress impose a tax on any article already taxed by a State, the general tax must be first paid. This is a necessary consequence of the supremacy of the general government, and is requisite for its preservation. The security against its abuse is, that the constituents of the general, and the State governments, are one and the same people; it is not, therefore, a foreign power acting upon the State governments, but the same people governing themselves through two different mediums. The powers of the national government must always be exercised with a due regard to the interest and prosperity of every member of the Union; for, on the concurrence and good will of the parts, the stability of the whole depends.

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CHAPTER VIII.

THE EXECUTIVE.

The Executive.

THE organization of the executive department, was the most delicate part of the task which the framers of the Constitution had to perform. The feeling against monarchy, was so strong throughout the country, that every thing, in the least resembling it, would meet with strenuous opposition; and yet, it was necessary, that the Executive should have very considerable power, in order to give vigor and efficiency to the government. Many thought it inconsistent with republican principles to lodge the executive power in a single person; and the liberties of the nation were supposed be endangered by such an arrangement. It requires, however, but little reflection, to perceive, that a single Executive is the safest, and best; and that none other is so well calculated to secure the objects of good government.

The object of this department, is the execution of the laws; and the welfare of society requires it to be so organized, as to effect this with fidelity and energy. Laws should be made with caution, after mature deliberation, and an attentive consideration of the situation and wants of the community; and of all the various interests to be affected by them. But when once enacted, they should be executed with promptness, and decision. The executive officer can exercise no discretion, as to the propriety of giving them effect. It is not for him to decide upon 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, and

The Executive. irresistible obedience.* If a law be impolitic, or inexpedient, let it be repealed by the Legislature; if it be unconstitutional, let it be declared by the Judiciary; but so long as it continues to receive the sanction of these two departments, it is the duty of the Executive to carry it into full effect. Uncertainty in the execution of the laws, is destructive of all order. The decision and energy requisite for their proper execution, can only be attained, by confiding this power to a single person. If the concurrence of several be required, division, indecision, and delay, will be the consequence. All history, ancient and modern, attests the inefficiency and injurious tendency of a compound Executive.

Unity of Executive. Nor is a single Executive more dangerous to the liberties of a country, than one consisting of several members. Safety, in this respect, consists in responsibility, and a due dependence upon the people.† Unity, while it increases the efficacy, secures also the responsibility of the Executive power. When acts are to be done by a body composed of several persons, no one is responsible. The real author of any measure, is concealed; no one feels the responsibility; and, therefore, there is not the same anxiety to secure public approbation. The temptation to remissness, or even corruption, is greater; and the security against it is less. Besides, the people will not know to whom to attribute the evils of mal-administration. It is the opinion of the most profound observers of government, that the executive power is most safely confided to one; the security arising from responsibility is greater; the attention of the people is directed to a single object, and the power is more easily confined. As to the other ingredient of safety,—a due dependence upon the people,—that is provided

* 1 Kent's Comm. 253. † Federalist, No. 70.

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by the term of continuance in power; and the liability, at all times, to impeachment, and dismission from office; and a subsequent trial and punishment in the common course of law.

Unity of Executive.

Upon these principles, a single Executive was determined upon; and the second article of the Constitution declares that "the executive power shall be vested in a President of the United States of America." The term of service, both of the President, and Vice President, is four years. This period was thought to be sufficiently long, to give stability and vigor to the administration of the President; while it is so short, as to keep alive a sense of his dependence upon public approbation.

Term of service.

The mode of electing this important officer, was next to be settled, and required the greatest wisdom and care. "The mode of his appointment," says Chancellor Kent, "presented one of the most difficult and momentous questions that could have occupied the deliberations of the assembly which framed the Constitution; and if ever the tranquillity of this nation is to be disturbed, and its peace jeopardized, by a struggle for power among themselves, it will be upon this very subject of the choice of a President. This is the question that is eventually to test the goodness, and try the strength of the Constitution; and if we shall be able for half a century hereafter, to continue to elect the Chief Magistrate of the Union, with discretion, moderation, and integrity, we shall undoubtedly stamp the highest value on our national character, and recommend our republican institutions, if not to the imitation, yet certainly to the esteem, and admiration of the more enlightened part of mankind."*

Mode of electing President and Vice President.

* 1 Kent's Comm. 253.

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Electors for President, &c.

The plan adopted shows that the framers of the Constitution were fully aware of the difficulties attending it, and endeavoured to avoid them. To give the election to the whole body of the people, would have been a dangerous experiment. The excitement it might produce, and the intrigue it would occasion, might convulse the whole country. It was therefore confided to a small body of electors, appointed, in each State, under the direction of the Legislature; and, that there might be no opportunity of negotiation and intrigue among the electors, Congress is authorized to determine the time of choosing them, and the day on which they shall give their votes, which day shall be the same throughout the United States. Under this authority, an act of Congress has been passed, requiring the appointment of electors to be made, in each State, within thirty-four days of the day of election; which, by the same act, is to be the first Wednesday in December in every fourth year.

Their appointment.

The Constitution directs that each State shall appoint, in such manner as the legislature thereof may direct,* a number of electors equal to the whole number of Senators and Representatives, to which the State may be entitled in Congress. According to the last apportionment of Congress, the whole number of electors is two hundred and eighty-eight. To prevent any improper influence from being exerted, by the person in office, it is provided, that no Senator or representative, or person holding any office of trust or profit, under the United States, shall be appointed an elector.

* The mode of appointing electors is different in the several States, according as it has been fixed by their respective Legislatures. In some, they are appointed by the Legislature without a popular election; in others, the State is divided into electoral districts, in each of which an elector is chosen by the people; but in most of the States, they are elected by a general ticket throughout the whole State.

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No other restriction or qualification is mentioned in the Constitution.

Their method of voting.

The electors are to meet in their respective States, at the place appointed by the Legislature, on the day fixed by Congress; 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. By the Constitution, as originally framed, there was no distinction made, in the ballots, between the two persons voted for, but the person having the greatest number of votes, was to be President; and the next highest on the list, was to be Vice President. By this mode, it might happen that two persons might have the same number of votes, and the House of Representatives would have to determine between them; though it might be well known which was intended by the electors to be President, and which Vice President. This actually occurred in the year 1801; when Mr. Jefferson and Col. Burr were returned, as having an equal number of votes; and for some time, it was doubtful, whether the intention of the electors would not be defeated, by the election of the latter. In consequence of this, the Constitution was altered, so as to require distinct votes for President, and Vice President.

Their votes opened.

The lists of votes are to be signed and certified by the electors; and transmitted, sealed, to the seat of government of the United States, directed to the president of the Senate. The president of the Senate, in the presence of the Senate and House of Representatives, opens all the

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Their votes opened.

certificates, and the votes are then counted. The person having the greatest number of votes for President, is President, if such number be a majority of the whole number of electors appointed.

Choice by the House.

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 immediately choose, 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 is necessary to a choice. And 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; then the Vice President shall act as President; as in the case of the death, or other constitutional disability of the President.

Choice of Vice President.

The person having the greatest number of votes as Vice President, is 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 this purpose, consists of two-thirds of the whole number of Senators, and a majority of the whole number, is necessary to a choice. No person, constitutionally ineligible to the office of President, shall be eligible to that of Vice President of the United States.

The object of this plan.

The theory of this mode of election, evidently is, that the people should delegate their right of choice to a select body of men, in whose judgment they could confide, and with whom it would rest to elect the persons, in their opinions best

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qualified for the stations. This would prevent any violent excitement in the popular elections, and all intrigue among the electors; since the uncertainty, who would be selected, and the shortness of the time between their appointment, and the election of President, would render it impossible to exercise an improper influence over them.

The object of this plan.

But it was hardly to be expected, that the people would be willing thus to part with their control over the election of their chief magistrate; and in practice, it has been found that very little discretion is left to the electors. They are appointed with a positive pledge, or an explicit understanding, that they will vote for particular candidates; and the people thus vote in fact for President, and Vice President; though, nominally, only for electors. When the election devolves upon the House of Representatives, in consequence of neither of the candidates having a majority of the whole number of electoral votes; they, of course, have the right of selection among the three highest on the list; without any obligation to take him who has most votes; because, in the first place, the Constitution would have declared him President, at once, if it had been so intended; and, in the next place, a majority of the people might have united upon one of the other candidates, in preference to him. But whoever is so chosen, should be considered the choice of the people; since it is according to their will, as expressed in the Constitution.

Its operation

The qualifications required for President of the United States, are, that he be a natural born citizen, or a citizen at the time of the adoption of the Constitution; that he shall have attained the age of thirty five years, and been fourteen years a resident within the United States. Considering the importance of the office, and the great influence it has over the whole government, these qalifications ap-

The qualifications of President.

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pear well calculated to prevent evils, to which other elective governments have been exposed.

Native citizenship. Were foreigners eligible to the office, it would be an object of ambition, or of policy, with foreign nations to place a dependent in the situation; and scenes of corruption and bloodshed, which disgraced the annals of Poland, might have been acted over again in this country. The necessity of citizenship by birth, precludes this, by rendering it impossible for any foreigner ever to be a candidate. The exception as to those who were citizens at the time of the adoption of the Constitution, was justly due to those men who had united themselves with the fate of the new nation, and rendered eminent services in achieving its independence; and is, necessarily, of limited continuance. It is not necessary that a man should be born in this country, to be "a natural born citizen." It is only requisite he should be a citizen by birth, and that is the case with all the children of citizens who have ever resided in this country, though born in a foreign country.

Age. The age required for President, is sufficient for him to have acquired full maturity of intellect, and to have established his character for ability and integrity, among his fellow citizens.

Residence. The qualification of fourteen years residence in the country is required, that he may be known to the community, and have a proper knowledge of, and attachment to, the laws and institutions of the country. Absence from the country, in the service of the United States, does not deprive a citizen of his residence within the meaning of the Constitution.

Provision in case of removal from office. 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 office, the

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same shall devolve on the Vice President; and Congress may, by law, provide for the case of removal, death, resignation, or inability, of both 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.

Provision in case of removal from office, &c.

