

and expressing only such views as are well established by observation. In conclusion, we cordially thank Dr. Torrey for his agency in the re-publication of this work, for we trust it will give an impulse and direction to the study of botany which it has yet to receive on this side of the Atlantic.

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ART. III.—*Story's Constitutional Law.*

*Commentaries on the Constitution of the United States; with a Preliminary Review of the Constitutional History of the Colonies and States, before the Adoption of the Constitution.* By JOSEPH STORY, LL. D., Dane Professor of Law in Harvard University. In three volumes. 8vo. Boston. 1833.

IT would be impossible to write any thing which could properly be called a Review of this work, in much less compass than that of the work itself.—It is in fact a Review of the Constitution, preceded by a sketch of the Constitutional History of the States, before the Revolution. This introduction contains, in outline, the civil and political history of each of the American Colonies and Provinces, with indications of the peculiarities and varieties of their legislation. This is succeeded by the history of the Revolution, the formation, decline and fall of the Confederation, and the adoption, and general character of the Constitution. On this follows what properly forms the substantial portion of the work;—viz. a complete Commentary on the entire Constitution of the United States, in all its parts. It is obvious, that it embraces a vast number of separate topics; a great amount of historical facts; and a long succession of the most important discussions. The work, properly used, with a diligent and faithful resort to the authorities cited, amounts to a digested course of reading on constitutional law; and the student, well possessed of its contents, would need nothing farther in this great department, than that which the active and discriminating mind must elaborate itself, in order to make any study profitable.

It is a question that unavoidably presents itself, now we have the book, How we did without it?—It is evidently such

a course on constitutional law, as indispensable to the enlightened politician, to the accomplished lawyer, to the student of our history, and even the well informed American citizen. It would seem that no one, in either of these classes, could afford to be destitute of the information, or a stranger to the discussions, contained in this work; and yet how few of any profession possess the ability, the opportunity, and the materials for conducting their private studies to such a result, that they would find themselves the masters of the treasures contained in these volumes?—It would seem that the appearance, from time to time, of works like these is absolutely necessary, to enable the mass of men to keep along with the increasing demands of the professions. If the study of the professions were not occasionally facilitated by the preparation of a treatise like that of Blackstone, or the one before us, men would break down, under the rapidly accumulating mass of materials in all departments. It is not that the study of Blackstone can ever supersede the study of Coke; but it greatly facilitates it:—It furnishes general results, by a very compendious process, and leaves for maturer years and the urgency of specific occasions the laborious study of difficult points, in the sources. No man will be insensible to the importance of these treatises, who will consider how much form, and manner, and occasion have to do, in the imparting of knowledge. So inconsiderable a thing as the mere character, in which a book is written, is not indifferent. A person used to our common type is a little bewildered with black letter; and few individuals understand a thing in manuscript, as perfectly as in print. A child learns to speak a language correctly by the ear, long before it is capable of comprehending a rule of grammar. It is the province of a work like Mr. Justice Story's,—and by him most successfully administered,—to place the entire learning relative to the subject treated, in precisely that form which makes it most intelligible and most attractive to the student; giving him not all that the books contain, but all that the magnetism of a good mind takes up from them, as possessing the quality in request.

Such books are written from time to time; and they must be. For although when successfully executed they attain a permanent reputation and possess a permanent value, and consequently form a part of the standard literature of a profession, yet, after

a time, society assumes phases so new;—and questions so unforeseen arise;—and affairs pass through revolutions so complete, although peaceful and silent;—that new elementary treatises become necessary. Constitutional law affords curious illustrations of these circumstances. It is true, there is a somewhat alarming tendency in this country, to resist the settlement of constitutional questions; to embalm doubts in everlasting preservation; to sacrifice history, practice, authority, and acquiescence, to the contested letter of the text; yet still reason and common sense will in some things have their way; and doubts and controversies will sometimes disappear with the occasions that produced them. A comparison of the *Federalist* with the work before us, in respect to the selection of the topics of greatest interest, will illustrate our meaning. The want of a bill of rights was one of the great objections to the Federal Constitution; and the provision, giving to Congress the powers of altering by law the regulations of the States as to the time, place, and manner of holding elections for members of Congress, '*with the exception of the places of choosing senators,*' was by no means one of the least anxiously debated clauses in that instrument. In framing the Constitution, this clause was found absolutely necessary to quiet the apprehensions of those, who feared that *places* would be appointed, by the General Government, for the choice of senators, where the electing body or bodies could not easily convene; and Mr. Nicholas tells us, in the debates of the Virginia Convention,\* that the objection to the Constitution, growing out of this clause, had been echoed from one end of the country to the other. We doubt if a controversy could now be got up relative to either of these matters;—not even in Virginia, where there is such an unsated appetite for the metaphysics of the Constitution. On the other hand, the great questions which agitate the politics of the country at the present day, are scarcely glanced at in the contemporary discussions of the Constitution.

