Yours truly
Geo. Ticknor Curtis

CONSTITUTIONAL HISTORY

OF

THE UNITED STATES

FROM THEIR DECLARATION OF INDEPENDENCE

TO THE CLOSE OF THEIR CIVIL WAR

BY

GEORGE TICKNOR CURTIS

IN TWO VOLUMES

Vol. II.

EDITED BY

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PREFACE.

In addition to "an infinite capacity for taking pains," a Macaulay-like memory, the precision of a lawyer and dialectician, the enthusiasm born of a profound reverence for the Federal Constitution, a close intimacy with many of our greatest statesmen, lawyers, and judges, Mr. George Ticknor Curtis possessed the power of taking broad historical and philosophical views, in a true judicial temper, and of expressing them with remarkable force and clearness.

The gravity, sincerity, precision, directness, and simplicity of his diction—scarcely modern—and his exhaustive knowledge of his noble subject, pre-eminently qualified him for writing the History of the Constitution of the United States, a history which appeals to the general reader and intelligent citizen as well as to the professional student of public affairs and Constitutional Law.

In 1854, Mr. Curtis's "History of the Constitution of the United States" first appeared—in two volumes. It at once became a standard "authority," and a worthy companion to "Story on the Constitution," and has been often cited with respect and approval by the Supreme Court; and all publicists have conceded its fairness and trustworthiness, although some of them have not been able to agree with its conclusions on every point of theory or of interpretation.

In 1889, he issued a revised edition in one volume, and announced, as in preparation, a second volume in continuation of the work originally published. The prospectus said:

"The first volume of this work contains the whole of Mr. Curtis's 'History of the Origin, Formation, and Adoption of the Constitution of the United States, with Notices of its Principal Framers,' which was first published by this house more than thirty years ago. The first volume of the new book has its

separate Index. The author has carefully revised his former work on the formation and adoption of the Constitution.

"The second volume, now in preparation, will have its own Index, and will be divided into fourteen chapters. The author explains in his Preface his reason for grouping together in these several chapters the topics to which they relate, instead of giving the Constitutional History of the United States in a strictly chronological order.

"The period covered by the second volume is from the adoption of the Constitution to the close of the Civil War—three quarters of a century. In fact, the volume embraces the Constitutional History of the country for about a century, since it describes all the changes that have followed the Civil War or that accompanied it, as well as those which preceded it. The following are some of the topics treated in the second volume: History of Opinion and Belief concerning the Nature of the Constitution; the Virginia and Kentucky Resolutions of 1798; the Federalists of New England and the Hartford Convention; Nullification, how distinguished from Secession; Webster and Calhoun, as Representatives of Opposite Theories; Renunciation of the Constitution by the Early Founders of the Anti-Slavery Societies; the History of Secession; the South Carolina Ordinance; Why Secession is Revolution; True Justification of the Federal Government in the Prosecution of the Civil War; Views of the Friends and Opponents of the Constitution at the time of its Adoption Concurred in Regard to its Nature; Hamilton as a Representative of the former, Patrick Henry of the latter; their Respective Opinions of the Necessity for a Bill of Rights; Necessity of Organic Laws to Supply the Machinery of the New Government; Mode of Choosing the President; his Constitutional Functions; 'Counting' the Electoral Votes; Washington's Acceptance of the First Presidency; Earliest Precedent of 'Counting' the Electoral Vote; Inauguration of the President and Vice-President; Power of Removal from Office; President's Salary; Question of a Title for the President; the Ten Amendments of the Constitution adopted in 1789–91; Why they were Demanded, and why they were Proposed; the First Revenue Law of the United States; How far 'Protection' was deemed Obligatory; Organization of the Judicial and Executive Depart-

ments; Executive Interpretations of the Constitution during Washington's Administration; Admission of New States; History and Purpose of the Territorial Clause; Rise, Progress, and Consequences of the Anti-Slavery Agitation; Counter Pro-Slavery Tendencies; Causes of the Civil War and its True Issues; Constitutional Doctrines of President Lincoln's Administration; Close of the War; 'Reconstruction' of the Southern States; the New Amendments, whether they were in Accordance with the Amending Power; Limitations of that Power; Judicial Interpretations of the New Amendments; How the Constitution was Left when the War was Ended and a Final Settlement of its Issues had been Reached; Conclusions to be Drawn Respecting the Permanency of our Present Political Institutions.

"A more detailed description of the contents of the second volume cannot be given in this circular. It is believed that every important event and topic in the Constitutional History of the United States since the adoption of the Constitution has been considered, impartially and fairly.

"In this labor the writer has been occupied for twenty years, aiming to condense into one volume the Constitutional History of the country for the first century of its present government, and distinguishing Constitutional History from Constitutional Law."

Mr. Curtis's death on the 28th day of March, 1894, was very sudden, although he had entered the eighty-second year of a life made illustrious by many contributions to the permanent literature of his country in the fields of Law, Biography, and History. Among his papers was found a large quantity of manuscript relating to the proposed second volume, for the publication of which he had contracted with Harper & Brothers.

When the family of Mr. Curtis—believing that I was familiar with his modes of thought and expression, as well through long personal acquaintance as through the study of his notable biographies of Daniel Webster, Benjamin R. Curtis, and James Buchanan, and of his other writings — made a suggestion to that effect, the publishers placed the manuscript in my hands, in order that it might be prepared for publication.

Of course I have endeavored to perform this grateful duty with entire fidelity to the views of the author, and have not felt at liberty to make any substantial change in, or addition to, the text.

In the somewhat confused mass of manuscript were found, more or less complete, thirteen of the chapters referred to in the prospectus; and also some *disjecta membra* relating to the other proposed chapters; there were also many notes and memoranda. I have, therefore, aside from the preparation of the Appendix, as an apparatus for students, and sundry notes duly identified, attempted but little more than editorial work—supplying omissions, verifying dates, names, and citations, and correcting errors of copyists, slips of the pen, and the like—and, so far as I could, putting the posthumous material in condition for publication.

The merit of the author will excuse the incompleteness of some of the chapters—thirteen of them are complete as far as they go; in two or three some announced topics were not reached when the manuscript abruptly ended.

The character and style of the first volume are so well known that I see no occasion in a Preface to the second volume to differentiate Mr. Curtis's views and methods from those of other writers on the same subject, or to comment upon them.

The Appendix contains some detached writings of Mr. Curtis, cognate to the main work; also a number of important historical documents considered in Vols. I. and II., and an annotated copy of the Constitution; and a short Bibliographic list, some notes, etc., by the editor. Vol. II. has its own Index.

Although this volume lacks the great advantage of its author's final revision and finishing touch, I am well persuaded that it will be found to be a not unworthy companion to the first volume, and a welcome addition to the literature of our Federal Constitution—*Charta maxima, lux libertatis præclara.*

J. C. C.

Summit, N. J., *August*, 1896.

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CONSTITUTIONAL HISTORY

OF

THE UNITED STATES.

CHAPTER I.

History of Opinion Concerning the Nature of the Constitution.

The history of opinion and belief concerning the nature of the Federal Union under the Constitution is a study necessary to any one who would understand the controversy that culminated in 1860–1 in a civil war of the most serious character. To pursue this study intelligently, one must begin with the period of the formation and adoption of the Constitution, and must trace the development of the controversies about its character through many and various phases.

We have seen that as soon as the framework of the Constitution became known, and before it was ratified and put into operation, much jealousy was felt at the idea of creating a central government with direct and sovereign powers. I have described the mode in which this jealousy was so far successfully quieted as to secure the adoption of the Constitution by the requisite number of states; and I have attributed this result partly to the publication of that remarkable series of papers since known as The Federalist, and partly to the judicious mode in which amendments were first proposed. But when the framers and friends of the Constitution had succeeded in getting it established, there

remained the great question of the nature of the Union; the question of the kind of political system that had been created; to what the states or their people had bound themselves by adopting it; or, in other words, the extent and character of the sovereignty of the United States when compared with the residuum of sovereignty remaining with each separate state. A perusal of the Constitution, along with the first ten amendments, should satisfy any one that the system is based on the fundamental idea that political sovereignty, or the right to govern, is capable of division, according to subjects and powers.

While the people of each state, after the Revolution, had a perfect and absolute right of independent self-government, it was found to be both theoretically and practically possible to transfer to a common depositary certain of their political powers for specific purposes. This is one of the discoveries in the science of government made by the framers of the Constitution, and its practical application was doubtless what they contemplated. But what should be the precise character and position of the common depositary of certain special powers of government—whether the cession of those powers should be regarded as irrevocable; whether the central government should be considered as an agent of the states, whose powers their principals could withdraw; whether the grant of those powers should proceed from the people of the United States as a nation, or from the people of each separate state, or from the states regarded as sovereigns—were questions that could not be settled in advance of the actual administration and operation of the new government; party, personal, and sectional influences would naturally lead to a great diversity of opinion.

This diversity began in the year 1798. In that year, during the presidency of John Adams, the Congress passed two laws known as the Alien and Sedition Acts. One of them empowered the president, in case of war, to deal with the persons of alien enemies who might be in this country; the other was a law which, among other provisions for the suppression of designs regarded as treasonable, made it a crime to write, print, or utter any false, scandalous, and malicious writing against the government, or against either house of Congress or the president, with intent to defame them, or to bring them into contempt or disrepute. These

were certainly very high-handed measures, and by a large part of the people of the country they were believed to be grossly unconstitutional. They excited great commotion among the opponents of Mr. Adams's administration, and were vigorously denounced by the legislatures of Virginia and Kentucky in certain resolutions which have been somewhat famous in our political history as the "Resolutions of '98." These resolutions propounded a theory of the Federal Constitution which it is not easy to define with precision; and in order to understand what the legislatures of Virginia and Kentucky really meant to affirm respecting the legitimate mode of encountering unconstitutional acts of the Federal Government, we must go to the subsequent explanation made by one of the principal authors of the resolutions, after the lapse of thirty years. During the period which is called the era of nullification (1830–3), when the South Carolina nullifiers claimed the authority of these resolutions for some of their constitutional doctrines, Mr. Madison, who drafted the Virginia Resolutions of 1798, published an elaborate explanation of their meaning, for the purpose of showing that they gave no countenance to the doctrine of nullification. This was probably true in regard to the intentions of the draftsman and the Virginia legislature; but the historical interest that now attaches to the resolutions springs from the fact that their language was such as to afford in after-times some plausible ground for contending that they meant what the nullifiers claimed. Thus, the third of the Virginia Resolutions described the Constitution as "a compact to which the states are parties," and it declared that "in case of a deliberate, palpable, and dangerous exercise of other powers not granted by the said compact, the states, who are parties thereto, have the right and are in duty bound to interpose for arresting the progress of the evil, and for maintaining within their respective limits the authorities, rights, and liberties appertaining to them." It is apparent that the soundness of this assertion depends upon the mode in which the resistance to unconstitutional measures is to be made. The resolution might mean to refer to the natural right to resist intolerable oppression by making a revolution: which no one denies. Or, it might mean that under the Constitution there is a right existing in the states to concert measures for amending it, in order to remove doubts as to its construction, or to render usur-

pations impossible: which no one can deny. Or, it might mean that each state, as a party to a compact, has some power to interpose by its own authority, and arrest the progress of measures not authorized by the terms of the compact. The last of these meanings comprehended the essence of what was afterwards called "Nullification." But Madison's explanatory comment on this resolution was that it did not intend to assert the doctrine that came afterwards to be claimed by the nullifiers, because the resolution which stood seventh in the series called upon all the states to unite with Virginia in denouncing the Alien and Sedition Acts as unconstitutional, and in taking "the necessary and proper means" for co-operating with Virginia "in maintaining the authorities, rights, and liberties reserved to the states respectively, or to the people." But the difficulty which the resolutions created for future times was because they were not explicit in regard to what are "the necessary and proper measures" to be taken by the states for resisting usurpation by the Federal Government. The language of the third resolution implied that, as a constitutional right resulting from the nature of the "compact," each separate state, as a party to that compact, can take measures within its own limits to arrest the exercise of a power by the Federal Government which that state deems a deliberate, palpable, and dangerous exercise of power not granted in the Constitution. This was what came to be the doctrine of nullification. Neither Madison, who framed the Virginia Resolutions, nor Jefferson, who had some hand in framing the corresponding resolutions passed by the legislature of Kentucky, had any intention of asserting such a doctrine as nullification. The South Carolina nullifiers of 1830–3 were wrong in their interpretation of the Resolutions of '98. But when they applied their acute and brilliant faculties to the discovery of some mode of arresting the operation of an Act of Congress within the limits of their state that would still leave the state in the position of a member of the Union, they found in the Resolutions of '98, passed by the legislatures of two states under circumstances of considerable gravity, and having the sanction of great names, the assertion that the Constitution is a "compact to which the states are parties." As a political formula this assertion is true or not true, according to the meaning given to the term "compact," and to

the sense in which the "states" are to be regarded as "parties" to the establishment of the Constitution. Madison used the term "compact," when applied to the Constitution of the United States, as meaning simply agreement or consent; which, being either expressed or implied, is, as he put it, "the vital principle of free governments as contradistinguished from governments that are not free."[1] His idea of the sense in which the states were parties to the establishment of the Constitution was, not that the state governments or the people of the states, became parties to an interstate compact or mutual league, but that the people of each state, in the exercise of their sovereign rights of self-government, had, by a grant, agreement, or conveyance, ceded certain political powers to a central government, the nature of which cession was that the powers were irrevocable by any process known to or implied in the Constitution itself. But the nullification idea of the Constitution was that each state, as an independent sovereign, had made a compact with all the other states that certain political powers should be exercised by a common central agent, according to the terms of the compact; that each state must judge for itself when the compact had been broken by transcending its limitations; and that when the state had determined that this had happened, it could, as a right resulting from the nature of the "constitutional compact," take its own measures for arresting the progress of the evil.

In the interval which elapsed between the time of the Resolutions of '98 and the era of nullification some new and entirely unforeseen constitutional questions arose, in consequence of measures resorted to in Mr. Jefferson's administration for the purpose of encountering the effect upon our commerce of the great European wars, and afterwards in consequence of the measures of Mr. Madison's administration, adopted or proposed in the prosecution of our war against England, which was declared in 1812. The two administrations of Mr. Jefferson extended from March, 1801, to March, 1809. The two political parties known respectively as the Republicans, or Democrats, and the Federalists, which had arisen during the administration of the elder

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[1] Madison's Works, IV. 294. Compare Webster's Works, III. 467.

Adams (1797–1801), became thoroughly organized at the time of Mr. Jefferson's first election to the presidency.

The French Revolution had been followed by wars in Europe that were not closed until the year 1815. In the earlier portion of this period of universal commotion, Washington had preserved this country in an attitude of neutrality, and his immediate successor, John Adams, had not been called upon to encounter the difficulties growing out of the long contest between England and Bonaparte, which began in 1803, about two years after the commencement of Jefferson's first term of office. In 1806 commenced the series of retaliatory blockades declared by the English Orders-in-Council and the Berlin and Milan Decrees of Bonaparte. By the effect of these manifestoes, which the public law authorized neither of the belligerent powers to put in force, but which were rigorously executed, neutral commerce was excluded from nearly every port in Europe. As this country was neither directly nor indirectly a party to any of these European wars, we had, since they began, a large part of the carrying trade of the globe in our hands. We were either to be driven from the ocean entirely, or we must compel one or the other, or both, of the great belligerents to retract their unwarrantable pretensions. On the measures proper and necessary to be taken our two political parties were at variance from the beginning.

The strongholds of the Federalists were in the commercial towns, and especially in New England, where six of the principal ports possessed more than a third of the whole tonnage of the Union. The Federalists regarded the aggression of France and the ambition of Bonaparte as the cause of all this disturbance in international relations, and they were opposed to the policy of our government, which leaned against England. The Republicans (or Democrats), with a large part of the nation at their back, were disposed to fight with England, if we must fight; and when Bonaparte skilfully signified to the people of this country that they must extort their rights as neutrals from England, and that they could expect no concessions from him until they had done this, he took advantage of the growing tendencies of the popular feeling in America to side against England at the time when her pretension to and exercise of a right to search our vessels for British seamen and deserters had excited an almost universal in-

dignation. In June, 1807, an English vessel of war, the *Leopard*, made an unprovoked and unlawful attack on an American vessel called the *Chesapeake*, off the capes of Virginia. Mr. Jefferson ordered our minister in England to demand immediate reparation for this outrage, and then issued a proclamation excluding British vessels of war from the American waters, and summoned Congress to meet in an extra session on the 26th of October. This message, in consequence of the British aggressions which it was necessary for the president to deal with, hardly noticed our grievances against France. In November the last and most stringent of the British Orders-in-Council was issued, closing the ports of France and of her allies to the trade of neutrals as if actually blockaded, and extending the visitation of the paper blockade over the whole ocean. On the 22d of December, 1807, Congress, adopting Mr. Jefferson's recommendation, passed the famous "Embargo," indefinitely prohibiting the departure of any vessel from the ports of the United States. To the Federalists this measure seemed to be directed exclusively against England. The administration and its supporters claimed it to be necessary to inhibit the sailing of our own vessels from our own ports, in order to save our commerce from the depredations of both the belligerents.

But whether necessary or unnecessary, an indefinite embargo raised an entirely new constitutional question; for it was said, with a great show of truth, that a power to regulate commerce does not comprehend a power to indefinitely prohibit it. Since the Constitution was established there had been no exercise of power under it so directly and extensively ruinous as this embargo. It fell with terrific weight upon the New England States. It was relaxed in 1809, in respect to our trade with other nations, but in the early part of that year there was substituted for it a system of the strictest non-intercourse with both England and France, until those countries should revoke or modify their edicts so that they would cease to violate our neutral rights. In consequence of this measure, and the complications arising out of the conduct of England on the one side and France on the other, a state of things ensued which ended at last in June, 1812, in the passage of an Act of Congress declaring war against England. This war, resulting chiefly from the effect of the belligerent

measures of England and France upon our neutral commerce, and also involving the English pretensions of a right to impress seamen of British birth from our vessels, was very differently viewed by the political parties of this country. On the one side, the Federalists contended that we had been duped by Bonaparte into a war against his great enemy, without any necessity for it. On the other side, the Democrats (or Republicans) maintained that towards ourselves England was wholly in the wrong. But in reference to the scope and powers of the Constitution, in the prosecution of a war, I have now to advert to the measures adopted or proposed by Mr. Madison's administration, and the occurrence in New England which brought into some discussion the obligation to submit to acts of the Federal Government believed to be beyond its constitutional authority, and by consequence am now led to some consideration of the nature of the Union.[1]

In the year 1814 the war had been prosecuted since its commencement in a manner which had produced great restiveness and dissatisfaction in the New England States. Their commerce had been ruined by the embargo and the non-intercourse. They contrasted the prosperity and happiness that followed the adoption of the Constitution and their present miserable condition. "The Constitution of the United States," they said, "under the auspices of a wise and virtuous administration, found itself competent to all the objects of national prosperity comprehended in the views of its framers. No parallel can be found in history of a transition so rapid as that of the United States from the lowest depression to the highest felicity — from the condition of weak and disjointed republicks to that of a great, united, and prosperous nation. This high state of publick happiness has undergone a miserable and afflicting reverse, through the prevalence of a weak and profligate policy."[2]

Such was the language, tinged no doubt with party feelings, that was wrung from a people who had begun to calculate the value of the Union because they were suffering from national

[1] I have not here attempted to describe in detail the events and causes which led to the War of 1812. The reader will find them fully adverted to in my Life of Daniel Webster, I. iv., which contains, I believe, an accurate account of the mode in which we became involved with the great European disturbance.

[2] Report of the Hartford Convention.

measures that bore with crushing severity upon their peculiar pursuits. Now that these measures had resulted in a war, and other measures in its prosecution were straining the powers of the Constitution, as they believed, beyond its legitimate scope, the Federalists of New England united in a step which was then and has ever since been regarded with suspicion. The legislatures of Massachusetts, Connecticut, and Rhode Island, and the counties of Cheshire and Grafton in the state of New Hampshire, and the county of Windham in the state of Vermont, appointed delegates to a convention which assembled at Hartford, in Connecticut, on the 15th of December, 1814. This assembly was composed of men of the highest public and private virtues, the most eminent and able of the leading Federalists in their respective communities. They made at least one very serious mistake. They deliberated with closed doors at a time when the country was engaged in a foreign war. This exposed them to the imputation of a treasonable design to separate their states from the Union. They ought to be judged, however, in history, not by the imputation cast upon them by their political adversaries, but by the authentic document which they put forth over their individual signatures, and which was published early in the month of January, 1815.[1] We may learn from this document that the members of this assembly considered the nature of their commission to be "the devising of means of defence against dangers, and of relief from oppression proceeding from the act of their own government, without violating constitutional principles, or disappointing the hopes of a suffering and injured people."

But their proceedings, like those of the legislatures of Virginia and Kentucky in 1798, lacked precise definition of the means by which unconstitutional measures of the Federal Government are

[1] The copy of the report of the Hartford Convention which I possess is of the "Third Edition, corrected and improved." It bears the imprint "Boston: printed and published by Wells and Lilly, 1815." The document bears date at Hartford, January 4, 1815. The signatures are those of Stephen Longfellow, Jr., Roger M. Sherman, George Cabot, Timothy Biglow, Daniel Waldo, James Hillhouse, Calvin Goddard, Benjamin Hazard, Nathan Dane, Joshua Thomas, Hodijah Baylies, John Treadwell, Daniel Lyman, Benjamin West, William Prescott, Samuel S. Wilde, George Bliss, Zephaniah Swift, Samuel Ward, Mills Olcot, Harrison G. Otis, Joseph Lyman, Chauncey Goodrich, Nathaniel Smith, Edward Manton, William Hall, Jr.

to be encountered "without violating constitutional principles." They had the same general conception of the right of the states to defend their own prerogatives, and it is apparent from the language which they used in the following paragraph of their report that they repeated some of the ideas and some of the expressions which they found in the Resolutions of '98.

"That acts of Congress in violation of the Constitution," they said, "are absolutely void is an undeniable position." This approached very nearly to the substance of the later doctrine of nullification, and it only fell short of it because the emergency had not actually arisen in 1814–15, inasmuch as the most obnoxious measures of the administration had not become laws, whereas the nullifiers of South Carolina, in 1830–3, aimed their resistance against a federal statute that was in actual operation.

The excellent men who composed the Hartford Convention were alarmed about the control which the administration proposed to assume over the militia of the states. A plan for a conscription for the purpose of filling the regular army, by classifying the militia of the states, and by drafting individuals, including minors, from the different classes, was pending in Congress at the time when the report of the Hartford Convention was prepared. It was indefinitely postponed by a movement made in the Senate by the opposition on the 28th of December, 1814.[1]

It is not necessary here to notice in full detail the various grievances of which the members of the Hartford Convention complained, or the mode in which they proposed to meet the anticipated dangers, by certain amendments of the Constitution. When this assembly terminated its sitting, it was proposed in its report that another convention of the same states should be held in Boston in the following June, in case their recommendations should be unsuccessful, or in case a peace should not have been concluded in the meantime; and this further assembly was to be instituted "with such powers and instructions as the exigency of

[1] Compare the date of the Hartford Convention's reports (June 4, 1815). It would seem that the defeat of the Conscription Bill was not known at Hartford when the report was signed. The reader will find a description of this proposed measure in the author's Life of Webster, I. 138–139.

a crisis so momentous may require." The nature of the "crisis," as it was regarded by the Federalists, was that the war had been and was still prosecuted in a mode which left the whole of the extensive sea-coast of New England without proper defence; that the millions raised by federal taxation had been squandered with shameless profusion, which had led to "unconstitutional expedients" for raising more troops; that it was impossible for the Eastern States, left by the administration to defend themselves against the common enemy, to discharge this duty from their own resources and continue to sustain the burden of national taxes. It was proposed, therefore, by the members of the Hartford Convention, not that their states should sever themselves from the Union, but that there should be paid into their treasuries a certain proportion of the national revenues, to be applied by them, separately or in concert, to the defence of their own coasts, and to be afterwards accounted for with the United States. This scheme, however, as well as all the other measures proposed by this convention, became unnecessary before the time (June, 1815) fixed for holding the future assembly of the same states. Negotiations for peace were pending when the Hartford Convention was adjourned, the Treaty of Ghent was concluded December 24, 1815, and ratifications were exchanged February 17, 1816.

If the war had not have been terminated, it is of course problematical what might have been the result of future action by the states of New England in the direction indicated by the report of the Hartford Convention. It may, however, be concluded with tolerable certainty that there prevailed, among very eminent and patriotic men of that time and region, ideas of the nature of the Union very similar to those which were embraced, or seemed to be embraced, in the Virginia and Kentucky Resolutions of 1798.[1]

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[1] Nathan Dane, the draftsman of the celebrated Ordinance of 1787, which organized the Northwestern Territory, was a member of the Hartford Convention from Massachusetts. He was an intimate friend of the Hon. Thomas L. Winthrop, afterwards lieutenant-governor of Massachusetts, father of the Hon. Robert C. Winthrop. Before going to the convention Mr. Dane called upon Mr. Winthrop, and told him that his object in attending the convention was to prevent mischief. On his return from Hartford he again visited Mr. Winthrop, and gave him the impression that mischief was prevented with difficulty. He gave to Mr. Winthrop a copy of the convention's reports, with his own marginal

There is, however, one of the recommendations made by the members of the Hartford Convention to the legislatures of the several states represented in that body which should be specially noticed here, because it proceeded upon an idea that was long afterwards acted upon by some of those states, and by others also. It was contained in the following resolution:

"That it be and hereby is recommended to the Legislators of the several States represented in this Convention, to adopt all such measures as may be necessary effectually to protect the citizens of said States from the operation and effects of all acts which have been or may be proposed by the Congress of the United States, which shall contain provisions subjecting the militia or other citizens to forcible drafts, conscriptions, or impressments not authorized by the Constitution of the United States."

It is doubtless quite possible that the distinguished and able men who put their signatures to this recommendation contemplated only such measures as might be necessary to subject acts of Congress, supposed to be unconstitutional, to a judicial test of their validity. But the tenor of the report does not warrant us in assuming that this was all that they contemplated. On the contrary, it would seem that the idea prevailed among them that there might be an emergency in which it would be the duty of a state legislature to take into its own hands the protection of its citizens against infractions of the Federal Constitution. They had in view emergencies which "are either beyond the reach of the judicial tribunals, or too pressing to admit of the delay incident to their forms." In such emergencies, they said, "States, which have no common umpire, must be their own judges, and execute their own decisions." We, who live in an age when constitutional doctrines have become better understood, can perceive

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annotations and comments. Mr. R. C. Winthrop supposes that this invaluable pamphlet was in his father's possession at the time of his death in 1841; but it has not since been found. It is not difficult, however, to infer that the "mischief" which Mr. Dane apprehended was some proposition looking to a separation of the New England States from the Union, and that this was parried by the suggestion of the plan for allowing those states to use a part of the federal revenues for the defence of their own coasts so long as the war should continue, and by the proposal of another convention, to be held in Boston in the following June.

how crude and unsafe those ideas were. They assumed that there could be an emergency beyond the reach of the judicial power, or which could not wait for judicial action; and they overlooked the question of the competency of a state, or of a state legislature, to decide when there had been a deliberate, palpable, and dangerous infraction of the Constitution by an act of Congress. Revolution may at all times be resorted to against acts of a government which are too oppressive to be borne, and which admit of no constitutional remedy. The Government of the United States has no prerogative which entitles it to be exempt from revolution, when the people choose to resort to that desperate remedy. It must defend its rightful existence and authority by the means with which the Constitution has clothed it. But the right to resort to revolution against intolerable oppression is governed by no law. The right to find relief against an act of Congress which transcends its constitutional powers springs from and is regulated by the Constitution itself. It is a right that can be exercised only by resorting to a judicial remedy; and no state legislature can take any measures to obstruct the execution of a statute of the United States, excepting to aid in subjecting it to the proper judicial test of its constitutional validity. Yet this was not clearly perceived even by such men as those who composed the Hartford Convention; nor was it perceived by the state legislatures which, after the year 1850, took steps to obstruct the extradition of fugitives from service under a statute of the United States then recently enacted.

It is now to be observed that the lapse of fifteen years after the War of 1812–15 had produced in New England the state of feeling that is above adverted to led, in a very different quarter of the country and in a time of profound peace, to much more searching and more dangerous discussions of the character and powers of the Federal Constitution.

In 1830 South Carolina became very restive under the operation of that part of the revenue laws that is commonly called the Tariff. The existing Tariff made discriminations in favor of home manufactures, and this South Carolina did not like. She passed various resolutions denouncing the Tariff as unconstitutional, and propounding new means of resistance of unconstitutional laws. Suddenly and unexpectedly a discussion sprang up in the Senate

of the United States, between Mr. Hayne, senator from South Carolina, and Mr. Webster, senator from Massachusetts, concerning the nature of the Constitution, and the constitutional mode of resisting the exercise of unconstitutional powers. In that discussion Mr. Hayne stated and enforced with great ability the nullification doctrine. It was in substance this: That the Constitution, being a compact between sovereign states, to which the states are parties, each state may judge for itself when the Constitution has been deliberately, palpably, and dangerously violated by Congress, and may, within its own limits, arrest the operation of the obnoxious law, and hold it inoperative until a convention of three fourths of the states has decided that it is constitutional. Every one sees, at the present day, that this doctrine, if left unanswered, would have overthrown the Union. But we must transport ourselves back to that period. We must remember that a generation had grown up in the South, with habits of thinking about the Union and the Constitution very different from the habits of the people of the Northern, the Middle, and the Western States. The latter had no particular reason to speculate closely about this subject. Happily for all parties—happily for the discussion of the momentous topic of the nature of the Constitution—slavery was not introduced specially into the great debate of 1830. In that debate it fell to Mr. Webster to answer Mr. Hayne; and in making that answer he made the celebrated speech which gave him the popular title of "Defender of the Constitution." It is not necessary to recapitulate his doctrine further than to say that its principal positions were that the Constitution was established by the people of the United States for the purpose of making a government, and not a league of sovereign states; that the people granted to their government irrevocably certain powers; that they declared the Constitution, and all laws passed in pursuance of it, as well as treaties, the supreme law of the land; that they created *in* the government an authority to determine the extent of its own powers by a judicial process, where judicial determination is practicable, and by the judgment of Congress where it is not; that to provide against usurpation, the people reserved the power and provided a mode for amending the Constitution; and, therefore, that no state has or can exercise, under the Constitution,

any power to arrest in her own limits the operation of any law which Congress has enacted.

The reader will observe that the South Carolina doctrine was, not that they claimed a right to make a revolution, but that the Constitution itself, by its very nature as a compact between sovereign states, gave each state a right to judge for itself when a law is unconstitutional, and to nullify it in the manner I have described; because, in a case of compact between sovereign states, there is no common arbiter to decide when the compact is broken, but each party to it must decide for itself.

It is both curious and important, in tracing the history of opinion on this great subject, to observe what relation this doctrine of nullification bore to the subsequently alleged right of state secession from the Union. The relation was one of strict logical sequence. If it is true that under the Constitution each state has a right to judge for itself when a particular law of Congress is unconstitutional, and thereupon to arrest its execution within her limits, it follows inevitably that she may arrest all the operations of the general government within her limits. If the states are, under the Constitution, sovereign parties to a compact, there is nothing but a moral accountability to prevent any one of them from breaking that compact when it thinks it has good reason. Now, the moral accountability of associated sovereign states is referable only to the right of revolution or to war; and therefore it is that secession is revolution or war. But the nullifiers of 1830 did not so regard it. They clung to the idea of a constitutional right of nullification, as a process resulting from the nature of the Constitution itself. Not so Mr. Madison, whose authority they claimed to invoke from the Resolutions of '98. Writing in 1833 to Mr. Rives, he said:

"The conduct of South Carolina has called forth not only the question of nullification, but the more formidable one of secession. It is asked whether a state, by resuming the sovereign form in which it entered the Union, may not, of right, withdraw from it at will. As this is a simple question whether a state, more than an individual, has a right to violate its engagements, it would seem that it might be safely left to answer itself. But the countenance given to the claim shows that it cannot be so lightly dismissed. The natural feelings which laudably attach

the people composing a state to its authority and importance are at present too much excited by the unnatural feelings with which they have been inspired against their brethren of other states not to expose them to the danger of being misled into erroneous views of the nature of the Union, and the interest they have in it. One thing at least seems to be too clear to be questioned: that while a state remains within the Union it cannot withdraw its citizens from the operation of the Constitution and laws of the Union. In the event of an actual secession, without the consent of the co-states, the course to be pursued by these involves questions painful in the discussion of them. God grant that the menacing appearances which obtruded it may not be followed by positive occurrences requiring the more painful task of deciding them."[1]

The reader will not fail to notice the penetration of this venerable statesman, in his retirement, in marking the causes that had begun to operate in promoting the growth of fatal errors. He speaks of the natural feelings which *laudably* attach the people of a state to *its* authority and importance; the unnatural excitement of sectional feelings; and the danger of being *misled* into erroneous views of the nature of the Union and the interest that all have in it. In weighing, therefore, the moral accountability of our Southern brethren for their share in producing the late civil war, let it not be forgotten that more than forty years ago Mr. Madison pointed out that it was opinion, honest, however mistaken opinion, that was possibly destined, under natural influences and the excitements of feeling, to bring the Union into the terrible necessity of encountering secession. I am in no way concerned to justify the Rebellion, as we are accustomed to call this great national schism. I am describing the growth of opinion on a complicated subject of human duty. How far we are morally accountable for the formation of our opinions on any subject—how far we are morally bound to forecast the consequences of our opinions—is a subject too vast to be entered upon here; and it is, moreover, a subject entirely distinct from the history of opinion.

To return to that history, it is only necessary to say further,

[1] Madison's Works, IV. 290.

concerning South Carolina nullification, that when, in 1833, she had pushed on to the very verge of open resistance, Mr. Calhoun and Mr. Webster had an encounter in the Senate over certain resolutions introduced by Mr. Calhoun for the purpose of presenting his views of the Constitution in opposition to the passage of a bill designed to enforce the collection of the revenue in South Carolina.[1] Mr. Calhoun's doctrine was stated in his resolutions with great precision and in a beautifully logical order of premise and conclusion. Whether his premises were correctly assumed is another matter; but even one who denies them must admit the ingenuity, the clearness, and the compactness of the argumentative process by which he arrived at his conclusions. I wish my younger readers, as a purely intellectual exercise, to note the steps in this great man's reasoning, which led him to maintain the doctrines from which the right of secession was deduced nearly thirty years afterwards. They will also profit, perhaps, if they will attend to the singularly skilful admixture of truth with what the opposite doctrine regards as error, introduced into this powerful piece of logical statement; and then they should also observe the absence of certain important facts which Mr. Calhoun did not notice.

His grand premise was this: "That the people of the *several* states composing these United States are united in a *constitutional compact*, to which the people of each state *acceded* as a separate sovereign community, each binding itself by its own *peculiar ratification;* and that the Union, of which the said compact is the bond, is a union *between the states* ratifying the same."

This being assumed as the truth, in respect to what took place in the formation and adoption or ratification of the Constitution, the next step in the process conducts to his conclusion, in the following manner:

"That the people of the several states thus united by the

[1] Mr. Webster's reply to Mr. Calhoun on this occasion was a much less rhetorical speech than his reply to Hayne in 1830. I have said elsewhere that the reply to Calhoun is the best and clearest exposition of the Constitution of the United States as a fundamental law, in opposition to the doctrine of compact between sovereignties, that Mr. Webster has left us. (Life of Webster, I. 451.) The full text of Mr. Calhoun's argument is to be found in his Works, II. 197 et seq.

constitutional compact, in forming that instrument, and in creating a general government to carry into effect the objects for which they were formed, delegated to that government, for that purpose, certain definite powers, to be exercised jointly; reserving, at the same time, each state to itself, the residuary mass of powers to be exercised by its own separate government; and that whenever the general government assumes the exercise of powers not delegated by the compact, its acts are unauthorized, and of no effect; and that the same government is not made the final judge of the powers delegated to it, since that would make its discretion, and not the Constitution, the measure of its powers; but that, as in all other cases of compact among sovereign parties, without any common judge, each has an equal right to judge for itself, as well of the infraction as of the mode and measure of redress."

Here was a doctrine, stated with great clearness of language, which conducts directly to this result: that the separate states, which have *acceded* as sovereigns to a compact, may *secede* from that compact when they think it has been broken; and if this is true, there is no good reason why they may not secede if they think there is imminent danger of its being broken. But whether the premise which regards the Constitution as a compact between sovereign states, instead of being a Constitution of government, or fundamental law, made by the people, who are the source of all law, is correct, depends upon the view that we take of certain historical facts and occurrences, and the interpretation we give to the public instruments which embodied those occurrences. When we come to analyze the public events and the public action that constituted the adoption of the Constitution, it becomes a question of intent, of understanding, of purpose, on the part of the people who participated in that great public transaction; and here the way divides into very different paths, which will lead to very opposite results, according as we choose the one or the other. Is it true that the people of the several states, in establishing the Constitution, acted and intended to act as independent sovereigns act when they enter into a mutual compact? Or, on the other hand, is it true that, by uniting in a mutual cession of certain powers of government, they made a fundamental law, which became enacted as law by reason of their all uniting in making it

the supreme law of the land? The latter is what they had the clear right and unquestionable power to do, just as they had to do the former. The question is, Which did they intend to do? According to the Websterian doctrine, among the many minor proofs that they intended to do the latter, and not the former, stand the great facts to which I have already adverted, which Mr. Calhoun omitted from his formal statement—namely, that they declared the Constitution to be the supreme law of the land; that they made in it a judicial tribunal for the express purpose of declaring its meaning; and that they provided a process for amending this fundamental law, *as* law, and *not as* an agreement, compact, bargain, or treaty between sovereigns.[1] It was certainly true, as Mr. Calhoun said, that the powers of the general government are delegated powers — that is, they are powers which the government possessed by no original and inherent authority of its own, but which it derived from some authority competent to confer them. It is true, also, as he said, that they are definite powers, and that all other powers of government are reserved by each state for itself. It is equally true that whenever the general

[1] The process of amending the Constitution seems scarcely reconcilable with the hypothesis that the Constitution is a compact between independent sovereign states. An amendment becomes part of the Constitution when ratified by three fourths of the states. It becomes the supreme law of the land to the remaining one fourth which did not ratify it, just as it does to the three fourths which have ratified it. It is, therefore, a process of making a new fundamental law, which shall bind a minority, rather than a process of making a new league or compact between sovereign parties, in which a minority of such parties cannot ordinarily be bound without their individual consent. It is true that the several states have agreed in advance to become bound by the action of three fourths of the whole number; but it is much more in accordance with principle to regard the process of amendment by a fixed majority as a method of enacting new organic law, than it is to consider it as a method of making a new treaty. Whether the process of amending the Constitution of the United States extends to the deprivation of any and all rights reserved to each state under the original Constitution and its Amendment X.—so that three fourths of the states can deprive the remaining one fourth of attributes of sovereignty unquestionably belonging to them as the Constitution originally stood—is a question that depends upon the effect of Amendment X. as a limitation upon the amending power. This question, which could not be discussed in the very limited space of this note, is alluded to here only for the purpose of saying that whether we regard the process of amendment as the enactment of a new fundamental law, or as the making of a new compact between sovereign states, the scope of the amending power is the same.

government assumes the exercise of powers not delegated to it, its acts are unauthorized and of no effect. But the process of ascertaining when and why its acts are unauthorized, and of declaring them to be of no effect, constitutes the immense difference between what I may now call the Webster and the Calhoun doctrine. If there is a process provided for this purpose by the Constitution itself—as there certainly is, both in the judicial power and in the power of amending the Constitution—then all other processes for the redress of supposed usurpations are outside of the Constitution; and if they conduct to violent resistance, they are revolutionary—resting, not upon constitutional principles and modes of redress, but on the great natural right of resisting intolerable oppression.

Such is the main substance of the two theories of the Constitution, omitting the minor arguments which were adduced in support of each. And now I have to note what accompanied and followed this discussion of 1833, which attracted a vast attention throughout the country.

In November, 1832, a state convention assembled in South Carolina and adopted an ordinance declaring the revenue laws of the United States to be null and void within the limits of that state, and directing the legislature to pass such state laws as would prevent the collection of the revenue. General Jackson was President of the United States. Supported in this matter by Mr. Webster, in the Senate and in the country—a support which he and his advisers always acknowledged—the president took such measures that the nullifiers were obliged to pause. The bill to enforce the collection of the revenue in South Carolina became a law on the 20th of February, 1833; but before this happened the crisis was passed, owing to General Jackson's firmness: although Mr. Calhoun fully developed in the Senate his views respecting the nature of the Constitution, and left them on the public records to encounter the opposite views maintained by Mr. Webster, and to a very considerable extent acted upon by the administration. Great credit has always been given, and very justly, to General Jackson, for the manner in which he met the crisis of nullification. But there is a less well-known incident, which took place in South Carolina, and which had a great effect in sobering and checking many of the

leading nullifiers. There was at that time in Charleston a small body of Union men, led by Mr. Pettigru and Mr. Legaré, two of the most eminent citizens of that state. These gentlemen, who had determined, if needful, to put their lives into the struggle, assembled one evening at the house of Mr. Pettigru, and there drew up and signed a round-robin, which they sent to their friends and neighbors of the nullifying party, informing them distinctly that if they took the first step in any overt resistance to the laws of the United States they would have to take that step over *their* dead bodies. This had an effect upon some persons who were not disposed, in their excitement, to be deterred by a president's proclamation, or by the possible and distant penalties of treason.