By law, enacted the 1st March, 1792, it is provided, that in case of a vacancy in the office, of both President, and Vice President; the president of the Senate *pro tempore*, and in case there should be no president of the Senate, then the Speaker of the House of Representatives, shall act as President of the United States, until the disability be removed, or a president shall be elected. And whenever both these offices become vacant, the secretary of state is to notify the executive of each State of the fact, and also to give public notice that electors will be appointed in each State to elect a President and Vice President, unless the regular time of such election shall be within so short a period as to render it unnecessary. The only evidence of a refusal to accept, or of a resignation of the office of President, or Vice President, is declared, by the same acts of Congress, to be a declaration in writing, filed in the office of the secretary of state.

President's compensation.

The support of the President is secured by the Constitution, which declares that he 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. This provision is intended to preserve the dignity, and the independence of the executive department. This compensation is to be fixed, before his term of service begins, and cannot be altered during its continuance. He is, therefore, in no way, depend-

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President's compensation.

ent upon Congress, and has nothing to hope from their favour. "A control over a man's living is, in most cases, a control over his actions:" and it would be in vain to look for independence, and energy in the President, if he were dependent upon Congress for his support. He is, therefore, wisely secured against this dependence, and even against the temptation to which he might be exposed, if Congress, or any of the States, could increase his regular compensation.

His oath.

Before entering on the execution of his office, he is to take an oath or affirmation, that he will faithfully execute the office of President of the United States, and will, to the best of his ability, preserve, protect, and defend the Constitution of the United States. This oath is necessarily general in its terms, and adds the sanction of religious obligation to the duty already incurred by the acceptance of the office.

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CHAPTER IX.

THE POWERS AND DUTIES OF THE PRESIDENT.

THE proper administration of the government, required that the President should be invested with very considerable powers. These are enumerated in general terms in the Constitution.

Commander in chief.

He is the commander in chief of the army and navy of the United States, and of the militia of the several States, when called into the actual service of the United States. Not that he is expected to take the command in person, for that would seldom be necessary or proper; but he is to have the direction of all the military force of the Union. This is requisite to repel invasion, to suppress insurrections, and to enforce obedience to the laws. The character of military operations, requiring promptness, decision, energy, and unity of action, makes it necessary that they should be under the control of a single individual; and no one is so appropriate for this station as the chief executive officer.

Opinions of heads of departments.

His right to require the written opinion of the principal officers, in each of the executive departments, upon any subject relating to the duties of their respective offices, seems to be so clear, that it scarcely need have been mentioned in the Constitution; but its insertion shows the extreme caution with which the instrument was framed.

Reprieves and pardons.

The President has power to grant reprieves, and pardons, for offences against the United States, except in cases of impeachment. In a perfect government, perfectly administered, such a power might be unnecessary; but, such is the imperfection of all human governments, that policy, and even justice, requires the existence,

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Reprieves and pardons.

and occasional exercise of this power. From the nature of human testimony, a man may be convicted of a crime of which he is afterwards found innocent; or there may be alleviating circumstances, which will render it highly proper to pardon an individual, who has been justly convicted; or it may be good policy, where many are engaged in crime, to recall the offenders, by mercy, rather than drive them to despair, by strict justice.

This power is wisely entrusted to the President alone. A single man, of sense and prudence, can better examine into the details, and balance the motives which should determine its exercise, than any numerous body of men; and, in cases of public emergency, such as treason, or rebellion, the propriety of the time, and manner of offering pardon, may be a matter of great delicacy, and not admit the delay, or the publicity, which would attend a legislative act. Besides, there is greater reason to expect a right exercise of this power, by a single responsible individual, who is observed, and scrutinized by the public, than by a numerous body, whose motives cannot be scanned, where all responsibility is divided, and lost. The power of pardon does not extend to cases of impeachment, because that, as we shall notice hereafter, is a peculiar proceeding, and the President ought not to have the power of screening public officers, his favourites or dependents, or with whom he may have been engaged in dangerous, or corrupt practices against the public welfare.

Of making treaties.

The President has power, by, and with the advice and consent of the Senate, to make treaties, provided two-thirds of the Senators present concur. As treaties are declared by the Constitution, to be the supreme law of the land, it might seem proper that the Legislature should have a part in their formation; but the peculiarity of their cha-

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racter, renders this inexpedient. Although legislative in their effect, they rarely operate immediately upon the domestic concerns of a nation. They are not, strictly speaking, laws, but "contracts with foreign nations, which have the force of law; but derive it from the obligation of good faith."* They are not rules, prescribed by the government; but agreements between nations; and the constitution of human society, requires that they should be obligatory upon the members of each contracting party.

Of making treaties.

The President is the constitutional organ of communication with foreign nations, and all intercourse with them, is best conducted through this channel. Moreover, the secrecy, and dispatch, often required in the preliminary negotiations, can only be attained by confiding the power to a single person. Foreign nations might be unwilling to enter upon negotiations when every thing must be made public, and on the other hand they would derive great advantage from knowing what concessions our ministers were authorized to make; both of which would be the consequence of requiring the previous concurrence of a popular assembly.

But it would not be right to entrust the power to the President, without control. It is too great, to be confided to any single individual, in a republican government, and it would expose him to too great temptation by the offers, which foreign nations might make to his avarice, or his ambition. The Senate of the United States has, therefore, been associated with him, in the execution of this power; in such a manner as to secure all the advantages to be derived from his single action, and to provide an efficient control over its abuse. The instructions are given, and the negotiations made, by the President, but the ratification of the Senate is necessary, to give vali-

* Federalist, No. 75.

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Of making treaties.

dity to the treaty. And, by way of greater caution, a larger majority is required, than in ordinary legislation. The construction of the Senate, the number and standing of its members, their acquaintance with public affairs, its permanent character, and the ease with which it may be assembled, render it peculiarly fitted for this high trust.

The effect of treaties.

It has been made a question, whether a treaty, constitutionally made, is obligatory upon Congress; or whether they have any discretion about passing a law which may be required to carry the treaty into effect. In the year 1796, the House of Representatives adopted a resolution, declaring, that when a treaty depended for execution of any of its stipulations, on an act of Congress, it was the right and duty of the House to deliberate on the expediency or inexpediency of carrying such treaty into effect. But General Washington, then President, explicitly denies this right, and asserted the exclusive authority of the President and Senate to make a treaty; which, when ratified in the mode prescribed by the Constitution, becomes the supreme law of the land. And such is the clear meaning of the Constitution. If a treaty require an appropriation of money, Congress is morally bound to pass a law for that purpose,* and the faith of the nation is pledged that it shall be done, for the people, by the Constitution, have proclaimed to foreign nations, that the President and Senate are competent to bind them by all legitimate compacts. The reasoning of Chancellor Kent upon the point is very satisfactory:

"If a treaty be the law of the land, it is as much obligatory upon Congress, as upon any other part of the government, or upon the people at large, so long as it continues in force, and

* Rawle on the Const. 68.

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unrepealed. The House of Representatives are not above the law, and they have no dispensing power. They have a right to make and repeal laws, provided the Senate and President concur; but without such concurrence, a law in the shape of a treaty is as binding upon them, as if it were in the shape of an act of Congress, or of an article of the Constitution, or of a contract made by authority of law. The argument in favor of the binding and conclusive efficacy of every treaty, made by the President and the Senate, is so clear and palpable, that it has probably carried very general conviction throughout the community, and this may be now considered as the decided sense of public opinion. This was the sense of the House of Representatives in 1816, and the resolution of 1796 would not now be repeated."*

The effect of treaties.

The same reasoning will apply to prove that a treaty repeals all existing laws, that are inconsistent with it. The President and Senate are authorized to bind the nation by treaties, which are to be the supreme law of the land; which would not be the fact, if their stipulations could be defeated by any prior laws; and foreign nations could have no security in treating with those whom the Constitution has appointed for this purpose, if the subsequent consent of Congress were necessary, to give validity to their acts.† Even if treaties have no higher obligation than ordinary laws, it is a well settled rule in legislation, that the last law must prevail, and prior laws inconsistent with it are, of course, repealed, though not particularly mentioned. This does not prevent Congress from afterwards passing laws inconsistent with the treaty, or even reviving those repealed by it. But to do so, would require the concurrence of the Senate and President; would

Treaties repeal prior laws.

* 1 Kent's Com. 268. † Rawle on the Const. 61.

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Treaties repeal prior laws.

be a violation of the treaty, and would, probably, lead to war; the right to declare which, is vested in Congress. What was said in relation to the election of President by the House of Representatives, may here be repeated, namely, that what is done according to the provisions of the Constitution, is to be considered as the will of the people. So a treaty constitutionally made, derives its effect from the will of the people expressed in their Constitution; and is as much a law as an act of Congress.

Appointment of officers.

The President has power to nominate, and by and with the advice and consent of the Senate, to appoint 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; but 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.

Advantages of this mode.

This mode of appointment unites the advantages of an undivided responsibility in the appointing power, with the control of a select and more numerous body, while it avoids many of the evils of each. As the President has the sole nomination to office, the responsibility rests upon him, and he has every motive for the exercise of integrity and wisdom in the selection, for upon him, will fall the public approbation or censure. In addition to this, the knowledge, that his nomination must be submitted to a separate and independent body, who have the right to examine into the fitness of the candidate, and the propriety of his choice, will have a silent, but salutary operation, in making him more cautious in presenting a friend, or a partizan for their approbation. As the authority of the Senate is confined to the mere approval, or rejection of the President's nomination, there is no room for the cabal, in-

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trigue, and party or personal motives, which might exist, if they had the right of selection, and which have usually been found to attend the appointments of a body composed of several individuals. Even if the Senate prefer another person, they cannot promote his appointment by rejecting the President's nomination, since the right of selecting another would still rest with him. Their decision will, therefore, be regulated by their opinion of the fitness or unfitness of the individual presented.

Advantages of this mode.

It was supposed by the author of the Federalist, that this co-operation of the Senate would have another advantage, in giving stability to the administration of government. "The consent of that body," he said, "would be necessary to displace, as well as appoint. A change of the chief magistrate, therefore, would not occasion so violent, or so general a revolution in the officers of government, as might be expected, if he were the sole disposer of offices." And he adds, "those who can best estimate the value of a steady administration, will be most disposed to prize a provision which connects the official existence of public men, with the approbation of that body, which, from the greater permanency of its own composition, will, in all probability, be less subject to inconstancy, than any other member of the government." This, however, is not the construction put upon this part of the Constitution. An Act of the first Congress, establishing the Department of State, recognized the right of the President to remove from office, without the concurrence of the Senate; and this construction has been adopted in practice ever since.