Its peculiar seasonableness at the present time gives Mr. Justice Story's work a value, which no work could have possessed under different circumstances. Constitutional law, in our day, instead of being the calm occupation of the schools, or the curious pursuit of the professional student, has become,

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\* 2 Elliott's Debates, p. 38.

—as it were,—an element of real life. The Constitution has been obliged to leave its temple, and come down into the forum, and traverse the streets. Instead of the mystery of unseen powers, with which, in more auspicious times, the fundamental law of prosperous countries usually executes itself;—its functions have been fiercely questioned, and its strength put to the utmost strain. It is visionary, at periods of excitement like those we have witnessed, to expect to convince your opponent, in the argument of the specific point at issue. Temper is up, and men hate each other for their logic. But even in times like these,—in any times,—it is not easy to resist the effect of a scientific and systematic exposition of an entire framework of government, developing the harmony of all its provisions, and unfolding the purport of the letter through the unity and connexion of the spirit.

We should be glad, if we dared promise ourselves, that this work will produce all the effect which it ought, in satisfying the public mind on questions of Constitutional Law, and putting an end to the controversies, which agitate the country. We trust, indeed, that it will have a great and salutary influence, especially on the minds of that most important portion of the population,—we mean the young men,—whose minds are not yet poisoned by party. But it seems to be the unavoidable effect of a written constitutional instrument, to promote controversy. The text of the Constitution, like the text of Scripture, furnishes topics of disputation more abundant and curious, than those which arise on matters not reducible or not reduced to writing. It is partly to be ascribed to this, that questions of Constitutional Law are so much less frequent in England than in America.

What will be the ultimate operation of *written* constitutions (purely as such), is a matter of high interest, not yet sufficiently decided by experience. In the lapse of time, changes in the fundamental law of all countries have been found necessary. Many such changes have been brought about by violent means, as the result of great revolutions. Others, not less important, have quietly and unconsciously grown up in the way of legislation. It may be doubted whether written constitutions are friendly to changes of this character. Such constitutions must, of course, contain provisions for their own amendment; but it seems essential to the plan of a written constitution, that an

amendment to it should not be made by a simple act of legislation. Every one knows the difficulty thrown in the way of all important amendments of the Constitution of the United States, by the complicated process required for that purpose. May it not happen that changes, required in the lapse of time, to suit the altered state of things, will be injuriously embarrassed or fatally obstructed by the process required to effect them? A great many plausible arguments could be adduced to show, that the equality of representation of great states and small in the Senate of the United States, is an anomaly in a popular government. Perhaps the strongest argument in favor of it is, that it was matter of compact at the outset; and that it will be a fatal error, to set the example of violating the original pledges of that compact. This argument, however, will daily grow weaker. It is a question in casuistry how long one generation can bind another. We remember to have heard the opinion expressed, eight years ago, by a very eminent disciple in the school of Nullification, that the People would not much longer allow Delaware and Rhode Island to have as much senatorial power, as New York and Pennsylvania. We think they will bear it a good deal longer. But the Constitution has provided that this article shall never be touched in the way of amendment, without the consent of the State which it might be proposed to deprive of its equal representation in the Senate; and what will be the practical efficacy of such a provision, is a question which we hope never to see put to the test.

The first portion of these Commentaries relates to the history of the Colonies and States, before the Constitution. The plan of the work required that this general survey should be brief and comprehensive. It presents the principal facts relative to each of the Colonies, in a series of chapters severally devoted to them. One of the most curious points in the history of this period, is the Confederation of the United New England Colonies. Judge Story has narrated its history\* succinctly, but sufficiently at length, for its place in the Commentaries. We are inclined to think, that both as an historical document, and as an early effort toward the accomplishment of the destiny of the American States,—a Federal Union,—it deserves an elaborate and critical consideration. The incon-

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\* Vol. I. p. 90.

venient form and dress, in which the records of the commissioners appear in Hazard's collection,—a book itself not very frequently to be met with,—repel the general reader. We beg leave to recommend to the Committee of Publications of the Historical Society, the subject of a new edition of this valuable document, in a modernized orthography, with a convenient division into chapters, an historical introduction, illustrative notes, and an index. We cannot but admire one indication of true republicanism in the mode, in which the articles of confederation were adopted by Plymouth Colony; not by the act of the colonial government alone, as appears to have been the case in Massachusetts, New Haven and Connecticut, but by the assent of the people *in the several townships*.\* The formation of this Union was delayed nearly ten years, after the time when it was first proposed, by the demand of a duty to be paid for the support of a fort at the mouth of the Connecticut.†

Mr. Justice Story justly remarks, in the general review of the history of the Colonies, which closes the first book, that the several efforts to establish a confederation, although unsuccessful, 'prepared the minds of the colonists for the gradual reconciliation of their local interests, and for the gradual development of the principles upon which a Union ought to rest.' The study of the history of the United Colonies of New England, imperfectly as it is preserved, affords no little instruction on this head; and as we know it was referred to by the framers of the Constitution, it is entitled to be regarded as authority, in the illustration of what may properly be called *union principles*. Thus the difficulty about the fort at the mouth of the river, which delayed the formation of the confederacy ten years, and formed, while it lasted, a most unpleasant subject of controversy, points directly to the expediency and policy of that portion of the Constitution, which provides that no 'vessels bound to or from one State shall be obliged to enter, clear, or pay duties in another.' In like manner, the positive acts of jurisdiction exercised by the commissioners, throw light on the essential objects and character of such a confederacy. The relations of the Colonies with the foreigners,—the French and Indians,—were a prominent subject of the care of the com-

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\* Hazard, II. p. 7.