Nullification passed into history as a mere paper war. But the discussions which attended it left deep traces in the opinions of men. Looking back to what was occurring fifty years ago, we can perceive how there came to be a radical difference of opinion about the nature of the Union, between the Northern and the Southern sections of the country. Not only were the educated men in mature life at the period of nullification profoundly impressed by the public discussions of the theory of the Constitution, but the generation of young men who were receiving their education at the institutions of learning paid far more attention to such subjects than is now, unfortunately, given to them at most of our great public schools. In a Northern college the youth imbibed the doctrines of a school which found its grand expression in the speeches of Webster and the commentaries of Story. The influence of the intellectual atmosphere, of admiration for great performances in which we take a local pride, is irresistible. Substantially the Webster doctrine of the nature of the Constitution became the doctrine of the whole North, and of all that portion of the West that was first settled under Northern influences. But if we go to the Southern section of the country, and observe the influences that were there working in the education of the young men of that region, we shall find that the great men of the North were not their demi-gods, their examplers, their teachers.

Nearer to them, perhaps personally known to them—at all events, greatly admired and studied by them—stood the distin-

guished Southern champion of what were called "State Rights"—a man of singularly pure personal character, who, if he was ambitious, had, as Webster said of him after his death, nothing in his ambition that was grovelling, or low, or meanly selfish, and whose patriotism no man could doubt. The Southern youth could not help yielding their minds to the influence of Mr. Calhoun's teachings. His doctrine was captivating to those whose feelings led them to regard their state as their natural sovereign; and it was enforced with a dialectic skill that seemed to answer all the objections of its opponents.

It will be found, therefore, by one who undertakes to analyze the history of opinion on this momentous subject, that while, ten years after the death of Mr. Calhoun, when the crisis of secession arose, there was a great difference of opinion among the Southern people on the point of necessity for that step, there had grown up in that region a generation of men who regarded Mr. Calhoun's doctrine with great reverence, and who might carry his views further than he intended. In the eulogium on Calhoun pronounced by Webster in the Senate, when Mr. Calhoun's death was announced, there was a sentence that was uttered in very measured language, but with a prophetic meaning that was perhaps not entirely perceived by those who heard it, but to which subsequent events have given great significance. It was in these words: "However he may have differed from others of us in his political opinions or his political principles, those opinions and those principles will now descend to posterity under the sanction of a great name."[1]

There was something more than mere compliment in this. It was the forecasting of the influence which Mr. Calhoun's doctrines were destined to have with the rising generation of Southern men, through the sanction of his great abilities and his irreproachable character. Webster's anxiety about the Union had been unceasing from the era of nullification to the time of his own death. He had employed all the forces of his logic and all the power of his rhetoric to encounter the nascent theory of secession, which was growing into birth out of the theory of nullification; he had striven to invest the idea

[1] Works of Daniel Webster, V. 368–370.

of the Union with attractions that would unite the influences of the imagination to the influences of reason; and when he said that the principles and opinions of his great antagonist would descend to posterity under the sanction of an illustrious name, he meant to give a warning to the North of what their effect would be on the next generation of the South. They did so descend. When, at the end of nearly thirty years after Mr. Calhoun had fully declared his opinions of the nature of the Constitution, there came about a state of things in which, from real or imaginary dangers — and it makes little difference in times of popular excitement whether the alleged dangers are real or imaginary — Southern men began to calculate the value of the Union, the belief in secession as a constitutional right was the general and conscientious belief south of Mason and Dixon's line. There were many exceptions, but they were of an order of men whose influence in a tempestuous time is not seldom overborne.

No one can have studied the history of the formation of the Constitution without perceiving to what an extent the existence of African slavery in certain states influenced its arrangements. We have seen that during the War of 1812–15 it was the policy pursued by the federal administration in the exercise of its war powers that brought the nature of the Constitution into some discussion, and that in the era of nullification it was the exercise of its revenue powers that led to much more profound and searching discussions of the fundamental basis of the Union. We now approach the period when slavery began to be the topic which finally led to a great national schism, ending in a civil war.

The arrangements of the Constitution, made necessary by the presence of a peculiar form of labor in eleven of the thirteen original states, recognized and upheld the principle of property in slaves, as a form of property existing under the local law of those states. It became a part, and a very important part, of the agreement made between the states when it was assumed that this form of property would continue to exist; and between those states where, if it had not already been, it was assumed it would soon be abolished, and that, as a right of property, it was to be regarded as founded in the local laws

and customs of the states which tolerated and were expected to continue it. Hence it became a solemn stipulation that by a mixed system of representation in which slaves, that were admitted to be property, were reckoned in a certain ratio as persons, in fixing the relative representation of those states in one of the houses of the national legislature. Hence, too, it became another equally solemn agreement between the slave and the free states that a fugitive who was held to labor by the law of a state from which he had escaped could be pursued and carried back by the person to whom his labor was due, notwithstanding the law of the state to which he had fled did not recognize the relations of master and slave. Although the terms of the Constitution which embodied this stipulation did not expressly mention slaves, but included as well the relation of parent and child, guardian and ward, master and apprentice, as fixed by the law of the domicile, yet the contemporary discussions make it entirely certain that the slaves were the principal objects which led to this interstate agreement, and there is every reason to believe that if this agreement had not been made in the Constitution, the Constitution could not have been established.

In the formation of such a political system as that of the United States under the Constitution, consisting of a group of independent states, each of which was to retain all of its powers of self-government which it did not cede to a central authority, but creating a central government for the exercise of certain powers of common concern and national interest, the recognition of whatever the local law of a state treated as property was at once correct and unavoidable.

If the Union had never embraced more than the thirteen original states whose people established the Constitution, the practical working of this principle would probably never have led to serious difficulty. From the historical detail given in the first volume of this work respecting the formation of the territorial clause of the Constitution (that relating to the admission of new states), the history of the acquisition of the Northwestern Territory, and the agreements made respecting slavery and slave-representation, two inferences may be drawn: First, that in the formation of the Constitution, it was the understanding of its

framers that the concession of a right to have slaves included in a certain ratio in the basis of representation in one of the houses of Congress was a concession made to and confined to the slave states then included in the Union; second, that this concession was made by the other states on the understanding that in the Northwestern Territory slavery would not be allowed to be introduced. But it was not so clear that other acquisitions of territory on the southern, or the southwestern, frontier of the Union, either by cession or conquest, from which new states would be made, were excluded from contemplation. Looking to the general terms of the Constitution, as it was framed and adopted, it is apparent that a power to admit new states into the Union was conferred upon the Congress, with no other qualifications than such as were necessary to prevent the dismemberment of any existing state without its own consent. It is equally apparent that the territorial clause conferred on the Congress a full power of legislation over the territorial possessions of the United States. Whether the peculiar phraseology of this clause, which spoke of "*the* territory or other property belonging to the United States," confined the legislative authority of Congress to the Northwestern Territory, which was all that the United States owned at the time when the Constitution was framed, or whether it embraced all future acquisitions of territory, was at one time a disputed point. But the course of legislation after other acquisitions of territory had been made shows that in practice Congress for a long time assumed and exercised a power of legislation over the new territories which it organized that could only have been founded on the grant of authority contained in the territorial clause; and that this authority was assumed to extend not only to the provision of a frame of government for each territory, but to the civil relations of the inhabitants, as well as to the disposal of the public lands. But the successive events which finally led to the great schisms of 1860–1, and to the civil war which then began, must be separately grouped by an examination of the different periods in which they occurred. This can be most conveniently done in a special chapter.

It belongs to the present chapter to analyze the doctrine of secession as a supposed constitutional right resulting from the nature of the Union which it established.

It has been quite recently said by one of the ablest and most thoughtful of the Southern men who believed in and acted on the right of secession until the contest was decided, that "in all nations in which there are any stirrings of constitutional life, there is more than one fundamental principle or power;" and that "these several principles or elements are not all developed at the same time or in equal degree."[1] This admirable discourse was delivered before Mr. Lamar was elevated to the bench of the Supreme Court of the United States.[2] Various causes, operating from an early period down to the year 1861, determined the character of our political system, making the centripetal more powerful than the centrifugal forces, notwithstanding the fact that the state sovereignties were so prominently asserted in the framing and establishment of the Constitution. Although, from the time of its adoption down through a period of seventy years, the principle of the paramount authority of the Union was becoming stronger and stronger, until in 1861 it was the fixed opinion in a majority of the states, there was a minority in which the doctrine of secession as a constitutional right was developed into an equally fixed opinion in a period of not more than thirty years. This minority of states, grouped together geographically, had common interests, and felt themselves exposed to common dangers. The pursuits of their people were chiefly agricultural, and the agricultural labor, as well as that in many other forms of industry, was the labor of slaves. The course of events which succeeded the year 1830 quickened the apprehensions of the Southern people in regard to their peculiar situation as slaveholding communities, and produced a rapid development of the doctrine of secession. But secession, as a constitutional right, was not advanced in the time of nullification, although the theoretical principles of both doctrines were much alike. At the end of thirty years from the era of nullification, throughout the Northern and Western States, the doctrine that the Constitution is a fundamental law which has established a national although

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[1] Oration on the Life, Character, and Public Services of the Hon. John C. Calhoun; delivered before the Ladies' Calhoun Monument Association and the public, at Charleston, South Carolina, by the Hon. L. Q. C. Lamar, Charleston, 1888.

[2] See Note B at end of this chapter.

limited sovereignty, and that it is not a compact or league between sovereign and independent states which can withdraw from it at will was the general belief. In the Southern States belief in a constitutional right of secession from the Union became so prevalent that, on the first apprehension of danger, whether well or ill founded, it could be acted upon in a time of great excitement. But it is of consequence, now that these tendencies can be calmly analyzed, to record that the doctrine of secession had no advocates when nullification was attempted in South Carolina, and especially that Mr. Calhoun himself did not hold or assert it.

It has already been seen that when Mr. Hayne, in the debate of 1830, asserted the right of nullification, he held that the process of its operation by a state was to arrest the execution, within her own limits, of an obnoxious act of Congress, on the ground of its being a violation of the Constitution, and to hold it in an inoperative condition until a convention of the states should have decided, by a two thirds vote of the states, that it was constitutionally valid, or, if not constitutionally valid, that the convention should have proposed to amend the Constitution as the exigency required. This was the doctrine of Mr. Calhoun; and it was certainly consistent with an adherence to the Union by the state which might have made this appeal to the body that he regarded as the authority paramount in our system to every other. But it is difficult to see, in the fifth Article of the Constitution, which embraces the amending power, why the convention of the states is the most august and imposing embodiment of political authority known to our system of government. There are two modes in which amendments of the Constitution may be proposed. They may be proposed by the Congress whenever two thirds of both houses shall deem it necessary, or when, on the application of the legislatures of two thirds of the several states, the Congress is required to call a convention of the states for the proposing of amendments. In either case the amendments proposed must be ratified by the legislatures of three fourths of the states, or by conventions in three fourths thereof, before they can become part of the Constitution. It is for the Congress to direct which of the two modes of ratification shall be resorted to. It may be said that when the occasion which gives rise to the necessity or the wish

for amending the Constitution is an act of the Congress itself, deemed to transcend its constitutional powers, the appeal can be most effectually made to a convention of the states. But the Congress must call the convention, and the convention has no other function than that of shaping and proposing the amendments, if any are found to be necessary. The Congress which has enacted the obnoxious law can be politically changed, if such is the pleasure of a majority of the people of the states, and the new Congress can be compelled to take the proper steps for hearing and acting on all complaints which may be preferred by any state or number of states.

Looking back to what took place at the time when the Constitution was first amended, and to the reluctance that was felt to the calling of a second convention of the states at the time of its ratification, and adding the further fact that we have never had a convention of the states since 1787, but that every amendment has been proposed by the Congress, it is quite apparent, as it seems to me, that the convention of the states is not the paramount power in our system, in a higher or stronger sense than the Congress, in the matter of proposing amendments. It would seem that the most august and imposing embodiment of political authority known to the American system of government is the majority of the people of the states acting separately as the Constitution requires, and not the Congress or the convention of states, which are both organs of the will of that majority. Still, it was undoubtedly the doctrine of Mr. Calhoun that the convention of the states is in some sort the highest political authority. He seems to have formed to himself an idea of a body clothed with a kind of paramount power, whereas the only function of a convention of the states recognized by the Constitution, and the only purpose for which it can be called, is to propose amendments. Whether the appeal had better be made to a convention rather than to the Congress, either body is to discharge the same function when occasion is supposed to have arisen. If ever there was a time since the Constitution went into operation when it might have been expedient to call a convention of the states, it was either just before, or during, or just after the late civil war. But such an assembly of the states was not asked for by the states which revolted from the Union; and if it had been

there is no probability that it would have been agreed to, or that if it had been held it would have resulted in any good.

Alexander Hamilton, in the concluding number of The Federalist, No. 85, thus luminously refuted the objection that the Congress would not be favorably inclined to the surrender of any power it had once exercised:

"In opposition to the probability of subsequent amendments [subsequent to the adoption of the Constitution], it has been urged that the persons delegated to the administration of the national government will always be disinclined to yield up any portion of the authority of which they were once possessed. For my own part, I acknowledge a thorough conviction that any amendments which may, upon mature consideration, be thought useful will be applicable to the organization of the government, not to the mass of its powers; and on this account alone I think there is no weight in the observation just stated. I also think there is little weight in it on another account. The intrinsic difficulty of governing thirteen states, independent of calculations upon an ordinary degree of public spirit and integrity, will, in my opinion, constantly *impose* on the national rulers the necessity of a spirit of accommodation to the reasonable expectations of their constituents. But there is yet a further consideration, which proves beyond the possibility of a doubt that the observation is futile. It is this: that the national rulers, whenever nine states concur, will have no option upon the subject. By the fifth Article of the plan the Congress will be *obliged*, 'on the application of the legislatures of two thirds of the states (which at present amount to nine), to call a convention for proposing amendments, which shall be valid to all intents and purposes, as part of the Constitution, when ratified by the legislatures of three fourths of the states, or by conventions in three fourths thereof.' The words of this article are peremptory. The Congress '*shall* call a convention.' Nothing in this particular is left to the discretion of that body. Of consequence, all the declamation about the disinclination to a change vanishes in air. Nor, however difficult it may be supposed to unite two thirds, or three fourths of the state legislatures, in amendments which may affect local interests, can there be any room to apprehend any such difficulty in a union on points which are merely relative to the general liberty or security of the

people. We may safely rely on the disposition of the state legislatures to erect barriers against the encroachments of the national authority.

"If the foregoing argument is a fallacy, certain it is that I am myself deceived by it; for it is, in my conception, one of those rare instances in which a political truth can be brought to the test of a mathematical demonstration. Those who see the matter in the same light, however zealous they may be for amendments, must agree in the propriety of a previous adoption [of the Constitution] as the most direct road to their object."

In that part of Mr. Calhoun's writings which related to the several divisions of powers between the Federal Government and the states every one must concur. He expressed in a terse sentence the united character of the states in their foreign relations. He said: "Abroad, to the rest of the world, they are but one. It is only at home, in their interior relation, that they are many." As a general proposition, this is obviously true. It is only when we come to inquire, in respect to internal affairs, what are the relations of "the many" to the power which is denominated "the Union" that we have to go further, and to determine where the supreme power resides. It is quite evident that there are internal affairs which are as exclusively committed to the authority of the Union as are the foreign relations of the country; and hence arises the necessity for finding the dividing line which separates the powers of the Union, in relation to internal affairs, from the powers of the states. On the one side of this line will fall the whole mass of internal powers which the Constitution has conferred on the government of the United States, and on the other side will fall the whole residuum of powers which each state may exercise within its own limits. Having made this discrimination, we must next proceed to inquire, when a conflict arises, or when the general government is supposed to have transcended its constitutional powers, where the authority resides which is to determine finally whether there has been such an unwarranted exercise of power.

The doctrine of nullification did not assert that a single state could finally, and of its own authority, annul an act of Congress. It claimed a right to arrest the operation of a law which the state deemed to be unconstitutional, and to hold it in suspense until a

convention of the states had decided the question of its constitutional validity. While it is true that this doctrine was claimed to be consistent with an adherence of the state to the Union, and the remedy which it contemplated was deemed to be one within the Union, resulting from constitutional principles, it still left a most important question undecided. That question was, not only whether such a remedy would be cumbrous, impairing the proceedings and vigor of action which every government should be able to exercise, but whether there is not a remedy provided by the Constitution itself, which excludes that contemplated by the process called nullification. This is what Mr. Webster undertook to establish; and it is what the Force Bill was founded on, which undertook to interpose the judicial remedy, as the means of encountering the process of nullification. I do not understand that the gradual reduction of the Tariff, proposed and carried by Mr. Clay, in order to prevent an actual collision of forces between South Carolina and the United States, involved any concession to the doctrine of nullification. The existing Tariff Act was repealed in order to make room for a gradual reduction of the duties to a revenue standard in the course of a period of ten years. This may have been an abandonment of what was called the protection system, but the Force Bill remained on the Statute Book of the United States, and thus continue to assert the supreme authority of the Union over a nullifying state.[1]

But in respect to the opinions of Mr. Calhoun, and the distinction which he drew between nullification and secession, it is perfectly clear that he was consistent, whatever may have been the tendency of the earlier doctrine to run into the later one. The advocates of secession in 1860–1 went beyond Mr. Calhoun, although they supposed themselves to be justified by his authority because he had so strenuously upheld the state rights thirty years before. Their deductions were drawn from some of his principles, but he himself would not have drawn those deductions. He left on record a full exposition of his own distinction between nullification and secession.[2]

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[1] The Force Bill was passed February 20, 1833. Mr. Calhoun and Mr. Clay withdrew from the Senate before the final vote. See Curtis's Life of Webster, I. 425.

[2] See Note B at end of this chapter.—J. C. C.

There is a passage in No. 28 of The Federalist (written by Hamilton) which might, on a cursory reading, seem to hint at something like nullification as a remedy against usurpations by the national government. A careful perusal, however, of the whole essay, and a comparison of it with other numbers from the same pen, will show that Hamilton recognized only two forms of resistance to acts of the national rulers supposed to be unconstitutional, and that neither of these forms comprehend what was afterwards known as nullification. The Federalist, it must be remembered, was written and published before the Constitution was adopted. The writers had to forecast the operation of the government which would be established under it, and they did this with marvellous insight, foresight, and accuracy. There are very few of their prospective explanations of the practical working of the Constitution which have not turned out to be correct. Indeed, they are entitled to be considered as prophecy, which the course of events has fulfilled to a more remarkable degree than any political speculations of the same kind of which there is a record in history, if in fact there are any which are parallel to them. Of the three writers of The Federalist, Hamilton was by far the ablest, and the contributions made by him largely exceeded in matter and in importance those of the other writers, Madison and Jay. Hamilton ranged over a much wider field than the two others occupied, and although the numbers written by them are of great value, it is not at all extravagant to say that if they were lost, the body of The Federalist, which was exclusively the production of Hamilton, would remain an imperishable monument of his genius and capacity as a statesman, and would still constitute the most important commentary on the Constitution that was written contemporaneously with its creation and establishment. It is singular that, while so much has been said concerning Hamilton's supposed monarchical tendencies (and undoubtedly he considered the British Government as theoretically the best system of modern times) concerning his course in the Convention and his dissent from many of the provisions which the new Constitution embraced, it has never been sufficiently observed, although it is certainly true, that in The Federalist (accepting a republican system as the only one possible for the people of the United States), he encountered, with wonderful success, the objection on the one

hand that it was not a sufficiently strong government, and on the other hand the opposite objection that it was too strong to be consistent with liberty. As an illustration of his political wisdom and sagacity, it has always seemed to me that his defence of the Constitution, as it came from the hands of its framers, against the objection that it did not contain a Bill of Rights, was, considering the purpose for which he made that defence, a masterful piece of constitutional exposition. His purpose was to show that however complete in the attribute of sovereignty were the powers conferred on the general government by the Constitution, making, in respect to those powers, collectively or separately, a very strong government, yet, from the fact that they were limited and defined powers, and from the implication that only what was in terms granted could be considered as bestowed, no express reservation of powers that were not granted was necessary for the protection of individuals or of states, and that therefore the Constitution itself, by its proper interpretation, ought to be considered to embrace all the Bill of Rights that was needful. This was perfectly sound, in theory, according to the principles of interpretation which should be applied to such an instrument as the Constitution, under the circumstances of its formation and establishment. The reason why a Bill of Rights, or subsequent amendments in the nature of a Bill of Rights, was considered necessary, was that, in order to disarm jealousy, it was best not to leave certain rights of individuals and of states to an implication, however correct and certain that implication might be, but to protect them by express provisions that would render all future cavil or question impossible, or reduce it to the minimum. But what I here endeavor to point out is that, as a matter of political reasoning, Hamilton was right in contending, in advance of a ratification of the Constitution, that a Bill of Rights was by implication embraced in an instrument which created a government of limited and defined powers of sovereignty, which were to be vested by the people of each state in a central government, leaving all other powers of government in the hands of the people constituting the sovereignty of each state as a separate and self-governing body politic. When I come to treat of the first Ten Amendments proposed by the first Congress, I shall have occasion to speak more at large of Hamilton's views on this subject, as expressed in No. 84 of

The Federalist. At present I have only to remark that in that number, and in all others that he wrote, while he admitted that the proposed new government would be a very strong one, he showed satisfactorily that it would be no stronger than the exigencies of the Union required, and that it could be adopted without danger to the rights of individuals or of states.

To return now to the language in No. 28 of The Federalist already referred to, which prospectively touched upon the modes of encountering acts of the general government which might be believed to transcend its constitutional authority. The language is as follows:

"The obstacles to usurpation and the facilities of resistance increase with the increased extent of the state, provided the citizens understand their rights and are disposed to defend them. The natural strength of the people in a large community, in proportion to the artificial strength of the government, is greater than in a small, and of course more competent to a struggle with the attempts of the government to establish a tyranny. But in a confederacy the people, without exaggeration, may be said to be entirely the masters of their own fate. Power being almost always the rival of power, the general government will at all times stand ready to check the usurpations of the state governments, and these will have the same disposition towards the general government. The people, by throwing themselves into either scale, will infallibly make it preponderate. If their rights are invaded by either, they can make use of the other as the instrument of redress. How wise will it be in them by cherishing the Union to preserve to themselves an advantage which can never be too highly prized! It may safely be received as an axiom in our political system that the state governments will, in all possible contingencies, afford complete security against invasions of the public liberty by the national authority. Projects of usurpation cannot be masked under pretences so likely to escape the penetration of select bodies of men as of the people at large. The legislatures will have better means of information. They can discover the danger at a distance; and possessing all the organs of civil power and the confidence of the people, they can at once adopt a regular plan of opposition, in which they can combine all the resources of the community.

They can readily communicate with each other in the different states, and unite their common forces for the protection of their common liberty. The great extent of the country is a further security. We have already experienced its utility against the attacks of a foreign power. And it would have precisely the same effect against the enterprises of ambitious rulers in the national councils. If the federal army should be able to quell the resistance of one state, the distant states would have it in their power to make head with fresh forces. The advantages obtained in one place must be abandoned to subdue the opposition in others; and the moment the part which had been reduced to submission was left to itself, its efforts would be renewed, and its resistance revive. We should recollect that the extent of the military force must, at all events, be regulated by the resources of the country. For a long time to come it will not be possible to maintain a large army, and as the means of doing this increase, the population and natural strength of the community will proportionably increase. When will the time arrive that the Federal Government can raise and maintain an army capable of erecting a despotism over the great body of the people of an immense empire, who are in a situation, through the medium of their state governments, to take measures for their own defence, with all the celerity, regularity, and system of independent nations? The apprehension may be considered as a disease, for which there can be found no cure in the resources of argument and reasoning."

Here it is obvious that Hamilton recognized two, and only two, modes of resistance to unconstitutional measures. The first he described as "the exertion of the original right of self-defence which is paramount to all forms of government." He meant by this the inherent right of a people to overthrow any government by force which has become intolerably oppressive. The other resort he described as action by the state governments, whose legislatures, so situated that they could discover danger at a distance, "can at once adopt a regular plan of opposition, in which they can combine all the resources of the community. They can readily communicate with each other in the different states, and unite their common forces for the protection of their common liberty." Not only does the context of this particular passage show that he did not have in view such a remedy as that which was afterwards

called nullification, but when he came, in the concluding number of The Federalist (No. 85), to treat of the amending power of the Constitution, he made it perfectly apparent that in No. 28 he had in view a regular admitted constitutional mode of correcting errors or usurpations by the combined action of the general and the state governments.

There is another phase of opinion concerning the Constitution which came about in the North contemporaneously with nullification, but which can be more correctly described as a repudiation of all its obligations. This was the view taken by the early founders of the anti-slavery societies at the beginning of the agitation on the subject of slavery in the Southern States. Taking their stand outside of the Constitution, although they were citizens of the United States, these men sought to overthrow it because it gave a sanction and some degree of protection to the slavery of the African race. Their first publication was a well-reasoned and correct argument to show that the Constitution was what they called "a pro-slavery instrument." This they proved both from the facts attending its formation and from its text. Their conclusion was that no consistent "abolitionist" could vote or hold office under such a Constitution, and this they urged by a wide dissemination of their paper, which they called "Tract No. 1."[1] There was a kind of consistency in the doctrines and conduct of these persons, if consistency may be predicated of men who, under a well-defined constitution of government, without proposing to amend the fundamental law of their country, renounce its civil obligations because it does not suit their ideas of morality, and instead of leaving the country continue to enjoy all the benefits of its institutions.

At a later period the "abolitionists" considerably modified their principles. Coupling together the Declaration of Independence and the Constitution, they maintained that the slavery of the African race was inconsistent with both. For example, they contended that a slave escaping from a state where slavery existed into one where it did not exist should not be returned, both

[1] This remarkable document is now very rare. It is a curious historical illustration of the spirit and aims of the early "abolitionists." [See Appendix, "Anti-Slavery Tracts."—J. C. C.]

because the clause in the Constitution did not comprehend slaves, and because the Declaration of Independence had proclaimed that all men are born free and equal, and have an inalienable right to life, liberty, and happiness. If there is one thing in our constitutional history that is perfectly clear, it is that whatever the Declaration meant to assert, the Constitution, although it did not use the word "slave," or "slavery," did recognize the bondage of the African race under the law of the states where it had long existed, and to a certain extent upheld it. The earliest "abolitionists," in their "Tract No. 1," made this abundantly manifest; and it was because the Constitution did this that they renounced all allegiance to it.

It is scarcely necessary to notice here the wild ideas concerning the Constitution which prevailed from time to time during the late civil war among public men in the North—ideas that were as fully unfounded as the doctrine of secession. They cannot be said to have had much consistency with the Constitution itself. They were hardly in the nature of interpretations of the instrument, or of the powers of the government. They were for the most part founded in the assumption that the Constitution was displaced from its position as the supreme law of the land, or as the measure of the powers which the government could rightfully exercise. These ideas, when analyzed, resulted in the theory that from the necessity of the case the government must exercise extraordinary powers in suppressing a formidable rebellion, and that these powers are, at such a time, not to be drawn from the Constitution itself, but from the object to be accomplished, which, being unprecedented as a public exigency, required for the time being a departure from the letter of that law that constitutes the rule of action at all other times. The Constitution, however, embraced all the powers the exercise of which was necessary to the carrying on of a war against an unconstitutional and unlawful organization of states that sought to leave the Union; and it is only needful to say here that the loose ideas entertained and to some extent acted upon at that time do not, in the history of opinions concerning the nature of the Union under the Constitution, amount to important illustrations, to be compared with the doctrines of nullification and secession.

It is now proper, however, to notice two very important and striking historical facts. The one is, that at the time the Constitution was before the people of the thirteen original states for adoption, the full character of the government that would be established under it was understood, both by its friends and opponents, so completely that it now excites our wonder that at subsequent times there was so much misapprehension on the subject. The discussions in the state legislatures and conventions at the time when the Constitution was under their consideration show that the nature of the Constitution, as an instrument which was to establish a very different system from that of the Confederation, was correctly appreciated by both its friends and opponents. Among the latter, Patrick Henry, as I have already said, was the foremost, and his expositions of the proposed new government, made for a very different purpose from that of The Federalist, were to the full as accurate. The other fact is that the writers of The Federalist, especially Hamilton, in the essays which were designed to convince the people that no danger was to be apprehended by substituting the Constitution for the Articles of Confederation, made a commentary on the former so comprehensive and accurate that in after-times their view has been considered to have foreshadowed the doctrines that have been generally acted upon.

I have now to notice the singular fact that while, from the year 1798 down through the War of 1812, and to a still later period, opinions concerning the nature of the Constitution had in different quarters of the Union branched into such serious errors as nullification and secession, the government was all along administered, in its judicial, legislative, and executive departments, as a government of sovereign although limited and specific powers; that its powers were practically treated as paramount to those of the states, in their appropriate sphere; and that the supremacy claimed for the Constitution over the laws and acts of the states was by nearly all who were at any time charged with the duty of administering it admitted to be just what Hamilton so lucidly explained in The Federalist. Let any one compare his exposition with the judicial, legislative, and executive action of the Federal Government from the time of its establishment under the Constitution down to the late civil war, and he will see

that there was no serious departure from the views that were taken of the nature of the instrument by both its friends and its opponents, when it was before the people of the states for their adoption.

When the process of secession is contrasted with the process of nullification, it will be seen that although there was some resemblance in the reasoning by which they were respectively maintained, the former went far beyond the latter as a constitutional doctrine. Nullification was claimed to be a remedy *within* the Union against an act of Congress supposed to transcend its legislative power. It was based on the assumed right of the people of a state to arrest the operation of the obnoxious law within their own limits, and to hold it inoperative until a convention of the states should have decided its constitutional validity, or should have proposed an amendment of the Constitution confirming or taking away the power that had been exercised. This, therefore, could be claimed as a process of constitutional action within the Union, inasmuch as it did not undertake to withdraw the states from the Union. Still, it is quite obvious that if the people of a state can thus arrest the operation and action of the Federal Government within their own limits, in respect to the exercise of one power, it may with equal reason apply the same process to the whole mass of the federal powers, and thus render those powers mere nullities—at least, for the time being. Secession, on the other hand, is a supposed constitutional right of the people of a state, acting in their sovereign capacity, and upon an implied reservation of such a right, to withdraw the state and its inhabitants from the Union. Whether such a right exists, upon constitutional principles, depends entirely upon an *implication*, deduced from the nature of the Constitution. It is nowhere expressly advanced in the Constitution, or in any of the proceedings by which any state ever ratified it. This will be apparent on an examination of the proceedings by which the state of South Carolina, for example, adopted the Constitution in 1788, and the proceedings by which it undertook to secede from the Union in 1860.

In the first volume of this History (pp. 543 et seq.) I have given a condensed account of the proceedings which took place in South Carolina after the Constitution was first promulgated down

to and including her ratification and adoption of the instrument in 1788. These proceedings, both in the legislature and in the state convention, show that the people of that state, like the people of every other state, perfectly understood that they were asked to make a grant, or cession, of certain limited powers of sovereignty, which up to that time had constituted part of their own sovereignty; and that this grant, or cession, was to be made, not to a league or confederation of states like that which existed under the Articles of Confederation, but to a government, to be composed of three great departments—the legislative, the executive, and the judicial—and to have the power to act on the individual inhabitants of every state that should accede to the proposed Constitution. It appears, too, that the people of the state of South Carolina, like the people of several other states, accompanied their ratification and adoption of the Constitution with the proposal of amendments, to be presented to the first Congress that should assemble under it for consideration and action. It is thus made entirely clear that the people of South Carolina well understood that after the Constitution should have gone into operation it could be changed or affected only by the process of amendment prescribed in the instrument itself. It remains for me now, however, to describe more particularly the form and nature of the grant by which the people of South Carolina made an absolute conveyance of certain powers of legislation and government to the proposed new government which was to be established under the Constitution of the United States.[1]

If it could be made to appear, upon principles of sound reasoning, that each state, when it ratified the Constitution, made an implied reservation of a right to withdraw from the Union when

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[1] The account of the proceedings in South Carolina, given in the first volume of this History (pp. 543 et seq.), was written and first published thirty years before the doctrine of secession had assumed a formidable shape. I have here, therefore, supplemented that account with a careful analysis of the Ordinance of Secession adopted by South Carolina in 1860. It was the model for the other Ordinances of Secession which followed it in other states. They were all based on an assumed right of the people of a state to repeal the grant which they made when they ratified and adopted the Constitution. [A copy of the Ordinance of 1860 appears in Note A at end of this chapter.—J. C. C.]

for reasons of its own it should see fit to do so, it might be conceded that the doctrine of secession has some foundation. But against this view there militate strongly an important fact and an important principle. The fact is that the instrument of ratification in South Carolina, and in every other state, was an absolute, unqualified, and unlimited grant of certain powers of sovereignty to a central government. To this must be applied the principle of public law that a nation, or a body of people forming a self-governing community with full rights of sovereignty in regard to their external and internal relations, is a continuous political body, not separable into different generations of men. If the men of one generation of such a people make an unconditional grant or cession of political powers, it binds equally all future generations of the same people. Successive generations of the same people do not follow and displace each at a given point of time; the individuals come into being at every moment of time, and at each new birth, or at each accession of a new inhabitant coming from without, the individual becomes incorporated with and forms an integral part of the body politic.

Without this principle of continuity, of the unbroken identity of the same people, national life would not exist. At the time of the adoption of our present Constitution the people of each state were severally in the condition of independent nations, each of which held and exercised a full right of sovereignty in regard to both external and internal relations. The nature of the league or federation of states, existing under the Articles of Confederation, left each state at liberty to withdraw from that partnership, and to make any disposition of any of its political powers that it might find to be for its interest and welfare. Moreover, there can be no sound distinction between a grant or cession of political powers, made by a people who possess a full right of self-government, and a grant or conveyance of property by the same people. If both are absolute and unconditional conveyances, they are irrevocable for the same reasons and on the same principles. When, in 1860–1, South Carolina had passed her Ordinance of Secession, which purported to be a repeal, and in form was professedly a repeal, of the ordinance by which in 1788 she ratified and adopted the Constitution of the United States, she claimed that this repeal operated to withdraw from the government of the

United States not only the political powers which she had ceded to that government in 1788, but also that it revested in her the title to real property which she had conveyed to the United States, as sites for forts and other national structures, by various public acts since the Constitution went into operation. This claim evinced that, according to the theory of secession, there is no distinction between a cession of political powers and a cession of property, but that both could be withdrawn and revested in the state, by repealing the Ordinance of 1788, with the same formalities and by the same authority by which it had been passed.

The Tenth Amendment of the Constitution militates against the fundamental idea of secession as strongly as it supports the reserved sovereignties of the states. It must be remembered that the amendment was dictated by a wise jealousy lest the Constitution might seem to have put the state sovereignties in some jeopardy, and that by its express reservation it excluded the idea of any other and implied reservation. It was in these words: "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." That is to say, there are reserved to each state, or to its people, all those political powers which are not delegated to the United States by the Constitution, or the exercise of which is not prohibited by it to the states. This is a general description of all that mass of powers which constitute the reserved sovereignties of the states after the deduction made by the grants of the Constitution or by its prohibitions. No other and implied reservation is made. The express reservation excludes the idea of any implied reservation. It is true that this express reservation is just what would result from the implication that things not granted were withheld. But the express reservation was made for greater caution, and in order that it might stand upon a positive text, and be made a part of the Constitution itself. At the same time, there was no implication that the state which had ratified and adopted the Constitution had reserved a right to withdraw the powers which it had delegated to the United States, or a right to exercise powers which the Constitution had prohibited.

A good deal of unnecessary and fine-spun analysis has been expended upon the word "delegated," as if its meaning were the

same as that which is ordinarily given to the delegation of a power or authority by a principal to an agent, and which may be revoked by the principal if a right of revocation is reserved, or when a right of revocation results from the nature of the agency. But it must never be forgotten that the government of the United States, as it exists under the Constitution, is not an agency of the states, in the sense which obtains between individuals when a principal appoints an agent with general or special powers; that government is a limited sovereignty for certain specific purposes; and the meaning of the term "delegated," therefore, as used in the Tenth Amendment, is simply "granted" or "consigned." It will be allowed that the framers of the Constitution understood the meaning of the terms which they used; and among them Alexander Hamilton was pre-eminently distinguished for the accuracy with which he employed practical language. The word "delegated" is used in several numbers of The Federalist which were written by him. In No. 15 occurs the following passage: "The great and radical vice in the construction of the existing Confederation is in the principle of legislation for states or governments in their corporate or collective capacities, and as contradistinguished from the individuals of which they are composed. Though this principle does not run through all the powers delegated to the Union, yet it pervades and governs those on which the efficiency of the rest depends."[1] Hamilton here made use of the word "delegated" in the sense in which it was used in Article 11 of the Confederation, which declared that "every 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." "Delegated" here meant "granted," "conveyed," or "ceded." The theory of the Union as it existed under the Confederation was that each state had granted or ceded certain political and sovereign powers to the "firm league of friendship" established between them "for their common defence, the security of their liberties, and their mutual and general welfare." The powers were to be exercised by the body styled "The United States in Congress assembled." They differed, so far as they extended,

[1] The Federalist, Lodge's edition, No. 15, p. 86.

from the powers afterwards delegated to the United States by the Constitution. Hamilton's meaning was that while these powers delegated to the Union by the Articles of Confederation are in their nature powers of sovereignty, yet that the radical vice of the system which prevented their efficient exercise was that the legislation was addressed to *states* and not to *individuals.* Thus the United States, under the Confederation, had "an indefinite discretion to make requisitions for men and money, but they had no authority to raise either by regulations extending to the individual citizens of America."

In The Federalist, No. 21, Hamilton observes: "There is no express delegation of authority to them (the United States under the Confederation) to use power against delinquent members; and if such a right should be ascribed to the Federal Head, as resulting from the nature of the social compact between the states, it must be by inference and construction, in the face of that part of the second article by which it is declared that 'each state shall retain every power, jurisdiction, and right not expressly delegated to the United States in Congress assembled.'" It follows from this that the powers expressly delegated to the United States in Congress assembled were theoretically full powers of sovereignty, but from the want of means of coercion, by which those powers could be applied to individuals, they were practically inoperative.

In The Federalist, No. 32, Hamilton uses the word "delegation," as applied to the transfer of political powers from the states to the United States (proposed by the Constitution, the adoption of which he was advocating), as a word entirely equivalent to an "alienation of state sovereignty." *Alienation* means an irrevocable cession, and not a delegation of authority by a principal to an agent. In The Federalist, No. 69, where Hamilton treats of the executive proposed by the Constitution, he speaks of the authority vested in a single magistrate, obviously using the term *vested* as applied to the powers of the executive in the same sense as the word "delegated" as applied to the whole mass of powers expressly ceded to the United States by the Constitution. In a previous number (46) Hamilton speaks of the powers "proposed to be conveyed to the Federal Government" — using this word in the

sense of granted or transferred. In No. 23 he had spoken of "the powers a free people ought to delegate to any government," using the word in the same sense. Madison, too, in No. 45 of The Federalist, says: "The powers delegated by the proposed Constitution to the Federal Government are few and defined."

Jay, in No. 64, observes that the power of making treaties "should not be delegated but in such a mode and as will afford the highest security," etc., and he proceeds to show that this has been accomplished by the plan of the Constitution. Thus it appears that these three writers and publicists, in recommending the Constitution to their countrymen, and in explaining its provisions, made use of the term "*delegated* powers" in the sense of *granted*, *ceded*, *conveyed*, and *alienated;* and that they never supposed it to imply a revocation or withdrawal, as a principal may revoke or withdraw the powers of an agent. At a much later period, when Madison felt called upon to express publicly his dissent from the doctrine of nullification, he made it entirely clear that, under the Constitution, no state has a right to withdraw her powers vested in the Federal Government, whether it undertakes to do so by the process called nullification or the process called secession.

Whether the famous Virginia and Kentucky Resolutions of '98 did or did not mean to assert a reserved right of the states to withdraw, in whole or in part, temporarily or finally, the powers granted by the Constitution to the Federal Government is a vexed question. It has been supposed by some that they did mean to assert such a right, and hence has arisen in former times a want of discrimination as to the meaning of the word "delegated" when applied to the powers granted by the Constitution. Mr. Madison's explanation of the meaning of the resolutions should be read by the light afforded by The Federalist of the term "delegated;" and whenever that term is now used it should be used in the sense of "conveyed," "ceded," or "alienated."

If we turn to Patrick Henry, the greatest and most powerful adversary of the Constitution at the time when it was before the people of Virginia for adoption, we shall find that he made no ingenious criticisms about the word "delegated." He interpreted it as The Federalist had; for he forcibly contended that the

powers proposed to be vested in the Federal Government were powers of full sovereignty. His great objection was that these powers would be alienated by the states without the indispensable check of a Bill of Rights, so formed as to protect the rights of states and individuals.[1]

In the full and accurate account of Henry's early education and subsequent acquisitions, given by Professor Tyler, it is shown that the great Virginia orator was a pretty well instructed lawyer, as well as statesman. I had, in the note above, intended to give him credit for being both a very able debater and a good parliamentary tactician. I must qualify my former estimate of him as a man of no great breadth of mind. The qualification that I now make is that while his mental breadth was somewhat less than that of some of his most eminent contemporaries—inasmuch as he carried his apprehensions of danger on the Constitution to an extremity—yet, in the knowledge of different systems of government, and of the principles of American liberty, he was inferior to no one of his time. I have, with the new light thrown upon his character and acquirements by Professor Tyler, gone in detail through his objections to the Constitution, for the purpose of making it clear that Henry well understood how the Constitution had made disposition of the powers of sovereignty; and that he held, as did the friends of the Constitution, that if Virginia should ratify it as it stood, she would irrevocably cede a part of her sovereign right to govern.

It now remains for me to refer to the Ordinance of 1788, by which South Carolina ratified and adopted the Constitution of the United States, and to contrast it with the Ordinance of 1860, by which she undertook to "repeal" it. That the party making

[1] I take this opportunity to express my high estimate of the value of a recent book entitled Patrick Henry, by Moses Coit Tyler. This author is a professor in Cornell University. His work, although a small 12mo of only 377 pages, throws more light on the character and public services of Patrick Henry than any production that has yet appeared. Mr. Wirt's Life of Henry has long ceased to be a reliable authority in many respects. Professor Tyler's book appeared in 1887, from the press of Houghton, Mifflin & Co., Boston and New York. It forms one of the volumes of a series entitled American Statesmen, edited by John T. Morse. In a note which will be found in the first volume of my present work, written and first published in 1854, I expressed my dissent from the common scepticism concerning Patrick Henry's abilities.

an unconditional grant, whether of political powers or of property, cannot by his own will, and without the consent of the grantee, revoke the one or the other, would seem to be a very plain proposition of ethics as well as of law. But the advocates of secession found means of satisfying themselves that a grant of political or governmental powers, and a grant of property, can be revoked by the grantor, that grantor being a sovereign state of the American Union.