Removal from office.

As vacancies may occur, by death, or resignation, in offices, which the public good requires to be immediately filled, the President has power to fill up all vacancies that may happen during the

Vacancies.

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Vacancies. recess of the Senate, by granting commissions, which shall expire at the end of their next session.

Duty to give information.

It is the duty of the President, to give to Congress, from time to time, information of the state of the Union, and recommend to their consideration, such measures as he shall judge necessary, and expedient. This he does by means of messages, sent to Congress, or to either House, as the case may require. During the administration of the first two Presidents, the President, in person, met Congress, at the commencement of each session, and delivered to them his addresses, on the state of the Union. But that practice has been discontinued, and all the messages of the President, to Congress, or to either House, are now sent by his private Secretary. The messages are the regular sources of information, upon which Congress are to act, in legislating upon either domestic or foreign affairs.

To convene Congress.

The President may, on extraordinary occasions, convene both Houses of Congress, or either of them. The separate attendance of the Senate may be necessary, to ratify a treaty, which may require immediate attention; but the House of Representatives cannot perform any public act, without the concurrence of the Senate. In case of disagreement between the two Houses, with respect to the time of adjournment, the President may adjourn them to such time as he shall think proper. "He shall take care that the laws be faithfully executed; and shall commission all the officers of the United States."

Impeachment.

In addition to the restraints imposed by a sense of duty, and the fear of public censure, the Constitution provides, that the President, Vice President, and all civil officers of the United States, shall be removed from office, on impeachment

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for, and conviction of treason, bribery, or other high crimes and misdemeanors. Impeachment is a mode of trial, taken from the British constitution, where it is adopted, in cases where it is supposed "the ordinary magistrate either dares not, or cannot punish."* The people, by their representatives, the House of Commons, *impeach*, or accuse, public officers, before the House of Peers, who are thought to stand sufficiently impartial, between the people, and the accused, to be a proper tribunal for this purpose; and, to be so independent, as to give their decision uninfluenced by popular excitement, or the power of the accusers.

Impeachment.

The same reasoning does not apply in this country; but still, impeachments may be useful here. The crimes which may be committed by public officers, prompted by avarice, ambition, or foreign influence, are so numerous, and so complicated, that it is well to provide a way in which they may be tried without the strictness and precision of form, required in ordinary legal proceedings. Judgment, in cases of impeachment, is limited by a former section of the Constitution "to removal from office, disqualification to hold and enjoy any office of honour, 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." The President's power to pardon, as already noticed, does not extend to cases of impeachment, because the accusation is made in a peculiarly solemn manner, by the representatives of the people, and is generally against officers appointed by, or deriving their authority from him.

The Constitution says "all civil officers," which has been held to mean all executive and

Who may be impeached.

* 4 Bl. Comm. 260.

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Who may be impeached.

judicial officers; but the Senate has decided that it does not include Senators,* nor, (it is presumed,) Representatives. But, little practical inconvenience can probably arise from this exemption, since either House may expel a member for any crime or misdemeanor which would justify an impeachment; though he might again be entrusted with office, if the people thought him worthy of confidence.

* Serg. Const. Law, 376.

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CHAPTER X.

THE JUDICIARY.

Supreme Court.

The third article of the Constitution relates to the Judiciary; and declares, that the judicial power of the United States shall be vested in one Supreme Court; and in such inferior courts, as Congress may from time to time ordain and establish.

Judges permanent.

The judges, both of the Supreme, and inferior courts, shall hold their office during good behaviour; and shall, at stated times, receive for their services, a compensation, which shall not be diminished during their continuance in office.

Inferior Courts.

The Supreme Court is thus established by the Constitution; but the details of its organization are left to Congress, who have also the power, to create and establish such inferior courts as they may deem proper.* But all the judges hold

* In the exercise of this power, Congress have established Circuit Courts and District Courts. The United States are divided into seven great circuits, in each of which Circuit Courts are held by one of the judges of the Supreme Court and the district judge of the district. These courts have jurisdiction in civil suits when the amount in controversy exceeds $500; and in all criminal cases cognizable under the authority of the United States. The District Courts are held by district judges, in the districts into which the United States are divided for this purpose, each State generally being one district, though some of the larger States are divided into two. These courts have jurisdiction of all inferior crimes and offences cognizable under the authority of the United States, and committed within their respective districts, or upon the high seas; of all civil causes of admiralty and maritime jurisdiction, and of seizures under the revenue laws of the United States; of civil suits in which the United States are plaintiffs, and the amount in dispute exceeds $100; and of all suits, within certain limits, against consuls and vice consuls. An appeal lies from the District Courts to the Circuit Courts, and from these, in some cases, to the Supreme Court.

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Inferior Courts.

their office during good behaviour, and have fixed, permanent salaries.

Compensation of Judges.

A change of circumstances, during the period of their continuance in office, may render what was a competent salary at the time of their appointment, a very insufficient support; and therefore it may be increased, if Congress think proper; but it cannot be diminished. This permanency of continuance, and support, affords the best security for that independent exercise of judgment, which is essentially requisite to the right performance of judicial functions. Without it, the judges would be dependent upon the power from which they were to derive their maintenance; and would, unavoidably, be under its control. But, though thus raised above the fear of undue influence from the other departments, they are not left without any control upon their conduct. They are liable to impeachment, for any abuse of their trust; and to be removed from office, upon conviction before the Senate.

Extent of judicial power.

The judicial power of the United States extends to ten descriptions of cases, viz. 1st, To all cases arising under the Constitution; because the meaning, construction, and operation of a contract ought always to be ascertained by all the parties, not by authority derived only from one of them. 2d, To all cases arising under the laws of the United States; because as such laws, constitutionally made, are obligatory on each State, the measure of obligation and obedience ought not to be decided, by the party from whom they are due, but from a tribunal deriving authority from both the parties. 3d, To all cases arising under treaties made by their authority; because as treaties are compacts made by, and obligatory on the whole nation, their operation ought not to be affected, or regulated by the local laws or courts of a part of the nation. 4th, To

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Extent of judicial power.

all cases affecting ambassadors, or other public ministers, and consuls; because as these are officers of foreign nations, whom this nation are bound to protect, and treat according to the laws of nations, cases affecting them ought only to be cognizable by national authority. 5th, To all cases of admiralty and maritime jurisdiction, because the seas are the joint property of nations, whose rights and privileges relative thereto, are regulated by the law of nations and treaties, such cases necessarily belong to national jurisdiction. 6th, To controversies to which the United States shall be a party; because, in cases in which the whole people are interested, it would not be equal or wise to let any one State decide and measure out the justice due to others. 7th, To controversies between two or more States; because domestic tranquillity requires that the contentions of the States should be peaceably terminated by a common judicatory; and, because, in a free country, justice ought not to depend upon the will of either of the litigants. 8th, To cases in which a State sues the citizens of another State; because when a State has demands against some citizens of another, it is better she should prosecute such demands in a national court, than in a court of the State to which those citizens belong; the danger of irritation, and criminations arising from apprehensions and suspicions of partiality, being thereby avoided. 9th, To controversies between citizens of the same State, claiming lands under grants from different States; because, as the rights of the two States, to grant the land, and drawn in question, neither of the two States ought to decide the controversy; and 10th, To controversies between a State, or the citizens thereof, and foreign States, citizens or subjects; (except suits by individuals against a State,) because, as every nation is responsible, for the conduct of its citizens towards other nations, all questions touching the justice due to

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Extent of judicial power.

foreign nations, or people, ought to be ascertained by, and depend on, national authority.*

Originally, suits against a State, by citizens of other States, or foreigners, were included in this power; but the States were unwilling to appear in the federal courts, at the suit of individuals; and therefore an amendment to the Constitution was adopted, which declares that 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.

The objects of the judicial power.

From this summary, taken from the opinion of Chief Justice Jay, in a case decided by the Supreme Court, it appears, that the cases comprehended within the judicial power of the Union, are those which appropriately belong to the general government, either from being matters of general interest, or such as could not properly be left to the States; or from their relation to foreign nations. This was necessary to secure the peace and harmony of the Union. The judicial authority of every government must be co-extensive with its legislative power, or it will be incapable of carrying its laws into effect. To have restrained the federal judiciary within narrower limits, would have rendered the federal government dependent upon the States for the execution of its laws; which was one of the principal evils under the old confederacy, intended to be remedied by the new Constitution.

Authority of the judiciary to declare laws void.

It is therefore expressly declared that, "the judicial power shall extend to *all cases* arising under this Constitution, the laws of the United States, and treaties made, or to be made, under their authority." This necessarily gives to the

* Chisolme *v.* The State of Georgia, 2 Dall. 475.

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courts authority to declare an act of Congress, an article in a State constitution, or a State law, which is inconsistent with the Constitution of the United States, void. When a question of this kind arises, and is brought before the Supreme Court for adjudication, its decision must be final, and conclusive; because the Constitution gives to that tribunal, power to decide, and has given no appeal from its decision.

Authority of the judiciary to declare laws void.

The people of the United States have declared the Constitution to be the supreme law of the land, and entitled to implicit obedience. Every act of Congress, every act of the Legislatures of the States, and every part of the Constitution of any State, which is repugnant to the Constitution of the United States, is, necessarily, void. The judicial power of the Union is declared to extend to *all cases* in law and equity arising under the Constitution; and to the judicial power it belongs, whenever a case is judicially before it, to determine what is the supreme law of the land. And this power, in the last resort, is vested, by the Constitution, in the Supreme Court of the United States.*

Some have imagined that this makes the judiciary superior to the Legislature; but this is a mistake, arising from an improper view of the nature of their respective functions. They are both equal, but both inferior to the Constitution, which is the direct expression of the will of the people. The Judiciary does not go out of its proper sphere to annul acts of the Legislature; but the courts must decide cases brought before them, according to the law of the land. It is not pretended that a legislative act, contrary to the Constitution, is valid. If such an act be presented to the court, the judge must determine

Not superior to other departments.