† Id. p. 87.

missioners. They declared war, and negotiated peace, both with the Indians and the French. Conventions with both are found in the records. They took measures for the promotion of learning, by encouraging contributions to the college of Cambridge, on the modest suggestion of President Dunster, that it would be expedient to invite each head of a family to pay one peck of corn, or its equivalent, annually for that object. With a view to the preservation of the neutrality of the Colonies, in their relation with the Dutch, French, Swedes, and others, on the American continent, it was on the 5th September 1644, at a meeting at Hartford, 'ordered, that no jurisdiction, within this Confederation, shall permit any voluntaries to go forth in a warlike way against any people whatsoever, without order and direction of the commissioners of the several jurisdictions.' Substantially the same provision was made, for the credit to be given in one of the United Colonies to the judicial proceedings of another, as is made in the Federal Constitution for the like object.\* Internal improvement was pointed out by the early instinct of necessity, as a great natural object to a confederation of States. We read under the same date, in 1644, 'Whereas a petition was delivered to the commissioners, desiring the mending of some places in the way from the Bay to Connecticut, it was agreed that it be left to Mr. Hopkins, President, to take care for providing some man or men to find and lay out the best way to the Bay, and the charge to be borne by the whole.' These instances will show the interesting analogy, which may be traced between this primitive plan of confederation, and the great constitutional compact of the present day. It labored under the incurable defect of the Confederation of the Revolution. It was not a government. It assumed great and beneficial powers, but it had no officers of its own to execute them. A question early arose on this point. Massachusetts, (evinced on this and several other occasions, a great deal more jealousy of the other Colonies, than became her own great superiority in numbers), in 1648 propounded, through a committee of the General Court, a number of points of enquiry to the commissioners, one of which was expressed in the following terms.

'In such cases of civil nature, where the commissioners may

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\* Hazard II. p. 21.

have power to make orders,—yet not to have power to make general officers of a civil nature to execute such order, but the same to be executed by the officers of such jurisdictions as shall be concerned therein, and if such jurisdiction or Colony shall not submit, and perform, &c. after due admonition, then to be responsible to the other Colonies for breach of league and covenant, and to be declared what further power the commissioners have in such cases; or what will be fit to be done in case any Colony should change their religion professed, &c.'

To the limitations on their power, suggested in this article, the commissioners reply, in the following manner :

' Though the commissioners consider and order in the public concerns of the Colonies, within the compass of their trust and power contained in the articles; as in all treaties concerning peace and war, sending messengers, appointing generals, and other officers for war, when all the Colonies are interested, appointing the numbers of men, ordering provision and charges necessary for the service, giving commissions, taking accounts concerning offenders, and all things of a like nature, which are the proper concomitants or consequents of such a consideration,—yet the execution to belong to the jurisdiction wherein the commissioners sit, or where the offender is or may be found, and to the magistrates or other inferior officers; but so that if the magistrates or the officers do deny or delay execution, in any case proper to the commissioners' cognizance, and wherein the other Colonies are interested and may suffer,—such jurisdiction to be responsible for breach of covenant; but what shall be done in such case, or in case any Colony should change their religion professed, they conceive cannot be now so well resolved, as when the case in the compass and in all the circumstances shall be considered.' \*

This rude and primitive project of a confederation had nearly gone to pieces, on the question of paying duties at Saybrook fort. After a severe contestation of this question, between Massachusetts and Connecticut, it was happily settled by the accidental burning of the fort; and the Confederacy was left to exert a highly beneficial influence, in defending its members against the enemies within their borders and the adjacent provinces. At length, however, under the gloomy reign of James the Second, it perished in the general wreck of the charters.

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\* Hazard, II. 108,—115.