The Ordinance of 1788, by which South Carolina ratified the Constitution of the United States, was an absolute and unconditional grant of political powers. The Ordinance of 1860 purported to be a *repeal*, and was professedly a repeal, of the previous ordinance. The state claimed that this repeal operated to withdraw from the government of the United States not only the political powers which she had ceded to that government in 1788, but also that it revested in her the title to real property which she had conveyed to the United States as sites for forts and other national structures, by various public acts since the Constitution went into operation. This claim evinced that, according to the theory of secession, there is no distinction between a cession of political powers and a cession of property, but that both could be withdrawn and revested in the state by repealing the Ordinance of 1788, with the same formalities and by the same authority by which it had been passed.

NOTE A.

The following is the text of the South Carolina Ordinance of 1860:

THE STATE OF SOUTH CAROLINA.

At a *Convention* of the *People* of the *State of South Carolina* begun and holden at *Columbia* on the *seventeenth day* of *December* in the *year of our Lord one thousand eight hundred and sixty*, and thence continued by adjournment to *Charleston* and there by divers adjournments to the *twentieth day* of *December* in the *same year*.

AN ORDINANCE *To dissolve* the *Union* between the *State of South Carolina* and other *States* united with her under the compact entitled "*The Constitution of the United States of America.*"

WE THE PEOPLE of the *State of South Carolina in Convention* assembled *do declare* and *ordain*, and it is *hereby declared* and *ordained* That the *ordinance adopted* by us in *Convention*, on the *twenty-third day of May* in the year of our *Lord one thousand seven hundred and eighty-eight* whereby the *Constitution* of the *United States* of *America* was *ratified* and also all *Acts* and *parts of Acts* of the *General Assembly* of this *State ratifying amendments* of the said *Constitution* are *hereby repealed*; and that the *union* now subsisting between *South Carolina* and other *States* under the name of "*The United States of America*" is *hereby dissolved.*

Done at *Charleston* the *twentieth day of December* in the year of our *Lord one thousand eight hundred and sixty.*

D. F. JAMISON, Delegate from Barnwell,
and *President* of the *Convention.*

[Here followed the signatures of all the delegates—170 in number.]

SECRETARY OF STATE'S OFFICE,

Charleston, S. C., 20th December, 1860.

I do *hereby* certify that *this ordinance* was *this day received* by me from the *hands of David F. Jamison, President* of the *Convention*, in the *presence of said body*, and *was by me filed* in *this office* by *his order.*

Witness my *hand* the *day and date above written.*

ISAAC H. MEANS,
Secretary of State.

STATE OF SOUTH CAROLINA.

Office of Secretary of State.

I, J. Q. Marshall, Secretary of State, do hereby certify that the *foregoing* is a *true copy* of the *Ordinance of Secession dated* the *20th day of December* A.D. *1860.*

Given under my *hand* and the *seal* of the *State*, in *Columbia*, this *twentieth day* of *September* in the *year of our Lord one thousand eight hundred and eight-nine*, and in the *one hundred and fourteenth year of the Independence* of the *United States of America.*

[L. C.] J. Q. MARSHALL,
Secretary of State.

NOTE B.

I think it well, in further illustration of Mr. Calhoun's political principles, to quote, at some length, from Mr. Lamar's oration (ante, p. 26), premising that while I concur in the main in his defence of Mr. Calhoun from the charge of inconsistency and vacillation, I have endeavored, in the preceding pages, to state what influence his doctrine of nullification had in shaping the doctrine of secession; and have pointed out that Mr. Webster foresaw it, and that he predicted how Mr. Calhoun's great name would give a sanction to his constitutional doctrines with posterity.

(Mr. Webster's eulogium on Mr. Calhoun, pronounced in the Senate after Mr. Calhoun's death, may be found in my Life of Webster, II. 434–436.)

The following are the passages in Mr. Lamar's "Discourse" to which I have referred:

"Mr. Calhoun's career in the House of Representatives did more than give him renown as a statesman pre-eminent for his nationality. The experience of its harsh trials, its obstacles, reverses, disappointments, followed by despondency submitting into apathy, and from that into dissensions; the ruined trade and depreciated currency and paralyzed industries which it caused; the numerous dangers of utter discomfiture, from which the escapes seemed, and perhaps really were, hair-breadth, made deep and lasting impressions on his mind, the influence of which may be seen in his sentiments and feeling and action through the whole course of his subsequent career as a statesman. For special reasons hereafter to be disclosed, I ask your attention to one of the principles which that war fixed in his mind and interfused with the very elements of his soul. I will state it in his own words: 'The chief object for which the Constitution was formed was to give the general government power, security, and respectability abroad. In our relations with foreign countries, where strength of government and national security are most required, the powers of our government are undivided. In those exterior relations—abroad—this government is the sole and exclusive representative of the united majesty, sovereignty, and power of the states constituting this great and glorious Union. To the rest of the world we are one. Neither state nor state government is known beyond our borders.'

"In that great work upon the Constitution of the United States, some of the pages of which were wet with ink but a short time before he expired, he repeats this principle. Speaking of the two great divisions of federal power, he says: 'One of them embraces all the powers pertaining to the relations of the United States with the rest of the world. . . . From the Declaration of Independence to the present time, in all the changes through which we have passed, the Union has had exclusive charge of this division of powers.' Again, speaking of the United States being unknown to the rest of the world, except in their united character, he says: 'Abroad, to the rest of the world, they are but one. It is only at home, in their interior relations, that they are many.'

"There is another principle which formed one of the foundation-stones of his political creed. It is that when a nation is in a state of war, or preparing for war, whenever it undertakes to protect the rights of its people, or to preserve their independence and honor from violations, injustice, and oppression, or invasion of another nation, that government has a legitimate right to the full command of all the resources of the community. He lays down this principle in his Disquisition on Government in the following terse words: 'When this' (*i. e.*, national security) 'is at stake, every other consideration must yield to it. Self-preservation is the supreme law, as well with communities as with individuals; and hence the danger of withholding from government the full command of the resources of the entire state.' This principle he insists upon, that government, in order to fulfil the end of protecting its citizens from dangers from without and the devastations of war, must have and must exercise powers sufficient to call forth the entire resources of the community, and be prepared at all times to command them promptly in every emergency that may arise.

"I have called attention to these principles not only on account of their vital importance, but for another reason. Mr. Calhoun has been charged with gross inconsistency of conduct at this time with the course pursued by him at a later epoch in his life upon the subject of a protective tariff, internal improvements, and a national bank. These measures may be said to have virtually originated in the war, for the conditions and disorders of war continue long in a body politic after terms of peace are entered into and proclaimed. The questions which then agitated men's minds, and upon which political parties arranged themselves in support and opposition, were not questions of internal policy; they related exclusively to the national security, growing out of the state of our external relations. Mr. Calhoun advocated, in 1816, the protection of manufactures 'as a means of national defence against dangers from abroad,' with which we were at that time immediately threatened. For the same reason he advocated a bank, and the adoption of an improved system of internal communication; and the constitutional authority to adopt such measures he did not look for in the enumerated powers specifically delegated to Congress, which operated directly upon the individual citizens of the United States, but he felt that it lay in that complete plenary power which pertained to the government as the sole and exclusive representative of the undivided sovereignty of the republic in its relations with other nations. That this was his view will be clearly seen by reading the speeches delivered in 1816 in support of these measures.

"Irksome as it must be to listen to the reading of documents, I must ask you to give me your attention while I read the following extracts from his speech of January 31, 1816, to show that he advocated protection to manufactures as a means of national defence, and purely as a temporary measure. In that speech he says: 'We are now called on to determine what amount of revenue is necessary for this country in time of peace. . . . The principal expense of the government grows out of measures necessary for its defence; and in order to decide what these measures ought to be, it will be proper to inquire what ought to be our policy towards other nations, and what will probably be theirs towards us?' After discussing the first question, he proceeds to the next, 'What will probably be the policy of other nations?' He then says: 'With both these nations (Great Britain and Spain) we have many and important points of collision. . . . With both there is a possibility sooner or later of our being engaged in war.' Then adverting to our relations with England, he says: 'But what will be the probable course of events respecting future relations between the two countries? England is the most formidable power in the world; she has the most numerous army and navy at her command. Will Great Britain permit us to go in an uninterrupted march to the height of national greatness and prosperity? . . I will speak what I believe to be true: you will have to encounter British jealousy and hostility in every shape—not immediately manifested by open force or violence, perhaps, but by indirect attempts to check your growth and prosperity. . . . Let us now consider the measures of preparation which sound policy dictates.' After speaking of England's power to do us injury both upon the coast, and from Canada as a point of attack, and our means of defence, he says: 'Thus circumstanced on both sides, we ought to omit no preparation fairly within the compass of our means.

Next, as to the species of preparation, a question which opens subjects of great extent and importance. The navy most certainly, in any point of view, occupies the first place.' After the most admirable argument in favor of the navy as the most powerful agency for our foreign defences, of the army, etc., he says : 'Now let us consider the proper encouragement to be afforded to the industries of the country. In regard to the question how far manufactures ought to be fostered, it is the duty of this country, as a means of defence, to encourage its domestic industry, more especially that part of it which provides the necessary materials for clothing and defence. Let us look at the nature of the war most likely to occur. England is in possession of the ocean. No man, however sanguine, can believe that we can soon deprive her of her maritime predominance. That control deprives us of the means of maintaining, cheaply clad, our army and navy. . . . Laying the claims of manufacturers entirely out of view, on general principles, without regard to their interests, a certain encouragement should be tendered at least to our woollen and cotton manufactures. The failure of the wealth and resources of the nation necessarily involve the ruin of its finances and its currency. It is admitted by the most strenuous advocates on the other side that no country ought to be dependent on another for its means of defence; that, at least, our musket and bayonet, our cannon and ball, ought to be of domestic manufacture. But what is more necessary to the defence of a country than its currency and finance? Circumstanced as our country is, can these stand the shock of war? Behold the effect of the late war on them! When our manufactures are grown to a certain perfection, as they soon will under the fostering care of the government, we will no longer experience these evils.'

"To this distressing state of things there were two remedies, and only two: one in our power immediately, the other requiring much time and exertion, but both constituting, in his opinion, the essential policy of this country—he meant the navy and domestic manufactures. By the former we could open the way to our markets; by the latter we bring them from beyond the ocean and naturalize them. Had we the means of attaining an immediate naval ascendency, he acknowledged that the policy recommended by this bill would be very questionable; but as this is not the fact, as it is a period remote with any exertion, and will be probably more so from that relaxation of exertion so natural in peace, when necessity is not felt, it becomes the duty of the House to resort to a considerable extent, at least as far as is proposed, to the only remaining remedy.

"Pardon the digression, but I desire here to state that through all these speeches there breathed the strongest sentiments of devotion to the Union. In the speech from which I have already quoted he said that, in his opinion, the liberty and the union of this country were inseparably united; that, as the destruction of the latter would certainly involve the former, so its maintenance will, with equal certainty, preserve it. He did not speak lightly. He had often and long revolved it in his mind, and he had critically examined into the causes that destroyed the liberty of other states. There are none that apply to us, or apply with a force to alarm. The basis of our republic is too broad and its structure too strong to be shaken by them. Its extension and organization will be found to afford effectual security against their operation; but let it be deeply impressed on the heart of this association and country that, while they guarded against the old, they exposed us to a new and terrible danger—Disunion. This single word com-

prehended almost the sum of our political dangers, and against it we ought to be perpetually guarded.

"The very last speech that he delivered in the House of Representatives was like that which, at the end of his life, he delivered in the United States Senate. It was a plea for the Union.

"Sixteen years elapsed between the delivery of this speech and his reappearance in the national councils as a Senator of the United States. Those years were crowded with important events and changes. At the expiration of them the United States had grown to be a great and powerful republic, whose people laughed to scorn the thought of danger from any power on earth. The moderate protective tariff, and other measures which he had advocated as a means of defence against foreign aggressions, had grown to colossal systems, drawing wealth and power from federal taxation, dominating and destroying the agricultural interests of the country. It was during this period that Mr. John Quincy Adams was elected President of the United States. The manner of his election by the House of Representatives over General Jackson, who had received the largest number of electoral votes, the bold centralizing doctrines enunciated in his inaugural, and the measures which he urged excited opposition among Republicans throughout the country, in which Mr. Calhoun united. The venerable Thomas Jefferson, then eighty-three years of age, and living in strict retirement, whose mind, however, looked from the brink of the grave keenly into the future, gave forth the following prophetic warnings:

"'I see as you do, and with the deepest affliction, the rapid strides with which the federal branch of our government is advancing towards the usurpation of all the rights reserved to the states, and the consolidation in itself of all powers, foreign and domestic; and that, too, by constructions which, if legitimate, leave no limits to their power. Take together the decisions of the federal court, the doctrines of the president, and the misconstructions of the constitutional compact acted on by the legislature of the federal branch, and it is but too evident that the three ruling branches of that department are in combination to strip their colleagues, the state authorities, of the powers reserved by them, and to exercise themselves all functions, foreign and domestic. Under the power to regulate commerce, they assume indefinitely that over agriculture and manufactures, and call it *regulation* to take the earnings of one of these branches of industry, and that, too, the most depressed, and put them into the pockets of the other, the most flourishing of all. . . . And what is our resource for the preservation of the Constitution? Reason and argument? You might as well reason with the marble columns encircling us.'

"It is not my purpose to discuss here the question of a protective tariff. I desire to efface myself on this occasion. My only aspiration is to present to you the moral and intellectual image of him whose outer form and lineaments are presented in the admirable statue we this day unveil.

"In one of his speeches he stated that the station of vice-president, from its leisure, had given him the opportunity to study the genius of the protective system as a measure of permanent domestic policy; that he saw its blasting effects on one section, its corrupting effects on another, and these effects increasing until the burden became intolerable under the tariff of 1828, which was the crowning act of the administration of Mr. Adams. He saw that under its operation

'desolation was spreading over the entire staple region ; its commercial cities were deserted ; Charleston parted with her last ship, and grass grew in her once busy streets.'

"He believed that the Constitution was violated in using a power granted to raise revenue as the instrument of rearing up the industry of one section of the country on the ruins of another ; that it was, in a word, 'a revolution of the Constitution by perversion, the most dangerous of all, because the most insidious and difficult to counteract.'"

"When convinced that there was no hope for relief from Congress through the administration of General Jackson, he advised a remedy which he believed to be within the limits of the Constitution, conducive to the preservation of the Union, and yet fully adequate to protect the states and the people from the abuse and encroachment of federal power. That remedy was state intervention or nullification. The state of South Carolina, in a convention duly and legally convoked in November, 1832, passed an ordinance declaring the tariff of 1832 and 1828 to be unconstitutional, null, and void within her limits, and of no binding effect upon her officers and citizens. This was followed by a proclamation from President Jackson declaring the ordinance unconstitutional, intended to dissolve the Union, and forbidding any obedience to it upon the pains and penalties of treason. In defence of this action of his state, and in opposition to the doctrines of the proclamation and the legislation in support of it, Mr. Calhoun put forth those profound expositions of political principles which, as Mr. Webster afterwards said, 'will descend to posterity under the sanction of a great name.'

"He said : 'I am not ignorant that those opposed to the doctrine [nullification] have always, now and formerly, regarded it as anarchical and revolutionary. Could I believe such, in fact, to be its tendency, to me it would be no recommendation. I yield to none, I trust, in a deep and sincere attachment to our political institutions and the union of the states. I never expressed an opposite sentiment, but, on the contrary, I have ever considered them the great instruments of preserving our liberty and promoting the happiness of ourselves and our posterity. And, next to this, I have ever held them most dear. Nearly half of my life has been passed in the service of the Union, and whatever public reputation I have acquired is indissolubly identified with it. To be too national has, indeed, been considered by many, even of my friends, my greatest political fault. With these strong feelings of attachment I have examined with the utmost care the bearing of the doctrine in question; and so far from being anarchical or revolutionary, I solemnly believe it to be the only solid foundation of our system and of the Union itself ; and that the opposite doctrine, which denies to the states the right of protecting their reserved powers, and which would vest in the government (it matters not through what department) the right of determining exclusively and finally the powers delegated to it, incompatible with the sovereignty of the states, if the Constitution itself be considered as the basis of the Federal Union.'

"To the objection that the right of a state to interpose and arrest an Act of Congress because of its alleged unconstitutionality is inconsistent with the necessary authority of the government, and must lead to feebleness, anarchy, and final disunion, he says that this power of nullification would, if unchecked, like all unchecked power, tend to abuse and disaster. 'But it is not unchecked,' said he. 'As high as this right of interposition on the part of a state may be regarded in

relation to the general government, the constitutional compact provides a remedy against this abuse. There is a higher power placed above all—by the consent of all: the creating and preserving power of the system, to be enacted by three fourths of the states, and which, under the character of the amending power, can modify our whole system at pleasure, and to the acts of which none can object. Admit, then, the power in question to belong to the states—and admit its liability to abuse—and what are the utmost consequences but to create a presumption against the constitutionality of the power exercised by the general government, which, if it be well-founded, must compel them to abandon it? . . . If, on an appeal for this purpose, the decision be favorable to the general government, a disputed power will be converted into an expressly granted power; but, on the other hand, if it be adverse, the refusal to grant will be tantamount to an inhibition of its exercise; and thus, in either case, the controversy will be determined. The utmost extent, then, of the power is that a state, acting in its sovereign capacity as one of the parties to the constitutional compact, may compel the government, created by that compact, to submit a question touching its infraction to the parties who created it. This amending power by a convention of the states is, when properly understood, the *vis medicatrix* of the system—its great repairing, healing, and conservative power—intended to remedy its disorders, in whatever cause or causes originating; whether in the original defects or errors of the Constitution itself, or the operation and change of circumstances. . . . Or, in case of a disputed power, whether it be between the Federal Government and one of its co-ordinates, or between the former and an interposing state, by declaring, authoritatively, what is the Constitution. . . . It is thus that our Constitution, by authorizing amendments, and by prescribing the authority and mode of making them, has, by a simple contrivance, with its characteristic wisdom, provided a power which, in the last resort, supersedes effectually the necessity, and even the pretext, for force.'

"'That such a remedy is provided is proof of the profound wisdom of the great men who formed our Constitution, and entitles them to the lasting gratitude of the country, but it will be in vain that their wisdom devised a remedy so admirable, a substitute so infinitely superior to the old and irrational mode of terminating such controversies as are of too high a nature to be adjusted by the force of reason, or through the ordinary tribunals, if their descendants be so blind as not to perceive its efficacy, or so intently bent upon schemes of ambition and avarice as to prefer to this constitutional, peaceful, and safe remedy the wanton, hazardous, and immoral arbitrament of force.

"'There is, indeed, one view, and one only, of the contest in which force could be employed; but that view, as between the parties, would supersede the Constitution itself—that nullification is secession—and would, consequently, place the state, as to the others, in the relation of a foreign state. . . . Standing thus towards one another, force might, indeed, be employed against a state, but it must be a belligerent force, preceded by a declaration of war and carried on with all its formalties. *Such would be the certain effect of secession;* and if nullification be secession, such, too, must be its effect, which presents the highly important question, Are they, in fact, the same? on the decision of which depends the question whether nullification be a peaceable and *Constitutional* remedy that may be exercised without *terminating* the *federal* relations of the state or not.

"'I am aware that there is a considerable and respectable portion of our state, with a very large portion of the Union, constituting, in fact, a great majority, who are of the opinion that they are the same thing, differing only in name, and who, under that impression, denounce it as the most dangerous of all doctrines; and yet, so far from being the same, they are, unless, indeed, I am greatly deceived, not only perfectly distinguishable, but totally dissimilar in their nature, their object, and effect; and that, so far from deserving the denunciation, so properly belonging to the act with which it is confounded, it is, in truth, the highest and most precious of all rights of the states, and essential to preserve that very Union for the supposed effect of destroying which it is so bitterly anathematized. They are wholly dissimilar in their nature. Secession is the withdrawal from the Union, . . . a throwing off of the authority of the Union itself, a separation from partners, and, as far as it depends on the member withdrawing, a dissolution of the partnership. It presupposes an association or union of several states or individuals for a common object. . . . Nullification, on the contrary, presupposes the relation of principal and agent; the one granting a power to be executed, the other appointed by him with authority to execute it, and is simply a declaration on the part of the principal, made in due form, that an act of the agent transcending his power is null and void. . . . The difference in their object is no less striking than in their nature. The object of secession is to free the withdrawing member from the obligation of the association or union, etc. Its direct and immediate object, as it concerns the withdrawing member, is the dissolution of the association or union, as far as it is concerned. On the contrary, the object of nullification is to confine the agent within the limits of his powers, by arresting his acts transcending them, not with a view of destroying the delegated or trust power, but to preserve it by compelling the agent to fulfil the object for which agency or trust was created, and is applicable only to cases where the trust or delegated powers are transcended on the part of the agent.'

"'It remains now to show that their effect is as dissimilar as their nature or object.'

"'Nullification leaves the members of the association or union in the condition to find them—subject to all its burdens, and entitled to all its advantages, comprehending the member nullifying as well as the others—its object being not to destroy, but to preserve, as has been stated. . . . Secession, on the contrary, destroys, as far as the withdrawing member is concerned, the association or union. . . . Such are clearly the differences between them; differences so marked that, instead of being identical, as supposed, they form a contrast to all the aspects in which they can be regarded.'"

CHAPTER II.

NATURE OF THE CONSTITUTION FURTHER CONSIDERED.—JUDICIAL VIEWS OF IT FROM THE ORIGIN OF THE GOVERNMENT TO THE PRESENT TIME.—PRESIDENT JACKSON'S CLAIM TO INTERPRET THE CONSTITUTION AS HE UNDERSTOOD IT.—FUNCTION OF THE SUPREME COURT.

I SHALL now advert to a striking contrast that marks the whole period of our constitutional history from the year 1789 down to the civil war. While the diversities of opinion respecting the nature of the Constitution, described in the foregoing pages, were prevailing in the minds of men in different parts of the country, the legislative, executive, and judicial interpretation of its powers proceeded upon a theory that is the direct opposite of both the nullification and the secession doctrine. The government established by the Constitution has always been administered as one of sovereign powers, granted to it by cessions irrevocable in their nature and supreme in their appropriate sphere. Whatever may have been the views held by individuals who have been prominent in public life and have filled federal offices, there has been no instance in which the legislative or the executive departments have been so administered as to give countenance to the idea that the Constitution is a league between sovereign states, or that its powers are subject to control by the resistance of one or more of the states interposed to absolve individuals from submission to its authority. The whole tenor of the legislation adopted to carry into effect the powers of the Constitution from time to time shows that these powers have been brought to bear upon individuals as subjects of a government that can rightfully control them in certain relations, and that this mode of administration has been based upon the fundamental postulate that within its own sphere the Federal Government is supreme. The means resorted to, in the first legislation, for making the supremacy of the constitution

effectual, and comprehended in the organization and establishment of the judicial department, evinces the understanding and purposes of the generation of men who first put the Constitution in operation. The 25th section of the Judiciary Act of 1789, by which the interpretation of the federal powers was brought from the final cognizance of the state courts into the Supreme Court of the United States, was a most skilful machinery by which the supremacy of the Constitution could be made practically secure.

Hamilton, in No. 15 of The Federalist, pointed out, with prophetic accuracy, the radical difference between the system of the Confederation and the plan of government proposed by the Constitutional Convention of 1787:

"The great and radical vice in the construction of the existing Confederation is in the principle of LEGISLATION for STATES or GOVERNMENTS, in their CORPORATE or COLLECTIVE CAPACITIES, and as contradistinguished from the INDIVIDUALS of which they consist. Though this principle does not run through all the powers delegated to the Union, yet it pervades and governs those on which the efficacy of the rest depends. Except as to the rule of apportionment, the United States has an indefinite discretion to make requisitions for men and money; but they have no authority to raise either by regulations extending to the individual citizens of America. The consequence of this is that though in theory their resolutions concerning those objects are laws, constitutionally binding on the members of the Union, yet in practice they are mere recommendations which the states observe or disregard at their option.

"It is a singular instance of the capriciousness of the human mind that, after all the admonitions we have had from experience on this head, there should still be found men who object to the new Constitution for deviating from a principle which has been found the bane of the old, and which is in itself evidently incompatible with the idea of GOVERNMENT—a principle, in short, which, if it is to be executed at all, must substitute the violent and sanguinary agency of the sword to the mild influence of the magistracy.

"There is nothing absurb or impracticable in the idea of a league or alliance between independent nations for certain defined purposes precisely stated in a treaty regulating all the details of

time, place, circumstance, and quantity, leaving nothing to future discretion, and depending for its execution on the good faith of the parties. Compacts of this kind exist among all civilized nations, subject to the usual vicissitudes of peace and war, of observance and non-observance, as the interests or passions of the contracting powers dictate. In the early part of the present century there was an epidemical rage in Europe for this species of compacts, from which the politicians of the times fondly hoped for benefits which were never realized. With a view to establishing the equilibrium of power and the peace of that part of the world, all the resources of negotiation were exhausted, and triple and quadruple alliances were formed; but they were scarcely formed before they were broken, giving an instructive but afflictive lesson to mankind, how little dependence is to be placed on treaties which have no other sanction than the obligations of good faith, and which opposes general considerations of peace and justice to the impulse of any immediate interest or passion.

"If the particular states in this country are disposed to stand in a similar relation to each other, and to drop the project of a general DISCRETIONARY SUPERINTENDENCE, the scheme would indeed be pernicious, and would entail upon us all the mischiefs which have been enumerated under the first head; but it would have the merit of being, at least, consistent and practicable. Abandoning all views towards a confederate government, this would bring us to a simple alliance, offensive and defensive; and would place us in a situation to be alternate friends and enemies of each other, as our mutual jealousies and rivalships, nourished by the intrigues of foreign nations, should prescribe to us.

"But if we are unwilling to be placed in this perilous situation; if we still adhere to the design of a national government, or, which is the same thing, of a superintending power, under the direction of a common council, we must resolve to incorporate into our plan those ingredients which may be considered as forming the characteristic difference between a league and a government; we must extend the authority of the Union to the persons of the citizens—the only proper objects of government.

"Government implies the power of making laws. It is essential to the idea of a law that it be attended with a sanction, or, in other words, a penalty or punishment for disobedience. If

there be no penalty annexed to disobedience, the resolutions or commands which pretend to be laws will, in fact, amount to nothing more than advice or recommendation. This penalty, whatever it may be, can only be inflicted in two ways: by the agency of the courts and ministers of justice, or by military force; by the COERCION of the magistracy, or by the COERCION of arms. The first kind can evidently apply only to men; the last kind must of necessity be employed against bodies politic, or communities or states. It is evident that there is [now] no process of a court by which the observance of the laws can, in the last resort, be enforced. Sentences may be denounced against them for violations of their duty; but these sentences can only be carried into execution by the sword. In an association where the general authority is confined to the collective bodies of the communities that compose it, every branch of the laws must involve a state of war; and military execution must become the only instrument of civil obedience. Such a state of things can certainly not deserve the name of government, nor would any prudent man choose to commit his happiness to it.

"There was a time when we were told that breaches, by the states, of the regulations of the federal authority were not to be expected; that a sense of common interest would preside over the conduct of the respective members, and would beget a full compliance with all the constitutional requisitions of the Union. This language, at the present day, would appear as wild as a great part of what we now hear from the same quarter will be thought, when we shall have received further lessons from that best oracle of wisdom, experience. It at all times betrayed an ignorance of the true springs by which human conduct is actuated, and belied the original inducements to the establishment of civil power. Why has government been instituted at all? Because the passions of men will not conform to the dictates of reason and justice without constraint. Has it been found that bodies of men act with more rectitude or greater disinterestedness than individuals? The contrary of this has been inferred by all accurate observers of the conduct of mankind; and the inference is founded upon obvious reasons. Regard to reputation has a less active influence, when the infamy of a bad action is to be divided among a number, than when it is to fall singly upon one.

A spirit of faction, which is apt to mingle its poison in the deliberations of all bodies of men, will often hurry the persons of whom they are composed into improprieties and excesses for which they would blush in a private capacity.

"In addition to all this, there is, in the nature of sovereign power, an impatience of control that disposes those who are invested with the exercise of it to look with an evil eye upon all external attempts to restrain or direct its operations. From this spirit it happens that in every political association which is formed upon the principle of uniting in a common interest a number of lesser sovereignties, there will be found a kind of eccentric tendency in the subordinate or inferior orbs, by the operation of which there will be a perpetual effort in each to fly off from the common centre. This tendency is not difficult to be accounted for. It has its origin in the love of power. Power controlled or abridged is almost always the rival and enemy of that power by which it is controlled or abridged. This simple proposition will teach us how little reason there is to expect that the persons intrusted with the administration of the affairs of the particular members of a confederacy will at all times be ready, with perfect good-humor and an unbiassed regard to the public weal, to execute the resolutions or decrees of the general authority. The reverse of this results from the constitution of human nature.

"If, therefore, the measures of the Confederacy cannot be executed without the intervention of the particular administrations, there will be little prospect of their being executed at all. The rulers of the respective members, whether they have a constitutional right to do it or not, will undertake to judge of the propriety of the measures themselves. They will consider the conformity of the thing proposed or required to their immediate interests or aims; the momentary conveniences or inconveniences that would attend its adoption. All this will be done; and in a spirit of interested and suspicious scrutiny, without that knowledge of national circumstances and reasons of state which is essential to a right judgment, and with that strong predilection in favor of local objects which can hardly fail to mislead the decision. The same process must be repeated in every member of which the body is constituted; and the execution of the plans,

framed by the councils of the whole, will always fluctuate on the discretion of the ill-informed and prejudiced opinion of every part. Those who have been conversant in the proceedings of popular assemblies, who have seen how difficult it often is, where there is no exterior pressure of circumstances, to bring them to harmonious resolutions on important points, will readily conceive how impossible it must be to induce a number of such assemblies, deliberating at a distance from each other, at different times and under different impressions, long to co-operate in the same views and pursuits.

"In our case, the concurrence of thirteen distinct sovereign wills is requisite, under the Confederation, to the complete execution of every important measure that proceeds from the Union. It has happened as was to have been foreseen. The measures of the Union have not been executed; the delinquencies of the states have, step by step, matured themselves to an extreme which has at length arrested all the wheels of the national government, and brought them to an awful stand. Congress at this time scarcely possess the means of keeping up the forms of administration till the states can have time to agree upon a more substantial substitute for the present shadow of a federal government. Things did not come to this desperate extremity at once. The causes which have been specified produced at first only unequal and disproportionate degrees of compliance with the requisitions of the Union. The greater deficiencies of some states furnished the pretext of example and the temptation of interest to the complying, or to the least delinquent, states. Why should we do more in proportion than those who are embarked with us in the same political voyage? Why should we consent to bear more than our proper share of the common burden? These were suggestions which human selfishness could not withstand, and which even speculative men, who looked forward to remote consequences, could not, without hesitation, combat. Each state, yielding to the persuasive voice of immediate interest or convenience, has successively withdrawn its support, till the frail and tottering edifice seems ready to fall upon our heads and to crush us beneath its ruins."

When, in No. 80 of the same work, Hamilton came to treat of the proper extent of the federal judiciary, he thus defined its appropriate objects:

"It seems scarcely to admit of controversy that the judiciary authority of the Union ought to extend to these several descriptions of cases: 1st, to all those which arise out of the laws of the United States, passed in pursuance of their just and constitutional powers of legislation; 2d, to all those which concern the execution of the provisions expressly contained in the Articles of Union; 3d, to all those in which the United States are a party; 4th, to all those which involve the PEACE of the CONFEDERACY whether they relate to the intercourse between the United States and foreign nations, or to that between the states themselves; 5th, to all those which originate on the high seas, and are of admiralty or maritime jurisdiction; and, lastly, to all those in which the state tribunals cannot be supposed to be impartial and unbiased.

"The first point depends upon this obvious consideration, that there ought always to be a constitutional method of giving efficacy to constitutional provisions. What, for instance, would avail restrictions on the authority of the state legislatures without some constitutional mode of enforcing the observance of them? The states, by the plan of the convention, are prohibited from doing a variety of things, some of which are incompatible with the interests of the Union, and others with the principles of good government. The imposition of duties on imported articles and the emission of paper money are specimens of each kind. No man of sense will believe that such prohibitions would be scrupulously regarded without some effectual power in the government to restrain or correct the infractions of them. This power must either be a direct negative on the state laws, or an authority in the federal courts to overrule such as might be in manifest contravention of the Articles of Union. There is no third course that I can imagine. The latter appears to have been thought by the convention preferable to the former, and, I presume, will be most agreeable to the states.

"As to the second point, it is impossible, by any argument or comment, to make it clearer than it is in itself. If there are such things as political axioms, the propriety of the judicial power of a government being coextensive with its legislative may be ranked among the number. The mere necessity of uniformity in the interpretation of the national laws decides the question. Thirteen

independent courts of final jurisdiction over the same causes, arising upon the same laws, is a hydra in government from which nothing but contradiction and confusion can proceed.

"Still less need be said in regard to the third point. Controversies between the nation and its members or citizens can only be properly referred to the national tribunals. Any other plan would be contrary to reason, to precedent, and to decorum.

"The fourth point rests on this plain proposition: that the peace of the WHOLE ought not to be left at the disposal of a PART. The Union will undoubtedly be answerable to foreign powers for the conduct of its members. And the responsibility for an injury ought ever to be accompanied with the faculty of preventing it. As the denial or perversion of justice by the sentences of courts, as well as in any other manner, is with reason classed among the just causes of war, it will follow that the federal judiciary ought to have cognizance of all causes in which the citizens of other countries are concerned. This is not less essential to the preservation of the public faith than to the security of the public tranquillity. A distinction may perhaps be imagined between cases arising upon treaties and the laws of nations, and those which may stand merely on the footing of the municipal law. The former kind may be supposed proper for the federal jurisdiction, the latter for that of the states. But it is at least problematical whether an unjust sentence against a foreigner, where the subject of controversy was wholly relative to the *lex loci*, would not, if unredressed, be an aggression upon his sovereign as well as one which violated the stipulations of a treaty or the general law of nations. And a still greater objection to the distinction would result from the immense difficulty, if not impossibility, of a practical discrimination between the cases of one complexion and those of the other. So great a proportion of the cases in which foreigners are parties involve national questions that it is by far most safe and most expedient to refer all those in which they are concerned to the national tribunals.

"The power of determining causes between two states, between one state and the citizens of another, and between the citizens of different states, is perhaps not less essential to the peace of the Union than that which has been just examined. History gives us a horrid picture of the dissensions and private wars

which distracted and desolated Germany prior to the institution of the Imperial Chamber by Maximilian, towards the close of the fifteenth century, and informs us, at the same time, of the vast influence of that institution in appeasing the disorders and establishing the tranquillity of the empire. This was a court invested with authority to decide finally all differences among the members of the Germanic body.

"A method of terminating territorial disputes between the states, under the authority of the federal head, was not unattended to, even in the imperfect system by which they have been held together. But there are many other sources besides interfering claims of boundary from which bickerings and animosities may spring up among the members of the Union. To some of these we have been witnesses in the course of our past experience. It will readily be conjectured that I allude to the fraudulent laws which have been passed in too many of the states. And though the proposed Constitution establishes particular guards against the repetition of those instances which have heretofore made their appearance, yet it is warrantable to apprehend that the spirit which produced them will assume new shapes that could not be foreseen nor specifically provided against. Whatever practices may have a tendency to disturb the harmony between the states are proper objects of federal superintendence and control.

"It may be esteemed the basis of the Union that 'the citizens of each state shall be entitled to all the privileges and immunities of citizens of the several states.' And if it be a just principle that every government *ought to possess the means of executing its own provisions by its own authority*, it will follow that in order to the inviolable maintenance of that equality of privileges and immunities to which the citizens of the Union will be entitled, the national judiciary ought to preside in all cases in which one state or its citizens are opposed to another state or its citizens. To secure the full effect of so fundamental a provision against all evasion and subterfuge, it is necessary that its construction should be committed to that tribunal which, having no local attachments, will be likely to be impartial between the different states and their citizens, and which, owing its official existence to the Union, will never be likely to feel any bias inauspicious to the principles on which it is founded.

"The fifth point will demand little animadversion. The most bigoted idolizers of state authority have not thus far shown a disposition to deny the national judiciary the cognizances of maritime causes. These so generally depend on the laws of nations, and so commonly affect the rights of foreigners, that they fall within the considerations which are relative to the public peace. The most important part of them are, by the present Confederation, submitted to federal jurisdiction.

"The reasonableness of the agency of the national courts in cases in which the state tribunals cannot be supposed to be impartial speaks for itself. No man ought certainly to be a judge in his own cause, or in any cause in respect to which he has the least interest or bias. The principle has no inconsiderable weight in designating the federal courts as the proper tribunals for the determination of controversies between different states and their citizens. And it ought to have the same operation in regard to some cases between citizens of the same state. Claims to land under grants of different states, founded upon adverse pretensions of boundary, are of this description. The courts of neither of the granting states could be expected to be unbiased. The laws may have even prejudged the question, and tied the courts down to decisions in favor of the grants of the state to which they belonged. And even where this had not been done it would be natural that the judges, as men, should feel a strong predilection to the claims of their own government.

"Having thus laid down and discussed the principles which ought to regulate the constitution of the federal judiciary, we will proceed to test, by these principles, the particular powers of which, according to the plan of the convention, it is to be composed. It is to comprehend 'all cases in law and equity arising under the 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 and grants of different states; and between a state or the citizens thereof and foreign states,

citizens, and subjects.' This constitutes the entire mass of the judicial authority of the Union. Let us now review it in detail. It is, then, to extend:

"*First.* To all cases in law and equity *arising under the Constitution* and *the laws of the United States.* This corresponds with the two first classes of causes, which have been enumerated, as proper for the jurisdiction of the United States. It has been asked, what is meant by 'cases arising under the Constitution' in contradistinction from those 'arising under the laws of the United States?' The difference has been already explained. All the restrictions upon the authority of the state legislatures furnish examples of it. They are not, for instance, to emit paper money; but the interdiction results from the Constitution, and will have no connection with any law of the United States. Should paper money, notwithstanding, be emitted, the controversies concerning it would be cases arising under the Constitution, and not the laws, of the United States, in the ordinary signification of the terms. This may serve as a sample of the whole.

"It has also been asked, what need of the word 'equity?' What equitable causes can grow out of the Constitution and laws of the United States? There is hardly a subject of litigation between individuals which may not involve those ingredients of *fraud*, *accident*, *trust*, or *hardship* which would render the matter an object of equitable rather than of legal jurisdiction, as the distinction is known and established in several of the states. It is the peculiar province, for instance, of a court of equity to relieve against what are called hard bargains. These are contracts in which, though there may have been direct fraud or deceit sufficient to invalidate them in a court of law, yet there may have been some undue and unconscionable advantage taken of the necessities or misfortunes of one of the parties which a court of equity would not tolerate. In such cases, where foreigners were concerned on either side, it would be impossible for the federal judicatories to do justice without an equitable as well as a legal jurisdiction. Agreements to convey lands claimed under the grants of different states may afford another example of the necessity of an equitable jurisdiction in the federal courts. This reasoning may not be so palpable in those states where the formal and technical distinction between LAW and EQUITY is main-

tained, as in this state, where it is exemplified by every day's practice.

"The judiciary authority of the Union is to extend:

"*Second.* To treaties made, or which shall be made, under the authority of the United States, and to all cases affecting ambassadors, other public ministers, and consuls. These belong to the fourth class of the enumerated cases, as they have an evident connection with the preservation of the national peace.

"*Third.* To cases of admiralty and maritime jurisdiction. These form, altogether, the fifth of the enumerated classes of causes proper for the cognizance of the national courts.

"*Fourth.* To controversies to which the United States shall be a party. These constitute a third of those classes.

"*Fifth.* To controversies between two or more states; between a state and citizens of another state; between citizens of different states. These belong to the fourth of those classes, and partake, in some measure, of the nature of the last.

"*Sixth.* To cases between the citizens of the same state *claiming lands under grants of different states.* These fall within the last class, and *are the only instances in which the proposed Constitution directly contemplates the cognizance of disputes between the citizens of the same state.*

"*Seventh.* To cases between a state and the citizens thereof and foreign states, citizens, or subjects. These have been already explained to belong to the fourth of the enumerated classes, and have been shown to be, in a peculiar manner, the proper subjects of the national judicature.

"From this review of the particular powers of the federal judiciary, as marked out in the Constitution, it appears that they are all conformable to the principles which ought to have governed the structure of that department, and which were necessary to the perfection of the system. If some partial inconveniences should appear to be connected with the incorporation of any of them into the plan, it ought to be recollected that the national legislature will have ample authority to make such *exceptions* and to prescribe such regulations as will be calculated to obviate or remove these inconveniences. The possibility of particular mischiefs can never be viewed, by a well-informed mind, as a solid objection to a general principle, which is cal-

culated to avoid general mischiefs and to obtain general advantages."

When these luminous expositions of the powers proposed in the Constitution are compared with the debate that took place in the First Congress, when the Judiciary Act of 1789 was passed, it will be seen that the act covered the whole ground which Hamilton had so fully and accurately laid out. The 25th section, which defined the appellate jurisdiction of the Supreme Court, and established the process by which it was to reach the necessary object, and to render the supremacy of the Constitution effectual, proceeded upon the principle that the laws enacted to carry out its powers demanded obedience from individuals, and are not directed against states or communities.