* 1 Kent's Comm. 293, 294.

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Not superior to other departments.

which they will obey, the act of the Legislature, or the Constitution. No one could doubt that they should prefer the Constitution, and the consequence is, that the law is pronounced void.

Nor does the conclusion by any means suppose a superiority of the judicial to the legislative power. It only supposes that the power of the people is superior to both; and that where the will of the Legislature, declared in its statutes, stands in opposition to that of the people declared in the Constitution, the judges ought to be governed by the latter, rather than the former. They ought to regulate their decisions by the fundamental law, rather than by those which are not fundamental.*

The same reasoning applies to State constitutions, and State laws; and it is no derogation from the dignity of a State, that one of its laws should be declared void, if contrary to the Constitution of the United States, any more than if one of its own courts exercised the same authority in relation to its own Constitution. If a State law be contrary to the Constitution of the United States, and the Supreme Court have to decide which it will consider superior, it undoubtedly must prefer the latter. A contrary determination, would be subversive of all government.

This authority necessary.

This is a very delicate trust confided to the Judiciary; but it must reside somewhere, else there would be no common standard of construction, no arbiter of the differences, which must arise among the members of the government. The people have placed it in this department, by declaring, in the Constitution, that the Constitution is the supreme law of the land, and that the judicial power shall, extend to *all cases* in law or equity arising under the Constitution. And the

* Federalist, No. 78.

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Supreme Court has been wisely designated for this purpose. The judges of this court are selected from the nation at large, for their integrity, ability, and legal acquirements: they are, therefore without local partialities or prejudices. They are raised, by their situation, above all dependence upon the other departments of government, or fear of undue influence; and their ordinary occupation leads them to a thorough acquaintance with the principles of the Constitution, and the laws of the several States, as well as of the Union. They have no interest but to promote the general good; and there is therefore, every reason to expect that their decisions will be correct. It is true, they are men, and therefore, liable to err; but it would be impossible to constitute a tribunal with greater prospect of correctness, or to which equal, if not greater, objection might not be made.

This authority necessary.

It sometimes happens, that questions respecting the constitutionality of laws, arise in cases before the State courts, which they must determine in the first instance. But it is evidently necessary that the ultimate decision must be made by the Supreme Court of the United States; for otherwise, there might be conflicting decisions, on the same point, in different States; and that which was decided to be constitutional, and valid, in one State, might be considered unconstitutional, and void, in another.

Appeal from State courts.

It is therefore provided, by the twenty-fifth section of the judiciary act of 1789, that the final judgment or decree in any suit in the highest court of a State, in which a decision could be had, where the validity of a treaty or statute of, or an authority exercised under, the United States is drawn in question, and the decision is against its validity; or where is drawn in question the validity of a statute of, or authority exercised under, any State, on the ground of its being

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Appeal from State courts.

repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of such its validity; or where is drawn in question the construction of any clause of the Constitution, or of a treaty, or statute of, or commission held under the United States, and the decision is against the title, right, privilege, or exemption, specially set up or claimed by either party, under such clause of the said Constitution, treaty, statute, or commission, it may be re-examined, and reversed or affirmed, in the Supreme Court of the United States.

This leaves to the States the opportunity of deciding such questions, in their highest tribunals; but reserves the ultimate decision for the Supreme Court; and is, clearly, in accordance with the Constitution. That instrument declares that the judicial power of the Union shall extend to all cases in law or equity, arising under the Constitution, laws, and treaties of the United States; and if there could be no appeal from the State courts, there would either be many cases arising under the Constitution, laws, and treaties of the United States, to which the judicial power of the Union would not extend; or it would be necessary to make some arrangement, by which such cases should be originally decided in the Federal courts. Without this ultimate resort to the Supreme Court, the Union could not be preserved; but would be entirely dependent upon the State Legislatures, which might enact laws destructive of all its powers, without any control but their own will; as was the case under the former confederation.

Ambassadors, &c.

In all cases, affecting ambassadors, other public ministers, and consuls, and those in which a State shall be a party, the Supreme Court has original jurisdiction. In all the other cases, the jurisdiction of this court is by appeal, with such

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exception, and under such regulations, as Congress may make.

Ambassadors, &c.

Crimes to be tried by jury.

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 crimes shall have been committed; but when not committed within any State, the trial shall be at such place, or places, as Congress may, by law, have directed. Trial by jury, has always been esteemed as the palladium of liberty; the security of individuals, against oppression by the government; and, therefore, it is expressly secured by the Constitution.

Rights of accused persons.

So important was it considered, that an amendment was proposed, and adopted, soon after the organization of the government, which declares that in all criminal prosecutions, the accused shall enjoy the right of a speedy and public trial by an impartial jury, of the State or 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 in his defence.

To those who are unacquainted with the practices of other countries, this extreme caution may appear unnecessary; but when it is recollected, that there are countries, in which persons are sentenced, and punished, without any public trial; without seeing, or knowing the witnesses against them, or having any opportunity of procuring witnesses in their favor; and even, sometimes, without being informed of the nature of the accusation against them; the wisdom of every precaution against the introduction of such monstrous practices into this country, will be acknowledged. Even in England, persons accused, (except in cases of treason, and misdemeanor,) are

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Rights of accused persons.

not allowed to have the assistance of counsel in their defence, but under considerable restriction.

Treason.

The Constitution declares that treason against the United States shall consist, *only* in levying war against them, or adhering to their enemies; giving them aid and comfort. And 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. This is a wise restraint upon the Legislature, calculated to guard against flagrant abuses, which have been experienced in other countries.

Treason, such as it is defined by the Constitution, is the greatest crime against the community; and deserves the severest punishment; because it aims at the destruction of the government, and the subversion of the first principles of society. But the perversion of the law of treason, has been one of the greatest engines of tyranny, and oppression: offences have been included in it, which had no relation to the existence of government; and under some of the arbitrary sovereigns of England, even to speak, or think evil, of the monarch, subjected the offender to the punishment of a traitor.

In trials for treason, too, the rules of evidence were made to conform to the wishes of the prosecutors, so that testimony of the most suspicious character was held sufficient for conviction. The fate of Sidney, who was convicted, and executed for treason, on the evidence of a manuscript treatise on government, found in his desk, is well known. All this has been guarded against, by defining, in the Constitution, what shall be deemed treason; and requiring the testimony of witnesses to the same overt act; or the open confession of the accused, for his conviction.

The nature, and the proof of treason, being thus ascertained, Congress have the power to

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declare its punishment; "but no attainder of treason shall work corruption of blood, or forfeiture, except during the life of the person attainted."

Treason.

By the law of England, when sentence of death is pronounced for any crime, the immediate, inseparable consequence, is *attainder*. "For," says Blackstone, "when it is now clear beyond dispute, that the criminal is no longer fit to live upon the earth, but is to be exterminated as a monster and a bane to human society, the law sets a note of infamy upon him, puts him out of its protection, and takes no farther care of him, than barely to see him executed. He is then called attaint, *attinctus*, stained or blackened."*

Attainder.

The consequences of this attainder, are forfeiture and corruption of blood; that is, all his property is forfeited to the King, including even that species of estate, called *estate tail*, in which he has but a life interest, to the utter ruin of his family: and his blood is considered as corrupted, so that he can neither inherit lands himself, nor can his children, or any other person, inherit them, if they are obliged to trace their title through him. Both these relics of feudal barbarism are prohibited by our Constitution.

Forfeiture and corruption of blood.

* 4 Bl. Comm. 380.

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CHAPTER XI.

MISCELLANEOUS SUBJECTS.

Miscellaneous subjects.

HAVING, in the first three articles, provided for the organization, and prescribed the powers and duties of the three great departments of government, the Legislative, the Executive, andthe Judicial, the Constitution proceeds to specify some other particulars, not strictly comprehended in either of them.

Records, &c.

From the intimate connexion of the States, and the constant intercourse among their respective citizens, it must frequently happen, that the laws, and judicial proceedings of one State, will affect the interest of the citizens of other States, who may acquire titles under them, or whose contracts may be regulated by them. It is, therefore, declared by the Constitution, that "full faith and credit shall be given, in each State, to the public acts, records, and judicial proceedings of every other State; and Congress may, by penal laws, prescribe the manner in which such acts, records, and judicial proceedings, shall be proved, and the effect thereof. This has been done by acts of Congress, directing the manner in which they shall be certified, in order to prove them before the Courts of the different States.

Citizenship.

For all national purposes embraced by the Constitution of the United States, the States compose but one nation. There ought, therefore, to be no invidious distinctions between the citizens of the several States; the intercourse between them should be perfectly unrestrained; and in whatever part of the Union they may go, they should feel that they are still in their own country. The Constitution, therefore, declares that the citizens of each State, shall be entitled to all the privileges,

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and immunities, of citizens in the several States. This means, that the rights of all persons, citizens of either of the United States, shall be equal in any particular State.*

Citizenship.

No State can, by law, confer upon its own citizens privileges, which it denies to the citizens of other States; but, there is no constitutional objection to a law, imposing restraints upon the citizens of other States, in common with its own citizens. A State law, forbidding all others, but its own citizens, to exercise certain rights, would be void, as against the citizens of other States; but if it forbid the exercise of those rights by any persons, except under certain restrictions, the citizens of other States could not exercise those rights in that State, without complying with the requisitions of the law, although they might not be subject to the same restrictions in their own State.

Fugitive criminals.

From the comity which subsists between independent nations, persons charged with crimes, in one country, and fleeing to another, to escape punishment, are sometimes given up, by the nation to which they have fled; and, it is not unusual, to introduce stipulations to this effect, into treaties between nations. But without such engagements, there is no positive obligation upon a nation, to surrender those who have fled to it for refuge; and the variety of punishment annexed to the same offence, in different places, may make a nation unwilling to subject an offender to what it may consider an unjust severity. The connexion between these States, made it essential to the security of individuals, and the peace and harmony of the Union, that offenders should not escape punishment, by going into another State; therefore, the Constitution provides, that a person, charged, in any State, with treason, felony,

* Serg. Const. Law, 394.

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Fugitive criminals.

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.