The Revolution in England formed an era in the history of the American Colonies. Their vacated charters were to be renewed, and rendered more conformable to their condition and the experience acquired under the earlier patents. Massachusetts, then the most important of the Colonies, put at rest by a liberal charter, enlarged by the accession of Plymouth and a quiet confirmation of her title to Maine, rose to new strength and consideration. New York, having effectually thrown off the Dutch yoke, received her first royal governor in 1619, and was already designated, by her position, and conveniences of internal communication, as a proper centre of military and political influence. Pennsylvania, after several unsuccessful modifications of her charter, received it in 1701, in the form in which it lasted till the Revolution. The power and influence of Massachusetts and the other New England Colonies were counterbalanced by the growth of Virginia and the other Southern Colonies; and an effectual foundation of colonial empire was evidently laid. The population of the different colonies in 1701, as computed by Dr. Humphreys, secretary of the Society for propagating the Gospel among the Indians, was as follows :\*

Massachusetts,	70,000	New York,	30,000
Connecticut,	30,000	E. and W. Jersey,	15,000
Rhode Island,	10,000	Pennsylvania,	20,000
New Hampshire,	10,000	Maryland,	25,000
		Virginia,	40,000
New England,	120,000	N. Carolina,	5,000
		S. Carolina,	7,000
			<hr/>
Middle and Southern			142,000
Colonies,	142,000		
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	262,000		

It was natural, under this state of things, and in the new condition of the government of the mother country, that enlarged projects for the Colonies should suggest themselves to the minds of reflecting men, and to those intrusted with the control of affairs. Dr. Davenant, in a discourse on the plan-

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\* Holmes's Annals, Vol. II. p. 537, where the authorities are given on which this statement is founded.

tation trade, published in 1698, has preserved the outlines of a plan of government for the British Colonies in America, which we presume to have been the first suggestion of the kind.\* Whether it partook in any degree of an official character, or engaged any serious attention on the part of the ministry, does not appear from the allusion to it in Dr. Davenant's work. His own position, as Commissioner of Excise and Inspector General of exports and imports, with his popularity as a writer on politics and trade, gives considerable interest to this project and his commentary upon it. The plan contemplated a Congress of the Colonies, to be composed of two deputies from each, over which a commissioner, appointed by the Crown, was to preside. The functions of this Congress, as stated by Dr. Davenant, were to hear and adjust all matters of complaint and difference between Province and Province, as

1. When persons quit their own Province and go to another that they may avoid their just debts, though able to pay them.

2. When offenders fly justice, or justice cannot well be had upon such offenders in the Provinces that entertain them.

3. To prevent or redress injuries in point of commerce.

4. To consider of ways and means to support the union and safety of the Provinces, against their common enemies, in which Congress the quotas of men and charges would be much easier allotted and proportioned, than it was possible for any establishment made in England to do; for the Provinces, knowing their own condition and one another's, could debate that matter with more freedom and satisfaction, and better adjust and balance their affairs in all respects, for their common safety.

In time of war, the royal commissioner was to be general or chief commander of the several quotas, upon such service against the common enemy, as should be thought advisable for the good and benefit of the whole.†

Mr. Pitkin, after citing these provisions of the plan for an American Congress, contained in the works of Dr. Davenant, justly exclaims: 'Thus early did British statesmen contemplate a constitution or confederation of the Colonies to manage their general concerns, as *best knowing their own condition and circumstances.*'†

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\* Davenant's works, Vol. I. 41, 42.

† Pitkin's Political and Civil History of the United States of America, Vol. I. p. 142.

We are not aware, that any further traces of this project exist in the political annals of the Colonies.

Fifty years passed away ;—a half century of great vicissitudes at home and abroad. The Colonies had steadily increased. In the war of 1744, they had made themselves known and felt in Europe. At the peace of Aix-la-Chapelle, England had nothing but Louisburg to go with into the great market of European negotiation. After a few years of restless armistice, another contest was impending. The actual possession of the region northwest of the Ohio, was to be struggled for. In 1753 the Lords Commissioners of Trade and Plantations, by order of the King, addressed a letter to the Governor of New York, requiring him to notify the Governors of Virginia, Maryland, Pennsylvania, New Jersey, Massachusetts Bay, and New Hampshire, to attend a meeting at Albany, with a view to a negotiation with the Six Nations of Indians, whom the French were strenuously exerting themselves to gain over to their interests. In the commission of the delegates from Massachusetts it is also stated, that they were appointed for the purpose (in addition to the object already mentioned) of 'entering into articles of union and confederation with the aforesaid governments, for the general defence of his Majesty's subjects and interests in North America, as well in time of peace as of war.' The Colonies, not specially named, were also to be invited by the Governor of New York to attend the meeting. Virginia and New Jersey, though specially named in the instructions from England, did not send deputies. Connecticut and Rhode Island, on the other hand, though not expressly named, appointed deputies. Hutchinson justly observes of this assembly, 'that it was the most deserving of respect of any which had been convened in America, whether we consider the Colonies which were represented, the rank and character of the delegates, or the purposes for which it was convened.\*'

The importance of this project may justify us in repeating the names of the delegates : they were as follows :

*New York*.—Joseph Murray, William Johnson, John Chambers, William Smith.

*New Hampshire*.—Theodore Atkinson, Richard Willard, Meshech Weare, Henry Sherburne.

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\* Hutchinson's History of Massachusetts Bay. Vol. III. p. 20.  
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*Massachusetts*.—Samuel Welles, John Chandler, Oliver Patridge, Thomas Hutchinson, John Worthington.

*Connecticut*.—William Pitkin, Roger Wolcott, Elisha Williams.

*Rhode Island*.—Stephen Hopkins, Martin Howard.