One of the most remarkable illustrations of the exercise by Congress of the power to make the laws which it enacts capable of execution against all state resistance is to be found in the "Force Bill," adopted during the administration of President Jackson, and of which some account has already been given. The celebrated proclamation issued by Jackson to warn the nullifiers to desist from their proceedings contains one of the clearest expositions of the nature of the Constitution that has ever been made. It shows not only the theory of the Constitution, which the executive branch of the government then meant to uphold, but also that this had been from the first the doctrine on which it had always been administered. It was no new theory, although the circumstances of that period required that it should be distinctly enunciated by the executive.

I have elsewhere given an account of General Jackson's course when a bill to continue in force the charter of the Bank of the United States came before him for his official approval as president. This occurred in 1832, during his first term of office. In his message vetoing the bill he assumed the ground that every public officer who takes an oath to support the Constitution swears to support it as he understands it, and not as it is understood by others; that, holding the original charter of the bank to have been unconstitutional, he, as president, was not bound to sign a bill continuing it in force, notwithstanding the Supreme Court had solemnly decided that the original charter was a perfectly valid law.

A single discrimination will show that on the general principle President Jackson was right, and that in the particular instance he was wrong. It may well be that every official who takes an oath to support the Constitution is bound to interpret it as he understands it; and especially is this true of both branches of the legislative power, one of which is the two houses of Congress, and the other of which is the president. To both of them a decision of the Supreme Court of the United States on a constitutional question commends itself by the weight of its reasoning; but when the same question arises in the course of legislation, those who exercise the functions of legislation must determine for themselves whether they will or will not follow out the views maintained by the court. What the court really decides is that, in a litigated case, the parties whose rights against each other are affected by a provision of the Constitution are bound to accept the interpretation of the Constitution which the court adopts. The decision also becomes a precedent in all future litigated cases in which the same question arises, and all inferior judicial tribunals, federal or state, are bound by it.

But the case on which President Jackson had to act was a peculiar one, and one that seldom arises. He was called upon as president, and therefore as a co-ordinate part of the legislative power, to approve a bill continuing the charter of the Bank of the United States in force for a further term of years. The bank was a party to the case of McCulloch *vs.* Maryland, and that state was the other party in the litigation. The court decided that the original charter was a constitutionally valid grant. The president was not called upon to decide whether the original charter was valid. He was to decide a narrower question; namely, whether Congress had constitutional power to prolong the charter. The bank was an existing corporation, with great rights of property vested in it under the original charter, which had not yet expired when Congress passed a bill to continue the charter in force for a further period, and sent the bill to the president for his approval. The president, going back to the question whether Congress originally had constitutional power to create the bank, rested his veto of the bill upon the ground that Congress exceeded its constitutional powers when it granted the original charter.

I conceive, therefore, that although the question whether Congress had power to renew the charter, by an extension of the corporate existence of the bank, involved in one aspect its power to grant the original charter, yet that the circumstances of the case did not call for an assertion by the president of his independent power to interpret the Constitution for himself. In general, the president, when called upon to approve of new legislation which undertakes to exercise a supposed power of the Constitution, must interpret the Constitution as an independent duty, and must decide for himself whether the power exists. But when the Supreme Court has decided that a charter of incorporation was a valid constitutional grant, and the president is asked to approve a bill continuing the existence of the same corporation, the question for the president wears a different aspect.

The charter of the bank was a law of the land in operation at the time when Congress passed the bill to continue it in force. There is a plain distinction to be observed between the original enactment of law and the enactment of a law continuing or amending it. This distinction was disregarded by President Jackson.[1]

The peculiar doctrine of President Jackson does not, however, detract from the value and importance of that exposition

[1] In the Life of Webster, I. 417, et seq., I have adverted to this subject, and have made the same discrimination that I have made here. By referring to my former work the reader will learn in what sense Mr. Webster considered a decision of the Supreme Court of the United States to be binding on all other departments of the government. He did not deny that when the question is whether a law is *to be* passed, all those who have to discharge the functions of legislators must determine for themselves whether Congress has constitutional power to enact it. But when the question is whether a statute which *is* in force shall be continued for a further period or be amended in any respect, a previous decision of the Supreme Court that the original statute was a constitutional exercise of legislative power has a greater force than the mere weight of the reasoning by which the court upheld it. Mr. Webster pointed out that the same principle of action on which the president, in his legislative capacity, refused to approve a law continuing an existing law in force for a further period, would enable him, in his executive capacity, to refuse to execute a law which he deemed unconstitutional. His oath to faithfully *execute* the laws would thus be in conflict with his oath to support the Constitution, as the latter was understood by President Jackson. Hamilton, with his usual perspicuity, in No. 78 of The Federalist, adverts to the separate functions of the Supreme Court and to those of the legislative body in interpreting the powers of the Constitution.

of the Constitution which was given in his proclamation against the nullifiers, and which was drawn up by his secretary of state, Edward Livingston, and was substantially the same as that previously maintained in the Senate by Mr. Webster.

When we turn to the views of the nature of the Constitution that have always been held and acted upon by the Supreme Court of the United States, it becomes at once apparent that they have admitted of no place for the doctrine which is implied in the idea of state resistance, or organized resistance of any kind. Beginning with the earliest judicial interpretations of the Constitution, and coming down to the latest, we shall find that they have been uniform and consistent.

When the Supreme Court was composed of Marshall as chief-justice, Bushrod Washington, Story, and their associates, it became necessary for them to speak positively concerning the nature of the Constitution, because it was then claimed, in the particular controversy which they had to decide, that the Constitution was established by the states in their sovereign capacities. This doctrine was distinctly negatived by the court in the following terms: "The Constitution of the United States was ordained and established, not by the states in their sovereign capacities, but emphatically, as the preamble of the Constitution declares, by the *people* of the United States. There can be no doubt that it was competent to the people to invest the government with all the powers which they might deem proper and necessary, to extend or restrain those powers according to their own good pleasure, and to give them permanent and supreme authority."[1]

A few years later, Chief-Justice Marshall, speaking for the whole bench, said: "The government of the Union is a government of the *people;* it emanates from them; its powers are granted by them, and are to be exercised on them, and for their benefit. . . . The government of the Union, though limited in its powers, is supreme within its sphere of action; and its laws, when made in pursuance of the Constitution, form the supreme law of the land."[2]

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[1] Martin *vs.* Hunter, 1 Wheaton's R., 304. The opinion of the court in this case was delivered by Justice Story.

[2] McCulloch *vs.* the State of Maryland, 4 Wheaton, 316.

Did Story, in referring to the preamble of the Constitution, or did Marshall, in speaking of the *people*, mean that the Constitution was ordained and established by the people of the United States regarded as a nation? It is quite apparent that the preamble, in using the words "We, the people of the United States, . . . do ordain and establish this Constitution for the United States of America," meant that the people of the several states do this great political act. It is, too, made certain that the very eminent jurists and magistrates, whose language I am now considering, did not regard the Constitution as ordained and established by that mass of people of whom we commonly speak as the People of the United States when we refer to them as a nation. This is apparent from what was said by Chief-Justice Marshall. The particular question then before the court was whether Congress had constitutional authority to create a bank, and whether the bank, so created, was subject to a tax imposed by the state of Maryland. This drew into consideration the nature of the government established by the Constitution. The chief-justice said:

"In discussing this question, the counsel for the state of Maryland have deemed it of some importance in the construction of the Constitution, to consider that instrument, not as emanating from the people, but as the act of sovereign and independent states. The powers of the general government, it has been said, are delegated by the states, who alone are truly sovereign, and must be exercised in subordination to the states, who alone possess supreme dominion. It would be difficult to sustain this proposition. The convention which framed the Constitution was, indeed, elected by the state legislatures. But the instrument when it came from their hands was a mere proposal, without obligation or pretensions to it. It was reported to the then existing Congress of the United States, with a request that it might 'be submitted to a convention of delegates, chosen in each state, by the people thereof, under the recommendation of its legislature for their assent and ratification.' This mode of proceeding was adopted; and by the convention, by Congress, and by the state legislatures the instrument was submitted to the people. They acted upon it, in the only manner in which they can safely, effectively, and wisely on such a subject, by assembling in con-

vention. It is true, they assembled in their several states; and where else should they have assembled? No political dreamer was ever wild enough to think of breaking down the lines which separate the states, and of compounding the American people into one common mass. Of consequence, when they act, they act in their states. But the measures they adopt do not, on that account, cease to be the measures of the people themselves, or become the measures of the state governments. From these conventions the Constitution derives its whole authority. The government proceeds directly from the people; is 'ordained and established' in the name of the people; and is declared to be ordained 'in order to form a more perfect union, establish justice, insure domestic tranquillity, and secure the blessings of liberty to themselves and to their posterity.' The assent of the states, in their sovereign capacity, is implied in calling a convention, and thus submitting that instrument to the people. But the people were at perfect liberty to accept or reject it, and their act was final. It required not the affirmance, and could not be negatived, by the state governments. The Constitution, when thus adopted, was of complete obligation and bound the state sovereignties.

"It has been said that the people had already surrendered all their powers to the state sovereignties and had nothing more to give. But surely the question whether they may resume and modify the powers granted to government does not remain to be settled in this country. Much more might the legitimacy of the general government be doubted had it been created by the states. The powers delegated to the state sovereignties were to be exercised by themselves, not by a distinct and independent sovereignty created by themselves. To the formation of a league such as was the Confederation the state sovereignties were certainly competent. But when, 'in order to form a more perfect union,' it was deemed necessary to change this alliance into an effective government possessing great and sovereign powers and acting directly on the people, the necessity of referring it to the people, and of deriving its powers directly from them, was felt and acknowledged by all. The government of the Union, then (whatever may be the influence of this fact on the case), is emphatically and truly a government of the people. In form and in substance

it emanates from them. Its powers are granted by them, and are to be exercised directly on them and for their benefit.

"This government is acknowledged by all to be one of enumerated powers. The principle that it can exercise only the powers granted to it would seem too apparent to have required to be enforced by all those arguments which its enlightened friends, while it was depending before the people, found it necessary to urge. The principle is now universally admitted. But the question respecting the extent of the powers actually granted is perpetually arising, and probably will continue to arise as long as our system shall exist. In discussing these questions the conflicting powers of the general and state governments must be brought into view, and the supremacy of their respective laws, when they are in opposition, must be settled.

"If any one proposition could command the universal assent of mankind, we might expect it would be this: that the government of the Union, though limited in its powers, is supreme within its sphere of action. This would seem to result necessarily from its nature. It is the government of all; its powers are delegated by all; it represents all and acts for all. Though any one state may be willing to control its operations, no state is willing to allow others to control them. The nation, on those subjects on which it can act, must necessarily bind its component parts. But this question is not left to mere reason; the people have, in express terms, decided it by saying, 'This Constitution, and the laws of the United States which shall be made in pursuance thereof . . . shall be the supreme law of the land,' and by requiring that the members of the state legislatures, and the officers of the executive and judicial departments of the states shall take the oath of fidelity to it. The government of the United States, then, though limited in its powers, is supreme; and its laws, when made in pursuance of the Constitution, form the supreme law of the land, 'anything in the constitution or laws of any state to the contrary notwithstanding.'"

It is evident throughout this lucid reasoning that when the chief-justice spoke of the Federal Government as one that emanated from the people, and as one that represents all and acts for all, he did not mean to refer to a consolidated democracy, composed of the people of the United States regarded as

a mass of individuals and acting as a nation. The mode in which the Constitution was ratified, by being submitted to conventions in the several states, and made the supreme law only in those states which should adopt it, and not unless it should be adopted by conventions of nine states, forbids the idea, on the one hand, that it was established by the state sovereignties, and, on the other hand, equally forbids the idea that it was the act of a nation as a mass of people. It was the act of the *people of each state* which adopted the proposed instrument of government. The people of each state, exercising for themselves the right of self-government inherent in them as a political community, granted to a government certain of their powers of sovereignty, and retained all their other powers. This was apparent from the nature and the form of the proceeding before the Ninth and Tenth Amendments were adopted. Those amendments, subsequently adopted out of abundant caution, were necessary in the sense of being in the highest degree expedient, in order to prevent misconstruction and abuse of the powers embraced in the Constitution, and to extend the ground of public confidence in the government so as to best secure the beneficent ends of its institution.

When the Ninth Amendment declared that "the enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people," it expressed in a positive text what was already implied in the nature of the Constitution and in the mode of its adoption; and when it referred to the "people," it meant the people of each state, for the people of the United States, regarded as a mass of individuals or as a nation, did not grant the rights enumerated in the Constitution, and had none to retain. This might have been sufficient, but it was deemed expedient to go further, in order to make it certain that there were rights held by the states and by the people of the states. Accordingly the Tenth Amendment declared that "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." That is to say, the people of each state as a political community reserve to themselves all the powers not vested in the United States by the Constitution, and which the Constitution does not prohibit

them from exercising; or, the people of each state reserve to themselves the whole of that original sovereignty or powers of government which they have not granted to the United States by the Constitution, or which they have not bound themselves not to exercise. I conceive that we are not to regard the Tenth Amendment, therefore, when it speaks of "the people," as meaning the collective body of the people of the United States; for *that* people, viewed as a mass or as a consolidated nation, had no rights to reserve, and, indeed, have no corporate existence under the Constitution of the United States. They do not and cannot act as a nation, in exercising the powers embraced in the Constitution. To whatever extent it may be true that during the Revolution, at the time of the Declaration of Independence and afterwards, the people of the colonies, and subsequently the people of the states, acted as one people (and there is some ground for so regarding their action during a considerable part of the period before the Constitution was adopted), yet when it came to be adopted, it was not based upon the idea that it was established by the people of the United States as a nation, or that it derived its existence or its powers from that people.

It is necessary always, in considering the nature of the Constitution, to discriminate between the sense in which we speak of the people of the United States as a nation, and the sense in which the Constitution has made a nation. The powers embraced in the Constitution are in one sense national powers, because they are held and exercised for objects that are common to the people of all the states. But they are not national powers in the sense of being derived from the people of the United States as a consolidated nation acting by democratic majorities. When we examine the mode in which the present government of the United States unites the federal and the national principle, we find that there is a sense in which it has that compound character. For example, in the primary election of a President of the United States, the people of each separate state have a voice in proportion to their numbers; and thus in the aggregate there may come to be a majority of the people of all the states represented in the choice. In the representation of the states in the Senate we have the federal principle incorporated. In the representation in the House, the people of each state have a weight according to their

numbers, and in the action of that body a majority of the people of the United States express their wish, and so the national principle becomes a part of the compound system. When the two houses concur in an act of legislation, both of these principles, the federal and the national, come into play; but the powers of legislation are national powers only in the sense that they concern the interests of the people of all the states.

Before I pass from the preamble of the Constitution, it will be well to advert to the fact that until the instrument had been adopted by the required number of nine states, the Constitution did not speak at all. Until the arrival of that time it was a mere proposal. The "more perfect Union" which it proposed to form did not come into existence until at least nine states had acted upon and adopted the instrument. This fact, therefore, controls the meaning of the words, "We, the people of the United States," used in the preamble to announce the name of those who thus declared themselves as the ordaining and establishing power.

If the preamble had said, "We, the people of the United States," meaning the mass of the inhabitants of the states regarded as a nation already existing and now acting as such, it must have referred to and assumed the existence of such a nation. But the convention which framed the Constitution was not authorized to make that assumption, and did not make it; nor is the mode of ratification which was proposed consistent with the idea that the Constitution was to be ordained and established by the action of such a people as the people of the United States *en masse*.

The greatest care was exercised to make the action of each state the action of the people of that state, and, to repeat the language of Chief-Justice Marshall, "No political dreamer was ever wild enough to think of breaking down the lines which separate the states, and of compounding the American people into one common mass. Of consequence, when they act they act in their states, but the measures they adopt do not on that account cease to be the measures of the people themselves or become the measures of the state governments. From these conventions [of the people of the several states] the Constitution derives its whole authority." In this forcible statement the chief-justice was combating the idea that the Constitution was an act of the state

sovereignties; and in showing that it was the act of the people of each state in their primary capacity he at once excluded the idea of its emanating from any other source.

I have been thus careful to state what I believe to be the true meaning of the preamble of the Constitution, because during the late civil war very wild and loose ideas were current throughout the northern section of the country, which assumed the existence of a national sovereignty as the ultimate power to carry on a war for the purpose of breaking up and destroying the Confederacy that had been formed by the states of the South. While the secession of those states from the Union was based upon the assumption that the Constitution was a league between states, from which any state could withdraw for a reason which it had a right to determine for itself, there was springing up in the states which adhered to the Federal Government an idea that the physical force of the nation could be exercised outside of the powers of the Constitution, for the purpose of saving that Constitution.

To some extent measures were adopted by the Federal Government based upon this idea, or largely influenced by it, and which seemed for a time to assume that the government, the mere creature of the Constitution, could temporarily set aside the Constitution in order to preserve it. This was what exposed the people of the North, in the eyes of intelligent Europeans, to the imputation of being animated by a love of dominion rather than by a purpose to defend and preserve the political system that had descended to them from their forefathers. It was said, with some show of truth, "If you admit that the American Revolution was justifiable upon the doctrine that it is an inherent right of a people to abolish an existing government and to make one for themselves, how can you deny this right to the people of the Southern States? You deny it because it is your will that they shall not succeed in separating themselves from you. You are acting for the domination of one people over another, in contravention of the professed principles on which you established your political existence as an independent people."

There was but one answer that could be made to this. It was that the Constitution of the United States is not a league between sovereign states, and therefore there is no constitutional

right resulting from the nature of the Union by the exercise of which the people of any state can absolve themselves from the obligation to obey the laws and submit to the authority of the Federal Government. Happily, although the doctrines held by many prominent men in public life, and to some extent the measures of the government, seemed for a time to countenance the idea that the Constitution had been temporarily put aside or suspended as the contest went on, it became apparent not only that the way to preserve the Constitution was to adhere to it, but that the Constitution embraced within itself all the powers that were needful for the exigency. More especially did this become plain when the Supreme Court of the United States, never interrupted in its action during the whole course of the civil war, had spoken of the new phases of public affairs which called for an exposition of the nature of the Constitution in reference to the new situation in which the government was placed.

This brings me, therefore, to the continued history of the judicial interpretation, as evinced by the doctrine held and acted on by the tribunal charged, in litigated cases, with the ultimate duty of declaring what the Constitution is. We have seen the uniformity and consistency of the doctrine maintained by two successive sets of judges in that high tribunal before the civil war. We have now to examine that which was maintained by their successors during that war.

In December, 1864, Salmon P. Chase, of Ohio, became Chief-Justice of the United States. He had been a senator in Congress, and was Secretary of the Treasury under President Lincoln from March 5, 1861, until he was appointed chief-justice. Without the judicial experience of his great predecessors Marshall and Taney, and being more of a statesman than a jurist, he was yet a man of fine powers, and in the main a sound constitutional lawyer. While Secretary of the Treasury, although he did not perhaps originate, he gave his sanction to the act of Congress which undertook to make the paper promises of the government a legal tender in the payment of private debts. When he became chief-justice and had to act on this question judicially, he did not hesitate to pronounce the law unconstitutional. This exposed him to some charge of inconsistency, which it is not necessary to examine here. We are here concerned with his judicial

opinions of the nature of the Constitution, of the character of the civil war, and the means by which the Federal Government could constitutionally encounter and suppress the Southern Confederacy.

In acting upon these subjects he spoke as the organ of the whole bench, and in his career as chief-justice he exhibited a high degree of moral courage.

Among the important constitutional cases in which the opinion of the court was prepared by Chief-Justice Chase, few are more notable than Texas *vs.* White, 7 Wallace, 700–743, decided in 1868.

This was an original suit in the Supreme Court, wherein the state of Texas, claiming certain bonds of the United States, asked for an injunction to restrain the defendants from receiving payment from the national government, and that the defendants be compelled to surrender the bonds to the state.

I cite some of the forcible paragraphs of that decision:

"In all respects, so far as the object could be accomplished by ordinances of the convention, by acts of the legislature, and by votes of the citizens, the relations of Texas to the Union were broken up, and new relations to a new government were established for them. The position thus assumed could only be maintained by arms, and Texas accordingly took part, with the other Confederate States, in the War of the Rebellion, which these events made inevitable. During the whole of that war there was no governor or judge or any other state officer in Texas who recognized the national authority. Nor was any officer of the United States permitted to exercise any authority whatever under the national government within the limits of the state, except under the immediate protection of the national military forces. Did Texas, in consequence of these acts, cease to be a state? Or, if not, did the state cease to be a member of the Union?

"It is needless to discuss at length the question whether the right of a state to withdraw from the Union for any cause regarded by herself as sufficient is consistent with the Constitution of the United States. The Union of the states never was a purely artificial and arbitrary relation. It began among the colonies, and grew out of common origin, mutual sympathies, kindred

principles, similar interests, and geographical relations. It was confirmed and strengthened by the necessities of war, and received definite form and character and sanction from the Articles of Confederation. By these the Union was solemnly declared to 'be perpetual.' And when these Articles were found to be inadequate to the exigencies of the country, the Constitution was ordained 'to form a more perfect union.' It is difficult to convey the idea of indissoluble unity more clearly than by these words. What can be indissoluble if a perpetual union, made more perfect, is not?

"But the perpetuity and indissolubility of the Union by no means implies the loss of distinct and individual existence, or of the right of self-government by the states. Under the Articles of Confederation each state retained its sovereignty, freedom, and independence, and every power, jurisdiction, and right not expressly delegated to the United States. Under the Constitution, though the powers of the states were much restricted, still all powers not delegated to the United States, nor prohibited to the states, are reserved to the states respectively or to the people. And we have already had occasion to remark at this term that 'the people of each state compose a state having its own government, and endowed with all the functions essential to separate and independent existence,' and that 'without the states in union there could be no such political body as the United States.' (Lane County *vs.* Oregon, 7 Wallace, 76.) Not only, therefore, can there be no loss of separate and independent autonomy to the states through their union under the Constitution, but it may be not unreasonably said that the preservation of the states and the maintenance of their governments are as much within the design and care of the Constitution as the preservation of the Union and the maintenance of the national government. The Constitution, in all its provisions, looks to an indestructible Union composed of indestructible states. When, therefore, Texas became one of the United States she entered into an indissoluble relation. All the obligations of perpetual union and all the guarantees of republican government in the Union attached at once to the state. The act which consummated her admission into the Union was something more than a compact; it was the incorporation of a new member into the political body. And it was final. The

union between Texas and the other states was as complete, as perpetual, and as indissoluble as the union between the original states. There was no place for reconsideration or revocation, except through revolution or through consent of the states.

"Considered, therefore, as transactions under the Constitution, the ordinance of secession adopted by the convention and ratified by a majority of the citizens of Texas, and all the acts of her legislature intended to give effect to that ordinance, were absolutely null. They were utterly without operation of law. The obligations of the state as a member of the Union, and of every citizen of the state as a citizen of the United States, remained perfect and unimpaired. It certainly follows that the state did not cease to be a state, nor her citizens to be citizens of the Union. If this were otherwise, the state must have become foreign and her citizens foreigners. The war must have ceased to be a war for the suppression of rebellion, and must have become a war for conquest and subjugation. Our conclusion, therefore, is that Texas continued to be a state, and a state of the Union, notwithstanding the transactions to which we have referred. And this conclusion, in our judgment, is not in conflict with any act or declaration of any department of the national government, but entirely in accordance with the whole series of such acts and declarations since the first outbreak of the rebellion.

"But in order to the exercise by a state of the right to sue in this court, there needs to be a state government competent to represent the state in its relations with the national government, so far at least as the institution and prosecution of a suit is concerned. And it is by no means a logical conclusion from the premises which we have endeavored to establish that the government relations of Texas to the Union remain unaltered. Obligations often remain unimpaired while relations are greatly changed. The obligations of allegiance to the state and of obedience to her laws, subject to the Constitution of the United States, are binding upon all citizens, whether faithful or unfaithful to them; but the relations which subsist while these obligations are performed are essentially different from those which arise when they are disregarded and set at naught. And the same must necessarily be true of the obligations and relations of states and citizens to the Union. No one has been bold enough to contend that while

Texas was controlled by a government hostile to the United States, and in affiliation with a hostile confederation waging war upon the United States, senators chosen by her legislature or representatives elected by her citizens were entitled to seats in Congress, or that any suit instituted in her name could be entertained in this court. All admit that during this condition of civil war, the rights of the state as a member, and of her people as citizens, of the Union were suspended. The government and the citizens of the state, refusing to recognize their constitutional obligations, assumed the character of enemies and incurred the consequences of rebellion.

"These new relations imposed new duties upon the United States. The first was that of suppressing the rebellion. The next was that of re-establishing the broken relations of the state with the Union. The first of these duties having been performed, the next necessarily engaged the attention of the national government. The authority for the performance of the first had been found in the power to suppress insurrection and carry on war; for the performance of the second, authority was derived from the obligation of the United States to guarantee to every state in the Union a republican form of government. The latter, indeed, in the case of a rebellion which involves the government of a state, and for the time excludes the national authority from its limits, seems to be a necessary complement of the former. Of this the case of Texas furnishes a striking illustration. When the war closed there was no government in the state except that which had been organized for the purpose of waging war against the United States. That government immediately disappeared. The chief functionaries left the state. Many of the subordinate officials followed their example. Legal responsibilities were annulled or greatly impaired. It was inevitable that great confusion should prevail. If order was maintained, it was where the good sense and virtue of the citizens gave support to local acting magistrates and supplied more directly the needful restraints."

NOTE.—The manuscript of Mr. Curtis for this chapter abruptly ends at this point. The editor will make an elaborate note in the Appendix concerning the other cases upon which Mr. Curtis intended to comment.—J. C. C.

CHAPTER III.

NECESSITY OF ORGANIC LAWS TO SUPPLY THE MACHINERY OF THE NEW GOVERNMENT.—MODE OF CHOOSING THE PRESIDENT.—HIS CONSTITUTIONAL FUNCTIONS.—COUNTING THE ELECTORAL VOTE.—THE ELECTORAL SYSTEM PROSTRATED BY THE NOMINATING CONVENTIONS.

IN all our constitutional history there is no more important study than that which is to be made by examining the process of unfolding and applying the Constitution as it came to the hands of the first Congress by the enactment of the organic laws that were to put it into operation, and the establishment of the first precedents that were to determine its meaning. Along with the interpretations that were given to it by the legislative department, this study should also embrace those which were acted upon by the executive. In short, the amount of constitutional construction settled during the administration of Washington, and before the era of judicial interpretations had really begun, is so considerable and instructive that a large space must be here given to its examination. The first legislative interpretations derive their importance from the fact that they were settled immediately after the discussions which had attended the adoption of the Constitution, and from the further fact that ten of the members of the first House of Representatives had been members of the convention which framed it, and two of the members of the first Senate had also been members of that body.[1] The first Congress ex-

[1] The members of the first House of Representatives who had been members of the Federal Convention were: Nicholas Gilman, of New Hampshire; Elbridge Gerry, of Massachusetts; Roger Sherman, of Connecticut; George Clymer and Thomas Fitzsimmons, of Pennsylvania; Daniel Carroll, of Maryland; James Madison, Jr., of Virginia; Hugh Williamson, of North Carolina; and Abraham Baldwin, of Georgia. All of them had signed the Constitution excepting Mr. Gerry. Pierce Butler, of South Carolina, and William Few, of Georgia, were the two mem-

tended from the 4th of March, 1789, until the 3d of March, 1791, in three sessions: the first session being from March 4, 1789, to September 29, 1789; the second from January 4, 1790, to August 12, 1790; and the third from December 6, 1790, to March 3, 1791. The first and the second sessions were held at the city of New York, and the third was held at Philadelphia. A bare enumeration of some of the topics that were acted upon by this Congress will evince the number and character of the constitutional interpretations which were then adopted by the legislative department.

First, then, the determination of the oaths of office necessary to be taken in the organization of the new government, the ascertainment of the persons who had been elected to the offices of president and vice-president, and the framing of the executive departments demanded immediate attention.

As revenue was essential to the operation of the new government, the modes in which its taxing power was to be exercised came at once into consideration. The distribution and exercise of the judicial power by the establishment of courts other than the Supreme Court, distinction of the irrespective jurisdictions, the enactment of process, and the other machinery of justice were alike needful for the completion of the system required by the general provisions and mandates of the Constitution. The management of the public debt, which the Constitution had made as valid against the United States under the new provision as under the Confederation; the creation of a land office; the exercise of the coinage power by the establishment of a mint; the creation of a bank; the organization of the militia; the determination of a mode of filling the office of president when there should be a vacancy and no vice-president to succeed; and the final settlement of the government — all this and a great deal more that was done by this Congress involved the first practical application of the Constitution, in the transition from the old to

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bers of the first Senate who had been members of the Federal Convention, and had signed the Constitution. The Senate sat with closed doors until the second session of the third Congress, both in legislative and executive sessions, excepting on one occasion—the contested election of Mr. Gallatin as a senator from Pennsylvania. Consequently there are but very meagre accounts of the Senate's proceedings prior to the second session of the third Congress.—J. C. C.

the new state of things. Finally, it devolved upon this Congress to formulate and propose some of the Amendments of the Constitution which, although not made conditions precedent by the ratifying states, had been earnestly pressed upon its consideration by most of them. Before a description is given of the first precedent established in 1789 for the ascertainment of the person who was to fill the chief executive office, it will be well to make an historical review of the design of the electoral system in the appointment of a chief-magistrate.

When it had been settled in the convention of the states in 1787 that the new government must have an executive head, to consist of a single person, the question of how he was to be appointed did not involve, in the same way as in the case of the legislative department, the consideration of the "federal" or the "national" principle. The appointment of the chief executive officer directly or indirectly by the people of the United States, or by the legislatures or the governors of the states, or by the Congress, would be consistent with a union of the states as political corporations, or with a union formed by the whole people of the United States, or with one in which both of these ideas were to be united; so that upon the executive department there did not arise the same contest between the friends and opponents of the national principle that arose with respect to the representation in the legislative body. But the great latitude of choice as to the mode of appointing or choosing an elective chief-magistrate, and the duration and tenure of so great an office, brought out the widest diversities of opinion. It is interesting to note the development of the complete conception of this office, as it grew to its full proportions—proportions which at length made it equal in power to many monarchies, and in some respects made it greater than the power of some constitutional kings. Perhaps there is no part of our Constitution which is better entitled to the praise of success than the mode in which an executive office of such great power was made an elective office and made consistent with republican government. But from the first germs of the conception of such an office to the time when it became formed and rounded in all the proportions in which we know it, there was an interval filled with many plans, many conflicts of opinion, many wise and necessary adjustments.

At first, the idea of having the executive chosen by the people of the United States at large was hardly entertained at all in the convention. The reason why it was not was that the first idea of the executive office assumed that its chief, if not its only function would be that of an executive agent of the *legislative* will. Accordingly, in the first plan brought forward the appointment of the executive was vested in the legislative department, because it was not supposed that the people would make a wise choice of the *kind* of magistrate then contemplated. It was thought that the best mode of obtaining a suitable incumbent of this office as it was originally expected to be framed, would be to avoid the tumults and risks of a popular election, and to commit to the legislature the choice of a magistrate who was expected at first to be only the executive servant of the legislature. But to counteract the inconvenience and danger of having the chief executive magistrate chosen by the legislature, the first expedient that was thought of was to make the incumbent of the office ineligible a second time. This, in its turn, would be attended with serious disadvantages, but as it was difficult to agree on the proper length of the official term, and as the evils of a choice by the legislative department became developed more clearly, some other mode of filling the office had to be considered.

Of course, if the election of a chief-magistrate were to be given to the people of the Union by a direct vote, they would have to vote in their respective states according to their state rules of suffrage, which differed very considerably, or else there would have to be a national qualification of voters for this special purpose. The suggestion of an intermediate body of electors, to be appointed for the express purpose of choosing the president presented an alternative method, which revealed the necessity for making the president impeachable while in office, so as to obviate the dangers of his corrupting the electors to secure a re-election.

When the report of the committee of detail came into the convention, and it appeared that they proposed to vest the appointment of the president in the national legislature for a term of seven years, and to make the incumbent ineligible a second time, a proposition for a direct election by the people was negatived by a large majority of the states. It is important to understand the reasons for this. To have vested the election directly

in the people of the United States as one community would have been liable to the objection that it would make a consolidated democracy, composed only of the free inhabitants and voters of the several states. The federal principle had been introduced into the construction of the Senate; but in the construction of the executive what was needful was to give the people of each state a relative weight in the election, by calculating their relative weight, not by the numbers of free inhabitants and voters, but by some different rule. But if a body of electors were to be interposed for the people of each state, how were the electors to be appointed? Were they to be chosen by the states in a certain ratio, or were they to be appointed by the Congress, or was the election of the president to remain vested in the Congress?

The relations which it was found must be established between the president and the Senate in the great matters of appointment to office, and the negotiation and ratification of treaties, and the president's veto power in the enactment of laws, as well as his function of executive magistrate, compelled the convention to separate his election in the first instance entirely from the Senate, and then to separate it equally from the whole Congress. It was found to be most advantageous to adopt the plan of an intermediate body of electors, and to refer their appointment to the people of the states. Without prescribing, therefore, by any positive direction how the people of the states should appoint their electors, the plan that was finally adopted left it to the state legislatures to determine in what *manner* the electors were to be appointed, but made the whole number of electors for the people of each state to be equal to the whole number of their senators and representatives in Congress.

Having thus reached the settlement of the plan for the primary election of the president, I must now turn aside from the narrative to make some comments upon that part of it which gave to the legislature of each state the power to determine the *manner* in which the electors within the state were to be appointed. The doctrine has been advanced by some that this provision of the Constitution has vested in the legislature of each state a full and unrestricted choice between every possible mode in which public functionaries can be appointed; that if the state legislature should choose to confer on the governor or on a court or on a

private individual the power to appoint the presidential electors, it can do so; that the people of the state have no fixed constitutional right to make their voice potential in the choice of the president; and that the purpose of the whole scheme was to remove the choice of the president from the popular determination, and to make it a kind of corporate right of the state, to be exercised just as its legislature might determine.

This doctrine requires a brief examination. It is necessary always to construe the Constitution not merely by its naked language, but by some reference to historical facts. It is an indubitable fact that after the framers of the Constitution had decided to separate the primary election of the president, in every form, from all possible control of either branch of the Congress, and to have an intermediate body of electors in each state appointed for the single purpose of casting the electoral votes, there were but two modes in which it was ever contemplated that the electors could be appointed. The two and only alternatives were either a popular choice of the electors or a choice of them by the state legislature, as that body might determine. That all other modes were to be excluded is plain from various considerations. One is, that the principles of republican government, as opposed to every kind of oligarchy, required that the sense of the people should operate in the choice of the chief-magistrate. It would so operate if the electors were to be chosen by the people of a state or were to be chosen by their legislature, for in either mode the political sentiment and wishes of the people of the state would find expression through the electors who might be appointed. But if the legislature of a state were to devolve the appointment of the electors on any select number of individuals, the electoral votes of the people of that state would be in the hands of a dangerous oligarchy; and if, after the legislature had determined that the electors should be appointed by a majority of the qualified voters of the state, and they had voted and made returns of their votes according to law, the legislature should authorize any body of state officers to disqualify or disfranchise any portion of those voters by rejecting their votes from the returns, a power capable of the most corrupt abuses would be established over the electoral votes of the people of the state. Nothing is more apparent or conspicuous in the efforts of those

who framed this electoral system than their solicitude to remove it from all corrupt influences. For this purpose they got as near to the people as they could, without prescribing in so many terms that the people should vote directly for the president. For this purpose they assumed that the electors would be appointed by the people, whom no one could corrupt; or that they would be appointed by the legislature, who would be less likely than a smaller body to be corrupted, and who would themselves be chosen in accordance with the political sentiments of their constituents. The most important evidence of the original design of the electoral system, aside from the proceedings of the convention, is to be found in Hamilton's comprehensive exposition given in No. 68 of The Federalist. It was written and published while the Constitution was before the people of the states for ratification, and it came from the pen of one who had the most ample means for understanding all the reasons for the adoption of this mode of appointing the president. It appears from Hamilton's testimony that this was almost the only part of the Constitution of any consequence which had escaped without severe censure, or which had received the slightest mark of approbation from its opponents. His commentary is so important that, although it is well known, I quote it at length:

"I venture somewhat further, and hesitate not to affirm that if the manner of it be not perfect, it is at least excellent. It unites in an eminent degree all the advantages the union of which was to be wished for.

"It was desirable that the sense of the people should operate in the choice of the person to whom so important a trust was to be confided. This end will be answered by committing the right of making it, not to any pre-established body, but to men chosen by the people for the special purpose and at the particular conjuncture.

"It was equally desirable that the immediate election should be made by men most capable of analyzing the qualities adapted to the station, and acting under circumstances favorable to deliberation and to a judicious combination of all the reasons and inducements that were proper to govern their choice. A small number of persons, selected by their fellow-citizens from the general mass, will be most likely to possess the information and discernment requisite to so complicated an investigation.

"It was also peculiarly desirable to afford as little opportunity as possible to tumult and disorder. This evil was not least to be dreaded in the election of a magistrate who was to have so important an agency in the administration of the government. But the precautions which have been so happily concerted in the system under consideration promise an effectual security against this mischief. The choice of *several*, to form an intermediate body of electors, will be much less apt to convulse the community with any extraordinary or violent movements than the choice of *one*, who was himself to be the final object of the public wishes. And as the electors, chosen in each state, are to assemble and vote in the state in which they are chosen, this detached and divided situation will expose them much less to heats and ferments that might be communicated to them from the people, than if they were all to be convened at one time in one place.

"Nothing was more to be desired than that every practicable obstacle should be opposed to cabal, intrigue, and corruption. Those most deadly adversaries of republican government might naturally have been expected to make their approaches from more than one quarter, but chiefly from the desire in foreign powers to gain an improper ascendant in our councils. How could they better gratify this than by raising a creature of their own to the chief-magistracy of the Union? But the convention have guarded against all danger of this sort with the most provident and judicious attention. They have not made the appointment of the president to depend on pre-existing bodies of men, who might be tampered with beforehand to prostitute their votes; but they have referred it in the first instance to an immediate act of the people of America, to be exerted in the choice of persons for the temporary and sole purpose of making the appointment. And they have excluded from eligibility to this trust all those who from situation might be suspected of too great devotion to the president in office. No senator, representative, or other person holding a place of trust or profit under the United States can be of the number of the electors. Thus, without corrupting the body of the people, the immediate agents in the election will at least enter upon the task free from any sinister bias. Their transient existence and their detached situation, already noticed, afford a satisfactory prospect of their continuing so to the con-

clusion of it. The business of corruption, when it is to embrace so considerable a number of men, requires time as well as means. Nor would it be found easy suddenly to embark them, dispersed as they would be over thirteen states, in any combinations founded upon motives which, though they could not properly be denominated corrupt, might yet be of a nature to mislead them from their duty.

"Another and no less important desideratum was, that the executive should be independent for his continuance in office on all but the people themselves. He might otherwise be tempted to sacrifice his duty to his complaisance for those whose favor was necessary to the duration of his official consequence. This advantage will also be secured by making his re-election to depend on a special body of representatives, deputed by the society for the single purpose of making the important choice.

"All these advantages will be happily combined in the plan devised by the convention, which is, that each state shall choose a number of persons as electors, equal to the number of senators and representatives of such state in the national government, who shall assemble within the state, and vote for some fit person as president. Their votes thus given are to be transmitted to the seat of the national government, and the person who may happen to have a majority of the whole number of votes will be the president. But as a majority of the vote might not always happen to centre in one man, and as it might be unsafe to permit less than a majority to be conclusive, it is provided that in such a contingency the House of Representatives shall select, out of the candidates who shall have the five highest numbers of votes, the man who, in their opinion, may be the best qualified for the office.

"This process of election affords a moral certainty that the office of president will seldom fall to the lot of any man who is not in an eminent degree endowed with the requisite qualifications. Talents for low intrigue and the little arts of popularity may alone suffice to elevate a man to the first honors of a single state; but it will require other talents, and a different kind of merit to establish him in the esteem and confidence of the whole Union, or of so considerable a portion of it as would be necessary to make him a successful candidate for the distinguished office of

President of the United States. It will not be too strong to say that there will be a constant probability of seeing the station filled by characters pre-eminent for ability and virtue. And this will be thought no inconsiderable recommendation of the Constitution, by those who are able to estimate the share which the executive in every government must necessarily have in its good or ill administration. Though we cannot acquiesce in the political heresy of the poet, who sings,

> "'For forms of government let fools contest—
> That which is best administered is best;'

yet we may safely pronounce that the true test of a good government is its aptitude and tendency to produce a good administration."

It will not be unprofitable to make some comments on this luminous explanation. First, then, what did Hamilton mean when he said that the sense of the people would operate in the choice of the person to whom so important a trust as the presidency was to be confided? The choice was deliberately and purposely withheld from the immediate votes of the people. How, then, was their sense to operate in the choice, and what did the commentator mean by "the sense of the people"? The context of his essay shows that by the sense of the people operating in the choice of the president he did not mean that they were to impose their will upon the electors in the selection of the individual. The right of making the choice is committed to a body of men most capable of analyzing the qualities adapted to the station, acting under circumstances favorable to deliberation and to a judicious combination of all the reasons and inducements proper to govern their choice. "A small number of persons," he adds, "selected by their fellow-citizens from the general mass, will be most likely to possess the information and discernment requisite to so complicated an investigation."

It was not, then, by dictating to the electors for what individual they were to cast their electoral votes that the sense of the people was to operate. How, then, could it operate? First, it would operate in the appointment of the electors, by the selection of men fit to exercise such a trust; secondly, it would operate in the choice of a body of electors agreeing in political sentiment

with the majority of their fellow-citizens by whom they were to be appointed; and thus the political sentiments of the people would at all times be felt in the electoral colleges, not in the designation of the individual for whom the electoral votes were to be cast, but in the prevalence or defeat of whatever public policy in the administration of affairs might command the approbation or the dissent of the people of each state.