Fugitive slaves.

No person, held to service or labour, 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 labour, but shall be delivered up on claim of the party to whom such labour or service may be due. This provision relates to that class of men who are held in bondage in some of the States, and are sometimes tempted to escape into the non slave-holding States, in the hope of gaining their freedom by that means. These States might be induced, by views of humanity, or other motives, to shelter the fugitives, and throw obstacles in the way of their recovery. This, if allowed, would be a constant source of dissention between the States, and might lead to the most serious consequences. The holding of slaves is a domestic concern, with which other States ought not to interfere; and, as long as it is permitted in any of the States, the peace of the country requires that the rights of the masters should be respected. This, therefore, is a wise provision, not adding any sanction to domestic slavery, but leaving it to be settled by each State, for itself, without the interference of the others. Without it, the southern States would probably not have consented to the Union.

Admission of new States.

The next section provides for the admission of new States into the Union, which may be done by Congress; 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, without the consent of the legislatures of the States concerned, as well as of

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Congress. This precaution was required to prevent portions of the larger States from erecting themselves into separate governments, upon any temporary dissatisfaction; or the smaller States being united to others, without their consent. When a territory becomes sufficiently populous to entitle it to the rank of a State, the inhabitants form a Constitution, which is submitted to Congress, and, if approved of, as consistent with the Constitution of the United States, the new State is admitted into the Union.

Admission of new States.

Congress have power to dispose of, and make all needful rules, and regulations, respecting the territory, or other property, belonging to the United States. This applies to lands, lying out of the limits of any particular State, and places ceded to the United States, by the several States, for public purposes, such as forts, arsenals, &c., and all moveable property belonging to the Union. But the general government cannot cede to a foreign nation, or otherwise dispose of the territory of any of the States. At the time of the formation of the Constitution, there was some doubt, whether the lands, lying to the west of the then existing States, ought to belong to the United States, as obtained by the combined power of the Union, or to the particular States which claimed them. There were also conflicting claims of different States, in relation to them. It was, therefore, expressly declared, that nothing in this Constitution shall be so construed, as to prejudice any claims of the United States, or of any particular State. These lands have since been ceded to the Union, by the States which claimed them.

The territory and property of the United States.

The last section of this article declares, that 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

Republican form of government guaranteed.

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Republican form of government guaranteed.

executive, (when the legislature cannot be convened,) against domestic violence. The governments, both of the Union, and of all the States, are essentially republican; the people are attached to this form, and are desirous that it shall be continued, under the firm conviction, that it is the most perfect in itself, and the best calculated to promote their happiness, and welfare. It is, therefore, made a part of the compact of Union, that the form shall be continued, in every State, and that the power of the general government shall be exerted, if necessary, for its preservation.

Other confederacies have comprised States, differing from each other in the form of their governments, but it is always a source of jealousy, and discord; it was wise, therefore, independently of the attachment to this particular form, to provide for uniformity in this respect, among the members of the Union. The force of the Union will, of course, be exerted to repel the invasion of a foreign foe, but it is not authorized to interfere with the domestic concerns of a State, unless called for by the legislature, or the executive, when the emergency does not admit of delay.

Amendments.

The fifth article provides a mode in which amendments may be made to the Constitution. A written Constitution, granting specific powers to government, and confining its operations within certain prescribed limits, was a grand experiment, which had never before been attempted on the same scale. The Convention did not suppose that their production was perfect; some parts had been the result of compromise between contending interests, and some were introduced to accommodate it to the peculiar state of feeling which existed at the time. Changes in the circumstances of the country might require corresponding alterations in the government; it might be necessary to enlarge, or restrain the powers

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conferred; or experience might prove, that some of its provisions would have an effect different from what was anticipated. The framers of the Constitution were aware of this, and, therefore, wisely provided a method, by which it may be amended, without disturbance of the public tranquillity, or injury to the general system.

Amendments.

The mode is this: 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 the one or the other mode of ratification may be proposed by Congress.

Advantages of the plan.

This plan has several striking advantages. In the first place, it secures great caution, and deliberation, which ought always to be exercised in making any alteration in the fundamental law. Again, specific amendments are to be proposed, which may be added to the Constitution, without interfering with the ordinary operations of government, or deranging the general system. Moreover, by this means, the attention of the nation will be directed to the particular alterations suggested, and the deliberate opinion of the people, as to the necessity, or propriety of their adoption, fully ascertained. As Congress are the agents of the people, immediately occupied in administering the government, they will be most likely to perceive its defects, and, therefore, they may propose amendments, if two-thirds of both Houses deem it necessary.

But it may happen, that the Constitution may be found to abridge too much, the rights of the States, or the people; or to confer too great

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Advantages of the plan.

powers on the general government, defects which might not be felt by Congress, or if felt, they might not be disposed to remedy them; the State legislatures, therefore, who are the vigilant guardians of their own, and the people's rights, and more intimately acquainted with their domestic concerns, may apply to Congress, who are bound, on the application of two-thirds of them, to call a convention for proposing amendments.

The amendments thus proposed, either by Congress, or by the convention, assembled on the application of the State legislatures, and to be submitted to the people of the several States, either in their respective legislatures, or in convention called for the purpose; and, if approved and ratified by three-fourths of the States, they become part of the Constitution. This process will, of course, require a considerable time, and that is not the least of its advantages; for, no alteration should be made at the instigation of sudden feeling, to suit temporary convenience; or, without the utmost caution, and deliberation. The happiness and prosperity of the nation depend, under Providence, upon the stability of its institutions; and nothing can have a more ruinous effect, than fluctuation and uncertainty in first principles.

Restrictions of power of amendment.

There were but two restrictions upon the power of amendment. The first, that no amendment made prior to the year one thousand eight hundred and eight, should, in any manner, affect the first and fourth clauses in the ninth section of the first article. These clauses relate to the importation of slaves, and the assessment of direct taxes; and being matters of contract, were not to be altered. The former was temporary in its terms; and, as has been already noticed, the importation was forbidden as soon as the prohibition expired. The latter, which was inserted to counterbalance the influence which the southern States derived

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from slave population, was not to be altered while they could increase that population by foreign importation. But that time has now passed, and the mode of levying direct taxes may be altered, if the requisite majority think it advisable.

Restrictions of power of amendment.

The other restriction is, that no State, without its consent, shall be deprived of its equal suffrage in the Senate. This was introduced for the protection of the smaller States, who might otherwise be deprived of this equality, by a constitutional majority of the States. This restriction is, of course, permanent.

Former debts and engagements.

The Congress of the United States, under the articles of confederation, had made great exertions, during the struggle for independence, in which they had contracted engagements, and incurred debts, which some persons were apprehensive might not be considered binding upon the new government. But this would be contrary, both to the principles of justice, and the law of nations, in which it is a rule, that a nation continues bound by all its engagements, no matter what changes may be made in its government. In accordance with this rule, and to obviate any difficulty on the subject, the Constitution declares that 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.

The supreme law of the land.

The government of the United States, though limited in its powers, to certain prescribed objects, is yet supreme, within the sphere of its action. It is the government of the people of the United States, and emanates from them. Its powers were delegated by all, and it represents all, and acts for all. In respect to those subjects, on which it can act, it must necessarily bind its component parts; and no State government has a

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The supreme law of the land.

right to impede, or in any way interfere with its acts, within the sphere of its constitutional authority.* This would follow from the nature of the government, and the absolute necessity of such an overruling power, to perform its appropriate functions.

But it is also expressly declared by the people, to be their intention, in the second section of the sixth article of the Constitution, where they say, "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." Whenever, therefore, the Constitution, or the laws of any State, come in conflict with the Constitution, or the constitutional treaties, or laws, of the United States, the judges of the State courts, as well as those of the Union, are bound to give effect to the acts of the general government; and to declare the State acts invalid, so far as they come in collision with them. In doing this, it should be remembered, that they are not exalting a foreign government, or in any way infringing the rights of the people of the State; but merely carrying into effect the will of that very people, as expressed in the Constitution of the United States.

Treaties.

There is a slight variation in the terms used in this section, in relation to laws, and to treaties; the former being those made "in pursuance of the Constitution," the latter, "under the authority of the United States." The reason is, that there were treaties already in existence, which were to be considered as part of the supreme law, though not made under this Consti-

* 1 Kent's Comm. 382.

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tution. But all treaties made since that time, must be in the mode prescribed by the Constitution, or they cannot be said to be made under the authority of the United States.*

Treaties.

To add the sanction of religious obligation, to this supremacy of the general government, the senators and representatives of the Union, 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. The Constitution of the Union is thus incorporated into, and made an essential part of the Constitution of each State; so that every department of the State government is to submit to it, and acknowledge its authority; and a State legislature, or executive, acting in opposition to it, violates the will of its constituents, as directly, as if it disregarded its own particular Constitution.

Oath to support the Constitution.

"But no religious test shall ever be required as a qualification to any office or public trust under the United States." The people of the United States were so fully aware of the evils which arise from the union of Church and State, and so thoroughly convinced of its corrupting influence, upon both religion, and government, that they introduced this prohibition into the fundamental law.

Religious test.

It has been made an objection to the Constitution, by some, that it makes no mention of religion, contains no recognition of the existence and providence of God; as though his authority were slighted or disregarded. But such is not the reason of the omission. The convention, which framed the Constitution, comprised some of the wisest and best men in the nation; men

* Rawle on the Const. 60.

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Religious test.

who were firmly persuaded, not only of the divine origin of the Christian religion, but also, of its importance to the temporal and eternal welfare of men; the people, too, of this country, were generally impressed with religious feelings; and felt, and acknowledged, the superintendence of God who had protected them through the perils of war, and blessed their exertions to obtain civil and religious freedom. But there were reasons why the introduction of religion into the Constitution, would have been unseasonable, if not improper.