*Maryland*.—Benjamin Tasker, Benjamin Barms.

*Pennsylvania*.—John Penn, Isaac Norris, Benjamin Franklin, Richard Peters.

Among the manuscript treasures of the Massachusetts Historical Society, is the hitherto unpublished journal of the proceedings of this Congress,\* a transcript of which is before us. It contains the credentials of the commissioners of the several Provinces, and the journal of their proceedings in Convention at Albany. It is full upon the subject of the negotiation with the Six Nations, containing at length the addresses made to them, and their replies. On the subject of the plan of union, the journal contains only the names of the committee by whom it was prepared, with occasional notices of the discussion of their report. This committee was designated by the nomination of one, by the deputies from each Province, and consisted of the following members, viz.

Thomas Hutchinson of Massachusetts Bay,  
Theodore Atkinson of New Hampshire,  
William Pitkin of Connecticut,  
Stephen Hopkins of Rhode Island,  
Benjamin Franklin of Pennsylvania,  
Benjamin Tasker of Maryland.

The plan of union, agreed to by this Convention, was drawn up by Dr. Franklin.† His works contain the plan, with the reasons separately stated for each article, and some general considerations applicable to the expediency of the whole. It may also be found in Minot's Continuation, in Trumbull's history of Connecticut (incorrectly), and in several other histories.‡

\* Probably the same which is referred to by Belknap as 'Atkinson's MS.' Belknap's New-Hampshire, Vol. I. p. 309. Farmer's Edition.

† Franklin's Works, London Ed. III. 1.

‡ Minot's Continuation, Vol. I. p. 191. Trumbull's History of Connecticut, Vol. II. Appendix. The second article providing for a President General is here omitted. Pitkin's Political and Civil History of the United States, Vol. I. Appendix p. 429. Franklin's Works, Vol. IV. p. 5—38. Philad. Ed. 1809.

It was deemed necessary in the outset, that an act of Parliament should pass, 'by which one general government should be formed in America,' 'within and under which government each Colony may retain its present constitution, except in the particulars wherein a change should be directed by the said act.'

This new government was to be administered by a President General, to be appointed and supported by the Crown, and a grand council, to be chosen by the representatives of the people of the several Colonies, met in their respective assemblies.

The first Grand Council was to be apportioned as follows :

Massachusetts Bay,	7	New Jersey,	3
New Hampshire,	2	Pennsylvania,	6
Connecticut,	5	Maryland,	4
Rhode Island,	2	Virginia,	7
New York,	4	North Carolina	4
	—	South Carolina,	4
	20		—
			28
			20
			—
			48

The first meeting was to be convened in the city of Philadelphia.

We are tempted to quote the reasons, stated by Dr. Franklin, for fixing on Philadelphia as the place of meeting for the Grand Council.

'Philadelphia was named as being the nearer the centre of the Colonies, where the commissioners would be well and cheaply accommodated. The high roads through the whole extent are for the most part very good, in which forty or fifty miles a day may very well be, and frequently are travelled. Great part of the way may likewise be gone by water. In summer time the passages are frequently performed in a week from Charleston (S. C.) to Philadelphia and New York; and from Rhode Island to New York, through the Sound, in two or three days; and from New York to Philadelphia by water and land in two days, by stage-boats and wheel carriages, that set out every other day. The journey from Charleston to Philadelphia may likewise be facilitated by boats running up Chesapeake bay three hundred miles. But if the whole journey be performed on horseback, the

most distant members (viz. the two from New Hampshire and from South Carolina), may probably render themselves at Philadelphia, in fifteen or twenty days ; the majority may be there in much less time.'

The members of the Grand Council were chosen for three years. After the first choice, and when the proportion of money which each Colony was to pay to the general treasury, should be ascertained, a new apportionment was to be made of the members of the council, in the ratio of taxation ; but no Province was to have more than seven members, nor less than two.

There was to be an annual meeting of the council ; but extra sessions could be called by the President, with the consent of seven of the members, and timely notice to the whole.

The members of the Grand Council chose their own Speaker ; and it could not be dissolved, prorogued, nor continued in session longer than six weeks, at one time, without its own consent or the special command of the Crown.

The members of the Grand Council were to be allowed ten shillings sterling *per diem* during their session, and journey to and from the place of meeting ; twenty miles to be reckoned a day's journey.

All acts of the Grand Council required the signature of the President to give them validity, and he was charged with their execution.

The President General, with the advice of the Grand Council, was to hold and direct all Indian treaties, in which the general interest of the Colonies was concerned ; and make peace, or declare war with the Indian nations.