It appears further, according to Hamilton's view and according to all contemporary testimony, that the electoral system was adopted in order to take precautions and security against the tumult and disorder which would be likely to attend, which must inevitably attend, a direct choice of the president by popular vote. The reasoning was that the choice of *several* to form an intermediate body of electors would be much less apt to convulse the community with any extraordinary and violent movements than the choice of *one*, who was himself to be the final object of the public wishes; and the electors themselves, being in a detached and divided situation, would be much less exposed to heats and ferments that might be communicated to them from the people than if they were all to be convened at one time in one place.

The whole purpose of the system is summed up by Hamilton in a brief description of the plan, namely, "that each state shall choose a number of persons as electors, equal to the number of senators and representatives of such state in the national government, who shall assemble within the state, and vote for *some fit* person as president."

Here, then, we have what was undoubtedly understood as the design of the electoral system at the time of the formation and adoption of the Constitution. Are the circumstances attending the first election of Washington to be considered as militating against this view; or are they to be regarded as constituting an exceptional case, in no important aspect inconsistent with what we know of the purpose of the system? If it appears that, on the first occasion of choosing a president, the sense of the people in regard to the most eligible individual, and the convictions of the electors in regard to the fittest person, concurred, because of the universal belief that Washington's services in the first administration of the new government were essential to the success of

the Constitution, there is nothing in the occurrence which militates against the design and purpose of the electoral system, as understood at that period. This appears very clearly from everything that took place.

The Constitution was first published at Philadelphia, in the Pennsylvania Journal, on the 19th of September, 1787. On the 27th of September another Philadelphia paper "nominated," as we should now say, General Washington for the presidency. The suggestion was instantly echoed through the country. As soon as it was known what the office was to be, the people of the United States, with almost one voice, declared that the new government must be intrusted to Washington's superintending care. It has sometimes been said that the office of president was made in the expectation that he would be first called to fill it. It was not so to any considerable extent. The framers of the Constitution knew that they had a Washington, but they also knew that in all human probability there never would be another man possessing his peculiar character. They framed the executive office, not for him, but for all time. But when the people saw what the office was to be, they demanded Washington's election as the first president. Every electoral vote in the Union was cast for him. Yet there were other public men of great eminence and reputation who might have aspired to the position, and who would have received more or less of the electoral votes, if the wishes and determinations of the people had not so strongly pointed to Washington as the person to whom must be committed the grand experiment of putting the Constitution into operation.

Washington's first election, therefore, and his second election, do not indicate that it was the design of the electoral system to have the electors under all circumstances perform the mere function of registrars of the popular will in regard to a previously designated individual. His election stands, in this respect, as an exceptional case.

Again: It was not the doctrine of that age that the states, as political corporations, or the state governments were to have their state rights specially asserted or defended through or in the presidential office. In the primary choice or appointment of the President of the United States the Constitution takes notice

of the separate states, in order that the president may be the representative in the executive office of a majority of the nation—of the people of the United States. For this purpose, in order to make a rule that will effect a just measure of the relative contribution of the people in each state to that majority of the nation, the Constitution gives to them the same number of electoral votes that they have of senators and representatives combined; and in order to leave the state untrammelled in regard to the choice of the electors, it leaves it to the people of the state to determine whether it shall be by their own votes or by the votes of their legislature. These are the only particulars in which the states are noticed in the mode of appointing the executive. The one of them fixes a rule for ascertaining the proportion which the people of each state contribute to the national majority by which the election of a president is to be determined; the other makes it optional with the people of each state to have the electors appointed by themselves or to have them appointed by their legislature. Underlying the whole system is the great purpose to remove the primary process of choosing the president as far as possible from all central influence, from all influence of the other branches of the government, from all the means and appliances of corruption, and to get as near as possible to a majority of the people of the United States, in order that their will may operate through the executive in whatever concerns the executive duties, whenever it is necessary to assert it by a change in the executive administration.

If I now take a nearer view of the powers that were to be vested in this great officer, the reader may better appreciate the advantages and purposes of the electoral system.

The president was to be commander-in-chief of the army and the navy, and of the militia of the states when called into the service of the United States; which implied that he was to be the military head of the nation.

In him exclusively was to be vested the power of granting reprieves and pardons for offences against the United States, except in cases of impeachment.

He was to have power to make treaties with foreign nations, subject to the advice and consent of two thirds of the senators present.

He was to nominate, and with the consent of the Senate to appoint, ambassadors, other public ministers and consuls, judges of the Supreme Court, and all other officers whose appointments were not otherwise provided for in the Constitution.

He was to have the power to fill up all vacancies that might happen during the recess of the Senate, by granting commissions that would expire at the end of their next session.

It was to be his duty from time to time to give to the Congress information of the state of the Union, and to recommend such measures as he might judge necessary and expedient.

He was to have power on extraordinary occasions to convene both houses, or either of them, and in case of disagreement between them as to the time of adjournment, to adjourn them to such time as he might think proper.

He was to receive the ambassadors and other public ministers of foreign powers, which implied that all foreign intercourse must be conducted through him as the organ of the nation.

He was to be invested with the executive power of the United States, and to take care that the laws be faithfully executed; and he was to commission all officers of the United States.

To these extensive powers there was to be added another, which was to give him a direct participation in the legislation of the United States. Before any bill could become a law, it was to be presented to him for his approval and signature; if not approved by him it was to be returned with his objections to the House in which it originated, and it could become a law only by being passed by two thirds of both houses notwithstanding his objections.

Finally, he was to be bound by a peculiarly solemn official oath. He was not only to promise before God faithfully to execute the office of President of the United States, but while all other officers of the government were required only to swear that they would support the Constitution, the president was to promise to the best of his ability *to preserve, protect, and defend it.*

That he might not, in the exercise of these vast powers, be above the laws, he was to be, like all other officers, removable from office on impeachment and conviction for treason, bribery, and other crimes and misdemeanors.

It is apparent that such a magistrate, standing in such relations to the Senate, and to the two branches of the legislature, should not owe to them, or either of them, if it could be avoided, either his original appointment or his re-election to the office. It is equally apparent that, as the office was to be periodically filled at comparatively short periods, and as its powers and duties involved not the interests or wishes of a part of the nation, not the rights or interests of any particular state or class of states, but the welfare, the interests, the dignity, and the will of the whole people, it was pre-eminently necessary that by the mode of his election the president should be made the representative of at least a majority of the nation. In all free governments, and especially in all republican systems, the majority is assumed to express the will of the whole; and whatever may be the arguments for what is called minority representation, when many public officers of the same class are to be appointed, the majority principle is the best that can be applied to the election of a single supreme ruler.

If the choice of the president had been committed to a majority of the qualified voters of the different states, a state in which manhood suffrage universally, or almost universally, prevailed would contribute a greater relative portion of the national majority than a state in which suffrage was more restricted. But under the rule which gives to the people of each state the same relative representation in the electoral college that they have in the two houses of Congress—a representation, that is to say, which is based upon population, without regard to the laws of suffrage—a more just and equal method is applied for ascertaining the relative contribution of the people of each state to the majority of the people of the United States.

I now approach a part of this subject on which there have lately been developed two extreme opinions. I refer to the mode of ascertaining and declaring the votes given by the electoral bodies for a President of the United States. It is to be observed that the Constitution directs the electors, in voting for the president, to make a list of their votes, which they are to sign and certify and transmit to the seat of government, directed to the president of the Senate. These lists the Constitution denominates "the certificates;" and as they are to be signed and

certified by the persons claiming to act as electors, they necessarily bring before the tribunal that is to act upon them and to declare the result the right of the persons who have signed them to act as electors in the several states from which the certificates come. It was necessary that some tribunal should be charged with the duty of examining the certificates and verifying the votes which they purport to contain. The *process* by which this duty was to be performed is thus directed by the Constitution: "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." Some tribunal, therefore, is to examine the certificates, to ascertain what electoral *votes* have been given and to whom they have been given, and whether any person has a majority of *all* the electoral *votes*.

One of the extreme opinions lately advanced has been that it is for the president of the Senate to perform this whole duty; that he may not only open the certificates, but that he may examine and declare what votes have been given, and pronounce the result, provided he does it in the presence of the two houses. But as this opinion has been generally rejected by the sense of the nation, it is not necessary to consider it at length. All that it is necessary to say about it is that the Constitution selected the president of the Senate for the ministerial duty of receiving and opening the certificates; but that without the clearest evidence of explicit terms we are not warranted in supposing that a single officer, who might himself be a candidate for the presidency, was also intended to be the tribunal which was to discharge whatever of judicial function or of adjudication was to be involved in "counting" the "votes."

The other extreme opinion is this: Assuming it to belong to the two houses, assembled in presence of each other, to discharge the duty of counting the electoral votes and declaring the result upon the certificates opened by the president of the Senate in their presence; yet, if there are two certificates from the same state, signed and certified by different bodies of persons acting as electors, the two houses can only receive and act upon the cer-

tificate which is accompanied by the written declaration of the proper official representative of the state sovereignty that the persons who gave the votes represented in that certificate were duly and lawfully appointed as electors; and that in no case, not even in a case of a plain and palpable and notorious fraud, can there be any inquiry into the fact of who the persons were that were duly appointed electors, but that the official title to act as electors must be taken wholly and exclusively upon the attestation of the officer who is assumed for this purpose to have given the sovereign attestation of the state to the appointment of electors. I believe I have thus stated the doctrine correctly, separated from the facts of particular cases; and I call it an extreme doctrine, because all will agree that it involves extreme consequences, one of which is that, on the attestation of an officer assumed to speak the sovereign assertion of the state, something is to be taken as true which perhaps is not true, which may have been fraudulently attested, and which may have deprived a majority of the people of the state of their rightful voice in the election of a President of the United States.

But we are first to ascertain what was the intention of those who made the Constitution. What did they mean to describe as the duty and function of the two houses by the words, "and the *votes* shall then be *counted*"? The votes have been opened; they are *then* to be *counted*. Does counting mean mere arithmetical enumeration, or does it imply more? That it implies more is apparently conceded by the very doctrine which I am now considering, for that doctrine assumes that the certificates coming from the electors are not of themselves anything, unless they are accompanied by the official attestation of some officer speaking the sovereign assertion of the state that the persons signing the certificate and giving the votes were duly appointed electors. The tribunal that is to "count," then, must look *beyond the mere certified lists of the votes*, beyond the signatures of the supposed electors, for *some evidence* that the persons who purport to give the electoral votes of the people of a state had a lawful right to give them.

It has been said that the best and the only evidence of their right to give the votes of the state is the assertion of the state itself, speaking through its official representative; that the act

of voting in the electoral college for a President of the United States is an act of the state sovereignty; and that it would be a dangerous encroachment on the rights of the state as a state to allow its official attestation of what persons had been appointed as its electors to be called in question.

The principal and the decisive objection to this doctrine is, that the act of voting in the electoral college was not designed to be an act of the state sovereignty at all; it was designed to be an act of the people of the state, in their individual characters as a portion of the people of the United States, a majority of whom were to elect the president through their agents and trustees in the electoral college.

I can discover in the formation of the Constitution, and in all its arrangements for the construction of the executive department, no theory or design that will make the primary election of the president an act to be performed by the states in their sovereign capacities, or that will make the president in any sense the representative of the states. If such was the design, why was not an equal number of electoral votes given to every state, as every state was given an equal number of votes in the Senate? Why was not the election of the president devolved on the state governments? Why were not the electors required to vote as a unit? Why were they left at liberty to vote for different candidates if, in giving their electoral votes, they were to represent the state as a political corporation? All the discussions and proceedings in the Federal Convention show that when it had been determined to take the choice of the president, in the first instance, away from both of the houses of Congress, the great effort was to devise a mode of election by which the people of each state could add their major voice to the major voices of the people of the other states, thus forming a majority of the nation. To this end there were to be as many electors in each state as it has senators and representatives; so that the number of electoral votes shall admit of as great diversity in voting as the political sentiments and wishes of the people may naturally produce. It is true that the Constitution declares that "each *state* shall appoint" a certain number of electors; but that it means by "state" not the political corporation, but the people dwelling in the state, is apparent from the fact that the presi-

dent, in no official act, duty, or function cast upon him by the Constitution, is supposed in any degree to represent the state sovereignties; whereas in all his official acts, duties, and functions he is supposed to represent the people of the United States. Did Mr. Lincoln cease to be President of the United States soon after his first inauguration, when a number of the states in their corporate political characters had "seceded" from the Union? By no means. He had been chosen president by a majority of all the electoral votes, representing a majority of the people of all the states; and he continued to be the representative of that majority of the nation, to whatever quarter of the universe some of the state sovereignties had strayed away.

I am by no means disposed to deny that the duty of counting the electoral votes is a very delicate one; but I can see far greater dangers in refusing to inquire, in cases that call for inquiry, into the right of those who claim to be electors to act as such, than I can see in making such inquiry. The purpose of the Constitution is, that "counting" the electoral votes implies the ascertainment of what are true and lawful electoral votes; and while, in all ordinary cases, there may be no occasion to look beyond the certificates and their accompanying attestation, there may be cases in which the power to do so ought to be held to be implied in the nature and objects of the proceeding by which the primary election of a president is to be determined. It is no answer to this view to say that the Constitution has not in express terms granted such a power to the two houses. Many powers of vast extent and importance have been deduced for the general government or some of its departments by the rules of implication applied to provisions of the Constitution no more specific and descriptive than this provision which declares that the electoral votes "shall then be counted." If power to do a particular thing is necessary to the accomplishment of some object or the discharge of some duty which is provided for by the Constitution in general terms, Congress is amply authorized by the text of the Constitution to provide by law for the doing of that thing. That it is obviously necessary to make inquiry in some cases into the genuineness and truth of papers which purport, or are certified to be, electoral certificates, in order that electoral votes may not be cast by unauthorized or disqualified persons, will be conceded

by all. The objection is, that however necessary such a power may be, it is not provided for; and that this must be regarded as a weak point in the electoral system, however much it may be lamented. I deny the premises and the conclusion. I deny the weak spot. I maintain that the authority granted in general terms to "count" the electoral "votes" embraces, by a proper application of the rule of implied powers, authority to ascertain what electoral votes have been lawfully given; and that there is no state right or state sovereignty involved in the matter that ought to prevent an application of the doctrine of implied powers, by the same deduction that has been again and again employed, without complaint, in determining some of the most important powers and functions of the government or its various departments. If I am right in respect to the power and duty of the two houses in counting the electoral votes, it is of course a power and duty that cannot be delegated to any other body, in any form whatever.

It is impossible to treat this subject exhaustively within the space here given to it. I have aimed only to suggest the nature of the question, and to describe what I believe to be the constitutional purposes of the electoral system, its merits, and its adaptation to the great objects for which it was designed. It is to be hoped we shall not be driven to surrender it by anything that has yet happened to it.

Above all, let us not surrender it to the insidious operation of a doctrine that renders it possible for a state legislature, after it has determined that the electors shall be appointed by the qualified voters of the state, to authorize any body of the state returning officers to disfranchise some of those voters, to throw out votes here and substitute votes there, thus changing and falsifying the result of the people's ballots, which have been duly returned by their local officers. Such a state law, applied to the appointment of presidential electors, is no more within the constitutional powers of a state legislature than it would be to reject the whole popular vote after it had been taken, and to proceed to give the appointment of the electors to a packed committee.

If the people of a state are so besotted, or so dominated by an oligarchy of perpetual office-holders, as to submit to such a method of dealing with their state offices, the people of the

United States have an interest and a right to say that they shall not apply it to the appointment of presidential electors. It is not within the grant of power which the Constitution made to the state legislatures when it authorized them to determine the "manner" in which the electors are to be appointed. That word "manner" comprehends nothing but a choice of the electors by the votes of the people, honestly ascertained and declared as they were actually given, or a choice by the legislature, ascertained and declared with equal honesty as it was actually made.

Again, let us never surrender the electoral system to the insidious operation of a doctrine that renders it not only practicable, but easy, to surround the returning officers of a state with influences that may lead them to declare that one body of electors was chosen by the people, when another body of electors was, in fact, chosen. If it is said that the two houses of Congress cannot inquire into the fact, and that, however deplorable this may be, it is a weak spot in our political system, a door is opened to every kind of fraud, to every imaginable species of corrupt influence. Of what consequence is it to a citizen of a state and of the United States whether the returning officers of his state, or any other, are bribed with money or with political promises, or whether they are governed by their convictions that it will be better for the country that one party should retain than that another should acquire the executive office? Some of the greatest crimes in history have been committed under the conviction that the public good required their commission. Whether the influence or the motive be one thing or another, when the returning officers of a state make a false return of the popular votes for presidential electors, and it is held that the truth cannot under any circumstances be inquired into, it is not that a weak spot is revealed in our electoral system, but the whole system is surrendered to the ever-rapacious, the ever-insatiable, the ever-unscrupulous, the ever-dangerous spirit of party, which corrupts and destroys the liberties of the republic in its most sacred and its best guarded institutions. Vice and villany shelter themselves under the ægis of the Constitution, and coolly tell us that its framers must bear the blame. The virtue, the sense, the reason of an indignant people make answer, "Your doctrine is false, your plea is overruled;" the Constitution gives no such immunity to

crime — it withholds no power of inquiry that is necessary to determine when a certificate of presidential electors, or any state document that supports it, asserts what is not true.

The exercise of the elective franchise in voting for a President of the United States is the most lofty, the most far-reaching in its consequences, of all the political privileges that have been bestowed upon the individual American citizen. If the reader carries his thoughts back for a moment to the enumeration which I made of the powers of that great office, and then reflects that, in voting to fill it, he acts as an integral part of the nation, he will see that he exercises a function that is more elevated, more direct and extensive in its influence upon public affairs, than was ever exercised in any other republic, ancient or modern; for in no republic, in ancient or modern times, has there ever been an elective chief-magistracy, to be filled by the free and untrammelled suffrage of a nation, in which the powers and duties were so directly held of and for the people, under a written constitution, as they are in this office of President of the United States. He is therefore to guard this great privilege as he would guard his life or his honor. He should surrender it to no political doctrines that will tend in any degree to impair it, lest the time may come when some power will say to him, as he approaches the polls, "Do you see those bayonets? They say to you that you may vote, but you must vote in one way!"

One of the strongest and the proudest republics that ever existed, that of ancient Rome — in which the free citizen held an elective franchise in the appointment of the chief-magistrate not unlike that which the American voter holds in the choice of a President of the United States—slid into an empire. For several centuries the forms of the old republican constitution were kept up, while their political significance and power were utterly lost. The emperor was annually chosen consul, as of old; but he was an absolute dictator, holding his office of emperor by military power, and appointing his successor so long as the military chiefs and the soldiers would support his selected heir. All the popular elections that were ever held in Rome under the Cæsars and their successors were held under the dictation of military power.

And have we not seen the French republic of our own times slide into an empire by a similar process? When Louis Napo-

leon, president of the republic, was transformed into Napoleon III., emperor, how was it done? First, there was a *coup-d'état*, which suppressed the whole machinery of the republic, and left its former president and the army which obeyed him masters of the nation. Then a constitution, establishing the empire and creating Louis Napoleon emperor, was offered to the votes of the people. But all the world knows that while the people were told they might vote, the power which had framed and dictated the constitution could and did dictate its adoption. The process was simple, and it was easy, because there was a physical force adequate to its accomplishment. To the power thus established the French nation submitted, until the corruptions of the empire had emasculated its vigor, and a foreign war destroyed what was left of it. Freed from an incubus of their own creation, the French nation proceeded once more to construct a republic, the stability and duration of which have become more and more probable, in proportion as honesty and truth and fidelity to the principles of liberty have been able to predominate over chicane, intrigue, corruption, and physical force.

A practice, however, which has grown up within the past sixty years, has entirely frustrated the original design of the electoral system of choosing a president. This has been the consequence of the activity, the powerful organization and discipline of the political parties, whose nominating "conventions"[1] have imposed on the electoral colleges an obligation that has come to have the force of law, without its sanctions or safeguards. All the political parties that have existed in this country for more than half a century are alike responsible for this departure from the Constitution, for they have all used the same methods. A description of these methods and their effect will be useful as a measure of the extent to which this abuse of the electoral system has been carried.

[1] See Appendix, "The Nominating Convention."—J. C. C.

CHAPTER IV.

THE CONSTITUTION INAUGURATED. — VINDICATION OF ITS FRAMERS AGAINST THE CHARGE OF INCONSISTENCY. — CLASSIFICATION OF THE STATES ACCORDING TO POPULATION. — THE GOVERNMENT PARTLY FEDERAL AND PARTLY NATIONAL. — BASIS OF REPRESENTATION IN THE TWO HOUSES OF CONGRESS.

HAVING, in the preceding volume, treated of the formation of the Constitution and its ratification by the eleven states, I now come to the period of its inauguration and establishment. The peaceful substitution of one government for another, through its voluntary acceptance by the people who were to be affected by the change, was in that age an unprecedented spectacle. Nearly all governments that the world had then known had been the result of force, or fraud, or accident, or of a combination of these three causes. Even in those in which there had existed some degree of liberty and regard for the happiness and welfare of the subject, the original title of the governing power had been more or less founded in conquest, in successful intrigue, or in occurrences that had given predominance to a race or a class. Hence it was that the fundamental idea of nearly all the governments of modern times was based upon the principle that the government itself is the source of all power, and that whatever of liberty it allows to its subjects is a concession. Even in the English system, the supreme power, the absolute and uncontrollable authority, which in all states resides somewhere, and from which there is no appeal, has always been held to be lodged in the Parliament. The legislative authority, which comprehends the two houses and the crown, is the supreme power; all individual rights are subject to its control; and the idea of a restraint laid upon the legislative power itself, and proceeding from the people, is unknown. All that is contained in Magna Charta, or in any of the monumental acts of English liberty; all that has been brought about

by the struggle between different orders of the state, or between those orders and the crown, has been obtained by way of grant or concession. The idea that the source of all power is the people, that the supreme authority is in them, and that the government grants nothing to them and that it derives all its power from them, is not the principle of the British political system. Whatever has come in modern times to be the force which public opinion and the national will exert through the House of Commons, whatever are now the acknowledged rights of individuals, it still remains true that everything is held at the supreme pleasure of Parliament, and that the government itself can be changed only by the legislative authority or by revolution.

In most of the other countries of Europe, at the period when the American constitutions were made, the fundamental principle that the actual government is a power in possession of the right to govern, and that it grants or withholds everything at its pleasure, lay at the foundation of the political system. Nowhere, excepting in America, had it been discovered that a government could be founded on the principle that the people themselves are the source of all power; that they can create such government as they may see fit to establish; that they may lay it under any restraint that they deem necessary to impose upon it; and that they may, by public compacts, limit their own power in respect to the modes in which the government shall be peaceably changed.[1]

But before proceeding to develop the special hazards which the Constitution had to encounter at the inauguration of the new government, it may be well to explain how it happened that

[1] There are many striking proofs of the contemporaneous recognition in Europe of the discoveries and advances in the science of government which were then making in America. Among them I have seen none more remarkable than what is contained in John Payne's Universal Geography, an English work in four volumes, published at the close of the last century. The fourth volume, relating to America, was republished in New York in 1799, by John Law, "at the Shakespeare's Head, No. 332 Water Street." Payne's analysis of the distinction between our Articles of Confederation and our Constitution, his description of the materials with which the framers of the latter had to work, his comprehension of their difficulties and the modes in which they met them, and his perception of the principle that throughout the whole structure "the citizens of the United States say 'we reserve the right to do what we please,'" are all acute, accurate, comprehensive, and instructive.

what has subsequently been regarded as an inconsistency was allowed to occur. It has already been claimed that our ancestors established the principle that the people are the source of all political power, that the inherent civil rights of all men are equal, and that nothing of individual right or political power is derived from the government. How, then, did it occur that the right to participate in the exercise of political power and the rights of personal liberty were, in the establishment of the Constitution of the United States, confined to a single race of men? Or, to speak more accurately, how was it that men of one race were, in fact, excluded from the enjoyment of these rights? Does not the political and social history of this country, as it appears in its early constitutional stage, exhibit some inconsistency?

So far as this question has not already been answered in the foregoing description of the circumstances which rendered necessary the so-called "slavery compromises" of the Constitution, this is a convenient place to exhibit more fully the true views which, I think, should be taken of this seeming inconsistency between the theory and the practice of our ancestors. They stand removed from us by the intervention of three generations, and by a great chasm which has opened between their political system and that under which we are now living, in consequence of the removal of all distinction between races in respect to the enjoyment of civil rights. Across that chasm we can recognize the facts which they were obliged to recognize and to act upon, and can determine, without prejudice, what measures of inconsistency ought to be imputed to them. By this inquiry we can also learn what adaptability there was in the political system which they left to us, to bring about a fuller accomplishment of their professed principles of human rights.

The republican character of the political system which existed in this country from the Revolution down to the close of the late civil war comprehended two great principles, each of which was not so much a matter of theory as it was a practical result of antecedent facts. The war of the Revolution was undertaken and fought to sever the connection of the colonies with the crown of England, and this involved the rejection here of the hereditary principle in government. When the thirteen colonies

had achieved their independence and had become sovereign and self-governing states, free to choose their own form of government, their choice was yet restricted by a fact; which was that there existed here no means by which the hereditary principle could be applied in any part of a system of government.

Our ancestors could not look for a ruler in any of the reigning families of Europe without compromising the independence which it had cost them so much to gain; and they could not find a monarch at home for the simple reason, among a great many others, that there was no man and no family in the nation in whom they could find even an elective king or establish a dynasty.

The only man who ever had supreme power within his reach in this country was Washington, and he was a determined foe to every form of monarchy. There was, as we have seen, a period in the darkest year of the war when it was necessary for him to exercise the powers of a dictator, and probably he could have held such powers for a considerable period. How sparingly he exercised the extraordinary powers which were confered upon him by the Congress in 1776, and how he resisted every suggestion of their prolongation beyond the immediate necessity of a most critical juncture, is well known. Believing that a republican government was the destiny of this country, he exerted all his vast influence to the exclusion of everything that might lead to a resort to the hereditary principle. Excepting in the asserted right of the British crown as the supreme executive authority over the colonies, the hereditary principle of government was practically never in force in this country. Even in our colonial condition there never were any persons among us who had an acknowledged hereditary right to public office; so that, when the people of the states came to shape their own political institutions, there existed no means for the practical adoption of the principle that public office of any kind can belong to individuals as a personal right. The political and social equality which prevailed among the people, and the fundamental principle asserted by the Declaration of Independence which made them the source of all political power, were quite consistent with a state of manners which exhibited a good deal of déference to official station. But while the distinctions in society, to which wealth, custom,

and official position everywhere lead, were as marked in this country as they were anywhere, our ancestors had a genuine simplicity of taste in regard to the outward show and manifestation of their political institutions, and this simplicity had much to do with the nature of the institutions which they established. Along with this the necessity of economy in public expenditures operated in the same direction. We were by no means a wealthy people in the era which witnessed the formation of our political system.

At the same time there was a limitation of the principle of the political equality of all men, which, like the principle itself, grew out of a practical necessity. Our political institutions were originally founded by and for a single race of men—the white inhabitants of the United States. They were not intended to embrace, and could not embrace, in their direct benefits and privileges, any other race; and it is no disparagement to the moral character or the political wisdom of our ancestors that the scope of their institutions was so limited. They did unquestionably assert in the Declaration of Independence that all men are created free and equal, and are endowed by their Creator with certain inalienable rights, among which are life, liberty, and the pursuit of happiness, and that governments are instituted among men to secure these rights. But it was not a mental reservation that confined the meaning of these solemn assertions to white men.

The framers of the Declaration asserted a broad, general truth which all of them, slaveholders and non-slaveholders alike, knew to be applicable by a law of nature to black men as well as white. But they also knew that when the independence of the United States should have been accomplished, it would be practicably impossible to frame institutions of national government that would include, in their direct benefits, a race of men held in some of the states as abject slaves and as property, under a system of local law recognized although not practised by all civilized nations. The principle of that law, that man can hold property in man, although beginning to be questioned, was by no means overthrown. The great and stubborn fact of African slavery was beyond the reach of the men who made the Constitution of the United States. They could make no new union

between the thirteen states without recognizing the admitted right of the slaveholding states to maintain a system of local law which recognized slaves as a form of property; and consequently they could create in a new government for that union no republicanism or equality of personal rights for any other race than the white inhabitants of the several states.

It was their mission to establish out of the materials within their reach a republican system of government for a nation in which the political equality of men could be practically worked by and for the members of one race, leaving the principle itself, in its universal application, to future ages and to an advanced condition of society, when the institutions created for the one race had stood the test of time.

Some recapitulation must here be made in order to exhibit the complex character of the whole process of forming the Constitution, and to show how the concessions that were made on the one side and on the other in regard to the matter of slavery became unavoidable. Looking back to the convention of the states in 1787, and remembering that it was assembled chiefly for the purpose of ascertaining whether a new political system could be devised that would put the external commerce of the country under the control of one governing authority, we have first to notice the inequality of the states in point of population, and their entire equality of rights as separate and self-governing political bodies, each of which was free to give or withhold its assent to any change in the existing confederacy.

The leading state in the Union at that time was Virginia, which had a total population of 532,000, of which 252,000 were whites and 280,000 were negroes. The next two largest states in point of population were Massachusetts and Pennsylvania, each of which had 360,000 inhabitants, without reckoning them by any distinction of color. Maryland had a population of 250,000, of whom 170,000 were whites and 80,000 were negroes. New York numbered 238,000, and Connecticut 202,000 inhabitants, whites and negroes included. North Carolina had 224,000, 164,000 being whites and 60,000 negroes. South Carolina had 182,000, including 102,000 whites and 80,000 negroes. New Hampshire had 102,000 total population, of whom a very inconsiderable fraction were of the African race. Georgia con-

tained a population of 98,000, 78,000 being whites and 20,000 negroes. The total population of New Jersey was 138,000; that of Rhode Island was 58,000. Delaware had 37,000 inhabitants. Rhode Island, it must be remembered, was not represented in the convention at all.[1]

Although slavery had then been expressly abolished in only two of the states—Massachusetts and New Hampshire—it was assumed in the convention that the eight Northern and Middle States would all become free sooner or later, and that the five Southern States — namely, Maryland, Virginia, North Carolina, South Carolina, and Georgia — would remain slave states. The line that was thus drawn was a line that assumed the aggregate population of the eight Northern and Middle States, without distinction of color, to be 1,495,000, and the aggregate population of the five Southern States, also without regard to color, to be 1,286,000; but counting only three fifths of the estimated number of negroes, this last aggregate would be 1,078,000. The excess, therefore, in favor of the eight Northern and Middle States would be 417,000.

There is now to be noticed another fact of great importance. Not only was it assumed on all hands that African slavery would continue to exist in the five Southern States, and that in all of the eight Northern and Middle States it would probably be abolished at no very remote period, but every one of the states then

[1] These estimates of the population of the states in 1787 are not taken from any official census. No such census had then been made in any of the states; but a table was made and used in the Federal Convention according to the most accurate accounts that could be obtained. It was published in the New York Daily Advertiser of February 5, 1788, and its authenticity as the table used in the convention appears from a speech made by General Pinckney in the legislature of South Carolina, in which he introduced and quoted a copy of it. When compared with the first census, taken under the Constitution in 1790, it will be found to have been substantially correct. In reckoning the number of colored persons in the five Southern States, the free were not distinguished from the slaves; not because the free colored people were not deemed to have any personal rights, but because the great mass of the colored people were slaves, and in the adjustment of the representation system the bond and the free were all reckoned together in the total colored populations. In the same way the colored people in the eight Northern and Middle States, whether bond or free, were classed together, and in adjusting the basis of the representative system they were put with the whites in the aggregate population of the eight states.

had the power to permit the importation of African slaves as long as it might see fit. It was a period of the world, moreover, when the slave-trade had not been universally condemned—when, in fact, it was but just beginning to be regarded as a barbarous and inhuman traffic, justifiable upon no principle whatever. As late as the year 1788 an act of the British Parliament was passed to "regulate" the transportation of slaves from the coast of Africa in British ships. This law provided that no ship should carry a greater number than could be stored in a certain proportionate space, according to the tonnage of the vessel and the measurement between decks; and when Wilberforce, in 1789, introduced in the House of Commons his celebrated twelve propositions concerning the slave-trade, the number of slaves annually carried from Africa in British vessels was estimated at 38,000.

Along with the actual situation of the states in regard to this difficult and embarrassing matter of slavery, we must take into the account the necessity for establishing a government for the Union, with the requisite machinery for enacting, interpreting, and executing laws on all the subjects and interests that might be committed to its jurisdiction. To repeat the characteristic principle of the Confederation would be useless. Whether the states could succeed in constructing a government upon a different principle would depend upon their ability and willingness to make mutual concessions. Without such concessions, no regular government could be formed with the necessary departments of a government, conveniently constructed for so extensive a country, divided into separate states that were to retain all of their respective powers of sovereignty that they did not mean to transfer to the central authority.

The idea of a regular government with appropriate departments was before the framers of our national Constitution—first, in the constitutional system of England, and, secondly, in their own state governments. From the English system, familiar to them and their ancestors for generations, they could derive the ideas of a legislative body with two chambers, of a judiciary as the interpreter of the laws, and of an executive head clothed with the power of enforcing them. These departmental divisions had been applied in their state constitutions, which had been in existence for seven or eight years. But there were certain peculiari-

ties of the English system which they not only could not imitate, but which were absolutely out of the question here. In the first place, the English constitution was a system of unwritten, customary, and traditionary law; and although there were many statutes, charters, and public acts which were regarded as fundamental and as embodying various rights of individuals, classes, and the crown, the whole of them were subject to the transcendent and unrestrained power of Parliament. In this country there could be no unwritten, customary, and traditionary law that would serve to define the functions of government or the powers of its departments. All of the states possessed, as an inheritance of their people, the unwritten code of the common-law of England, or such parts of it as their ancestors had chosen to recognize and put in force after their emigration; all of them claimed as parts of that common-law the principles of Magna Charta and of some of the other great charters of English liberty.[1] But this body of law, of inestimable value in the regulation of personal rights and the rights of property, could afford scarcely any aid in the formation of a system of government, its divisions into separate departments, and the definitions of governmental powers. These must be established by written constitutions, enacted by the authority of the whole people as public compacts between the governing mass of the community and every member of it. These great objects had been accomplished in the state constitutions with no inconsiderable success, and in them useful models could be found for framing a limited constitution for the whole people of the United States.

The reader who has followed me through the preceding volume has seen that at a very early period in the deliberations of the convention it was settled that the new government must be divided into the three departments of the legislature, the executive, and the judicial, and that it must be a *national* government. It may here be useful to condense into one statement what has already been given in greater detail in regard to the early distinction between a "national" and a "federal" government. It has appeared that many important members of the convention

[1] See a recent and admirable monograph, "The Sources of the Constitution of the United States," by C. Ellis Stevens. Macmillan & Co., 1894. J. C. C.

admitted at once the necessity for a more efficient government than that of the first Confederacy of the states, but they believed that the existing system of the Union could be made to answer all requirements by distributing its powers into the three departments of a legislative, an executive, and a judiciary, without altering the principle which made the Union a close league between sovereign states for certain purposes common to them all. But under this principle there had been no mode by which the legislative, the executive, or the judicial powers could be made to act directly upon individuals, whether those powers were rested in one body of men or in several bodies. Nor had such a mode of action upon individuals been devised in any of the confederacies between different states, either in ancient or in modern times. It was found that in order to reach and introduce the principle of direct action upon the individual citizen, some means must be discovered by which the powers of the central government, whatever they were to be, could be made supreme over the separate powers of the states, in case of any conflict. To abolish the states, or to fuse all the elements of political sovereignty into one mass, was out of the question. The convention was not assembled and had not been instituted with any design or expectation that the people of the states would merge themselves in one national democracy, or deposit the whole of their respective sovereignties in the hands of a central government of any form or description.

It is therefore necessary to follow the reasoning of those members of the convention who were in favor of changing the existing principle of the Union, in order to discover how they succeeded in effecting that change, and what it was. Admitting from the first the impossibility of suppressing the state sovereignties, they said that there can be no such thing as a government unless it is a supreme power, and that on the same subjects and the same concerns there can be but one supreme power in the same community. In the nature of things, too, supreme power cannot act on states in the usual and peaceful mode in which the operations of all governments ought to be conducted; but it must reach the *citizen* by addressing to *him* its commands, and by applying to him all the force that is requisite to insure submission. Unless this should be done, distribution of the powers of the ex-

isting confederacy into three departments would be no improvement. Here, then, we have the germ of the distinction between a national government and a federation, as that distinction began to be developed in our American political science. According to this distinction, a pure federation is a number of separate sovereign states united together by a compact, which has established a central authority as their common agent for certain agreed purposes; but the acts and determinations of this central authority can only be addressed to the members of the confederacy—namely, in our case, to the states themselves.

A national government, on the other hand, is one in which all the individual inhabitants of the country are subject in their persons to the direct action of the political powers, whatever they may be, that are vested in that government, without having any other authority stand between it and them.

Such a government may be clothed with limited and specific, or with unlimited and general, powers; but its characteristic principle is that it governs individuals and not states, and that it is supreme within its appropriate sphere.

It did not follow, however, from this reasoning, at any stage in the development of the distinction, that the new system which was to be made for the United States must be either purely federal, or wholly and universally national. It might be a mixed system, partaking of the nature of both theories; and how our present government of the United States came to be such a mixed system has been already described. The reader has learned that in the Confederation of 1778 the constituent parties to the union were themselves sovereign communities; that the people of the several states had no direct representation and no suffrage in the Congress apart from their state governments; and that the rule of suffrage in the governing body being that of voting on all measures by *states*, there could be no determination of anything by the will of a popular majority of the nation. But inasmuch as in a republican government the representation and the suffrage must determine its character, in order to create a government for the United States that would embrace the national principle to any extent whatever, the basis of representation and the rule of suffrage in the legislative body had to be changed.

When, therefore, it had been determined that there was to be

a legislative department, distinct from the executive and the judicial functions, the first question that had to be encountered was whether it should consist of one or of two chambers. If it was to consist of two, what was to be the representation and the rule of suffrage in each of them? The reader, however, will not have forgotten that before this question could be settled there was an occurrence which foreboded a serious obstruction to the proceedings. This was the threatened secession of Delaware from the convention, after it appeared probable that the ratio of representation for the states in the new Congress would be according to the quotas of their contributions to the national expenses or to the number of their free inhabitants—a rule that would give to Virginia nearly seven times as much political power as it would give to Delaware. So that there began a struggle between the larger and the smaller states, which I have traced in the preceding volume down to the adoption of that equality of representation in the Senate which is so familiar to us, and which established the federal principle as one of the essential parts of the new system. But all along through the proceedings of the convention this contest between the largest and the smallest states was crossed by another, between the slave states and the states which were classed as free. Virginia, Pennsylvania, and Massachusetts, the three most populous states, desired a representation of all their inhabitants without reference to age, sex, or condition. The less populous states had an obvious interest in seeking for an equality of votes in the new Congress as between the different states, or at least for a rule of representation that would exclude some portions of the population of the greater members of the Confederacy. The outline of the grand compromises in the formation of the legislative body, which reconciled conflicting theories with practical necessities, has been fully sketched, and does not need to be here repeated. Those compromises show, with great distinctness, how the existence of slaves among a free population became part of a complicated problem in the adjustment of a system of representation for states possessing great numbers of persons held in servitude, and states which, it was assumed, would soon be wholly without such inhabitants; and how the rule of direct taxation, in apportioning a national burden among the states had to be adjusted upon the same relative basis.

When the principles of representation in the two branches of the new legislature had been settled, it became comparatively easy to determine what powers of legislation should be ceded by the people of the several states to the general government, and where the line of division should be drawn between these powers and the reserved sovereignties of the states. It became more easy, also, to establish the principle of the supremacy of the national powers over the powers of the states, and to select the means by which that supremacy could be made effectual in case of conflict. Again, it became less difficult to determine what prohibitions ought to be expressly laid upon the states so as to restrain their otherwise unrestricted authority in matters that concerned the general welfare.

There are now some observations to be made upon the prominent features of this system of government, by way of introduction to its subsequent constitutional history. One thing that is always to be remembered is the dual character of this political system. Its character is dual in two very important respects. It is dual in the principle of representation in the legislative department, being national in one of the houses and federal in the other. The introduction of the federal principle by an equality of state representation in the Senate became necessary in consequence of the fact that no basis for such a body could be found but one that would recognize the states as political corporations and sovereigns. Distinctions of social rank or wealth among the people, such as those which form the basis of the British House of Lords, were not among the materials out of which a second legislative chamber could be framed. Nor was it possible to establish the Senate upon the relative populations of the states or upon their relative wealth. An equality of representation, treating each state as the peer of every other, and regarding each of them as entitled to an equal voice in this branch of the legislative power, without regard to its relative extent of territory, numbers of people, or amount of wealth, afforded a basis which avoided all the difficulties attending the other modes of representation, and at the same time enabled the states to interpose a check upon the political power of a democratic majority of the people of the United States. On the other hand, the introduction of the principle of unequal proportionate representation of the people of the

states in the House of Representatives gave a national character to this part of the system, because it enabled a majority of the people of the United States to make their will effectual in one branch of the legislative power.

The value of the equality of state representation in the Senate cannot be too highly estimated, for without it there could scarcely have been any efficient check upon the centripetal tendencies of so powerful a government as that which the Constitution created. The practice of making party determinations the rule of action in both branches of the legislative body has somewhat tended to impair the principle which the equality of representation in the Senate was intended to preserve; and it would have effectually destroyed the state sovereignties if the same principle of representation had been applied to both houses. But notwithstanding this practice, it is at all times in the power of the states to emancipate their senators, if they will, from the mere dominion of party, and thus to save the efficiency of this check upon dangerous encroachments on the reserved rights of state sovereignty.

As, however, we approach the period of the first eleven amendments of the Constitution, we shall see how little efficiency was then attributed to this mode of defending the powers of the states; how it was deemed necessary to incorporate with the body of the Constitution an express rule of determination, by which it could be made affirmatively certain that the states had reserved to themselves respectively all powers of government which had not been delegated to the United States, or which the Constitution did not prohibit the states from exercising.