In the first place, it was intended, exclusively for *civil* purposes, and religion could not be regularly mentioned, because it made no part of the agreement between the parties. They were about to surrender a portion of their civil rights, for the security of the remainder; but each retained his religious freedom, entire and untouched, as a matter between himself, and his God, with which government could not interfere. But even if this reason had not existed, it would have been difficult, if not impossible, to use any expression on this subject, which would have given general satisfaction. The difference between the various sects of Christians is such, that while all have much in common, there are many points of variance; so that in an instrument, where all are entitled to equal consideration, it would be difficult to use terms in which all could cordially join. Besides, the whole Constitution was a compromise, and it was foreseen that it would meet with great opposition, before it would be finally adopted. It was therefore important to restrict its provisions to things absolutely necessary; so as to give as little room as possible to cavil. Morever, it was impossible to introduce into it, even an expression of gratitude to the Almighty, for the formation of the present government; for when the Constitution was framed, and submitted to the people, it was en-

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tirely uncertain whether it would ever be ratified, and the government might, therefore, never be established.

Religious test.

The prohibition of any religious test for office was wise, because its admission would lead to hypocrisy, and corruption. The purity of religion is best preserved by keeping it separate from government; and the surest means of giving to it its proper influence in society, is by the dissemination of correct principles, through the medium of education. The experience of this country has proved, that religion may flourish in all its vigor and purity, without the aid of a national establishment; and the religious feeling of the community is the best guarantee for the religious administration of government.

Ratification.

The seventh and last article declares, that the ratification of the conventions of nine States, shall be sufficient for the establishment of this Constitution, between the States so ratifying the same. It was foreseen that the Constitution would meet with much opposition, and that some States might even refuse, for a considerable time, to accede to it. But the evils of the former confederation were so apparent, and the danger to be apprehended from the failure to form a new, and more energetic government, so great, that it was thought better to give the new Constitution a fair trial, if a respectable majority of the States would agree to it, even if it were not consistent with the views or wishes of all.

To have required unanimity for its adoption, would have placed it in the power of an inconsiderable minority, to prevent its going into operation; whereas, if nine were willing to accept it, the experiment might be made on a sufficiently large scale; and if it proved successful, the others might, afterwards, be induced to come into the measure.* The result proved the wisdom of

* Federalist, No. 40.

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Ratification.

this plan; for some of the States persisted a long time in refusing their consent; and it is probable this would have been persevered in, to the entire rejection of the Constitution, if unanimity had been required. The consideration that their opposition would be unavailing to prevent the other States from uniting under the new form of government, while they would be shut out from its benefits, no doubt, had great weight in inducing them to adopt the same resolution, of which they have never since had reason to repent.

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CHAPTER XII.

THE AMENDMENTS.

The amendments.

When the Constitution was submitted to conventions, called for the purpose, in the several States, it every where met with violent opposition, and a great variety of objections were urged against it. The most plausible, and most likely to have weight with the people, were those which were founded on the great power with which it invested the general government, and the fear that the influence of the States would be greatly impaired, if not altogether destroyed, by the supremacy of the Union.

Many amendments were suggested, abridging the powers granted by the Constitution, or securing the rights of the States, and the people, which were supposed to be in danger; and, in some of the States, it was proposed, to make the adoption of amendments proposed by them, a condition of their acceding to the Union. But the impropriety of this course was evident, as it would materially impair the plan proposed by the Convention, and make it subject to the will of each State offering amendments; thus mutilating it, and preventing its merits from being fairly tested. Its friends, therefore, prevailed, in procuring its ratification, in its original form, by eleven of the States, with the understanding that some of the amendments, most earnestly insisted on, should be made after its adoption, in the mode provided in the Constitution itself. The advantage of this course was twofold. First, the new government, so much required by the situation of the country, was organized sooner than it could otherwise have been; and next, only such alterations would be made in the Constitution, as three-fourths of the States should agree in thinking expedient.

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The amendments.

Accordingly, the first Congress, during their first session, proposed ten distinct articles, selected chiefly from those which had been suggested in the State conventions, which, having been ratified by the legislatures of the requisite number of States, are now a part of the Constitution. These additional articles consist principally of abstract declarations, asserting the rights of the people, and expressly restricting the powers of the government, in certain particulars, where it was apprehended that the latter might be abused, or the former endangered, without this precaution. From the nature of the new government, possessed of only limited powers, granted by a written instrument, it could not have gone beyond the prescribed limits, even if these express restrictions had not been imposed; but the anxiety of the people to secure their liberty against every invasion, would not permit them to leave any room for doubt upon this subject.

Rights of conscience.

By the first article, it is declared, that Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances. The imposition of any "religious test" had already been prohibited by the Constitution, and nothing in it could be construed to invest the government with a right to interfere in matters of religion. But such was the solicitude of the people on this point; such their sense of the evils of a national religious establishment, and their determination to preserve the utmost freedom of conscience; that, it was deemed proper, thus to deprive Congress of all pretence for ever attempting to legislate upon this subject.

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Freedom of speech and of the press, &c.

The other items of this article, the freedom of speech, and of the press, and the rights of informing government of the wants and wishes of the people, are essential to true liberty, and, therefore, properly placed beyond the control of Congress. But it should always be remembered, that no man has a right to use the freedom of speech, or of the press, to the injury of another; and, therefore, he must always be responsible for the abuse of them. Laws prescribing punishments for such abuse, are not forbidden by the Constitution.

The right to bear arms.

The second article of the amendments, secures the right of the people to provide for their own defence, by declaring that "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."

Quartering of troops.

The third is intended to guard against the tyranny which arbitrary governments have sometimes exercised, by keeping large numbers of troops stationed in different parts of the country, and quartered upon the peaceable citizens, to watch their motions, and hold them in subjection. "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 to be prescribed by law." The people of this country, while under the dominion of England, had felt too sensibly, the evils arising from the want of arms, and the presence of foreign troops, not to take every precaution against their recurrence.

General warrants.

The issuing of *general warrants*, that is, warrants for arresting any person whom the officer may think proper, is an intolerable engine of oppression, inasmuch as it gives to an executive officer, authority to arrest and imprison any one at his discretion, without a specific charge, and yet, under colour of legal process. Instances of

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General warrants.

this abuse of power had occurred even in England, notwithstanding the boasted liberty of her institutions; it was, therefore, right, to prevent the possibility of such a practice here; and the fourth article of the Amendments declares, that "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."

Indictments.

The fifth Article comprises several matters of interest. First, "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." The Constitution had already declared, that "the trial of all crimes, except in cases of impeachment, shall be by jury," and this amendment guards against two modes of proceeding in England, which were considered incompatible with the full enjoyment of this privilege.

Informations.—Appeals.

One is the mode of prosecution by *information;* whereby, a man may be arraigned, and tried, upon the information of the attorney-general, without the intervention of a grand jury, which is thus prohibited in this country, in all cases of capital, or otherwise infamous crimes. The other is the prosecution by *appeal,* which is defined by Blackstone to be, "an accusation by a private subject against another, for some heinous crime, demanding punishment on account of the particular injury suffered, rather than for the offence against the public.*" The punishment,

* 4 Bl. Comm. 312.

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Informations.—Appeals.

upon conviction, in this mode, is the same as upon a public prosecution, with this additional circumstance, that the king has no power to pardon the convict, because it is the individual prosecutor, and not the public, that is to be satisfied by his punishment. This is a practice of the common law, derived from those times when every offence was regarded more as an injury to the individual immediately affected by it, than to society, and might be atoned for by a pecuniary compensation paid to him. Its continuance would be an indulgence of private revenge, unbecoming an enlightened age, and a Christian country, and is, therefore, prohibited.

Jeopardy of life or limb.

"Nor shall any person," says the same Article, "be subject, for the same offence, to be twice put in jeopardy of life or limb." This has been supposed, by some, to forbid the second trial of an offender, who has once been put on his trial, which has, by some means, been interrupted, before the jury agreed upon a verdict. He has once been in jeopardy, they think, and, therefore, cannot be again tried for the same offence. But this is clearly not the meaning of this clause. It may, like the preceding one, have a reference to the trial by *appeal*, because, by that mode, a man is liable to be tried, and capitally punished, at the suit of an individual, after an acquittal on a public indictment. But its principal reason is to be found in the complicated organization of our government.

It is a rule in criminal jurisprudence, that an offender is to be tried and punished, in the territory within whose jurisdiction the crime has been committed. But it may so happen, that a crime, from its circumstances, may be punishable in two separate places, under different jurisdictions; and this might more readily be the case, in States so united by position, and community of manners, and language, as are the members of this Union.

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Jeopardy of life or limb.

For instance, if a mortal wound be inflicted in one State, upon a person who goes into another, and there dies, in consequence of it, the murderer would be punishable in either State, because the crime is considered as committed against both. Again, the same act may be prohibited by the laws of a State, and by those of the Union; and a person who commits it may be punishable by both. Thus, an attack upon the mail-stage is made highly penal by the laws of the United States; and it is also a violation of the common law of the particular States, as any other assault would be. An offender, therefore, may be tried as a mail robber under the laws of the Union, or as a common highway robber, in the State in which the act was done. But in either of these cases, if a man were tried, and acquitted, or convicted and pardoned, under one jurisdiction, it would not be right that he should again be put in jeopardy of punishment for the same offence. Natural justice would dictate this, and this clause expressly confirms it.

Testimony —legal process.

The same article proceeds to declare, that "no person 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;" principles of common sense, and common justice, from which a government, depending upon public opinion, would not readily depart, and yet, which it was well to secure by an express declaration.

Compensation for property taken for public use.

The last clause is, "nor shall private property be taken for public use, without just compensation." It is the right of every government; incident to its general powers; and, sometimes necessary to its existence, to make use of the private property of its citizens, when the public good required it. The land of an individual may be wanted for the erection of a fort, or the esta-

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blishment of a public highway; and in a variety of other instances, the welfare of society may make it necessary, to use the property of its members. In such cases, the general welfare ought not to depend upon the will of an individual, who might be unwilling, either from caprice, or from obstinacy, to allow his property to be used for public purposes. The public, therefore, have a right to take it, even without his consent. But natural law, which is natural justice, dictates that he ought not to bear the whole loss; the community which receives the benefit, ought to make him a just compensation for what is taken; and such is the received law of nations. But nations, like individuals, are too apt to neglect the precepts of justice, in the pursuit of favourite objects; and, therefore, the people of the United States have made it a part of the written law, by which their government is to be controlled, that the rights of individuals, as well as the welfare of the community, are to be protected from violation.

Compensation for property taken for public use.