The President and Council to make such laws as they judged necessary for regulating the Indian trade, to make all purchases from Indians for the Crown, of lands, not now within the bounds of particular Colonies ; or that shall not be within their bounds, *when some of them are reduced to more convenient dimensions.*

They were to make new settlements, or such purchases, granting title in the King's name, reserving a quit rent to the Crown, for the use of the general treasury. They were also to make laws for the government of such settlements, till the Crown shall think fit to form them into particular governments. Hutchinson remarks on this head, that he cannot ascertain precisely what Colonies were referred to, as those which might

be reduced within more convenient dimensions :—but he presumes Connecticut and Virginia to have been two of them. This no doubt was the case. The article in question throws light upon the disposition which existed to question the validity of the claim, set up by several of the Colonies to an indefinite extension westward. The blow here menaced against her western domain, supposing Connecticut to have been one of the Colonies alluded to, will perhaps aid in explaining the great anxiety of this Colony, to prevent the adoption of the plan of Union. No Colony exerted itself more strenuously to that end, than Connecticut.

In addition to the powers already enumerated, the Grand Council were to raise and pay soldiers, and build forts for the defence of any of the Colonies, equip vessels of war to guard the coasts and protect the trade upon the ocean, lakes and great rivers ; *but not to impress men in any Colony without the consent of the Legislature.*

For the purposes enumerated, they had power to make laws, and lay and levy such general duties, imposts or taxes, as to them shall appear most equal and just, (considering the ability and other circumstances of the inhabitants in the several Colonies), and such as may be collected with the least inconvenience to the people ; rather discouraging luxury, than loading industry with unnecessary burdens.

They were to appoint a general treasurer, and particular treasurers in each government when necessary ; no money to be paid except to the joint order of the President and Council, unless when provided for by standing law to be paid to the order of the President alone.

The accounts were to be annually settled and reported to the several colonial assemblies.

A quorum of the Grand Council, competent to act with the President, was to consist of twenty-five members ; among whom was to be one or more from a majority of the Colonies.

The laws passed by the Grand Council were not to be repugnant to the laws of England, but as near as possible in harmony with them, and were to be transmitted to England for the approbation of the King in council, and if not disapproved within three years after presentation, *remained* in force.

On the death of the President General, the speaker of the Grand Council succeeded to his place, till the King's pleasure was known.

All military officers, by land and sea, were to be nominated by the President General, and confirmed by the council;—all civil officers to be nominated by the council and confirmed by the President. In case of death or removal of any officer, civil or military, ‘*under this Constitution*,’ the Governor of the Province in which the vacancy happened, was to fill it, till the pleasure of the President General and Grand Council should be known.

The particular military and civil establishments of each Colony were to remain in their former condition, notwithstanding the general Constitution;—and each Colony, on emergency, was authorized to defend itself and lay the expense before the President and council for allowance.

Such was this celebrated plan of Union. Dr. Belknap observes, that it is worthy of remark, that this plan for the Union of the Colonies was agreed to on the fourth day of July; ‘*exactly twenty-two years before the declaration of American Independence*;’ and this observation has been repeated by several other writers. We are loth to disturb the credit of an association of events so pleasing; but truth compels us to say, that it is without foundation in fact. We do not find the date of this instrument in any printed document, nor is it contained in the manuscript journal already alluded to. We find, however, in that journal, under date of the 10th of July, the following entry:—‘*Mr. Franklin reported in a new form the draught of a plan of a Union, agreeably to the determination of yesterday, which was read paragraph by paragraph and debated, and the further consideration of it deferred till the afternoon.*’ ‘*In the afternoon the consideration of the plan of the Union was re-assumed, which is as follows:*’—It would appear certain from this record, that it had not been adopted on the 10th of July.

It is plain to see, in this plan, a near approach to an efficient remedy for some of the evils of the country. It is idle to speculate on what might have been the effect of its adoption. Not a Colony approved it at home, and in England it met with no favor from the government.

The assembly of Connecticut passed a strong resolution against it, on the grounds that the country was too large for such a government, and that a defensive war carried on by it would prove ruinously burdensome to the Colonies. They also feared that, in the course of time, it might ‘*be dangerous*



and hurtful to his Majesty's interest, and tend to subvert the liberties and privileges, and to discourage the industry of his Majesty's good subjects, inhabiting the Colonies.' The agent of this Colony in London was directed to oppose the plan with the greatest vigor, to demand a hearing against it by council before Parliament, should it there be discussed, and adopt any measures he might think necessary to prevent its receiving the royal sanction. The assembly further resolved, 'that the Governor should watch all the steps, which the other governments should take relative to the said plan; that he should prepare whatever might be necessary for its prevention; that he should urge any further reasons against it, which his own mind might suggest; that he would suggest alterations in various parts, particularly that the government should be lessened and divided into two districts;—that the proportions allotted to each Colony were unjust; and that he would show in what respects the liberties of the people would be infringed; that he would prepare the evidence of the facts and send them to the agent, with whatever else might be necessary on the subject.\*' We have already suggested a consideration, which may have animated the zeal of the people of Connecticut in opposing this plan of Union. A general impression throughout the Colonies no doubt was, that an organized plan of raising a colonial revenue, to defray the expense of the wars which might be carried on, would be very apt to interfere with the claims for reimbursement, which had heretofore been presented to the British Parliament, and allowed. The consequence would be a great aggravation of the evils of their present political condition, already sufficiently disadvantageous, in being dragged into the contest, whenever the great powers of Europe found it for their interest to go to war. The flower of two generations in the Colonies had perished in the wars of France and England; and if, in addition to calamities of this character, the whole financial burden of carrying on the contest were to be thrown upon the Colonies, it was plain that effectual and not very tardy ruin would ensue.