Again, the dual character of our political system is apparent from the fact that every inhabitant of the country lives under a national power of a limited and specific character, which has a determinate right to govern him in certain enumerated relations, and at the same time he lives under a local power which has a right to govern him in all other relations, excepting in so far as it is restrained by a few prohibitions imposed by the Constitution itself. This was the obvious theory and effect of the Constitution as it came from the hands of its framers. But here, too, we shall have occasion to note that, after it had been ratified by the required number of states, so great was the mass of power which it had surrendered to the new government, and so little did that

power appear to be restrained by express safeguards thrown around the rights of individuals, that prudence and safety required many positive restraints to be interposed, which would operate with a force equal to that created by the grant of the powers vested in a government which could wield a supreme authority in the name of a concurring majority of the nation and a majority of the states. Many foreigners have criticised this political system, because they have not been accustomed to see political sovereignty divided by a separation of the relations in which the citizen stands to the governing power. But notwithstanding the complex character of our system of government, it is not an artificial system in the sense of a union of irreconcilable theories. When we come to the development of the judicial machinery in this government, and note how it preserves the line of demarcation between the national and the state powers, it will be seen how well or ill we have succeeded in making two governments act harmoniously upon the same individuals. Looking back to the year 1787, and contrasting the group of thirteen republics on the Atlantic coast with the great and powerful nation that stretches across this continent, it must be regarded as a fortunate and beneficent necessity that made the preservation of the state governments unavoidable. If a constitution had been adopted by the people of the United States which had absorbed all political power into the hands of a central government, it cannot be imagined that we should have attained the same development, enjoyed the same happiness, acquired the same renown, or exhibited the same civilization. The state system has enabled us to carry our free institutions from ocean to ocean; to diversify our laws on all subjects of local and domestic concern; to try those experiments in government which are essential to progress, holding fast what is good, and easily dropping what is bad; accomplishing, in short, innumerable objects which no national power could have had the harmony and the steadiness to effect. Popular education, the relations of marriage, the relations of parent and child, of master and servant, the title and descent of property, the care of the public health and morals, the whole long catalogue of household rights, social duties, business concerns, and municipal organizations which belong to the domain of state legislation, could not have been managed by any national and

central authority with any approach to the success which has been gained by the principle of local self-government. Commencing our political existence as a group of separate sovereignties, we evolved out of our weakness a limited national sovereignty, and made it consistent with the preservation of the separate authority of each state over its domestic concerns. It will be seen hereafter what were the perils encountered by this system when an abnormal assertion of state sovereignty became inconsistent with the central authority of the national government; how far the exertions of the latter in defence of its just supremacy tended to endanger the former, and how we recovered from the hazards which this conflict brought about.

The Constitution had provided that the legislature of each state should elect two senators for a term of six years; and if it had made no other provision in respect to the tenure of the office, the whole Senate would have been changed, or would have been liable to be changed, in the year 1799, and so on at the expiration of every term of six years. But to obviate the inconvenience of such a possible simultaneous change in the whole body, by which there would have been a loss of accumulated experience and familiarity with the duties, the Constitution had directed that the first Senate should be divided as equally as might be into three classes, and that the seats of the senators of the respective classes should be vacated at the expiration of the second, fourth, and sixth years of their respective terms, so that one third of the whole body might be chosen every second year.[1] The classification of the senators was made on the 14th of May. At the first assembling of a quorum, on the 6th of April, there were but twelve members present. On the 13th of April six more members had appeared and taken their seats. On the 14th of May the classification was made for twenty members, including, along with the eighteen who were present, Pierce Butler, of South Carolina, and William Grayson, of Virginia, who had not taken their seats, but who were known to have been elected.[2] The classification was so made as not to place both the senators of the same

[1] Art. I. § 3, cl. 2.

[2] Mr. Grayson took his seat on the 21st of May, and Mr. Butler on the 6th of June.

state in the same class; and it was provided that when senators should appear from states which had not yet made appointments they should be placed by lot in the classes, but so as to keep the classes as nearly equal as might be in numbers. The first distribution placed seven senators in the first, seven in the second, and six in the third class.

CHAPTER V.

WASHINGTON'S ACCEPTANCE OF THE FIRST PRESIDENCY.—EARLIEST PRECEDENT OF COUNTING THE ELECTORAL VOTES.—INAUGURATION OF THE PRESIDENT AND VICE-PRESIDENT.—POWER OF REMOVAL FROM OFFICE.—PRESIDENT'S SALARY.—QUESTION OF A TITLE FOR THE PRESIDENT.

THE time and place appointed for the meeting of the First Congress under the Constitution were the city of New York and the 4th of March, 1789; but a quorum of the House of Representatives was not assembled until the 1st of April, and a quorum of the senators did not appear until the 6th. The House was organized on the 1st by the election of a speaker and a clerk.[1] On the 6th the Senate elected a president "for the sole purpose of opening the certificates and counting the votes of the electors of the several states in the choice of a President and Vice-President of the United States."

The House was then informed by a message that the Senate was ready to proceed, in the presence of the House, to the discharge of this duty, and that the Senate had appointed one of its members to sit at the clerk's table and make a list of the votes as they should be declared. In the House, before proceeding to the Senate chamber, two members were appointed for the like purpose of sitting at the clerk's table with the member of the Senate and making a list of the votes. The speaker and the members of the House then entered the Senate chamber, and it was announced that the two bodies were "in presence," according to the requirement of the first section of Article II. of the Constitution. The Constitution had directed that the electoral certificates, or lists of the electoral votes, signed, certified, and sealed

[1] Frederick Augustus Muhlenburg, of Pennsylvania, was chosen speaker, and John Beckley, of Virginia, clerk.

up by the electors of the several states, be transmitted to the seat of government of the United States, and directed to the president of the Senate. As, at the time of the first election of a president and vice-president, and the making of the electoral certificates, there was no president of the Senate, the precedent had to be framed by the appointment of a president of the Senate for the special and sole purpose of opening the certificates and counting the votes. The mandate of the Constitution, which required the president of the Senate to open all the certificates, declared that "the votes shall then be counted." The opening of the votes, "in the presence of the Senate and the House of Representatives," was an act to be performed by the presiding officer of the Senate. The context left it somewhat indeterminate whether the counting of the votes was to be an act to be performed by that officer; but the form of the proceeding, in the shaping of the first precedent, shows what was then assumed to be the meaning of the Constitution. One member of the Senate and two members of the House, as organs of the respective bodies, were placed at the clerk's table, for the purpose of making a list of the votes as they should be announced. The presiding officer of the Senate then declared that he, in the presence of the two houses, had opened and counted the votes of the electors for President and Vice-President of the United States. As the presiding officer of the Senate read off the votes from the electoral certificates, lists were made at the clerk's table for the official information of both bodies. When the representatives had returned to their chamber, their two members, appointed for this purpose, delivered in at the clerk's table a list of the votes of the electors, as the same were declared by the president of the Senate in the presence of the Senate and of the House, and the list was entered on the journal. The Senate was informed of the results shown by the certificates through the declaration of its presiding officer; and the list of all the electoral votes being entered on its journal, it appeared officially to both houses that George Washington was elected President and that John Adams was elected Vice-President of the United States.

But this precedent is not to be deemed to have settled anything more, in respect to the duty and function of the presiding officer of the Senate, than what was necessary to be settled on that occasion. It determined that the two acts of opening and

counting the electoral votes must be performed in the presence of both houses. It determined that the act of opening the electoral certificates was an act to be performed by the presiding officer of the Senate. It did not determine what the act of "counting" involved, or whether, in case there should be two certificates purporting to come from the same state, it rested with the presiding officer to decide which of them should be received as the official evidence of the electoral votes of that state. These questions could not arise upon a state of the electoral certificates which exhibited no conflict, and which gave the whole number of the electoral votes to one person, thirty-four votes to another person, and the remaining thirty-five to ten different persons. It appears that on this occasion all the "counting" that was performed by the presiding officer of the Senate consisted in reading or declaring the contents of the electoral certificates in the presence of the two houses; and as there could be no question or dispute arising out of conflicting certificates, "counting" was not required in any other sense than an enumeration of the results appearing on the face of papers which were not challenged by any one. The ceremonies to be observed in the inauguration of the President and Vice-President of the United States related to the administration of the oath of office, the induction into their respective positions, and the titles by which they were severally to be addressed. Neither General Washington nor Mr. Adams had arrived in New York when the electoral votes were counted and declared. On the 15th of April both houses of Congress adopted a report providing for a temporary residence of the President of the United States at the house of Mr. Osgood, which had been formerly occupied by the president of Congress, and also providing for a joint committee of both houses to receive the president-elect at the place where he was to embark from New Jersey to the city of New York, and to conduct him, without form, to the temporary official residence. Another joint committee was appointed to wait upon the vice-president on his arrival in the city, and to congratulate him in the name of the Congress of the United States. Mr. Adams duly arrived in New York, and, in order to complete at once the organization of the Senate, he was conducted into the Senate chamber by a committee, on the 21st of April, and was met on the floor by Mr. Langdon, the temporary presiding officer,

who made to him a very brief address and placed him in the chair. The vice-president then made an address to the Senate.[1]

[2] None of the biographers of Washington has given a circumstantial account of the various causes which produced in him a long hesitation before he consented to become the first President of the United States. As a study of character this hesitation is not less interesting than the circumstances which gave rise to it are important to a true appreciation of the risks which the Constitution encountered after it had been framed. We have lived so long under its beneficent sway that the history of its early perils is in some danger of being forgotten; and we of the present generation have suffered so much in saving it from the greater perils of recent times that we can scarcely form an idea of the hazards which attended its first establishment, or estimate rightly the service which Washington rendered to his country when he consented to become the chief magistrate under whom the new government was to be inaugurated.

It is by no means an extravagant supposition that if we had had no Washington we should have had no Constitution—not because his agency in framing it, or his direct exertions for its adoption, were greater than those of others—they were, in fact, much less than the agency and exertions of many others—but because the hope and expectation that he would be the first president operated as a great moral force to incline the people to accept it as an experiment, and to give it a trial under the best auspices. The reader is probably aware that Washington at both his first and his second election received every electoral vote in the Union. As the Constitution then stood, the electors were required to vote for two persons, without designating which of them they wished to make president, or which vice-president, but the person receiving the highest number of votes was to be declared president when the votes were opened and counted, and the person receiving the next highest number was to be declared

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[1] The Constitution did not require an oath of office to be taken by the vice-president. Mr. Adams's address to the Senate may be found in the very convenient book entitled Hickey's Constitution of the United States.

[2] This portion of this chapter, down to p. 142, was written for and appeared in Harper's Magazine for March, 1882.

vice-president. At the first election Washington received sixty-nine electoral votes, which was the whole number that the states then in the Union were entitled to give. Mr. John Adams received thirty-four votes, which made him vice-president, the remaining thirty-five votes being scattered among different persons. The extraordinary unanimity in regard to General Washington was the result of a popular conviction that no other man could be so safely intrusted with the first administration of the new government, and the history of the time abundantly proves that the hope of obtaining his consent became so strong and general, immediately after it was known that there was to be a chief executive magistracy, that long before his consent to take the office had been obtained this hope had ripened into a belief, which had a potent influence in bringing about a ratification of the Constitution by the requisite number of states.

The proposed Constitution of the United States had been promulgated scarcely more than a week, in the month of September, 1787, when a newspaper published in the city of Philadelphia gave expression to the general sentiment of the country by declaring that Washington must be the first president. This was somewhat premature, for although the new government was framed, it was by no means certain—indeed, it was not highly probable—that it would be established. A long and anxious interval was to be passed before the friends of the Constitution could see it made the organic law of the Union. But it is interesting to observe this prompt suggestion that Washington, who had retired a few years before to enjoy, as he hoped, the tranquil pleasures of private life, must again be called into the service of the country. As men read that new instrument of government, and pondered on what it contained; as they saw that it was to create what free America had not then known—a supreme executive magistracy, to be filled by a single person, an office which in some form, monarchical or republican, society naturally craves—their thoughts turned at once to Washington. The first popular impulse leaped by a natural process to the most natural of conclusions. That the office of chief ruler, the head of the state, should be united with the highest form of character, is a thought that lies in the unprompted instincts of the human heart.

The idea of rewarding Washington, of remunerating him by

this grand new dignity of the presidency for what he had done and what he had been, never entered into the imaginations of the people. How could he be rewarded for that long, disinterested service of his Revolutionary career, so successful, so peculiar, in which the acquisition of an influence entirely unexampled had been followed by an entirely unparalleled resignation of all claims to power so soon as the liberties of his country were established? Neither the character of Washington, nor his relations to the people, nor their feelings towards him, admitted the idea of bestowing anything upon him as a recompense. The people saw before them the creation of a supreme magistracy, and the fitness of uniting it with the highest virtue was all that occurred to them.

But there were persons whose views were uninfluenced by the popular enthusiasm, yet who began at a very early period to present to Washington's mind the necessity for a compliance with the call which they now saw would be made upon him. When, in that affecting scene which occurred in the city of Annapolis on the 21st of December, 1783, he resigned into the hands of the Congress his commission as commander-in-chief, at the close of the war, the public men of the country, whether civilians or soldiers, probably had no expectation of ever seeing him again in a public station. They could scarcely have imagined a course of events which, within a little more than five years, would bring him from the repose to which, with so much melancholy mingled with so much gratitude, they then saw him retire. The war was over; the treaty of peace was signed; the independence of the United States was acknowledged: Washington's task was apparently done.

Nevertheless, for the country all was uncertain and perilous. The loose and feeble government of the Confederation had been able, with Washington's powerful aid, to get through the war. But now came the trial of peace, which was to reveal its incapacity and to break down its structure. The four years of failure, imbecility, and disappointment which succeeded at length produced that political education of the people of the United States which made the Constitution a necessity and a possibility.

The development which may be traced in the history of this

instructive period is seen in nothing more remarkably than in the intellectual growth of those American statesmen who were concerned in the futile experiment of the Confederation, and who devised the more hopeful experiment of the Constitution. They had the wisdom to perceive how indispensable it was to the success of the new system that the proposed head of the government should possess that weight of character and degree of public confidence which would disarm the effort, if it should be made, to prevent its establishment, and would carry it safely through those inevitable conflicts of opinion and feeling to which its first administration must give rise. While the world at large *believed*, they *knew*, that Washington possessed the powers and qualities demanded by this great exigency. They knew that he would exercise the rare faculty of deciding without partiality, and that he would have the rare felicity of high elevation above party or personal aims. From the nature of the government and the circumstances of the country the office in which they desired to see him could not be invested with that mysterious influence which attends the person and authority of a monarch. A republican chief magistrate, the voluntary choice of freemen as the political head of a nation for a limited time and under a limited Constitution, was alone to be selected and instituted. For this reason there must be found in personal qualities all that would command popular reverence, and in an illustrious reputation all that would attract the confidence of mankind.

Washington was singularly endowed for the occasion by his character, and by the impression which it had produced upon his countrymen and upon foreign nations. In his person and deportment, according to all contemporary testimony, there was an indescribable majesty, untinged, however, with the slightest haughtiness; an ineffable dignity, the expression of his balanced and elevated nature, speaking through the grace of a fine stature, and grave but courteous manners. His reputation was unlike the reputations of that or any former age. Before it all other reputations might "pale their ineffectual fires." There had been more consummate captains; but no leader of a revolution, fighting for the liberties of his country, had achieved success on so great a theatre against so many and such various difficulties. There had been more brilliant and more accomplished statesmen;

but no man had ever acted so largely in public affairs, and had such opportunities for personal aggrandizement, of whom it could be said, as it could be said of Washington, that he was a stranger to ambition.

So soon as there appeared a reasonable prospect of the adoption of the Constitution by the number of states required to give it effect, Washington was made to understand that another great sacrifice of his personal inclinations would be demanded of him. One of the earliest of these intimations appears to have reached him at about the time when the Constitution had been ratified by the six states of Delaware, Pennsylvania, New Jersey, Georgia, Connecticut, and Massachusetts, but when the conventions of Maryland and South Carolina were about acting, when that of New Hampshire stood adjourned for a future day, and when the most serious consequences were anticipated from the effect of this postponement upon New York and Virginia.

This intimation came from one of his old companions in arms, General Armstrong.[1] Washington replied to it on the 25th of April, 1788, saying that he was so wedded to a state of retirement and to rural occupations that to be drawn again into public life, at his advanced age, would require a sacrifice that could admit of no compensation. His age was then fifty-six.

A few days afterwards he wrote in the same strain to Lafayette, who, on the other side of the Atlantic, had foreseen that the adoption of the Constitution must result in calling his illustrious friend from retirement. From this time forward, as each succeeding event rendered more and more probable the establishment of the new government, every post brought letters of the same purport from persons the weight of whose opinions and wishes he could not but feel. It is not to be doubted that the suggestion, however flattering, gave him great embarrassment, and even pain. The causes for these feelings lay partly in his own temperament, and partly in the circumstances in which he was placed.

Washington was a man of singular modesty, and it must, I think, be admitted that he was, at least at this period of his

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[1] Major-General Armstrong, of Pennsylvania, *not* the writer of the Newburgh Addresses.

life, without ambition; for if ambition be that longing for further distinction which leads men to covet posts of honor and responsibility, and to reach the highest attainable position, it is certain that Washington, after he had passed the middle period of life, never did one of the acts which usually indicate the existence and influence of this passion. There is no evidence and no contemporary suggestion that he sought or desired the appointment of commander-in-chief at the beginning of the war; and he was closely observed by those who would have noted his efforts to obtain the appointment, and would have caused them to be known to posterity, if he had made any. He himself solemnly assured his wife, in a letter that could have been intended for no eye but hers, that so far from having sought it, he had used every endeavor to avoid it, not only from an unwillingness to part with her and his family, but from the consciousness that the trust was too great for his capacity. To his brother Augustine he made the same declaration.

But although he was unambitious, he was careful of his fame; and when he received from all quarters the offer, so to speak, of the presidency, his reputation, which filled the civilized world, was rather an impediment than an incentive to new exertions in untried fields of labor. His judgment was so calm that he could distrust his own powers—an exertion of the judgment to which more brilliant and more aspiring men, who have had much success in life, have often been unequal. He felt a strong reluctance to put at hazard the glory that he had gained by assuming a position and responsibility so new to him.

In addition to this, he had a real love of private life, of the pursuits of agriculture, and of domestic pleasures. He was fond of the exercise of hospitality, and accustomed to a large indulgence of his social tastes. His personal situation was all that such a man, with such feelings and such a life to look back upon, could desire. His estate was ample, and under his management productive. He was an object of the deepest interest to the enlightened of every nation, and no stranger who could be introduced to him thought of leaving our shores without seeking his house. By his neighbors and friends, by the whole body of his countrymen, in truth, he was revered as no other man has ever been. What he had accomplished, and the reputation which

it had gained for him, were enough for any mortal happiness. So calmly, however, so justly, and with such moderated feelings, did he look backward and forward, that he promised himself no higher felicity than to glide smoothly on through an old age of domestic happiness to what might remain for him beyond the grave. Why should such a man covet public station? Why, rather, should Washington have been willing to accept that new, weighty, and hazardous responsibility?

Fond as he was of private life, and careful as he was of his fame, Washington held his personal advantage in all things and at all times constantly subordinate to the public good. We know that he so acted when he consented to take the command for the Revolution, and when he yielded to the earnest desire of his friends and became a member of the convention which framed the Constitution. On both occasions he put a great deal at risk; he incurred the risk at once, as soon as he saw the duty, but he hesitated until the duty was plain to him. We may trace a similar operation of his mind through that long period of suspended decision, from the time when the presidency was first suggested to him, in the spring of 1788, to the close of that year and the beginning of the next. There was the same struggle caused by his personal inclinations and his depreciation of himself; and it is abundantly apparent that one of his chief reasons for his extremely cautious replies to those who wrote to him on the subject was that he could not see the necessity for his services in the same light in which others saw it. He was, however, a good deal under the constraint arising from the uncertainty of the adoption of the Constitution down to the end of July, at which time the states of New Hampshire, Virginia, and New York were known to have ratified it.

All uncertainty, therefore, respecting the adoption of the Constitution by the necessary number of states was thus dispelled. But a new and apparently unexpected hazard was yet to be encountered. The mode in which the Constitution was to come into operation, according to the plan devised by the convention, required that the ratification of the states should be returned to the existing Congress, and that the time of choosing the electors of the president, and the time and place for the new government to commence its proceedings, should be determined

by that body. The Constitution designated no place as the permanent seat of government for the United States, but it embraced a clause authorizing the future Congress to establish such a seat in a district not exceeding ten miles square, to be obtained by cession from any of the states. This provision was regarded as the declaration of a settled policy in favor of the final establishment of the government in a central situation, and away from the commercial cities; and when taken in connection with the reference made by the convention to the Congress of the Confederation to fix the place for the new government to commence its proceedings, it evidently contemplated that the Congress to be assembled under the Constitution would, at a proper time, undertake the duty of carrying out the policy thus declared by the convention and by the states which had ratified the instrument. But so great were the local jealousies on this subject, and they had become so much increased by the inconveniences which had been experienced by the old Congress, that when that body was called upon to determine the place for the commencement of the new government, it was feared that the designation of a place would greatly embarrass the future question of removal and settlement elsewhere.

These jealousies were not altogether unreasonable. Practically, the question of a temporary seat lay between the cities of New York and Philadelphia. It was now five years since the Congress of the Confederation had been obliged to leave Philadelphia, where the great measures of the Revolution had been conducted by their predecessors. During nearly two years of the five they had been almost an ambulatory body, making abortive efforts to agree on a permanent place, until at length they found themselves in the City Hall of New York. Here they had been established for nearly three years, when they were called upon to decide at what place the new government should begin to act. There was an obvious convenience in having its proceedings commenced where the federal offices and archives were then established. But if this step was likely to make the city of New York the permanent seat of government — and it would evidently have some tendency to do so — the selection would be extremely objectionable. Eight only of the twenty-six senators of the new government, and seventeen only of the

sixty-five representatives, would come from the states east of New York; sixteen senators and forty-two representatives would come from states south of her. On the other hand, Philadelphia was scarcely more central in reference to the convenience of the Southern members; it was open to the same objection with New York of being a commercial city; and its adoption as the temporary seat of government might have the same tendency to prevent the acquisition of a federal district, and the establishment of a permanent seat in a more central position.

The body which was to decide this delicate and difficult question, and was to exercise, as it appeared, an immense power over the destinies of the country, was an assembly in which each state had a single vote. The states of North Carolina and Rhode Island had not adopted, and did not then seem likely to adopt, the Constitution. But whether they were present or absent, or whether they voted upon this question or abstained from voting, they were counted among the thirteen states, and thus it was necessary that seven votes should be thrown for some particular locality before the question could be settled and the new government could have an actual existence. Even with the most patriotic purposes, too, and with the most friendly sentiments towards the Constitution on the part of the leading members of that Congress, it was possible that conscientious differences of opinion on a doubtful question of expediency might totally prevent the organization of the new government. Six of the members had sat in the National Convention — Madison, Hamilton, Gilman, of New Hampshire; Yates, of New York; and Few and Baldwin, of Georgia. Of these, Yates was hostile to the Constitution; the others were its firm friends; the first two were, of course, its earnest and anxious advocates.

But at the time when the ratification of New Hampshire, the ninth state, was received and officially laid before the Congress, Madison and Hamilton were both absent. The former had been in the Convention of Virginia, which had ratified the Constitution, but this event was not then known at New York, and Madison had not yet arrived there. Hamilton was still in the Convention of New York, at Poughkeepsie, endeavoring to procure the ratification of that state. Sedgwick, of Massachusetts, who became a delegate in this Congress before this question was

settled, and who was an earnest Federalist, had not yet taken his seat. On the reception of the ratification of New Hampshire, a motion was made for the appointment of a committee to report an act for putting the Constitution into operation, according to the resolutions of the National Convention. The states of North Carolina and Rhode Island did not vote upon it, and Yates alone of all the delegates recorded his vote in the negative.

The committee do not appear to have agreed on a place for the new government to commence its proceedings, but they reported a time for the choice of electors of the president, a time for their assembling and voting, and a time for the commencement of the government. In this attitude of the matter Madison arrived from Virginia. Soon after his arrival a motion was made to establish the government temporarily in Philadelphia, and he, with the rest of the Virginia members, voted for it, but it was not carried. In a few days Hamilton, whose labors in behalf of the Constitution in the Convention of New York had just been crowned with success, appeared in his place in the Congress, and on the next day he was followed by Sedgwick. They acted together in endeavoring to procure a vote in favor of the city of New York, while Madison as steadily exerted himself to have the new government first assembled at Philadelphia. This diversity of views between Madison and Hamilton on this question renders the motives of each of them an interesting subject for inquiry.

It was in truth a case of reasoning upon similar principles, but leading to different results, because the reasoning was drawn from different premises. Mr. Madison's opinions were formed under the influence of an occurrence which gave him an entirely wrong impression concerning the objects of Hamilton and the other Federalists of New York. The convention of that state was dissolved, after having ratified the Constitution, a few days before Madison returned to his seat in Congress. He found that the circular letter of that state, recommending another general convention to amend the Constitution, was made use of by its opponents, particularly in Virginia, to inculcate the idea that the government was fatally defective; and he formed the opinion that the Federalists of the New York Convention had concurred in that measure as the means of purchasing an immediate ratifi-

cation, in order to save to the city of New York the chance of becoming the seat of the new government. That the Federalists of New York were anxious to have the Constitution immediately ratified by their state there can be no doubt; and I have elsewhere suggested, what seems to me very plain, that they could have obtained a ratification only by conceding to their opponents the measure of the circular letter. This measure certainly had an unfortunate tendency, but it would have been still more unfortunate to have permitted the state of New York to remain out of the new Union. The result shows that it was in the highest degree fortunate for the country that the city of New York should have been able to press its claim to become the temporary seat of the government, and to have that claim so far admitted at last as to make that city the place for the assembling of the First Congress, because it was there that the First Congress was able to decide finally on the future permanent residence of the government, and to agree that its residence should in the meantime be at Philadelphia. If the latter city had been the place of the first meeting of Congress, far greater difficulties would in all probability have attended the settlement of this question. Madison, however, supposed at this time that there was a much greater difference between Hamilton's purposes and his own than there really was.

They differed, in fact, only with respect to the best mode of reaching substantially the same result. Madison did not desire to have the government permanently established in Philadelphia; Hamilton did not wish to see it permanently placed at New York. The latter desired that the First Congress should be compelled to settle the question of a permanent seat of government under the operation of the inconveniences attending its residence at New York. Madison wished for the delay that would follow a temporary residence at Philadelphia as more favorable to the good selection of a permanent seat.

The four states which lay east of New York steadily concurred with the vote of that state in resisting the selection of Philadelphia as the place for the first meeting of the new Congress. New Jersey, with a territory contiguous to New York on the one side and to Pennsylvania on the other, would have been content with either city for the temporary residence of the government, but

had hopes of its final establishment within her own limits on the banks of the Delaware. The six states south of Pennsylvania, with the exception of South Carolina, favored the present claims of Philadelphia. These divisions appeared soon after the arrival of Hamilton and Sedgwick, and they continued for six weeks. More than twenty different votes were taken, on motions and counter-motions, on various preambles and declarations, without any result. At length, according to Mr. Madison, the opponents of the city of New York saw themselves "reduced to the dilemma of yielding to its advocates, or of strangling the government in its birth." He himself became convinced of the necessity of yielding much sooner than others. But it was finally agreed by all to be the safest policy to keep the government at the city of New York until a permanent seat could be chosen. There was some danger that the new Congress might not select a spot farther south than the Delaware, or, at most, than the Susquehanna. When, however, the opposition to the exertions of Hamilton and Sedgwick in favor of a temporary residence at New York gave way, it appears to have been understood on all sides that the government would finally be carried to the banks of the Delaware, the Susquehanna, or the Potomac. In this expectation, the Congress, nine states being present, unanimously agreed to a resolution appointing a time for choosing the electors of president, a time for their voting, and a time for commencing proceedings under the Constitution, and making the city of New York the place.[1]

On the day on which this vote was passed, Henry Lee, one of the Virginia delegation in Congress, wrote an earnest and impressive letter to Washington, urging his acceptance of the presidency. It drew forth a guarded and cautious reply, from which it does not appear that Washington's feelings on the subject had undergone much change. But in the course of a few days he received a letter from Hamilton, which evidently produced a stronger impression upon him than any similar communication had done. From their former relations, we might expect to find Washington much influenced by Hamilton's arguments. But

[1] For an account of the proceedings in the old Congress, and in the Federal Convention respecting a seat of government, see I. 434, 488-492.

the letter itself was so able, and it presented so clearly the considerations which alone could have weight with the person to whom it was addressed, that it may properly be considered to have been of the greatest importance, if it did not even cause the decision to which Washington came.

The characters and positions of the two men, and the momentous question of duty which Hamilton thus undertook to present to the mind of Washington, invest this correspondence with a high personal interest as well as great historical importance. The mode in which the question was stated would appear to have been chiefly the dictate of a consummate tact, inspired by an intimate knowledge of Washington's character, if we did not see in the letter proof that Hamilton felt that he was stating the case of his country as well as arguing to reach the mind that he addressed. There is not a sentiment in this letter of the vulgar material on which ambition feeds. The situation in which Washington is placed is viewed with the eye of one who comprehends all its relations. Due consideration is given to his wish to be exempted from further public service; the risk to his reputation is justly weighed; the bearing of his decision on the respectability and renown with which the new government will commence its operations is stated with the clearness and precision characteristic of the writer; the implied pledge that was given by his taking part in the framing of the Constitution is skilfully suggested; and then the whole is summed up in a proposition which rests upon the immutable basis of all patriotism. "In a matter so essential," said Hamilton, "to the well-being of society as the prosperity of a newly instituted government, a citizen of so much consequence as yourself to its success has no option but to lend his services if called for."

This frank, manly, and forcible presentation of the subject was of the utmost service to Washington, for it gave him what he greatly needed—the opinion of one who was so placed as to be able to see every element in the case. No man in the country had more carefully or more anxiously studied the public mind respecting the Constitution than Hamilton. He was able to say to Washington, and to say it from a very wide observation, that the conviction of the necessity for his taking the presidency was universal, and therefore that he would be likely to incur no un-

candid imputation in any quarter by accepting it. He was able, moreover, to tell him that there was but one question in the case, and that was a question of duty.

Washington was evidently relieved. He had been so constrained by his situation that he had been obliged to refrain from asking the counsel of his best friends. His delicacy shrank from the thought of presenting, or even appearing to present, himself as a candidate. Now that he had been written to freely by a person to whose judgment he would have appealed if he could have done so, he answered without reserve, and with an evident yielding of some of his doubts. But he still thought that there was one very serious obstacle to his consent. While he was willing to admit that the friends of the Constitution might be disposed to think that his administering the government would give it strength, he suggested to Hamilton that the same opinion might influence its enemies to oppose his election. He supposed that such persons would find their way into the electoral colleges, and that they would extend their opposition to any man likely to thwart their measures. He believed that the anti-Federalists had formed a systematic plan of opposition, extending through the states.

Hamilton answered this objection by assuring Washington that he was the only person in the country who could sufficiently unite the public opinion, or give the requisite weight to the office, in the commencement of the government; that in all probability his refusal would throw everything into confusion — certainly that it would have a very disastrous influence.

It cannot now be ascertained at what precise period Washington may be said to have gained his own consent to the step which he was thus urged to take; for although some of his objections were overcome by the arguments of Hamilton and his other personal friends, still the year was closed, and the time for the choice and action of the electors had drawn near, before we discover that any decided answer had been given by him, even in his private correspondence, and he was approached in no public or official way on the subject. Happily, in those early days of the republic, and in the inauguration of the Constitution, there were no defined and organized parties, with their machinery of nominations, platforms, and conventions. The nation "nomi-

nated" Washington, and they waited decorously for the official communication to him of the votes of the electors, to learn that he had accepted. What his feelings were, as the hour for a final decision approached, we know from an unreserved communication of them to one who had served him faithfully, and whom he ever regarded with strong affection—Jonathan Trumbull.

"I believe you know me sufficiently well, my dear Trumbull," he wrote, in December, "to conceive that I am very much perplexed and distressed in my own mind respecting the subject to which you allude. If I should, unluckily for me, be reduced to the necessity of giving an answer to the question which you suppose will certainly be put to me, I would fain do what is in all respects best. But how can I know what is best, or on what I shall determine? May Heaven assist me in forming a judgment! for at present I see nothing but clouds and darkness before me. Thus much I may safely say to you in confidence: if ever I should, from any apparent necessity, be induced to go from home in a public character again, it will certainly be the greatest sacrifice of feeling and happiness that ever was or can be made by him who will have, in all situations, the pleasure of professing himself yours," etc.

What a relief it were could we know whether these dark shadows which then cast themselves over that serene and tranquil nature did not continue to the last! What would we not give could we receive his own final estimate of the happiness or unhappiness which his last public service gave him—could weigh with him—against the waywardness of faction, the resistance of the bad, the shortcomings of the well-meaning, the obstructions, the failures, the disappointments, the pangs, which ingratitude may have given him; also of that vast sum of present and prospective good which he accomplished by presiding over the government for the first eight years of its existence! Did he know it all, did he feel it all, did he comprehend it all, in the brief interval of rest which was afforded to him before that sharp, quick summons to the tomb which came ere he had yet reached what may be called old age? It may be that it is not always given to the great benefactors of our race to be fully conscious of the importance of their own lives and characters. Of Washington we know at least that as he gave himself without reserve to the

welfare of his country, as neither ambition nor any personal object animated him, so his happiness could not have been exposed to the causes which afflict the aspiring and self-seeking; that as he was not a man of genius, so he did not suffer the pains of genius; and that all the enduring satisfaction which great deeds, wise counsels, and disinterested services can give to the heart of man must have been his.

The legislative department of the government had been fully organized and brought into a condition to make laws as soon as the president had taken the oath of office. The mode of carrying into execution that part of the Constitution which related to the executive power is now to be adverted to. Without directly enjoining the establishment of executive departments, the Constitution assumed that they would be created, as such departments were twice referred to in the article concerning the executive power; and from the text it was apparent that the Constitution contemplated a "principal officer" or "head" of each executive department. But as it had vested the executive power in the president, it was obvious that in him the whole of that power was to reside and by him alone it was to be exercised. The first question, therefore, that required determination related to the mode in which these principal executive officers were to be appointed and to their tenure of office. The discussion on these topics began in the House of Representatives of the First Congress on the 19th of May, 1789, in Committee of the Whole. After some preliminary debate on the mode of dealing with the subject, Mr. Madison proposed "that there shall be established an executive department, to be denominated the Department of Foreign Affairs, at the head of which there shall be an officer, to be called the Secretary for the Department of Foreign Affairs, who shall be appointed by the president, by and with the advice and consent of the Senate, and to be removable by the president." He also proposed the establishment of a Treasury and a War Department on the same principles.

The Committee of the Whole readily agreed to the creation of the Department of Foreign Affairs, and to the proposed title of its head; but it was objected that as the Constitution itself had provided the mode in which such officers were to be appoint-

ed — namely, on a nomination by the president and a confirmation by the Senate — the mode of appointment was not a proper subject of legislation, since Congress could not confer a power which the Constitution had already conferred. This objection prevailed, and the mode of appointment was, with Mr. Madison's consent, stricken from his resolution.

Then came the difficult and important question relating to the removal of officers nominated by the president, confirmed by the Senate, and commissioned by the president after such confirmation—three steps which would all be essential to the filling of the office. To understand what was settled on this subject in 1789, it is necessary to observe the provisions of the Constitution as it came from the hands of its framers, the inferences that might be drawn from them, and the different views that were developed by the debate in the House of Representatives, which began on the 19th of May and was continued at intervals until the 24th of June. The discussions were animated, profound, and exhaustive, and the result leaves no doubt of what was the opinion of the majority of the members of that House. Six of the members had sat in the convention which framed the Constitution. The Constitution was silent in regard to the removal of any officers of the government excepting by the process of impeachment, which involved a trial by the Senate on a charge to be preferred by the House of Representatives. One very reasonable inference that could be derived from the provision that gave to the Senate a voice in the appointment of civil officers was, that the Senate should also have a voice in their removal. Whether, by providing the process of impeachment and making it applicable to all civil officers, the Constitution had or had not excluded every other mode of removal, was likewise an open question, to be determined by general reasoning. It was again a question whether the Constitution, by declaring that the judges of the supreme and inferior courts should hold their offices during good behavior, intended that all other officers should not hold their places by a like tenure, but should be subjected to some process of removal. Finally, it was a question whether the Constitution ought to be so construed as to hold that Congress could by its legislation confer on the president alone a power of removal, or whether it ought to be considered as a

power inherent in his office, and not one to be given or withheld by the legislature at its discretion. It is thus apparent how nearly the action of the First Congress on this subject approached to the making of constitutional law; for although the results of its deliberations carried with it nothing more than an implication that the power of removal without impeachment was to be assumed as a necessary deduction from the whole scope of the Constitution, and that this power resided in the president alone, yet this result is clearly to be discerned on the face of the proceedings in the House of Representatives. The rule which regards a contemporaneous construction of such an instrument as the Constitution when made by the legislative department as nearest in authority to judicial expositions, and having the same general recommendation that belongs to the latter, had not, of course, been developed when this debate of 1789 occurred. But it is quite evident from the discussions that the members of the first House of Representatives, in organizing the executive departments, acted with a full sense of the future importance of their decision, and under circumstances which give to such a decision a very high intrinsic value.

Three distinct theories appeared in this debate, and they covered the whole ground: First, that the Constitution had lodged the power of removal with the president alone; second, that the Constitution had lodged it with the president, acting with the advice and consent of the Senate; third, that the Constitution had not lodged it anywhere, but had left it to be acted upon by the legislative power when it should create offices and prescribe their tenure. It was twice decided to retain the words which declared that the Secretary of the Department of Foreign Affairs should be removable by the president; first, by the passage of Mr. Madison's resolution in Committee of the Whole, and again, afterwards, by negativing a motion in committee to strike out the words of the first section of the bill that had been prepared in pursuance of that resolution. But when the bill was reported to the House, and before it was engrossed, the words of the first section, which declared that the Secretary should be removable from office by the president, were stricken out by a vote of 31 against 19. But in the second section, which provided for a chief clerk of the department, it was declared that "whenever the said

principal officer shall be removed from office by the President of the United States, or in any other case of vacancy," the chief clerk should have the custody of the records, etc., during such vacancy. The law was so shaped, in order: First, to avoid the appearance of a legislative grant to the president of the power of removal; and, secondly, to make it operate as a clear implication that under the Constitution the power of removal is in the president alone. The Treasury and War Departments were subsequently organized upon the same model and with the same implication of the president's constitutional power to remove the principal officer.[1]

The Constitution, for reasons which have been mentioned in the first volume of this work, had made the following provisions: "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."[2]

Washington, towards the close of his inaugural address, foreseeing that this subject would demand the early attention of Congress, referred to his own intention in regard to pecuniary official compensation in the following language: "To the preceding observations I have one to add which will be most properly addressed to the House of Representatives. It concerns myself, and will, therefore, be as brief as possible. When I was first honored with a call into the service of my country, then on the eve of an arduous struggle for its liberties, the light in which I contemplated my duty required that I should renounce every pecuniary compensation. From this resolution I have in no instance de-

[1] The Department of Foreign Affairs, afterwards called the Department of State, was first organized by the act of July 27, 1789; that of War by the act of August 7, 1789; and that of the Treasury by the act of September 2, 1789. It appears from the papers of the vice-president, Mr. John Adams, that the bill for establishing the Department of Foreign Affairs was passed in the Senate only by his casting vote. In the Life of Mr. Adams, by his grandson (I. 448–450), it is stated that his reasons for voting for the bill were never committed to writing, but that he never doubted the correctness of his vote. For the debates in the House, see the Annals of Congress, First Congress, First Session; see also Marshall's Life of Washington, II. 160, Philadelphia edition.

[2] Art ii. § i.

parted. And being still under the impression which produced it, I must decline, as inapplicable to myself, any share in the personal emoluments which may be indispensably included in a permanent provision for the executive department; and must accordingly pray that the pecuniary estimates for the station in which I am placed may, during my continuance in it, be limited to such actual expenditures as the public good may be thought to require." In thus declining all personal emoluments, and at the same time expressing his willingness that provision should be made for defraying the actual expenditures that might be required by the public good, Washington acted in conformity with what had been his practice during the whole of his Revolutionary service. Whether he consulted only his personal feelings, and was governed by a wish to be consistent with his former relations to the country, or whether he was also influenced by considerations of another kind, it may not be easy now to determine. It is not improbable, however, that he regarded the putting of the new government into operation as an experiment, as we know that he considered the Constitution in that light; and he may have wished to relieve the public burdens, as far as he might, by signifying that in his own case a pecuniary compensation would be unnecessary. We are to remember that it was all yet unsettled in what manner the great taxing power that had been conferred upon Congress was to be exercised, or what the revenues of the government would be. It was quite true that if the government was to have any revenue at all, the salary of a president would be an inconsiderable item in its expense. But how revenue was to be raised, or how far the people of the United States would be willing to be taxed, or be able to bear taxation, were problems that could not be determined by the unlimited scope of the taxing power. While it is certain, on the one hand, that Washington must have foreseen the necessity for a permanent provision for the executive department, and that he did not mean by his example to embarrass his successors in the office, it is equally clear, on the other hand, that he wished to have it understood, at least, that he would not receive any personal emoluments for his official services, even if the legislature had to be shaped without any reference to his renunciation of a salary. When the bill to establish the salaries was brought in it was apparently deemed to be most

decorous not to take notice in Congress of the president's intimation, but to fix the compensation of the president and the vice-president, to commence with the time of their entering on their respective duties.[1]

On the 23d of April the Senate instructed a committee of three of its members to consider and report "what style or titles it will be proper to annex to the offices of President and Vice-President of the United States, if any other than those given in the Constitution." This led to a conference on the subject with a committee of the House of Representatives, and the result was a disagreement.