The next amendment, relating to criminal prosecutions, has already been noticed, when treating of the corresponding section, under the article on the Judiciary, in the body of the Constitution.

The seventh Article declares, that "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." The right of trial by jury, in all criminal cases, had been secured by the Constitution, as originally framed; but so highly was this right esteemed by the people, that they were unwilling to allow the possibility of its being encroached upon, even in civil cases; and, therefore, added this amendment. The latter part of

Trial by jury.

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Trial by jury.

it is to prevent the infringement of this right, by the judges taking upon themselves, in any case, the power to decide upon matters of fact, which have been settled by a jury. The only proper mode of re-examining such questions, is by submitting them to another jury, by means of a new trial. The *common law*, referred to in this, and other parts of the Constitution, is the common law of England, whence, in a great measure, the principles of American jurisprudence are derived.

Bail—fines—cruel punishments.

"Excessive bail shall not be required, nor excessive fines imposed; nor cruel and unusual punishments inflicted." What shall be deemed "excessive bail," or "excessive fines," must, of course, be left to the discretion of those whose duty it is to decide upon such questions, as it depends upon the particular circumstances of each case, since the bail or the fine which would be excessive in one case, would be extremely moderate in another. All that could be done, therefore, was to declare, by these general terms, that bail is to be taken and fines imposed for the purposes of justice, not as means of oppression. The amount which will effect this object, must be determined by the proper judge, or court, in each particular case. The prohibition of cruel and unusual punishments, marks the improved spirit of the age, which would not tolerate the use of the rack or the stake, or any of those horrid modes of torture devised by human ingenuity for the gratification of fiendish passion.

Reserved rights.

The last two articles, added at that time, show the jealousy with which the people regarded the new government, and the care with which they guarded against any unauthorized extension of its power. The ninth is, "the enumeration, in the Constitution, of certain rights, shall not be construed to deny or disparage others, retained by the people." It is not to be supposed, that the

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people have retained only those rights which are expressly reserved to them in the Constitution, but all, which they have not by that instrument, granted to the government. The tenth is a repetition of the same sentiment in a different form, with the additional reservation of the rights of the separate States. "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." These are important articles, and express the sense of the people, on points of the highest consequence.

Reserved rights.

In the first place, they declare the limited authority of the national government, and leave no pretence for the doctrine that it has a right to do whatever it may think conducive to the general welfare, whether authorized by the Constitution, or not. The "supreme sovereignty," in the sense in which that phrase is used by jurists, resides in the people of the United States, not in the government; and, to them, recourse must be had in the last resort, when the limited authority of government fails. But, it is to be borne in mind, at the same time, that the people of the United States intended to invest the general government with all the powers necessary for managing the affairs of a great nation; and this ultimate resort is only to be recurred to, for the purpose of enlarging or altering the powers of government, when found necessary; the people do not, in any other way, interfere with its operations.

Authority of government limited.

But though the government is limited by the Constitution, it is not confined to those powers, *expressly* granted by the words of that instrument. As was observed in a former part of this treatise, the Constitution necessarily uses general language, and mentions the great objects to be effected, without descending into the details of the means

But not to powers expressly granted.

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But not to powers expressly granted.

by which this is to be done. Almost every express grant of power includes others which are incident to it, and necessary for its proper exercise. That such is the meaning of the Constitution, is further obvious, from the omission of the word "expressly," in the tenth article.*

By the first article of the former confederation the States reserved every power "not expressly delegated to the United States in Congress assembled." The people had felt the evils arising from this restriction, in the weakness of Congress, and its inability to execute the powers undoubtedly confided to it; and, therefore, omitted the word "expressly," in this article, which was introduced for the avowed purpose of prescribing bounds to the authority of the new government.

State governments do not possess all powers reserved.

Another observation suggested by these two articles is, that the State governments are not the depositories of all powers not delegated to the Union. Certain rights are "retained by *the people*," and the powers not delegated are "reserved to the States respectively, or to *the people*." The State governments, as well as that of the Union, are created by the people, for certain specific purposes; they are limited by their respective Constitutions, and cannot rightfully exercise any power not granted to them. Whenever, therefore, they go beyond the limits of their authority, to interfere with the general government, it is as much a violation of the will of their constituents, as if the federal government should usurp powers not granted to it. The people of the United States, acting as one nation, have formed the one; and the same people, acting in their respective States, have erected the others; and, given to each powers, for the attainment of the objects for which each was designed.

* M'Culloch *v.* The State of Maryland, 4 Wheat. 407.

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These objects are, in a great degree, destined, and require distinct spheres of operation; but where they come in contact, the general good requires, and the people have declared, that general government must prevail. Except in the cases authorized by the Constitution, neither has a right to interfere with the other.

State governments do not possess all powers reserved.

A few years after the adoption of the Constitution, the States became dissatisfied with that part of it which subjected them to be sued by individuals in the federal courts; and the third Congress, during its second session, proposed an amendment, declaring that the judicial power of the Union 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. This was ratified by the requisite number of States, and so became a part of the Constitution. This limitation was noticed while treating of the extent of the judiciary power, and it is unnecessary here to say more, than that this limitation applies only to suits brought against a State by individuals: a State may still be sued in the federal courts, by another State, or by a foreign nation.

Restriction upon the judiciary.

The last amendment was added in the year 1803, in consequence, as already mentioned, of the state of the votes for Mr. Jefferson and Colonel Burr. The same thing was likely to happen frequently, since, in the division of parties, two candidates would be selected on each side, and all the votes of each party would probably be given to the same individuals. This amendment was, therefore, adopted, changing the mode of electing the President and Vice President, principally, by making it necessary for the electors to designate, in their ballots, which of the candidates they in-

Voting for President and Vice President.

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Voting for President and Vice President.

tended for President, and which for Vice President. The object contemplated by the original plan, was to secure the two most distinguished citizens, for the two highest offices of the government; but the amendment appears to be judicious, inasmuch as it removes all doubt, as to the intention of the electors, and prevents difficulties which might otherwise occur.

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CONCLUSION.

In regarding the Constitution, a brief exposition of which has been attempted in the preceding pages, the first observation which occurs, is, that it is the deliberate expression, of the will of the whole people of the United States, as to the mode of their government; and, therefore, that all powers granted by it, and exercised under it, have the authority and support of the will of the people. This extends to every act that is constitutionally done by the government, or any department of it; which is to be considered as done by the people, since it is done under the authority given by them.

In ascertaining the limits of this authority, and the particulars to which it is to extend, the terms of the Constitution are to be liberally and fairly interpreted; and such a construction put upon them, as would be given by any candid and unprejudiced mind; not confined to their strict literal meaning, nor yet enlarged beyond their true import. It is a necessary consequence of the imperfection of language, that scarcely any instrument, of any length, can be framed, which will not admit of some variety of construction: and this is particularly the case with the Constitution; which necessarily deals in general expressions, and grants general powers, that include, and absolutely require, the exercise of others, not specified. In short, we must always recollect, when construing it, that we are examining a *Constitution*.*

The convention of 1787, presented this plan to the people of the United States, as "the result of a spirit of amity and mutual concession;" and, as such, it was accepted and ratified by them. It is acknowledged to be an experiment; but it is an experiment, made under the most favourable circumstances. Prepared by men, distinguished for their talents, integrity, and patriotism; collected from every part of the country, and well acquainted with the wants and wishes of the people; digested in a calm discussion of several months,

* 4 Wheat. 407.

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in secret session, and therefore without the influence of popular excitement; afterwards submitted to the deliberate examination of the whole community, and scrutinized with all the jealousy of party feeling, and individual opposition. And finally adopted by the people, acting in thirteen separate and distinct conventions; it is probably as perfect, and as little liable to objection as any human production can be. If it fail, there is little prospect of success for any other. It contains within itself, a provision for amendment, by which to remedy any defects in its original structure, or such as may occur in process of time. But this power should be used with great caution; and always with the conviction, that stability is an important requisite of good government; and that frequent changes are destructive of its utility. Lord Bacon says, "it is good not to try experiments in States, except the necessity be urgent, or the utility evident; and well to beware that it be the reformation that draweth the change, and not the desire of change that pretendeth the reformation."

Another important observation is, that the Constitution is not a compact of the States, but a frame of government, made by the people of the United States. The States, as such, are no parties to it: they were expressly, and intentionally excluded. Their continued existence, is, indeed, contemplated; and their action is, in some cases, essential to the proper and complete operation of the general government. But in such cases, the people have made it their duty to act, and have not given them any control over the federal government. Nor are the States in any danger from this construction. The general government is not calculated for, nor can it desire, the destruction of the State governments: and if it did, the mutual jealousy of the people of the different States, and their attachment to their local institutions, would be amply sufficient to preserve them from consolidation. Those who speak of the general government, as a foreign power, aiming at the destruction of the several States, and actuated principally by motives of ambition; seem to forget that it was formed by the people, for their own benefit; and is administered by men of their own choice, taken from among themselves, pos-

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sessing the same local attachments, and equally interested to promote the general welfare.

The great defect of the former confederation, was its want of energy; arising from the fact, that it legislated for sovereign States, who might obey its laws if they thought proper, but there was no means of enforcing obedience, except by a resort to arms. And such must ever be the case, unless the laws operate directly upon individuals, who may be coerced by the ordinary civil magistrate. To effect this, it was necessary for the States to be so closely united as to form, in some respects, but one nation. Accordingly, "to form a more perfect union," is the first declared object of the present Constitution: and for this purpose, a portion of their sovereignty was taken from the States, by the people, and given to the general government. So far, they are consolidated; but in all other respects they retain their original powers. Any attempt of the States to exercise powers taken from them, and vested in the Union, is a violation of the principles of the Constitution.

There is no provision in the Constitution for the dissolution of the Union, or the withdrawal of any one of the States from the confederacy. Such an event was, evidently, not contemplated, and cannot take place constitutionally. If it be asked whether the States are bound to continue united, without any right to resist the authority of the Union, or secede from it, in case of oppression? the reply must be, that they are; unless the oppression be of such a character as wlll justify open and forcible opposition; or, in other words, a revolution. The right of the people, to overturn an oppressive government, or refuse submission to it, lies at the foundation of our political existence; and can never be taken away by any form of government. But any thing short of this, will not justify resistance to constitutional authority.