But these and all other apprehensions, which the plan of 1754 may have inspired, passed away with the entire failure of that project to take effect. The time had not yet arrived. Union was destined to be the fruit of Independence, connected

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\* Trumbull's History of Connecticut. Vol. II. p. 337.

with it indissolubly and reciprocally as cause and effect. Nothing but an arduous struggle for independence, with its attendant perils and extremities, could have conquered the centrifugal tendency of thirteen Colonies, jealous of their separate rights. Nothing but Union would have sufficed as a permanent and safe basis of independence; and it is doubtful whether it is less important now, in this respect, than at the period of the Revolution.

Accordingly, with the commencement of the revolutionary war, the attention of the Federal Congress was turned to a confederation of the States. Before proceeding to the discussion of this subject, Mr. Justice Story devotes a most interesting chapter to the History of the Revolution. In this chapter (Book II. chap. I.), the interesting topic of *sovereignty* is most ably treated, and great light is thrown on some of the agitating questions of the present day. With this introduction, we are led to the history of the formation of the Confederation, the fourth of the projects or plans for a Union of the States, of the three former of which we have had something to say in this article. This is followed by an analysis of the articles of confederation themselves, and an accurate statement of the powers which it granted and withheld. The succeeding chapter, on the decline and fall of the Confederation, is full of instruction. The usual considerations under this head are arrayed in strong light, and others of a less familiar character are introduced. Let any man, who reflects upon the all-important functions to be discharged by a judiciary, capable of carrying its decrees into effect, pardon the condition of things adverted to in the following paragraph.

‘A striking illustration of the weakness of the Confederacy may be found in our juridical history. The power of appeal in prize causes, as an incident to the sovereign powers of peace and war, was asserted by Congress, after the most elaborate consideration, and supported by the voice of ten States, antecedent to the ratification of the articles of confederation. The exercise of that power was, however, resisted by the State courts, notwithstanding its immense importance to the preservation of the rights of independent neutral nations. The Confederation gave, in express terms, this right of appeal. The decrees of the Court of Appeals were equally resisted; and, in fact, they remained a dead letter, till they were enforced by the Courts of the United States under the present confederation.’ \*

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\* Story's Commentaries, Vol. I. p. 230.

The weakness of the Judiciary under the Confederation may be sufficiently judged of by the faint tradition of those, who administered that department of the government, and the meagre records of their labors. Of the military and parliamentary history of the Revolution, and the period which followed it, up to 1789, we have some documentary history; and the names of the generals and statesmen, who stood at the head of affairs, are familiar to our ears. But who can tell us much about the Federal jurisprudence of the same period, fruitful as that period must have been in all the elements of an important admiralty and prize system?

Although it is obviously impossible for us to go very particularly into the analysis of the contents of these chapters, we cannot forbear making a quotation of a short section of the chapter immediately before us, and which deserves to be well weighed by every citizen of the United States, who respects the authority of the great men, who framed and contemporaneously expounded the Constitution.

‘The last defect which seems worthy of enumeration is, that the Confederation never had a ratification of the PEOPLE. Upon this objection it will be sufficient to quote a single passage from the same celebrated work, (Federalist, No. 22.) as it affords a very striking commentary upon some extraordinary doctrines recently promulgated. “Resting upon no better foundation than the consent of the State Legislatures, it has been exposed to frequent and intricate questions concerning the validity of its powers; and has in some instances given birth to the erroneous doctrine of a right of legislative repeal. Owing its ratification to a law of a State, it has been contended that the same authority might repeal the law by which it was ratified. However gross a heresy it may be to maintain, that a party to a compact has a right to revoke that compact, the doctrine itself has had respectable advocates. The possibility of a question of this nature proves the necessity of laying the foundations of our national government deeper than the mere sanction of delegated authority. The fabric of American Empire ought to rest on the solid basis of THE CONSENT OF THE PEOPLE. The streams of national power ought to flow immediately from that pure original fountain of all legitimate authority.”’

Having thus opened the way, Mr. Justice Story relates the history of the formation of the Constitution. A chapter on the objections to it follows. To this succeeds a discussion of the nature of the Constitution,—whether it be a *compact*.

This is one of the most able, luminous, and valuable chapters of the work. The whole artillery of constitutional law, on this great topic of present interest, is brought out with masterly skill and power; and the politician, who knows nothing of his calling, but how to inflame popular feeling on topics of local interest, may read this chapter and learn how mean his occupation is.