The president had, in the meantime, been inaugurated—viz., on the 30th of April—and in the address, in answer to his inaugural speech, presented to him by the House on the 5th of May, he had been addressed simply as "George Washington, President of the United States." On the 8th of May the Senate appointed a new committee of its own body to consider and report under what title it would be proper for the *Senate* to address the president. This committee, on the 14th, proposed as a title, "His Highness, the President of the United States, and Protector of their Liberties." But without proceeding to the adoption of a title that was certain to be rejected by the House, and that would have led to a difference in the practice of the two bodies, the Senate proposed the following resolution:

"From a decent respect for the opinion and practice of civilized nations, whether under monarchical or republican forms of government, whose custom it is to annex titles of respectability to the office of their chief magistrate, and that, on intercourse with foreign nations, a due respect for the majesty of the people of the United States may not be hazarded by an appearance of singularity, the Senate have been induced to be of opinion that it would be proper to annex a respectable title to the office of President of the United States; but the Senate, desirous of preserving

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[1] The salary of the president was fixed at the rate of $25,000 per annum, and that of the vice-president at the rate of $5000 per annum, from the time of the commencement of their services, by the act of September 24, 1789. By the act of February 18, 1793, these salaries were continued from and after the 3d day of March in that year. It seems that there was some furniture and other effects belonging to the United States in the possession of the president at the time of the passage of the first act, and the use of these was continued by both acts.

harmony with the House of Representatives, where the practice lately observed in presenting an address to the president was without the addition of titles, think it proper, for the present, to act in conformity with the practice of that House; therefore,

"*Resolved*, That the present address be, 'To the President of the United States,' without addition of title."

This method of receding from the position that had been taken by the Senate was resorted to in consequence of a debate which took place in the House on the 11th of May upon a proposition made by the Senate for a further conference in regard to the future mode of addressing the president. As the House had already determined that it would not be proper to annex any other style or title to any of the offices than that given in the Constitution, and had, in addressing the president, acted in pursuance of this determination, there was a strong opposition manifested to any further consideration of the subject. But after an earnest discussion, which exhibited no difference of opinion on the question of additional titles, the House consented to the appointment of a new committee of conference, and Mr. Madison was placed at the head of it. The conference between the two committees was held, but on the 14th the Senate was informed that the disagreement remained. The Senate then adopted the resolution which is above quoted, and from that time the matter of titles was allowed to sleep.

As the Senate, both in its legislative and executive sessions, sat with closed doors until the second session of the Third Congress, with the single exception of a contested election of a member, we are without any reports of its debates. We can, therefore, only infer from its resolution what were the views entertained by its members on this matter of official titles. The practice, which had prevailed from the beginning of the Revolution, of addressing the governors of the states by the title of "Your Excellency" or as "His Excellency," doubtless had some influence with the senators, who thought that the President of the United States should not be regarded as a less dignified personage than the governor of a state. General Washington, during the whole period of his service as commander-in-chief of the Continental forces, had been addressed by public bodies, by his subordinate officers, and by private individuals with the title of

"Your Excellency," to which he submitted, apparently, because the commander-in-chief of the opposing armies was so designated; and in all formal matters Washington would not admit of any implication of inferiority of rank between himself and the British commander. This habit of addressing Washington during his military service may have seemed to the senators of 1789 as in some sense personally due to his dignity in the civil station to which he had been called. But when we analyze the ideas expressed in their resolution they seem singularly inappropriate, and it becomes apparent that the views of Mr. Madison and the other members of the House of Representatives were far wiser. The decent respect for the practice of other nations, which the senators by their resolution suggested as a reason for the adoption of some title of respectability by which to address the chief magistrate, created no necessity for a nation whose institutions and manners made the dignity of their government to consist in other things than titles. Nor did "the majesty of the people of the United States," in their foreign intercourse, need to be asserted in this way. It was not a quite appropriate idea to imply that the sovereignty of the people of the United States was of such a nature that it ought to be expressed by a term peculiar to the majesty of a sovereign ruler. It was a sovereignty, in the sense of a paramount right to govern on certain subjects and relations, but the very specification of its powers which the Constitution had embraced made it a limited sovereignty. If the imposing title suggested by the committee of the Senate had been adopted as the official style of the president, there would have been at least this "appearance of singularity," that the title would have been an excrescence ingrafted upon a Constitution which was in its essence incompatible with ideas that the title implied. The president's oath of office expressed the only sense in which he was to be protector of the liberties of the people. It bound him to "preserve, protect, and defend the Constitution of the United States." In all other respects and in all other ways the liberties of the people were in their own keeping.

The course of settling this precedent, which rejected the use of all other titles than the constitutional name of the office, shows that it was a matter with which Washington in no way interfered. It does not appear that he was consulted. If any-

thing resembling the title proposed in the Senate had been adopted, or if he had been asked to consent to the use of any but the constitutional title, his well-known taste and his sound judgment concerning the nature of the government which he had been called to administer would doubtless have prevented his acceding to anything of this kind. He had, in the most important and efficient sense, been the protector of the liberties of his countrymen in the whole of the Revolutionary struggle. But he was now to discharge the duties of chief magistrate in a government organized under a written Constitution, and his oath of office defined all the mode in which he was to protect the liberties of the people. As he should be officially addressed, so would his successors. Moreover, at the critical time when this proposal of a title was made by the Senate, there was no small danger that those who had opposed the Constitution would be justified in their fears, if a practice were to be introduced in imitation of governments of a totally different character. The objection was thus forcibly summed up by Mr. Tucker,[1] of South Carolina, in the debate of the 11th of May:

"I am still of opinion that we were wrong in appointing the first committee, and think that we shall be guilty of greater impropriety if we now appoint another. What, sir, is the intention of this business? Will it not alarm our fellow-citizens? Will it not give them just cause of alarm? Will they not say that they have been deceived by the convention that framed the Constitution — that it has been contrived with a view to lead them on by degrees to that kind of government which they have thrown off with abhorrence? Shall we not justify the fears of those who were opposed to the Constitution because they considered it as insidious and hostile to the liberties of the people? One of its warmest advocates, one of the framers of it [Mr. Wilson, of Pennsylvania], has recommended it by calling it a pure democracy. Does this look like a democracy when one of the first acts of the two branches of the legislature is to confer titles? Surely not. To give dignity to our government, we must give a lofty title to our chief magis-

[1] Thomas Tudor Tucker, a representative from South Carolina in the First and Second Congresses, and a very able and efficient debater.

trate. Does the dignity of a nation consist in the distance between the first magistrate and the citizens? Does it consist in the exaltation of one man and the humiliation of the rest? If so, the most despotic government is the most dignified; and to make our dignity complete, we must give a high title, an embroidered robe, a princely equipage, and, finally, a crown and hereditary succession! Let us, sir, establish tranquillity and good order at home, and wealth, strength, and national dignity will be the infallible result. The aggregate of dignity will be the same, whether it be divided among all or centred in one. And whom, sir, do we mean to gratify? Is it our present president? Certainly, if we expect to please him, we shall be greatly disappointed. He has a real dignity of character and is above such little vanities. We shall give him infinite pain; we shall do him an essential injury; we shall place him in a most delicate and disagreeable situation; we shall reduce him to the necessity of evincing to the world his disapprobation of our measures, or of risking some diminution of that high reputation for disinterested patriotism which he has so justly acquired. It is not for his gratification; for whose, then, are we to do this? Where is the man among us who has the presumption and vanity to expect it? Who is he that shall say, For my aggrandizement three millions of people have entered into a calamitous war; they have persevered in it for eight long years; they have sacrificed their property, they have spilt their blood, they have rendered thousands of families wretched by the loss of their only protectors and means of support? This spirit of imitation, sir, this spirit of mimicry and apery, will be the ruin of our country. Instead of giving us dignity in the eye of foreigners, it will expose us to be laughed at as apes. They give us credit for our exertions in effecting the Revolution, but they will say that we want independence of spirit to render it a blessing to us."[1]

[1] I have been careful to explain the establishment of this precedent because, even if it now seems to relate to a trivial matter, its relations were not trivial at the time of the inauguration of the Constitution. As a trait of manners, the practice, which is now sometimes ignorantly followed, of addressing the president by some other title than that which is given to the office by the Constitution, is at variance with its spirit and with the early precedent. With regard to the governors of states, the better custom is not to use the title of "excellency," unless it is affixed to the office by the state constitution.

CHAPTER VI.

THE POWER TO AMEND THE CONSTITUTION.—THE FIRST TEN AMENDMENTS—1789–91.—LIMITATIONS ON POWER TO AMEND.

ONE of the most important subjects that can engage the attention of the statesmen and people of this country is the extent and scope of the power to amend the Constitution of the United States. Very little aid on this subject can be derived from the mode in which the constitution of a state may be amended; for the Constitution of the United States contains in itself a positive text, which at once prescribes the mode in which it may be amended, and limits the power of amendment.

In considering this text, however—Article V. of the Constitution—it is necessary also to consider the force and operation of the Ninth and Tenth Amendments, because they may have some bearing upon the original article which embraces the amending power.

The public bodies which are to be the agents for amending the Constitution are those which are authorized to propose amendments, and those which are authorized to adopt them and make them a part of the instrument.

The first of these are the two houses of Congress, acting by a two-thirds vote of each, or a convention of all the states, called by the Congress on the application of the legislatures of two thirds of the several states. The ratifying bodies in either case are the legislatures of three fourths of the several states, or conventions in three fourths thereof, as the one or the other mode of ratification may be proposed by the Congress. Thus it appears that two thirds of both houses of Congress may propose amendments, or the legislatures of two thirds of the several states may apply to have a convention of all the states called for the proposing of amendments, in which case the Congress must make the

call; and it further appears that the amendments, when proposed by either form of action, may be ratified by the legislatures of three fourths of the states, or by conventions in three fourths thereof, as the one or the other mode of ratification may be directed by the Congress when the amendments are proposed. So that there may be one fourth of the several states that must submit to the will of three fourths thereof, if the three fourths ratify any amendment that has been constitutionally proposed, although the one fourth may not accede to it. This is a great and far-reaching power, but it is carefully defined and regulated; and the question arises, What, if any, are its limitations? What is to secure the constitutional minority of the states from an exercise of power by the constitutional majority that will prostrate their state sovereignties and destroy their autonomy?

It will be observed that the amending power is not a power to be exercised by a majority of the people of the United States, acting as a mass of individuals, or as a collective people. It is to be exercised by three fourths of the states, a constitutional majority of the members of the Union fixed for this special purpose. It may thus happen that a proposed amendment would be ratified by a less number than a majority of the people of all the states, because of the mode of ratification and the fixed constitutional number of the state legislatures or state conventions which would have the power to ratify it.

All this shows, on the one hand, how careful the framers of the Constitution were, in shaping the amending power, to preserve the state sovereignties; and, on the other hand, how far their system removes the amending power from the action of the people of the United States regarded as a nation.

No one can read the ten amendments of the Constitution which were prepared by the First Congress in 1789, and were ratified by the states in 1789–91, without perceiving how necessary they were to supplement the instrument that came from the Convention of 1787, and was adopted in 1787–88. In the first volume of this work I have explained the jealousy that was felt by the people of many of the states against the establishment of such a government as the one proposed, without express safeguards to protect the rights of states and of individuals. That this jealousy was a reasonable one is apparent from the preamble of the

resolution by which the First Congress proposed twelve articles of amendment to the consideration of the state legislatures.[1]

The preamble recited that "the conventions of a number of the states had, at the time of ratifying the Constitution, expressed a desire, in order to prevent misconstruction or abuse of its powers, that further declarative and restrictive clauses should be added; and that extending the ground of public confidence in the government would best insure the beneficent ends of its institution." This explains the reasons which actuated the First Congress in proposing amendments, and furnishes the key to the whole proceeding.

It is not necessary to notice here the various amendments that were asked for by the states when they communicated to Congress their several ratifications of the Constitution. They embraced many subjects, and some of them proposed modifications of the framework of the government. It was for the Congress, in the exercise of its authority, to shape the amendments for the consideration of the state legislatures, to make a judicious selection of the matters to which they were to relate. When we look into those which were proposed and adopted, we can see that they were really needed to secure public confidence in the new government. Hamilton was not often wrong in his views of the Constitution as it came from the hands of its founders, and in the reasons which he assigned in The Federalist (No. 84) why any further Bill of Rights than the Constitution itself was not necessary, he was theoretically right. A Bill of Rights was necessary, however, in the sense that what is in the highest degree expedient is necessary. Such an addition would relate, not to the framework of the government, but to the rights of individuals or of the people, and the rights of states; and although these rights might be said to be exposed to no danger from the exercise of the powers which the Constitution was to vest in the new government, it was, nevertheless, considered important that some express security should be extended to them. For example, the Constitution had not expressly or by implication authorized the Congress to make a law respecting an establishment of religion, or prohibit-

[1] Although twelve amendments were proposed, ten only were ratified by the requisite number of states.

ing 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. It might be said that powers of legislation which were not enumerated in the Constitution would never be exercised. But this was not enough to satisfy those who looked at the whole mass of powers which were plainly granted in the Constitution, and saw in them a government which was to have the force of a majority of the people of the states and of the states also, and which was to possess an unlimited power of taxation. Minorities, they said, must be protected; majorities can protect themselves. We have since had abundant reason to be convinced of the soundness of this reasoning. We have had a civil war, in the prosecution of which powers were exercised that had to be judicially brought to the test of one or more of the ten amendments which were incorporated into the Constitution immediately after its ratification.

In answering those who desired provisions in the nature of a Bill of Rights, Hamilton pointed out that the Constitution contained a number of such provisions. He instanced those which limited the effect of judgment in cases of impeachment; the suspension of the *habeas corpus* only when the public safety required it in cases of rebellion or invasion; the prohibitions against bills of attainder, and *ex post facto* laws, and titles of nobility; trial by jury in all cases of crime; the definition of treason, and the nature of the proof required for conviction; and the limitation of an attainder of treason so as not to work corruption of blood or forfeiture except during the life of the person attainted. Important as these were—and their importance was adverted to by Hamilton with his usual perspicacity—they did not constitute that full and sufficient Bill of Rights which was demanded by a large number of the states. They did not secure the rights of persons as they were provided for in eight of the amendments, and, above all, they did not reach the very important declarations contained in the ninth and tenth.

In justice to Hamilton, it should be observed that he wrote and published the eighty-fourth number of The Federalist principally for the purpose of encountering those who insisted that the Constitution should be amended before it was put into operation. Every one can concur in this great man's general definition of

bills of rights: that "they are, in their origin, stipulations between kings and their subjects, abridgments of prerogative in favor of privilege, reservations of rights not surrendered to the prince." But to his conclusion one cannot so readily assent. "It is evident, therefore," he said, "that, according to their primitive signification, they have no application to constitutions professedly founded upon the power of the people, and executed by their immediate representatives and servants. Here, in strictness, the people surrender nothing; and as they retain everything, they have no need of particular reservations."

The Constitution proposed by the Convention of 1787 was undoubtedly founded on the power of the people of the states. It was equally true that it was to be executed by their immediate representatives and servants, that the people surrendered nothing and retained everything. Still, they might have need of particular reservations, and of that need they were to judge.

The Constitution proposed the establishment of a great government; and although this government was to be a creation proceeding from the people of the several states, and was not like the situation of a prince who claims powers and prerogatives that he does not hold of the people, yet it was not the less necessary to make particular reservations, lest the inference might be drawn that what was not prohibited might be presumed to have been granted. The analogy, therefore, between the situation of a prince such as Hamilton referred to and the proposed new government of the United States, did not fully illustrate the question respecting express reservations of particular rights. A bill of rights, whether sufficiently contained already in the Constitution or needing additions, was not to be a stipulation between a king and his subjects. It was not to be a compact between prince and people, like Magna Charta and its subsequent confirmatory charters, or the Petition of Rights assented to by Charles I., or the Bill of Rights first presented to the Prince of Orange in 1688, and afterwards put into the form of an Act of Parliament. Although these monumental charters of English liberty might furnish, and did furnish, exemplars and illustrations of the rights that were to be secured, and although texts of the utmost value might be drawn from them, which would in all future time be looked to for the intent with which language was used, yet a Bill of Rights

for the United States was not to be a compact between prince and people. It was to be a declaratory and restraining instrument, laying the government of the United States under further prohibitions, in addition to those which the Constitution already contained. The government was not to be a party to a compact, the other party being the people. It was to be the creature, receiving the fundamental law of its being and action from its creator; having no will of its own, but bound in all things by the will of the people.

The House of Representatives in the First Congress, after being organized by a quorum on the 1st of April, 1789, was in session until the 8th of June, before the subject of amendments to the Constitution was taken up in that body. On that day Mr. Madison brought it forward, and proposed that it be referred to the committee of the whole. A desultory debate followed his motion, in which considerable opposition was manifested to any action on the subject of amendments until the government had been fully organized by the adoption of measures which were then under consideration, and the perfecting of others. In the course of this debate Mr. Madison introduced certain propositions concerning the amendments which he considered proper to be recommended by the Congress to the state legislatures. It was objected to his propositions that they did not take up the amendments asked for by the several states. At length, however, Mr. Madison's propositions were referred to and considered in a committee of the whole.

The modifications which they underwent are not necessary to be considered here. The ten amendments finally prepared and submitted to the state legislatures were evolved out of numerous propositions, all of which evince the necessity for guarding against the effect of the doctrine of implication in exercising the powers conferred.

These ten amendments, adopted by the requisite number of states then composing the Union, took effect after the Constitution had been put into operation.

According to the express terms of the amending power (Article V. of the Constitution) they "became valid, to all intents and purposes, as part of this Constitution," by force of their adoption by the requisite number of states. They are, therefore, to be read

as if they had been originally incorporated in the text of the Constitution, after the close of Article VII.

They were denominated by the Congress which proposed them, "Articles in Addition to, and Amendment of, the Constitution."[1] Their texts are as follows:

THE TEN AMENDMENTS.

ARTICLE I.

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

ARTICLE II.

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

ARTICLE III.

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.

ARTICLE IV.

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

ARTICLE V.

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall he be compelled in any Criminal Case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

ARTICLE VI.

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime

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[1] The reader will derive valuable instruction by consulting the debates in the House of Representatives of the First Congress on the proposed amendments. These discussions throw much light upon the meaning of the ten amendments which were adopted after the Constitution was in operation, as well as upon those which were considered but not adopted. See Annals of Congress, First Congress, pp. 440, 690, 699, 730, 809.

shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining Witnesses in his favor; and to have the Assistance of Counsel for his defence.

ARTICLE VII.

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

ARTICLE VIII.

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

ARTICLE IX.

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

ARTICLE X.

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

It is proper to observe here that the first ten amendments, unlike some of those which were adopted at a much later period, were designed as restraints imposed on the Federal Government, and not on the state governments. The whole tenor of these texts, and the contemporaneous history, show that they had their origin in the fear that in the powers granted by the Constitution to the government of the United States the safety of the states and their people had not been sufficiently guarded. Designed as restrictive and explanatory clauses, to apply to the powers granted to that government, their language is susceptible of no other meaning. Accordingly, it has been repeatedly held by the Supreme Court of the United States that none of them affects the conditions of the states, or the powers which the states or their people may rightfully exercise.

The powers which the states may not rightfully exercise, according to the original Constitution, as it first took effect, were those which were subjected to the prohibitions expressly laid upon every state by Article I., Section 10. These are the prohibitions referred to in Amendment X., which reserves to the states respectively, or to the people, all powers which had not

been so prohibited, and all which had not been delegated to the United States.'

At a subsequent period, when the Thirteenth, Fourteenth, and Fifteenth Amendments were adopted, other prohibitions were added which restrained the states in the exercise of certain powers that they previously had. Whenever, therefore, it is sought, in a judicial or any other proceeding, to show that a state is restrained by the Constitution, as now amended, from exercising any power which the original text of the Constitution did not prohibit, the restraint must be found in one of the amendments adopted in 1789 or subsequently. For all other restraints on the state powers the inquirer must consult Article I., Section 10, of the Constitution as it was originally framed and adopted. The Ninth and Tenth Amendments are in themselves express fundamental provisions, fixing immutably the reserved rights of the states. If three fourths of the states were to undertake to repeal them, or to remove them from their place in the foundations of the Union, it would be equivalent to a revolution. There would remain nothing but the dominant force of three fourths of the states, and this would soon end in a complete consolidation of the physical force of the nation, to be followed by a different system of government of a despotic character.

It seems to me, therefore, that while it is within the amending power to change the framework of the government in some respects, it is not within that power to deprive any state, without its own consent, of any rights of self-government which it did not cede to the United States by the Constitution, or which the Constitution did not prohibit it from exercising. In other words, I think the power of amending the Constitution was intended

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[1] The language of the Tenth Amendment is peculiar in one respect; but it is not, in my opinion, susceptible of the interpretation sometimes given to it. It reserves "to the states or to the people" the powers not delegated by the Constitution to the United States, or not prohibited by it to the states. This means, as I apprehend, not the people of the United States, regarded as a mass, but the people of the several states. The "people of the United States," regarded as a nation, have no powers of government—they have the power to make a *revolution*. The reservation is to the *states*, or to *their* people. The reason for using both terms "the states" and "the people" was that the states, as organized by their constitutions, might not lose all the powers which their "people" have.

to apply to amendments which would modify the mode of carrying into effect the original provisions and powers of the Constitution, but not to enable three fourths of the states to grasp new power at the expense of any unwilling state.

Take, as an example, some of the amendments adopted at a later period; for instance, those which took from the states the power to continue slavery, or involuntary servitude — a power which every state unquestionably held before those amendments became a part of the Constitution. Or, take the provisions of Amendment XIV., which prohibited any state from assuming or paying any debt incurred in aid of insurrection or rebellion against the United States—a thing which any state could have done but for this inhibition.

It is not necessary to consider here the mode in which these later amendments were required to be adopted by the people of the Confederate States, who had waged war against the government of the United States. When I come to treat specifically of these later amendments, it will appear that notwithstanding some degree of compulsion was used to bring about their acceptance and ratification by the people of the Southern States—a method of proceeding that was certainly not in accordance with the intent and spirit of the amending power—yet these later amendments, both by the ratifications given to them by the Southern States and by the universal acquiescence of their people, are now properly regarded as parts of the Constitution, although we may regret that any kind of compulsion was used. But suppose these amendments had not been proposed and adopted under peculiar circumstances; that, like the earlier amendments, they had been submitted to the people of all the states, to be acted upon freely, without any conditions affecting their standing in the Union, and that three fourths of all the states had adopted them, and one fourth had refused their assent, would any of the constitutional minority of the states have been rightfully deprived of the power to continue slavery, or to assume and pay the Confederate debt, or any debt contracted in aid of the insurrection against the United States?

The true answer to this question, I think, is to be found in the *Ninth* and *Tenth* of the first amendments; for I cannot interpret those amendments as meaning anything less than reser-

vation to the several states of all powers of government which they had not granted to the United States by the Constitution, or which the Constitution had not prohibited them from exercising.

I conclude, therefore, that there are rights of the several states of which they cannot be deprived by an amendment to the Constitution besides their right to equal suffrage in the Senate. We must consider whether a proposed amendment would relate only to the structure of the government, or whether it would relate to some right of the people of a state which was not touched by the original Constitution, and which the states meant to reserve, and did reserve, by the *Ninth* and *Tenth* of the amendments. These amendments have certain clauses as applicable to the amending as to all the other powers embraced in the Constitution. It is quite true that the *amending* power is not a power to be exercised by the government of the United States as that government exercises its powers of legislation. It is a specific power, vested as a final authority in three fourths of the states. But when we come to inquire whether three fourths of the states can, by amending the Constitution, deprive any state of a right of which the Constitution did not deprive it, as it was first adopted, we must, I think, reach the conclusions which I have indicated.

The grand effort of the Federal Convention of 1787, which framed the Constitution of the United States, was to make a system of government for the Union which, while having certain specific powers ceded to it by the people of each state, would be consistent with the preservation of the state sovereignties in all other respects. The discovery that was made in the process of forming the Federal Constitution was that sovereignty—which in our American sense means only the political authority of the people—is divisible according to the subjects on which it acts; that some powers of government can be vested in one class of public agents, and all others can be retained by the people in whom they primarily reside; and thus that the individual inhabitants of separate political communities can be acted on by two distinct governments, each of which has its appropriate sphere. But this mode of constituting a mixed political system required that the Federal or Central Government should, by express pro-

vision, be made supreme and paramount in the exercise of all the powers ceded to it by the people of the several states. That the people of the several states would retain all the original and inherent powers not parted with by cession to the Federal Government was assumed to be a fundamental implication, resulting from the fact that the powers granted to the Federal Government were specific, described, limited, and enumerated, and did not comprehend all the powers of sovereignty. But when the Constitution, as originally framed and promulgated, came before the people of the several states for adoption and ratification, they were not content to leave this very important matter to implication; they demanded an express reservation of all the powers which were not to be ceded by the people of the several states to the Federal Government, or which they were not to be prohibited from exercising. Accordingly the Tenth Amendment, adopted in 1789–91, was made to declare:

"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."

By this reservation every state remains a self-governing political community, in respect to its own inhabitants, in every relation in which those inhabitants are not by the Constitution of the United States placed under the authority of the Federal Government.

It is this mass of rights, privileges, and powers not vested in the Federal Government, but retained by the people of each state, that constitutes the state sovereignty. It follows, as a necessary consequence from this system, that the people of every state in this Union have under their entire control every relation of their inhabitants that is not under the control of the United States by reason of some provision in the Federal Constitution. With the domestic relations of their inhabitants the states can deal as they see fit.

There is another marked and prominent characteristic of our political system evinced by the provisions of the Federal Constitution. It is that each state, by and through that Constitution, enters into compacts and agreements with all the others. They are prohibited from making agreements with each other without the consent of Congress; but they may and do covenant per-

petually and irrevocably, by and through the Constitution of the United States, that the Federal Government shall have and exercise all the powers ceded to it by their assent to the Constitution, and that no state shall exercise any power prohibited to it by that instrument. The idea, therefore, of compacts, covenants, and agreements between the separate states, as members of the Union, and the United States as the representative of all the states collectively, is embedded in the Federal Constitution and forms its principal strength. It is what gave the Federal Government authority to vindicate and assert its own existence and powers against an attempt of certain states to break the compacts which they had respectively made with the United States when they ratified and adopted the Constitution.

The tenth section of Article I. of the Constitution contains the prohibitions which it has laid upon the states. Some of these prohibitions are absolute; others relate to things that can be done only by the consent of Congress. Every one of them, both those that are absolute and those that are conditional, relate to things that every state would have a perfect right to do if it had not convenanted with the United States, in and by the Constitution, that it will not do them. But the prohibitions owe all their force, all their obligations, all their restraining efficacy, to the compact which every state has made with all the others, collectively styled the United States, whereby each state has limited its own sovereignty in certain respects over which it would otherwise have retained full control.

Take, for example, one of the absolute prohibitions: "No State shall enter into any Treaty, Alliance, or Confederation." If any state were to do what is thus prohibited, is it to be supposed that there would be no remedy? that the United States would have no constitutional power to prevent the operation of the treaty, alliance, or confederation? Take one of the conditional prohibitions: "No State shall, *without the consent of Congress*, lay any duty of tonnage, keep troops or ships of war in time of peace." It is not to be imagined that if a state were to undertake to do one of these things the United States would be powerless in the matter. And if it is asked what the remedy would be, I answer that it would not be by Federal action against the state itself in its corporate, political, or sovereign capacity; it would be

by appropriate legislation to reach, restrain, or punish individuals who should undertake to carry out the will of their state in respect to a thing that it had covenanted that it would not do or attempt to do. This authority, which results necessarily from the right of the United States to execute every part of the Constitution, rests for its foundation on the compact that every state has made with the United States, that it will not exercise its own sovereignty in certain matters, but that in those matters it has submitted its own sovereignty to the control of Congress.

Commencing, then, with the framework of the Constitution alone, we find that it is largely and primarily founded in irrevocable compacts between each state and the United States, whereby every state has diminished its own sovereignty in certain important particulars. Other examples of the diminution or limitation of the state sovereignty will be found in the amendments adopted after the close of the Civil War, some of which largely curtailed and diminished previous state powers. These curtailments and diminutions of state sovereignty rest on compacts made by the several states with the United States.

What, then, is to prevent a new state, or the people of a proposed new state, when they present themselves for admission into the Union under a Republican Constitution, from doing that which every state did when it ratified and accepted the Constitution of the United States, whether it was one of the original thirteen states or was one that came into existence as a state since the year 1789? It is said that the renunciations of state sovereignty which were made by the states when they entered the Union under the Constitution were made by all alike, and related to matters of common concern, whereas a matter that is peculiar to the social condition or situation of a proposed new state is not of that character. This would be a begging of the question; for the question here is what compacts in diminution or limitation of its own sovereignty is it constitutionally competent for any state to make with the United States? Must it be one that every other state has made or ought to make, or wishes to make? Or, if it is one that is peculiar to the situation of the proposed new state, growing out of the present or past social condition of that people, is it excluded from the category of agreements and covenants that a state can make with the United States? The prec-

edents that have been cited answer this question emphatically in the negative.

Two limitations of the amending power are found in Article V., embraced in a *proviso.* The one is that no amendment which might be made prior to 1808 shall in any manner affect the *first* and *fourth* clauses of the *ninth* section of Article I. The effect of this part of the proviso was that Congress could not prohibit the states from promoting the migration or importation of such persons as they might think proper to receive prior to the year 1808.

This, as I have already shown, was designed to allow the continuance of the slave-trade for a limited period. So soon as that period had expired Congress prohibited that trade.

The fourth clause in the ninth section of Article I. restrained Congress from laying any capitation or other direct tax, unless in proportion to the census or enumeration which the Constitution directed to be taken. The proviso has now become inoperative, both as to the slave-trade and the capitation or other direct tax by reason of the limitation of time in which it was to operate, and these clauses are now subject to amendment.

The remainder of the proviso is in these words: "And that no State, without its own consent, shall be deprived of its equal suffrage in the Senate." This limitation of the amending power is *perpetual.* No amendment can ever be made that will take away that equality of suffrage in the Senate which makes the Federative principle in our system of government.[1]

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[1] For the history of these clauses and of the amending power, see vol. i. pp. 613 *et seq.*

CHAPTER VII.

THE FIRST REVENUE LAW OF THE UNITED STATES.—HOW FAR PROTECTION WAS DEEMED OBLIGATORY.—CONDITION OF AMERICAN MANUFACTURES IN 1789.—COMPARATIVE ADVANTAGES OF FREE TRADE AND PROTECTION ACCORDING TO ADAM SMITH.—WAGES IN THE AMERICAN COLONIES BEFORE THE REVOLUTION.—CHIEF-JUSTICE MARSHALL ON IMPLIED POWERS.—NATIONAL BANK.—TARIFF FOR REVENUE ONLY.

THE Department of Foreign Affairs was organized before those of the Treasury and of War; and it is now to be noted that the first revenue law was enacted before the law which established the Treasury Department. In the discussions which took place on this revenue measure we may learn to what extent "protection" was then considered expedient, or incumbent on Congress as a constitutional obligation. The bill that was brought in contemplated, among the objects for which revenue was immediately necessary, not only the support of the government, but the discharge of the debts of the United States. The Constitution had made the debts contracted, and the engagements entered into, before its adoption as valid against the United States under the Constitution as they were under the Confederation. Whether this obligation was to extend to the debts contracted by the separate states before the adoption of the Constitution was a question of both construction and policy. What was to be done in making provision for the discharge of debts contracted by the United States, whether the revenue for this purpose and for the support of the public credit was to include the state debts, were matters that did not come within the scope of a temporary revenue system, which, although it were to include within its declared objects the discharge of the debts of the United States, must be primarily designed to procure revenue for defraying the current expenses of the govern-

ment by taxing the imports then coming in. How the duties were to be paid after they had been imposed could only be provided for by making them payable in coin. Whether there would be specie enough in the country to enable the importers to pay the duties was doubtful. How a paper money was to be created was a most important practical question. All that could be done in framing the temporary revenue system was to lay the duties and to provide for their payment in coin.

A wide field was thus opening for the exploration of questions of constitutional power as well as of expediency. Much of this exploration could be made only in framing the Treasury Department and defining the duties of its head. The history of the formation of this department is therefore extremely interesting, in reference both to the person who became its first secretary and to the great measures which he devised.

Madison, who had been concerned with Hamilton in a strenuous effort to induce the states to establish the revenue system of 1783, which I have described in the first volume of this work, now took the lead in introducing and conducting through the House of Representatives a measure for obtaining the revenue needful for the support of the new government. It seems to have been his purpose, at first, to make it a temporary measure only, and to frame and enact it in season to have it operate on the importations of that spring. But it became at once apparent that even if, by general consent, the new law should be framed with this view, there was a strong disposition to consider and act upon the encouragement and protection of domestic manufactures, as a principle to be regarded at the outset in the levying of duties on imports. The revenue system proposed in 1783 had aimed only to procure for Congress authority to obtain revenue without relying on requisitions made upon the states. There were then comparatively few manufactures in this country, and at the close of the Revolutionary War the great quantities of manufactured goods imported from Europe had at first rendered our own manufactures almost useless. Very considerable changes, however, had taken place in the interval between the complete establishment of our independence and the inauguration of the new government under the Constitution. Several causes had given an impetus to our domestic manufactures; so that when

the First Congress assembled under the Constitution, there were some kinds of manufactures sufficient to answer the consumption of the whole Union, and others were growing in importance so much that it appeared not unlikely that our own materials could be worked up to a point at which articles made in this country could be profitably exported. It was contended, therefore, very early, that the question of protection must be met at the threshold of the legislation. Perceiving this, Madison admitted that they might be under the necessity of investigating principles more extensively than he had at first contemplated, although he still maintained that the object of obtaining immediate revenue by a temporary measure ought to be kept steadily in view.. In the observations which he made at some length on the 9th of April, he developed the principles on which he supposed the representatives of the states ought to act. In the first place, he reminded the Committee of the Whole that any system of imports must be founded on mutual concessions by the states to each other. At the same time he brought forward very distinctly the expectations and purposes of the states most advanced in population and ripe for manufacturing industries when they ratified the new Constitution. He said that while these states retained in their own hands the power of regulating trade, they had the power to cherish and protect their own manufactures; but as they had now thrown this power into other hands, they must have done so in the confidence that their interests would not be neglected or overlooked by the new Congress. He then proceeded to state the principles which he thought should govern the legislation. He avowed himself to be a friend to a very free system of commerce, regarding it as a truth that commercial shackles are generally unjust, oppressive, and impolitic, and that capital and labor, if left to their own course, will generally be most productive, and in a more direct and certain way than the wisdom of the most enlightened legislature can devise. This he held to be as true of national interests as of the interests of individuals, whom no legislation can compel or lead to become manufacturers of all the articles they need for their own consumption. Freedom of trade, then, being the general principle to be kept in view in adjusting the relations of different countries, the departure from it must be exceptional, arising out of the pe-

culiar situation of the country for which the legislation is designed.

The problem is, he said, to discover the exceptions to the general principle of free trade. In this country, the first great exception is the interest of agriculture or the products of the soil, whether spontaneous or cultivated. With a great abundance of cheap land, the United States enjoyed, or might enjoy, as much of a monopoly in agriculture as any other nation had in any article whatever, and with this advantage: that it would not be shared or injured by rivalship. The interest of navigation was the next exception; for if America were to leave her ports entirely free, and make no discrimination between vessels owned by her own citizens and those owned by foreigners, while other nations made this discrimination, such a policy would tend to exclude American shipping from foreign ports, when, by encouraging our own carriers, we encourage the products of our own soil, our own industry, which they transport. Embargoes in time of war are another exception to this general principle of free trade. These, however, are peculiar and temporary shackles upon the freedom of commerce, which do not enter into the plan of a revenue system. Lastly, there is an exception on which great stress has been laid by eminent authorities. It is said that every nation ought to have within itself the means of defence, and not to be dependent on foreign supplies in whatever relates to the operations of war. He, however (Mr. Madison), was persuaded that the reasoning on this subject had been carried too far.

Adam Smith's great work, "An Inquiry into the Nature and Causes of the Wealth of Nations," was first published in 1776. Although important additions were made in subsequent editions, the second chapter of the fourth book, entitled "Of Restraints upon the Importation from Foreign Countries of such Goods as can be produced at Home," remained as it was originally written and published. In that chapter the author states with entire fairness the general advantages and disadvantages of perfect freedom of trade. Although he was evidently no friend to commercial restrictions, he considered the home market to be the most important field to be secured to producers of all kinds; and he begins the chapter by laying down the following proposition, the scope of which will best appear by italicizing two of his

expressions: "By restraining, either by laying duties or by absolute prohibitions, the importation of such goods from foreign countries as *can be* produced at home, the monopoly of the home market is *more or less* secured to the domestic industry employed in producing them." After adducing certain striking illustrations of this proposition, he speaks of the encouragement thus given to the industry which enjoys it, and makes a qualification that is as true now as it was when he wrote: "That this monopoly of the home market frequently gives great encouragement to that particular species of industry which enjoys it, and frequently turns towards that employment a greater share of both the labor and stock of society than would otherwise have gone to it, cannot be doubted. But whether it tends either to increase the general industry of the society, or to give it the most advantageous direction, is not perhaps altogether so evident. The general industry of the society never can exceed what the capital of the society can employ. As the number of workmen that can be kept in employment by any particular person must bear a certain proportion to his capital, so the number of those that can be continually employed by all the members of a great society must bear a certain proportion to the whole capital of that society, and never can exceed that proportion. No regulation of commerce can increase the quantity of industry in any society beyond what its capital can maintain. It can only direct a part of it into a direction into which it might not otherwise have gone; it is by no means certain that this artificial direction is likely to be more advantageous to the society than that into which it would have gone of its own accord." Having developed the argument on this head, and shown why it is injurious to direct private people in what manner to employ their capital, he admits that there may be two cases in which it will generally be advantageous to lay some burden upon foreign for the encouragement of domestic industry. The first is where some particular sort of industry is necessary for the defence of the country; as was the case with Great Britain, whose defence depended very much upon the number of its sailors and shipping, and hence the Act of Navigation, which began under the Long Parliament. This is the exception to which Mr. Madison referred in general terms, in regard to everything requisite for national defence; and it is what Mr. Cal-

houn at a later period had in view when, in 1816, he advocated protection of domestic manufactures. The second case in which it will generally be advantageous to lay some burden upon foreign for the encouragement of domestic industry is when some tax is imposed at home upon the produce of the latter. In this case, it seems reasonable that an equal tax should be imposed upon the like produce of the former. This would not give the monopoly of the home market to domestic industry, nor turn towards a particular employment a greater share of the stock and labor of the country than would naturally go to it. It would only hinder any part of what would naturally go to it from being turned away by the tax into a less natural channel, and would leave the competition between foreign and domestic industry, after the tax, as nearly as possible upon the same footing as before it. Mr. Smith then proceeds to consider two other cases in which the laying of burdens upon foreign for the encouragement of domestic industry may sometimes be a matter of deliberation. The first is, how far it is proper to continue the free importation of foreign goods. This opens the subject of retaliations, which are resorted to for the purpose of compelling another nation to repeal her high duties or prohibitions on our products; a temporary expedient, dictated by particular circumstances, but injurious to ourselves while the retaliation lasts. The second case is, how far and in what manner it is proper to restore the free importation of foreign goods after it has been for some time interrupted. This is an inquiry of special importance at all times when particular manufactures, by means of high duties upon all foreign goods which can come into competition with them, have been so far extended as to employ a great number of hands. On this point the author lays down a doctrine which is true at all times, and is of great force when a system of high duties on foreign manufactures has been long in operation and has induced extensive investments in certain industries: that the freedom of trade should be restored only by slow gradations, and with a good deal of reserve and circumspection, and after a long warning. "The legislature," he says, "were it possible that its deliberation could always be directed, not by the clamorous importunity of partial interests, but by an extensive view of the general good, ought, upon this very account perhaps, to be particularly careful

neither to establish any new monopolies of this kind, nor to extend further those which are already established. Every such regulation introduces some degree of real disorder into the constitution of the state, which it will be difficult afterwards to cure without occasioning another disorder."

The situation of the United States before the adoption of our present Constitution was, in fact, one to make the general principles laid down by Adam Smith, and the exceptions to them, applicable in the earliest legislation. Before the Federal Constitution, the states were independent nations in all matters of revenue and taxation. Each of them levied such duties as it saw fit on foreign goods imported into its own dominions; each paid such attention as it thought proper to the protection of its own manufactures. The same kind of foreign goods which had paid a certain duty on being entered at the port of one state, would have paid a different duty at the port of another state; and as there was freedom of trade between the states, commodities of the same cost in the country of their production would have a different price in different parts of this country. When the central government became clothed with authority to make a revenue system for the whole Union, the principle of such encouragement and the means of giving it were familiar to the people of the states and their representatives. Accordingly, as soon as Mr. Madison had introduced the subject of revenue, to be obtained for the expenses of the new government, and a list of articles to be subjected to the new duties had been laid before the House, the subject of protection was brought into the discussion by an occurrence which is of marked historical interest.

On the 11th of April a petition was presented from the tradesmen, manufacturers, and others of the town of Baltimore. It set forth, "That, since the close of the late war and the completion of the Revolution, they had observed with sincere regret the manufacturing and the trading interest of the country rapidly declining, and the attempts of the state legislatures to remedy the evil failing of their object; that, in the present melancholy state of our country, the number of poor increasing for want of employment, foreign debts accumulating, houses and lands depreciating in value, and trade and manufactures languishing and expiring, they look up to the supreme legislature of the United

States as the guardian of the whole empire, and from their united wisdom and patriotism and ardent love of their country, expect to receive that aid and protection which can alone dissipate their just apprehensions and animate them with hopes of success in future, by imposing on all foreign articles which can be made in America such duties as will give a just and decided preference to their labor; discountenancing that trade which tends so materially to injure them and impoverish their country; that they have annexed a list of such articles as are or can be manufactured among them, and humbly trust in the wisdom of the legislature to grant them, in common with the other mechanics and manufacturers of the United States, that relief which may seem proper." This petition, although coming from a single town, called upon the new Congress, as the supreme legislature of the United States, in the broadest terms, to apply the principle of protection so as to benefit American labor, and to discountenance that freedom of trade which tended to injure the industry of our own mechanics and manufacturers. It asked for such legislation not only in regard to articles then produced, but also in regard to those which could be produced in this country; thereby proposing that the legislation should aim to continue the protection heretofore ineffectually extended by the separate states to manufactures already established, and to raise up those which might be established in the future. The petition made no reference to the obtaining of revenue for the uses of the government, but it presented the encouragement of our own manufactures as the primary object to be accomplished in the laying of duties on foreign products. Still, it necessarily proceeded upon the idea that the duties would be laid in the exercising of the taxing power which the Constitution had conferred on the new government. The exercise of this express power would convey with it the implied power to lay the duties so as to benefit our own industry, because such a power is inherent in any government which possesses a right to select the objects of taxation, and to determine the rates of duty to be laid on them.