Were the Constitution merely a *compact* between the States, no *one* of the parties would have a right to withdraw from it. The interests of all are involved; common engagements are formed, and common rights are acquired; which might be essentially injured, if one, or some of the parties, might revoke their consent to the compact. This doctrine is so familiar in the ordinary concerns of indi-

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viduals, that it does not admit of a doubt whether a man who has entered into a contract with others, is bound by the terms of it, though, from any cause he may become dissatisfied with his bargain. The principle is the same with the larger bodies whether Corporations, or States; and that it has been made a question, is to be attributed to the power and dignity of the parties, not to the doubtfulness of the subject. In treaties, which are compacts between States, no one doubts the obligation of the parties, unless in cases which justify war.

But, as has been said, the Constitution is not a mere compact, but a government, over which the States have no rightful control. It is formed by all the people, its powers are delegated by all, it acts for all, and all are subject to its authority, within its allotted sphere. In this, there is no hardship, no degradation. For the States to resist it, is to set themselves in opposition to the people. As the national government was formed by the people, so it is under their control, and depends upon them for its existence. If they find it incompetent or oppressive, they may amend or destroy it; but so long as they continue it in existence, its authority should be recognised and obeyed.

Every attentive observer, who is unprejudiced by attachment to some other form of government, must be struck with the excellence of our Constitution, and its peculiar adaptation to the circumstances of our country. Extending over an immense territory; and comprising a numerous population, having a common language, and manners, and, in all important particulars, a common interest, yet separated into rival States, of unequal magnitude, and power; no single government, without despotic power, would be sufficient for the whole. If, on the other hand, the States were completely sovereign and independent; each possessing all the powers of government, and united only by a league; the uniform experience of the world proves, that they would have been liable to constant dissentions, which would almost inevitably lead to civil wars, embittered by the very similarity of manners, and feelings of friendship which had formerly united them. The present system is a happy medium between the two extremes. The management of foreign relations, and of

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all matters of general interest, is committed to the national government; while the regulation of all local and domestic affairs, is reserved to the respective States. By this means, the system may be expanded to an indefinite extent; the nation may be increased, and strengthened by the addition of new States, and the protection of government be extended over the whole; and the interests of each portion be as carefully regarded, and preserved, as if it were the only object of attention.

But this truly grand result depends upon our union; and as we value our liberty and independence, we should cherish the Union, recollecting, that upon its preservation, depends the dignity, safety, and happiness of our country. This Union, in the language of Washington's farewell address, which ought to be engraved on the hearts of every citizen, "is a main pillar in the edifice of our real independence; the support of our tranquillity at home; our peace abroad; of our safety; of our prosperity; of that very liberty, which we so highly prize. It is of infinite moment that we should properly estimate the immense value of our national union to our collective and individual happiness; that we should cherish a cordial, habitual, and immoveable attachment to it; accustoming ourselves to think and speak of it, as of the palladium of our political safety, and prosperity; watching for its preservation with jealous anxiety, discountenancing whatever may suggest even a suspicion that it can, in any event, be abandoned; and indignantly frowning upon the first dawning of every attempt to alienate any portion of our country from the rest, or to enfeeble the sacred ties which now link together the various parts."

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APPENDIX.

Declaration of Independence.

In Congress, July 4, 1776.

THE UNANIMOUS DECLARATION OF THE THIRTEEN UNITED STATES OF AMERICA.

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 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 long established should not be changed for light and transient causes; and accordingly all experience hath shown, that mankind are more disposed to suffer

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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 Britian is a history of repeated injuries and usurpations, all having in direct object the establishment of an absolute tyranny over these States. To prove this, let facts be submited 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 repository 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 the dangers of invasion from without and convulsions within.

He has endeavoured to prevent the population of these States; for that purpose obstructing the laws of naturalization of foreigners; refusing to pass others to encourage

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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 on 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 legislatures.

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 offences:

For abolishing the free system of English laws in a neighbouring 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 forms of our governments:

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

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

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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 endeavoured 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 attentions to our British brethren. We have warned them, from time to time, of attempts 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 connexions and correspondence. They too have been deaf to the voice of justice and of 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 States 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

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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 connexion 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 honour.

JOHN HANCOCK.

NEW HAMPSHIRE.
Josiah Bartlett,
William Whipple,
Matthew Thornton.

MASSACHUSETTS BAY.
Samuel Adams,
John Adams,
Robert Treat Paine,
Elbridge Gerry.

RHODE ISLAND, &c.
Stephen Hopkins,
William Ellery.

CONNECTICUT.
Roger Sherman,
Samuel Huntingdon,
William Williams,
Oliver Wolcott.

NEW YORK.
William Floyd,
Philip Livingston,
Francis Lewis,
Lewis Morris.

NEW JERSEY.
Richard Stockton,
John Witherspoon,
Francis Hopkinson,
John Hart,
Abraham Clark.

PENNSYLVANIA.
Robert Morris,
Benjamin Rush,
Benjamin Franklin,
John Morton,
George Clymer,
James Smith,
George Taylor,
James Wilson,
George Ross.

DELAWARE.
Cæsar Rodney,
George Read,
Thomas M'Kean.

MARYLAND.
Samuel Chase,
William Paca,
Thomas Stone,
C. Carroll, of Carrolton.

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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 Heyward, jr.
Thoms Lynch, jr.
Arthur Middleton.

GEORGIA.

Burton Gwinnet,
Lyman Hall,
George Walton.

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Articles of Confederation.

In Congress, July 8, 1778.

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, Virginiu, North Carolina, South Carolina, and Georgia.

Article 1. The style of this confederacy shall be, "*The United States of America.*"

Art. 2. 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. 3. The said States hereby severally enter into a firm league of friendship with each other, for their common defence, 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 pretence whatever.

Art. 4. § 1. 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 State, 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 restrictions shall not extend so far as to prevent the removal of property imported into

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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.

§ 2. 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 the 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 offence.

§ 3. 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. 5. § 1. For the more convenient management of the general interests of the United States, delegates shall be annually appointed in such a 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.

§ 2. No State shall be represented in Congress by less than two, nor 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 any other for his benefit, receives any salary, fees, or emolument of any kind.

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

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

§ 5. 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. 6. § 1. No State, without the consent of the United States, in Congress assembled, shall send any embassy to,

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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.

§ 2. 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.

§ 3. 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.

§ 4. No vessels of war shall be kept up in time of peace by any State, except such number only as shall be deemed necessary by the United States, in Congress assembled, for the defence 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 defence of such State; but every State shall always keep up a regular and well disciplined militia, sufficiently armed and accoutred, and shall provide and constantly have ready for use, in public stores, a due number of field pieces and tents, and a proper quantity of arms, ammunition, and camp equipage.

§ 5. 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 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 de claration of war by the United States, in Congress assem

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bled, 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. 7. When land forces are raised by any State, for the common defence, all officers of, or under the rank of colonel, shall be appointed by the legislature of each State espectively 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. 8. All charges of war, and all other expenses that shall be incurred for the common defence or general welfare, 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. 9. § 1. The United States, in Congress assembled, shall have the sole and exclusive right and power of determining on peace and war, except in the 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 man-

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ner 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.

§ 2. The United States, in Congress assembled, shall also be the last 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 present 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 cannot 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

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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 pronounce sentence, or judgment, which shall in like manner be final and decisive; the judgment 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 favour, affection, or hope of reward." Provided also, that no State shall be deprived of territory for the benefit of the United States.

§ 3. All controversies concerning the private right of soil claimed under different grants of two or more States, whose jurisdiction, 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 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 disputes respecting territorial jurisdiction between different States.

§ 4. 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 and 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

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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.

§ 5. 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, 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 in 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,

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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.

§ 6. 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 in any treaties or alliances, nor coin money, nor regulate the value thereof, nor ascertain the sums and expenses necessary for the defence 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.

§ 7. 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. 10. 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,

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the voice of nine States, in the Congress of the United States assembled, is requisite.

Art. 11. 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. 12. 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. 13. Every State shall abide by the determination of the United States, in Congress assembled, in 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 legislature of every State.

And whereas it hath pleased the great Governor of the world to incline the hearts of the legislatures we rsepectively 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, fully and entirely ratify and confirm each and every of the said articles of confederation and perpetual union, and all and singular the matters and things therein contained. And we do further solemnly plight and engage the faith of our respective constituents, that they shall abide by the determination of the United States, in Congress assembled, in 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

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perpetual. In witness whereof, we have hereunto set our hands, in Congress.

Done at Philadelphia, in the State of Pennsylvania, the 9th day of July, in the year of our Lord 1778, *and in the third year of the Independence of America.*

NEW HAMPSHIRE.
Josiah Bartlett,
John Wentworth, jun.

MASSACHUSETTS BAY.
John Hancock,
Samuel Adams,
Elbridge Gerry,
Francis Dana,
James Lovel,
Samuel Holten.

RHODE ISLAND, &C.
William Ellery,
Henry Marchant,
John Collins.

CONNECTICUT.
Roger Sherman,
Samuel Huntington,
Oliver Wolcott,
Titus Hosmer,
Andrew Adams.

NEW YORK.
Jas. Duane,
Fra. Lewis,
Wm. Duer,
Gouv. Morris.

NEW JERSEY.
Jno. Witherspoon,
Nath. Scudder.

PENNSYLVANIA.
Robt. Morris,
Daniel Roberdeau,
Jona. Bayard Smith,
William Clingan,
Joseph Reed.

DELAWARE.
Thos. M'Kean,
John Dickinson,
Nicholas Van Dyke.

MARYLAND.
John Hanson,
Daniel Carroll.

VIRGINIA.
Richard Henry Lee,
John Banister,
Thomas Adams,
Jno. Harvie,
Francis Lightfoot Lee.

NORTH CAROLINA.
John Penn,
Cons. Harnett,
Jno. Williams.

SOUTH CAROLINA.
Henry Laurens,
William Henry Drayton,
Jno. Mathews,
Richard Hutson,
Thos. Heyward, jun.

GEORGIA.
Jno. Walton,
Edwd. Telfair,
Edwd. Langworthy.

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