And here begins the great business of this work, not indeed, that the previous chapters are not of close connexion with its main subject, and some of them, in fact, not inferior in present interest and seasonableness. But in this discussion of the question, whether the Constitution is a compact or a government, we enter the great temple of constitutional law. A chapter on 'the Final Interpreter' follows, and this is succeeded by another on the Rules of Interpretation. Having gone through with these preliminary inquiries,—preliminary not as of less than essential importance, but as applying to the whole Constitution and all its parts,—Mr. Justice Story takes up his commentary on the instrument itself, and beginning with its Preamble, goes through with every article, section and paragraph.

We have already intimated, that a work of this kind,—itself a review of the Constitution, almost bids defiance to all attempts at a complete analytical review of itself. At all events, we feel ourselves incompetent to the undertaking, particularly in the limited space which remains to us. Suffice it to say, that it is a work whose value must be learned by the student of constitutional law, by the politician, and by the intelligent American citizen, from a careful and repeated perusal of the volumes. Had we been called upon to designate the individual, for the honorable and laborious task of preparing a Commentary on the Constitution, we should have designated Mr. Justice Story.

It is of course the first qualification for a constitutional commentator, that he should be of sound principles. We hope never to see the day, when our highest judicial functionaries shall be claimed as belonging to any of the parties, which distract our republic. Still, however, it is impossible that public men should grow up in a career of active usefulness, without having had their party associations. Mr. Justice Story was of the democratic party, and shared the general views of that party, on questions of constitutional politics; but with a

mind of too *legal* a cast, to run into wild revolutionary extremes. Coming upon the bench with prepossessions of the character intimated, Mr. Justice Story rose immediately above the sphere of party ; and with the ermine of office, put on the sacred robe of the Constitution and the Law. Henceforward it became his duty, his desire, his effort, neither to strain the Constitution, nor to travel round it, on the loose popular maxims which guide the partisan ; but to interpret it with impartiality, and administer it with firmness. In a word, he became a constitutional lawyer of the school of Marshall ; and nowhere can a more authentic, comprehensive, and instructive exposition of the principles of that school, in their entire application to the Constitution, be found, than in these volumes.

To this vital qualification for the work, Mr. Justice Story has superadded others, rarely to be found united and made available for such an undertaking. His position as a magistrate has secured a moderation of statement and a caution in laying down principles, highly desirable in a work, which is to impart to the youth of the country those impressions relative to the Constitution, which are to go with them in many cases through life. Nothing would have been more out of place, in such a work, than a controversial tone and manner ; and no guarantee against even the unconscious assumption of such a tone and manner is so likely to prove effectual, as the restraint of the judicial office.

Lastly, a work like the Commentaries on the Constitution could scarcely be accomplished, in a becoming manner, except by an individual, uniting to all the other qualifications, those of an almost boundless reading, professional, historical, political and miscellaneous ; and a happy talent of extracting, from a heterogeneous mass, the sequence and consent of truth. It is impossible to go through these volumes without feeling, that, from the first frail New England Confederacy of 1643 down to the ratification of the Federal Constitution in 1789, Union, Union, Union is the great destiny of our country. This is the lesson to be learned, and the truth to be evolved through a continuous investigation of the most laborious and often perplexing character :—and the true prophet of our political dispensation is he, that can most clearly discern it, when it is faintly indicated, and most powerfully support it, when it is plausibly assailed. Mr. Justice Story's Commentaries have brought to its illustration a world of well-digested learning ;

and furnish the most satisfactory general refutation of the detached essays, which perverted ingenuity is ever able to dress up in defence of any paradox, however amazing. We rejoice in its appearance;—in its appearance at this crisis. Earnestly do we desire, that it may perform the salutary office of aiding to win back the judgments of our Southern brethren to the sound doctrines of 1789. It seems impossible to us to resist the conviction, that the theories, which have been recently broached, carry us back to the rude and abortive confederacies and plans of confederacies of other days. Well may that doctrine be called Nullification, in which the experience of two centuries goes for nothing, and in which the sole and express object for framing the Constitution is set at nought.

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ART. IV.—*The Whale Fishery.*

1. *An Account of the Arctic Regions, with a History and Description of the Northern Whale Fishery.* By WM. SCORESBY, JR. F. R. S. E. In two volumes. Edinburgh. 1820.
2. *Journal of a Voyage to the Northern Whale Fishery, including Researches and Discoveries on the Eastern Coast of West Greenland, made in the Summer of 1822.* By WM. SCORESBY, JR. F. R. S. E. Edinburgh. 1823.
3. *Discovery and Adventure in the Polar Seas and Regions, with an Account of the Whale Fishery.* Harper's Family Library, No. 14. New York. 1833.
4. *Scientific Tracts.* Nos. 18 & 24.—*Whale Fishery.* Boston. 1833.

FROM the legends and chronicles of the inhabitants of the Northern shores and islands of Europe, we learn that they have always depended upon the whale for much of their employment and subsistence. Among them all, and among the Esquimaux of North America, we discover rude implements and canoes for capturing the huge monster. Those of our readers who have read the 'Pirate,' will recollect with what a hearty zeal the Zetlanders engaged in capturing a stranded