It does not appear that similar petitions in relation to manufactures were preferred from other quarters of the Union in the same formal and direct mode; but it is quite apparent, from the discussions that ensued, that the representatives of different states

urged the interests and wishes of their constituents upon the same grounds.

The Baltimore petition was referred to the Committee of the Whole, and then the debate proceeded at intervals from the 11th of April to the 29th of May. In this long and able discussion there were differences of opinion developed upon the question of framing a permanent system of revenue, or adopting a temporary measure. At length, however, the matter settled down to the latter course as the only one that was then practicable. As each article that was proposed to be included in the bill was taken up and considered, the debate turned upon the questions of imposing some duty on it or letting it come in free, of the amount of duty that could be collected on it, and of the influence of that duty upon the encouragement or discouragement of American manufactures and productions. There were at that time no official statistics that would furnish a safe basis of calculation in all cases; but there was some information that could be derived from the official statistics of a few of the states, and the representatives of different sections of the country could speak with some certainty in regard to the amount of present importation of foreign products, the extent to which the same products were already produced by their constituents, and the extent to which further manufactures could be carried so as to answer the home consumption, and perhaps to lead to some exportation. The interests of agriculture, too, were fully considered, as likely to be affected by the introduction of the principle of encouraging our own manufactures by the imposition of duties on the same articles imported from other countries. So also were the interests of navigation. Thus, when the article hemp came under consideration, it was urged that it could be produced in the United States in quantities quite sufficient for the supply of all the cordage required for our own shipping, and then the question became the compound one of what rate of duty would afford the proper stimulus to the production of hemp, what rate could be collected, and how the duty would affect ship-building. Steel was stated to be already made in considerable quantities in Pennsylvania, and it was urged that the imposition of the right duty on the foreign article would lead to its production in much larger quantities. So with regard to every article on which it was proposed to lay a specific or an

ad valorem duty, the bearing of the imposition on our own industry, whether that industry was comprehended in the interests of manufactures, or of products of the soil, or of ship-building, or of navigation, was duly considered.

The reader who may examine this interesting and instructive debate, which ended in the framing of our first revenue law, will find, among other things, a curious discussion on the effect of imposing duties on ardent spirits and on molasses. In reading this debate, too, one comes upon a fact that powerfully arrests attention. In our own time we have seen a confederacy of the Southern States sustain a long war against the Federal Government, upon a system of finance based largely upon the single article of cotton, as a product in constant demand in Europe. The product of cotton in 1860 was 4,669,770 bales; in 1861 it was 3,656,006 bales; in 1886 it was 6,550,215 bales.

In 1789 it could not be said that cotton was an article of production in the United States. In the debate of which I am here giving some account, Mr. Burke, of South Carolina, who was able to speak of his own state and of the adjoining state of Georgia when hemp was under consideration, made the following statement:

"The staple products of that part of the Union are hardly worth cultivation, on account of their fall in price; the planters are, therefore, disposed to procure some other. The lands are certainly well adapted to the growth of hemp, and we have no doubt its culture would be practised with attention. Cotton is likewise in contemplation among them, and if good seed could be procured, he hoped it might succeed. But the low, strong rice lands would produce hemp in abundance—many thousand tons this year, if it were not so late in the season. He liked the idea of putting a low duty now [on hemp], and encouraging it against the time when a supply might be had of our own cultivation." At that time the chief products of South Carolina and Georgia were rice and indigo.

When the bill came to be framed for the purpose of obtaining the very insignificant sum of $3,000,000—the amount supposed to be needed for the expenses of the government—it was deemed proper to declare in a preamble the objects that were to be accomplished. It is not material to consider in what order these

were stated, because each of them was declared to be necessary; each of them was as important as the others, and no one of them was made incidental to or dependent upon the others. They were all embraced, as the basis on which the legislation was to be adopted, in the same declaration of the purposes to be effected by laying the duties. The preamble was as follows:

"WHEREAS, it is necessary for the support of the government, for the discharge of the debts of the United States, and for the encouragement of manufactures, that duties be laid on goods, wares, and merchandise imported;

"Be it enacted, etc., That on and after the first day of August next ensuing (1789), the several duties herein mentioned shall be laid on the following goods, wares, and merchandises imported into the United States from any port or place."

It appears, therefore, that in the first revenue legislation after the Constitution was adopted it was deemed proper to make the encouragement and protection of our own manufactures one of the principal objects to be effected by the legislation. This was but the continuation of a policy previously acted upon by the separate states, but ineffectual because the states could only lay duties on foreign products brought into their own dominions. The situation of the country was virtually the same in 1789 as it has been since, in its relations with other nations, the difference between that and any subsequent period being in respect to the quantity of importations and the quantity and kind of our own products. There were the same questions then as now in regard to the encouragement and protection of manufactures existing among us, and those which might be introduced and established later.

There is one fact to be noted, however, which makes a very important difference between the situation of the United States in 1789 and the situation at a later period. It was assumed in 1789 that the United States did not produce, and never would produce, the precious metals. No duty was therefore laid on gold, silver, or precious stones, unless they came in the form of wares or jewelry, on which an *ad valorem* duty was imposed. On cotton was laid a duty of three cents per pound, to take effect from and after the 1st of December, 1790. This prospective legislation seems obviously to have been designed as an expression of the intent of Congress to encourage the production of cotton whenever it should be apparent that it would be practicable to establish it. A duty

of three cents per pound on foreign cotton could not produce any revenue in 1789, but it would signify that Congress would be ready to encourage the cultivation of cotton when it might become apparent that it would be produced. Hemp being an article already produced in this country, and capable of still further production, was subjected to a duty of sixty cents on every 112 pounds, to take effect December 1, 1790. The articles on which the new duties were laid by the bill distributed themselves into several classes: First, certain manufactures, or articles on which labor had been expended in the production. Steel was subjected to specific duties. Coal, which, although a mineral obtained from the ground, was an article produced by labor, had the duty of ten cents per bushel put upon it. I cannot discover, from the debate, that coal was regarded as a product of the United States, and therefore the presumption is that this low duty was imposed on foreign coal from the same motive as the low duty on cotton. Indigo was subjected to the high duty of sixteen cents per pound, because it was a staple product of some of the Southern States. Manufactured tobacco and snuff, pickled fish, corned fish, salted provisions, and many other articles, were subjected to high duties for the same reason.

Second. Teas, which could not be expected to become a product of the United States, were classed according to the place from which and the vessels in which they were imported. If imported from China or India, in vessels built in the United States, and belonging to a citizen or citizens thereof, or built in foreign countries and on the 16th of May, 1789, wholly the property of a citizen or citizens of the United States, and so continuing until the time of importation, the duties imposed were lowest. If imported from Europe in vessels of the same ownership, the duties were higher. If imported in any other manner, the duties were still higher. Thus, on Hyson teas, the duties ranged from twenty cents to forty-five cents per pound, according to the place from which and the vessels in which they were imported. Then there remained another large class, namely, all goods, wares, and merchandises, other than teas, imported from China or India in foreign vessels; on these a duty of twelve and a half per cent. *ad valorem* was imposed. There was still another class, on which *ad valorem* duties were imposed varying in amounts,

some of them being and some not being produced in the United States.

The conclusions which are to be drawn from the first revenue law and the debate which preceded its enactment may be stated as follows: First. That entire freedom of trade, however theoretically right, is inexpedient and impracticable for a country of diversified pursuits, in which capital and industry are employed in agriculture, in navigation, in manufactures, in fisheries, and in mining. The situation of the country at any given time, relatively to other countries, however that situation may have been produced, whether by its own legislation or by the action of other countries, must determine what foreign commodities shall be free, and what shall be subjected to imposts and duties. This situation will vary at different times, and the legislation must therefore be varied from time to time; but when, for a long course of years, the capital and industry of the country, or of considerable parts of it, have been employed in particular products and pursuits, sudden changes, for whatever reasons resorted to, cannot be made without causing great disturbance and loss of national wealth.

Second. That the power conferred on Congress by the Constitution to lay and collect taxes, duties, imposts, and excises, subject only to the condition that they shall be uniform throughout the United States, taken in connection with the circumstances existing at the time of its establishment, warrants the deduction that when the national government needs, as it must at all times need, revenue, it may resort to direct or indirect taxation, or, as it is now called, to an internal or external revenue, or to both; that the latter is always to be preferred to the former, because it is more easily collected and more easily paid, the burden falling upon those who consume the articles the price of which is enhanced by the duty, thus enabling the legislative power to distinguish between the luxuries and the necessaries of life; and that when the revenue is raised by indirect taxation, or by imposts on foreign commodities, Congress is empowered, and is under an obligation, to so regulate the duties as to encourage and protect domestic capital and domestic industry. It does not appear from the discussions of 1789, nor do I think it a fair inference from them, that when our domestic industry, meaning thereby what are common-

ly called the interests of labor as distinguished from the interests of the capitalists who employ the labor, was the subject of consideration, it was regarded at that time as eminently proper or necessary to so shape the legislation as to secure to the American artisan or other laborer better wages than were commonly paid to the corresponding classes in other countries. So far as this comparison was instituted at all, it was considered that the American laborer would enjoy a higher rate of pay than the same labor enjoyed in other countries, as an incident to the encouragement and protection of the capitalist who employed him. In other words, it was considered that the interests of capital and labor, so far as they are capable of distinct appreciation, would both be promoted by legislation which tended to exclude foreign competition in our own market, because that legislation would enable the employer to pay the employed higher wages than were paid in other countries. It was not considered that the American laborer, because he was an American, had a superior right to high wages; but it was considered that comparatively higher wages would result to him by securing to his employer some permanence and safety in his investments. How far changes in the situation of the country may have operated to bring about different views of this important subject, how far the American laborer may have been led to expect, and thus to have a moral right to, a better condition than he would enjoy if he were employed in any other country, is a question that has come into great prominence since the year 1789.

Whatever may be said of the value of opinions maintained by the class of speculative writers sometimes called "doctrinaires," it is apparent that our first revenue legislation was substantially in accordance with the principles taught by the first living writer on public economy of that time. This concordance took place, not so much because of the deference paid to such writers as Adam Smith, regarded as authorities, as it did because the situation of the United States proved that the speculative reasonings of some public economists were true. It is not to be inferred, from my citations from Smith's *Wealth of Nations*, that his doctrines were alluded to in the debate. They were not. But the legislation that was adopted coincided with the principles which he maintained; and whoever compares those principles with the

details of our first revenue legislation will find that the latter strikingly illustrates the former. Indeed, if Mr. Smith had written after 1789, he might have shown from this legislation many remarkable confirmations of his reasoning.

Wages, for example, were higher in this country than in England before our Revolution. Adam Smith, writing in 1773, noticed the fact that they were much higher. He specified the wages then paid in the province of New York to various classes of laborers, all of which, he said, were higher than in England. The following paragraph assigns the reasons for this difference, and these reasons remain very much the same now, in any comparison between the wages paid in this country and other countries:

"It is not the actual greatness of national wealth, but its continued increase, which occasions a rise in the wages of labor. It is not, accordingly, in the richest countries, but in the most thriving, or those which are growing rich the fastest, that the wages of labor are highest. England is certainly in the present times much richer than any part of North America. The wages of labor, however, are much higher in North America than in any part of England. In the province of New York, common laborers earn three shillings and sixpence currency, equal to two shillings sterling, a day; ship carpenters ten shillings and sixpence currency, with a pint of rum worth sixpence sterling, equal in all to six shillings and sixpence sterling; house carpenters and bricklayers eight shillings currency, equal to four shillings and sixpence sterling; journeymen tailors five shillings currency, equal to about two shillings and tenpence sterling. These prices are above the London prices; and wages are said to be as high in the other colonies as in New York. The price of provisions is everywhere in North America much lower than in England.

"A dearth has never been known there. In the worst seasons they have always had a sufficiency for themselves, though less for exportation. If the money price of labor, therefore, be higher than it is anywhere in the mother-country, its real price, the real command of the necessaries and conveniences of life which it conveys to the laborer, must be higher in a still greater proportion."[1]

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[1] Smith's Wealth of Nations, I. 61, Hartford edition of 1804. The whole chap-

The framers of the first revenue law acted upon a rule of interpretation without which the Constitution could not be executed. It is a rule upon which the government has been administered for more than a hundred years. It is deducible by a sound construction from certain texts of the Constitution. The first of the legislative powers of Congress was granted in the following terms:

"Section 8. That Congress shall have power — 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;

"To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other powers vested by this Constitution in the government of the United States, or in any Department or office thereof."

A tax is a rate laid by government on the income or property of individuals.

Duty means a tax laid on foreign imported merchandise or other property.

An impost is any pecuniary exaction laid upon any kind of commodity.

Excise is an inland tax levied upon commodities of home consumption.

The implied powers of the Constitution might have been left to be inferred from the general expressions used to describe each express legislative power; but, in order to prevent any uncertainty, it was thought best to fix in the Constitution a positive rule which would determine the character of the implied powers that Congress might exercise.

The laws which Congress may pass are all those which shall be necessary and proper for carrying into execution the legislative powers vested by the Constitution in the government of the United States, or in any department or office thereof.

For example: Under the power to borrow money on the credit of the United States, Congress may establish a national bank. Under the power to regulate commerce, Congress has passed a

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ter on "The Wages of Labor" is exceedingly instructive. What the author said of wages in North America was written before the disturbances caused by our Revolutionary war.

great variety of laws regulating all intercourse with foreign nations, and among the several states and with the Indian tribes. Under the power to coin money, Congress has established a mint. Under the power to raise and support armies, Congress has passed laws to enlist men, provide for their instruction and discipline, build barracks, etc.

In short, every specific and express legislative power must be executed by the exercise of implied powers or legislation in the passage of laws which are necessary and proper to carry the power into execution. The laws which are necessary and proper are those which Congress determines to be so. All that is needful is that they conduce to the execution of the specific power to which they are supposed to relate.

The most important illustration of the rule "for deducing the implied powers from the express powers" is that course of reasoning employed by Chief-Justice Marshall, in vindicating the authority of Congress to establish a national bank. The following is his masterly argument (see McCulloch *vs.* Maryland, 4 Wheaton, 316):

"The express powers delegated by the Constitution to the Federal Government imply the ordinary means of execution thereof.

"Among the enumerated powers, we do not find that of establishing a bank or creating a corporation. But there is no phrase in the instrument which, like the Articles of Confederation, excludes incidental or implied powers, and which requires that everything granted shall be expressly and minutely described. Even the Tenth Amendment, which was framed for the purpose of quieting the excessive jealousies which had been excited, omits the word 'expressly,' and declares only that the powers 'not delegated to the United States, nor prohibited to the states, are reserved to the states or to the people;' thus leaving the question, whether the particular power which may become the subject of contest has been delegated to the one government or prohibited to the other, to depend on a fair construction of the whole instrument. The men who drew and adopted this amendment had experienced the embarrassments resulting from the insertion of this word in the Articles of Confederation, and probably omitted it to avoid those embarrassments. A constitution, to contain an accu-

rate 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, would partake of the prolixity of a legal code, and could scarcely be embraced by the human mind. It would probably never be understood by the public. Its nature, therefore, 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. That this idea was entertained by the framers of the American Constitution is not only to be inferred from the nature of the instrument, but from the language. Why else were some of the limitations found in the ninth section of the first article introduced? It is also, in some degree, warranted by their having omitted to use any restrictive term which might prevent its receiving a fair and just interpretation. In considering this question, then, we must never forget that it is a constitution we are expounding.

"The creation of a corporation, it is said, appertains to sovereignty. This is admitted. But to what portion of sovereignty does it appertain? Does it belong to one more than to another? In America, the powers of sovereignty are divided between the government of the Union and those of the states. They are each sovereign with respect to the objects committed to it, and neither sovereign with respect to the objects committed to the other. We cannot comprehend that train of reasoning which would maintain that the extent of power granted by the people is to be ascertained, not by the nature and terms of the grant, but by its date. Some state constitutions were formed before, some since, that of the United States. We cannot believe that their relation to each other is in any degree dependent upon this circumstance. Their respective powers must, we think, be precisely the same as if they had been formed at the same time. Had they been formed at the same time, and had the people conferred on the general government the power contained in the Constitution, and on the states the whole residuum of power, would it have been asserted that the government of the Union was not sovereign with respect to those objects which were intrusted to it, in relation to which its laws were declared to be supreme? If this could not have been asserted, we cannot well comprehend the process of reasoning

which maintains that a power appertaining to sovereignty cannot be connected with that vast portion of it which is granted to the general government, so far as it is calculated to subserve the legitimate objects of that government. The power of creating a corporation, though appertaining to sovereignty, is not, like the power of making war or levying taxes or of regulating commerce, a great substantive and independent power, which cannot be implied as incidental to other powers, or used as a means of executing them. It is never the end for which other powers are exercised, but a means by which other objects are accomplished. No contributions are made to charity for the sake of an incorporation, but a corporation is created to administer the charity; no seminary of learning is instituted in order to be incorporated, but the corporate character is conferred to subserve the purposes of education. No city was ever built with the sole object of being incorporated, but it is incorporated as affording the best means of being well governed. The power of creating a corporation is never used for its own sake, but for the purposes of effecting something else. No sufficient reason is, therefore, perceived why it may not pass as incidental to those powers which are expressly given, if it be a direct mode of executing them.

"But the Constitution of the United States has not left the right of Congress to employ the necessary means for the execution of the powers conferred on the government to general reasoning. To its enumeration of powers is added that of making 'all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States, or in any department thereof.' The counsel of the state of Maryland have urged various arguments to prove that this clause, though in terms a grant of power, is not so in effect; but is really restrictive of the general right, which might otherwise be implied, of selecting means for executing the enumerated powers. In support of this proposition, they have found it necessary to contend that this clause was inserted for the purpose of conferring on Congress the power of making laws. That without it doubts might be entertained whether Congress could exercise its powers in the form of legislation. But could this be the object for which it was inserted? A government is created by the peo-

ple, having legislative, executive, and judicial powers. Its legislative powers are vested in a Congress, which is to consist of a Senate and House of Representatives. Each house may determine the rule of its proceedings; and it is declared that every bill which shall have passed both houses shall, before it becomes a law, be presented to the President of the United States. The seventh section describes the course of proceedings by which a bill shall become a law; and, then, the eighth section enumerates the powers of Congress. Could it be necessary to say that a legislature should exercise legislative powers in the shape of legislation? After allowing each house to prescribe its own course of proceeding, after describing the manner in which a bill should become a law, would it have entered into the mind of a single member of the convention that an express power to make laws was necessary to enable the legislature to make them? That a legislature endowed with legislative powers can legislate is a proposition too self-evident to have been questioned. But the argument on which most reliance is placed is drawn from the peculiar language of this clause. Congress is not empowered by it to make all laws which may have relation to the powers conferred on the government, but such only as may be 'necessary and proper' for carrying them into execution. The word 'necessary' is considered as controlling the whole sentence, and as limiting the right to pass laws for the execution of the granted powers to such as are indispensable, and without which the power would be nugatory; that it excludes the choice of means, and leaves to Congress, in each case, that only which is most direct and simple.

"Is it true that this is the sense in which the word 'necessary' is always used? Does it always import an absolute physical necessity, so strong that one thing, to which another may be termed necessary, cannot exist without that other? We think it does not. If reference be had to its use in the common affairs of the world or in approved authors, we find that it frequently imports no more than that one thing is convenient or useful or essential to another. To employ the means necessary to an end is generally understood as employing any means calculated to produce the end, and not as being confined to those single means, without which the end would be entirely unattainable.

Such is the character of human language that no word conveys to the mind, in all situations, one single, definite idea; and nothing is more common than to use words in a figurative sense. Almost all compositions contain words which, taken in their rigorous sense, would convey a meaning different from that which is obviously intended. It is essential to just construction that many words which import something excessive should be understood in a more mitigated sense—in that sense which common usage justifies. The word 'necessary' is of this description. It has not a fixed character peculiar to itself. It admits of all degrees of comparison, and is often connected with other words which increase or diminish the impression the mind receives of the urgency it imports. A thing may be necessary, very necessary, absolutely or indispensably necessary. To no mind would the same idea be conveyed by these several phrases. This comment on the word is well illustrated by the passage cited at the bar from the tenth section of the first article of the Constitution. It is, we think, impossible to compare the sentence which prohibits a state from laying 'imposts, or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws,' with that which authorizes Congress 'to make all laws which shall be necessary and proper for carrying into execution' the powers of the general government, without feeling a conviction that the convention understood itself to change materially the meaning of the word 'necessary,' by prefixing the word 'absolutely.' This word, then, like others, is used in various senses; and in its construction the subject, the context, the intention of the person using them are all to be taken into view.

"Let this be done in the case under consideration. The subject is the execution of those powers on which the welfare of a nation depends. It must have been the intention of those who gave these powers to insure, as far as human prudence could insure, their beneficial execution. This could not be done by confining the choice of means to such narrow limits as not to leave it in the power of Congress to adopt any which might be appropriate and which were conducive to the end. This provision is made in a Constitution intended to endure for ages to come, and, consequently, to be adapted to the various crises of human af-

fairs. To have prescribed the means by which government should, in future time, execute its powers, would have been to change entirely the character of the instrument, and give it the properties of a legal code. It would have been an unwise attempt to provide, by immutable rules, for exigencies which, if foreseen at all, must have been foreseen dimly, and which can be best provided for as they occur. To have declared that the best means shall not be used, but those alone without which the power given would be nugatory, would have been to deprive the legislature of the capacity to avail itself of experience, to exercise its reason, and to accommodate its legislation to circumstances. If we apply this principle of construction to any of the powers of the government, we shall find it so pernicious in its operation that we shall be compelled to discard it. The powers vested in Congress may certainly be carried into execution without prescribing an oath of office. The power to exact this security for the faithful performance of duty is not given, nor is it indispensably necessary. The different departments may be established; taxes may be imposed and collected; armies and navies may be raised and maintained; and money may be borrowed, without requiring an oath of office. It might be argued with as much plausibility as other incidental powers have been assailed that the convention was not unmindful of this subject. The oath which might be exacted—that of fidelity to the Constitution—is prescribed, and no other can be required. Yet he would be charged with insanity who should contend that the legislature might not superadd to the oath directed by the Constitution such other oath of office as its wisdom might suggest.

"The good sense of the public has pronounced without hesitation that the power of punishment appertains to sovereignty, and may be exercised whenever the sovereign has a right to act, as incidental to his constitutional powers. It is a means for carrying into execution all sovereign powers, and may be used, although not indispensably necessary. It is a right incidental to the power, and conducive to its beneficial exercise. If this limited construction of the word 'necessary' must be abandoned in order to punish, whence is derived the rule which would reinstate it, when the government would carry its powers into execution by means not vindictive in their nature? If the word 'nec-

essary' means 'needful,' 'requisite,' 'essential,' 'conducive to,' in order to let in the power of punishment for the infraction of law, why is it not equally comprehensive when required to authorize the use of means which facilitate the execution of the powers of government without the infliction of punishment? In ascertaining the sense in which the word 'necessary' is used in this clause of the Constitution, we may derive some aid from that with which it is associated. Congress shall have power 'to make all the laws which shall be necessary and proper to carry into execution' the powers of the government. If the word 'necessary' was used in that strict, rigorous sense for which the counsel of the state of Maryland contend, it would be an extraordinary departure from the usual course of the human mind, as exhibited in composition, to add a word, the only possible effect of which is to qualify that strict and rigorous meaning; to present to the mind the idea of some choice of means of legislation not straitened and compressed within the narrow limits for which gentlemen contend.

"It is to be observed that the clause of the Constitution which embraces the revenue power authorizes Congress to lay and collect taxes, duties, imposts, and excises in order to pay the debts and provide for the common defence and general welfare of the United States, and that the clause which follows after all the express powers of the Constitution authorizes Congress to make all laws which shall be necessary and proper for carrying those powers into execution. If Congress is of opinion that in levying duties on foreign merchandise it will promote the common defence and general welfare of the United States to lay the duties so as to protect our own manufactures from the injurious effect of foreign competition, it is perfectly legitimate and constitutional for it to do so. This is neither a strict nor a latitudinarian construction. It is a necessary and rational construction."

Until the year 1892 no political party or faction in this country, excepting the nullifiers of South Carolina, had ever seriously questioned the constitutional power of Congress to enact protective tariffs. But in the summer of 1892 the representative men of the Democratic party assembled in convention at Chicago to nominate candidates for the offices of President

and Vice-President of the United States. They adopted what in political parlance is called a platform, in which they denounced protection as unconstitutional, and declared that Congress has no authority to lay duties on foreign merchandise for any purpose but to obtain revenue for the uses of the government. This dogma of a tariff for revenue only is specious, but false and delusive. There never was and never can be a tariff for any purpose but revenue. The highest protective tariff that was ever enacted was enacted for the purpose of obtaining revenue for the support of the government, and as we have seen, from the preamble of the law of 1789, its provisions were framed for the express purpose of protecting and encouraging American manufactures. So it has always been until a recent period. It has been claimed, however, that because the candidates nominated by the Democratic party in the summer of 1892 were elected in the autumn of that year, the principle of protection was overthrown by the votes of a majority of the people of the United States. This, however, is not likely to be accepted as final.

See *Note* in Appendix on tariff for revenue only.—J. C. C.

CHAPTER VIII.

Admission of New States.—History and Purpose of the Territorial Clause of the Constitution.—Acquisitions of Louisiana, Florida, California, and other Parts of Mexico.—Annexation of Texas. — The Mexican War. — The So-called Missouri Compromise and its Repeal.—The Dred Scott Case. —The Controversy in Kansas. — Rise of the Republican Party.—Secession of the Southern States.

Seven different periods of unequal length now claim the attention of the reader. They may be stated in the following order:

First, the events which took place at the time of the formation and adoption of the Constitution, and immediately afterwards, which illustrate and explain the scope and purpose of its territorial clause, and the clause for the admission of new states.

Second, the acquisition of Louisiana by a treaty with France in 1803, and the events which followed that acquisition down to and including the admission of Missouri into the Union in 1820.

Third, and as a separate event, the acquisition of Florida by a treaty with Spain in 1819.

Fourth, the annexation of Texas; the war between the United States and Mexico, resulting in the acquisition of California and other Mexican provinces.

Fifth, the so-called Compromise Measures of 1850.

Sixth, the repeal of the Missouri Compromise in 1854, the Dred Scott case in 1857, and the Controversy respecting Slavery in Kansas.

Seventh, the rise of the Republican party, the election of President Lincoln in 1860, and the secession of the Southern States.

With regard to the first of these periods, it must be remembered that the convention of the states by which the Constitution was framed, and the Congress of the Confederation were in ses-

sion at the same time—that is, in the spring and summer of 1787; the former at Philadelphia, the latter at New York. How the unsettled territory within the limits of the United States became a matter of grave concern, first in the adoption of the Articles of Confederation, and afterwards in the formation of the Constitution, has been explained in the first volume of this work. It has there been shown that very different views were held after the Revolution in regard to the title to those lands. On the one hand, some of the states claimed that these lands were within their chartered boundaries, and that the title of the crown of Great Britain had devolved upon them by the accomplishment of their independence. But, on the other hand, it was claimed that a war which had been carried on by a common government and for the common interest of all the states, must be held to have acquired for the United States the whole title of the British crown to these lands. There were, too, between the states which claimed an exclusive title to these lands, disputed questions of their respective boundaries, which still further complicated the whole matter. It was a controversy that could be terminated only by a cession of the claims of the different states to the United States. We have seen how it delayed the accession of Maryland to the Articles of Confederation, and how the establishment of the Confederacy was at length effected in 1781 by the proceedings of New York, New Jersey, Delaware, and Maryland.[1] The cession by New York of its claims to western territory was made to the Confederacy on the 1st of March, 1781; the cessions of Virginia, Massachusetts, and Connecticut followed the establishment of the Articles of Confederation. These cessions comprehended the claims of those states not only to the soil, but also to the jurisdiction of the region of country lying to the northwest of the river Ohio. They were made in order to perfect and cement the Union contemplated under the Articles, but the governing body of that Union was destitute of any defined authority to deal with such a property or such a political jurisdiction. While the purpose of these cessions was to enable "the United States in Congress assembled" to dispose of these lands for the common benefit of all the states, and to provide for the formation of new states in the territory ceded,

[1] Ante, I. 90–95.

to be admitted into the Union, the Confederation had no proper authority to do either of these things. When, therefore, we reach the period of the formation of the Constitution, it is important to connect the proceedings of the Congress and the proceedings of the Federal Convention in regard to these territorial possessions of the old Union which the Constitution was to supersede. The framers of the Ordinance of 1787, which excluded slavery or involuntary servitude save for crime from the whole of the region northwest of the Ohio, doubtless acted upon the assumption that the convention, in the draft of a Constitution which that body was preparing, would provide for some proper national authority to deal with the national domain. The ordinance was passed by the Congress on the 13th of July (1787), and a copy of it was communicated by Richard Henry Lee to General Washington, the president of the convention, two days after its passage.[1] So that, with the ordinance before it, the convention had to act upon this state of things: first, that complete cessions of their claims to unoccupied lands had been made by the states of New York, Virginia, Massachusetts, Connecticut, and South Carolina, to the Union formed by the Articles of Confederation; secondly, that the cessions of such state claims were yet incomplete, for North Carolina and Georgia had not yet transferred their claims to the United States; thirdly, that what had been done, or was expected to be done, contemplated that the unsettled territory should be applied to the common benefit, so far as it then had or might hereafter have a pecuniary value as landed property, and that so far as it might become the seat of new states, they should be admitted into the Union on an equal footing with the original states; fourthly, that what had been done by the ordinance in respect to the territory northwest of the Ohio was to make temporary provision for the government of that region, the title to which had become complete in the United States. The government provided by the old Congress for that region of country could not continue unless the Constitution should confer on the United

[1] Correspondence of the American Revolution, IV. 174; Writings of Washington, IX. 261. The ordinance was published at length in a Philadelphia newspaper on the 25th of July, most probably by Washington's direction. For copy of the Ordinance of 1787, see Appendix II.—J. C. C.

States the necessary powers to continue it. The ordinance provided for certain officers to govern the territory, and they were to be appointed by and to be responsible to the Congress of the Confederation. But after the adoption of the Constitution they must be officers of the United States, appointed and commissioned by the president, and they must exercise powers derived from the United States under the Constitution. The ordinance provided for the establishment of new states in the territory, and declared that when any of them had sixty thousand free inhabitants it should be admitted into the Union on an equal footing with the original states. But it prescribed no mode of admission and no rule of voting on the admission. In fact, the Congress of the Confederation had no power to admit new states formed in that region of country. The ordinance embraced many admirable provisions of fundamental law, to be of perpetual obligation in new communities which were to be moulded on principles of right and justice. Thus it made the obligation of contracts inviolable by legislative power. But the Congress of the Confederation had no machinery by which such a prohibition could be made effectual. The want of constitutional power over the conditions of social life in the territory must be supplied in the Constitution. Even the prohibition against the introduction of slavery, although declared by the ordinance to be of perpetual force, could not remain so unless the new government of the Union should be clothed with ample authority to confirm what the ordinance had undertaken to effect.[1] But are the territorial clause

[1] On the 7th of August, 1789, the Congress passed an act which contained the following recital: "*Whereas*, in order that the Ordinance of the United States in Congress assembled for the government of the territory northwest of the river Ohio, *may continue to have full effect*, it is required that certain provisions should be made so as to adapt the same to the present Constitution of the United States." This act then provided for the appointment by the president of all officers who, by force of the Ordinance, were to have been appointed by the Congress of the Confederation, and for their commissions in the manner required by the Constitution; and it empowered the secretary of the territory to exercise the powers of the governor in case of the death or necessary absence of the latter. Fourteen members of the Congress which passed this act had been members of the convention which framed the Constitution; and Washington, who signed the act as president, had also been president of the convention. The first Congress, therefore, that sat under the Constitution, asserted a power to prohibit slavery

of the Constitution and the clause for the admission of new states to be interpreted as if they were made only in reference to the territory northwest of the Ohio? If we confine our view of historical events to those which preceded or accompanied the formation of the Constitution, we shall find very satisfactory proof that such interpretations would be incorrect; and if we follow out the history of subsequent enlargements of the limits of the United States, we shall find conclusive proofs that this interpretation has been, as it ought to have been, rejected by the legislative, the executive, and the judicial constructions of the Constitution. For example, I have mentioned the cession by South Carolina to the United States made in August, 1787, when the Federal Convention was framing the Constitution. Notwithstanding there has been some doubt whether any territory actually passed by this cession, or what was the extent of the tract that did pass, there can be no doubt that the state of South Carolina, in making the cession, and the Congress in accepting it, considered that it transferred to the United States both the soil and jurisdiction of an extensive and important part of the unsettled territory ceded by the Crown of Great Britain by the treaty of peace at the close of the Revolutionary War. It was assumed at the time of this cession that the claim of South Carolina covered the tract of country out of which one part of the states of Mississippi and Alabama were afterwards founded, the other part of these states being formed out of territory ceded by Georgia in 1802.[1] Thus the titles of New York, Virginia, Massachusetts, Connecticut, and South Carolina, as well of soil as of jurisdiction, to all ungranted lands lying within what they claimed to be their chartered boundaries, whatever those titles were, had been transferred to the United States before the Constitution was finally framed and submitted to the people of the United States for their adoption. At the same

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within the territory of the United States northwest of the Ohio, not on the ground of a compact between the original states and the people and states in the new territory, but because the Constitution had authorized Congress to make all needful rules and regulations respecting the territory.

[1] The cession of South Carolina was made on the 8th of August, 1787; that of North Carolina on the 25th of February, 1790; and that of Georgia on the 24th of April, 1802.

time it was a confident expectation that North Carolina and Georgia would complete the plan so far executed by New York, Virginia, Massachusetts, Connecticut, and South Carolina; and along with this expectation must be taken the fact that the opinion was held by many important persons that the title to all the unsettled and ungranted country was vested in the United States by the treaty of peace, and needed, in truth, no cessions from the individual states, excepting for the purpose of harmony and concord. These great facts throw a flood of light upon the meaning and scope of the territorial clause of the Constitution, and the clause which immediately precedes it for the admission of new states into the Union. They show that the territorial clause was designed to confer on Congress a full power to govern whatever territory had become or might become the property of the United States out of the ascertained limits of any state; and that with respect to the territory northwest of the Ohio the Constitution would enable the new Congress to take up and confirm the ordinance of 1787, and to supply the powers which the Articles of Confederation did not contain. Here, then, we may leave the events which were taking place at the formation and adoption of the Constitution, and may come to those which occurred in respect to the territory ceded by the several states above named, for the purpose of observing how the matter of slavery was dealt with south of the Ohio before the acquisition of Louisiana.

The tracts of country ceded to the United States by the states above mentioned lay east of the Mississippi River, to the eastern shore of which some of these claims were supposed to extend. The cessions were accepted on the understanding that the states which surrendered their claims were entitled to make conditions of the transfer. Before the year 1803, when Louisiana was acquired, Congress, acting under the Constitution, legislated four times in reference to slavery in territories; twice against it, and twice in favor of it. Thus, on the 7th of August, 1789, an act was passed for the government of the territory northwest of the Ohio, adapting the provisions of the ordinance to the Constitution, and continuing in force the article which prohibited slavery as well as others of its provisions. On the 7th of May, 1800, Congress passed an act for the government of the

territory of Indiana, which extended to that territory the prohibition against slavery that was embraced in the ordinance. On the other hand, Congress, on the 2d of April, 1790, passed an act accepting from North Carolina a cession of the territory which is now the state of Tennessee; and this cession was made and adopted upon the condition that "no regulation made or to be made shall tend to emancipate slaves." Tennessee was organized as a territory by an act passed May 20, 1790, for the government of the territory south of the Ohio, making it like the government of the Northwestern Territory, but recognized and confirming the condition on which the cession had been accepted. Under the government thus established slavery continued to exist until the territory became the state of Tennessee. Similar legislation recognized and confirmed slavery in the territory ceded by Georgia, which became first the territory and afterwards the state of Mississippi. One other stipulation of the cession was that the ordinance of July 13, 1787, "shall in all its parts extend to the territory contained in the present act of cession, that article only excepted which forbids slavery.[1]

By an act of Congress passed May 7, 1800, the Northwestern Territory was divided into two separate governments. On the 30th of April, 1802, an act was passed to enable the people of the Eastern Division to form a state constitution, and for the admission of the state into the Union. The state thus formed was the state of Ohio, which was finally admitted into the Union by an act approved February 19, 1803. Subjected, like all the rest of the Northwestern Territory, to the provisions of the ordinance of 1787, the state of Ohio came into the Union as a state in which slavery was perpetually interdicted. The cession of the Northwestern Territory, made by Virginia in 1783 and accepted in 1784, was modified in 1788 so as to allow of the formation out of it of not less than three and not more than five states. Indiana was made a separate territory in 1800, two years before Ohio became a state. It is apparent, therefore, that

[1] The first act for organizing a government in this territory was passed April 7, 1798, and it excepted and excluded the anti-slavery clause of the ordinance. The limits of the territory were afterwards amicably settled with Georgia, and she released her claims on the condition recited in the text. The territorial government was established by another act, passed May 10, 1800.

for a period of eleven years after the adoption of the Constitution Congress acted upon the construction that its power "to make all needful rules and regulations respecting the territory or other property belonging to the United States" extended to all territory ceded by the individual states to the United States, whether so ceded before or after the Constitution was established; that this power embraced a full authority to establish civil government; that it comprehended likewise a full authority to legislate concerning the social relations of the inhabitants while the territorial condition should continue; that a regulation concerning slavery was a "needful" one, if in the judgment of Congress it was necessary or expedient; and that in two cases it was deemed needful to prohibit, and in two it was deemed needful to allow and confirm it.

We now come to the second period, in which the United States first acquired territory the title to which was not derived from the Crown of Great Britain, either to the United States, or to any of the separate states. Extending this period from the purchase of Louisiana, by the treaty with France in 1803, down to the admission of Missouri into the Union in 1820, we have to note the legislation that took place with reference both to the region acquired from France west of the river Mississippi and to the remaining portions of the Northwestern Territory, the whole of which was subject to the provisions of the ordinance of 1787.[1]

As in the period which followed the establishment of the Constitution, so in the seventeen years which followed the acquisition of Louisiana, the legislation of Congress embraced two classes of acts; in one of which slavery was recognized and confirmed, while in the other it was interdicted. To the first class belongs the legislation of 1804, 1805, and 1812, relating to the territories of Louisiana, Orleans, and Missouri. To the second class belongs the legislation of 1805 and 1809, relating to the territories of Michigan and Illinois.

Notwithstanding the opinion once advanced that the treaty

[1] The reader will remember that while the ordinance of 1787 applied to the whole of the so-called Northwestern Territory, the territory of Indiana had been organized in 1800, and that in 1802–3 Ohio was enacted into a state and admitted into the Union.

of 1803, by which the United States acquired from France the country called Louisiana, restrained the United States from prohibiting the existence of slavery in any part of it, it is apparent from the course of the legislation that Congress, in recognizing and confirming it in the cases of Louisiana, Orleans, and Missouri, acted upon the same view of its constitutional power over the whole subject of slavery in territories on which it had acted in the former period. In the cases of these three territories, which were inhabited at the time of the transfer by subjects of France holding slaves as property, there was a stipulation in the treaty which provided that "The inhabitants of the ceded territory shall be incorporated in the Union of the United States, and admitted as soon as possible, according to the principles of the Federal Constitution, to the enjoyment of all the rights, advantages, and immunities of citizens of the United States; and in the meantime they shall be maintained and protected in the enjoyment of their liberty, property, and the religion they profess." In legislating to carry out this stipulation in regard to all those portions of the ceded territory which were transferred to the United States "in full sovereignty," Congress exercised the same constitutional power to make all needful rules and regulations respecting the territory belonging to the United States that it had previously exercised in legislating for tracts of country ceded by certain states of the Union. In the cases of cessions made by the states Congress had deemed a regulation recognizing and confirming the slavery already existing as a needful one, because the cession had been accepted on the condition that this species of property should not be interfered with. In the case of the inhabited parts of the Louisiana territory Congress deemed a recognition and confirmation of the existing slavery a needful regulation.

The construction which Congress gave to the territorial clause of the Constitution was that it embraced a full legislative power over the conditions of social life in the territories of the United States so long as they should remain territories. I now pass on to the next important event in this series of legislation under the third section of the fourth article of the Constitution.

The region acquired by the United States from France, under

the name of "Louisiana," was the tract of country west of the river Mississippi, extending north from the mouth of that river.[1]

The memorable settlement made in 1820, and known as the "Missouri Compromise," originated and was perfected as follows: Missouri was at first a part of the region called Louisiana; but by an act of Congress passed June 4, 1812, it was provided that "the territory heretofore called Louisiana shall hereafter be called Missouri."

Arkansas was made into a territory out of the southern part of Missouri by an act passed March 2, 1814. In the Fifteenth Congress, on the 18th of December, 1818, a memorial of the Legislative Council and House of Representatives of the territory of Missouri was presented to the House of Representatives of the United States, in the name and behalf of the people of Missouri, praying that they might be permitted to form a constitution and state government, with described boundaries, and be admitted into the Union on an equal footing with the original states. A

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[1] It was a disputed question, at the time when the case of Dred Scott came before the Supreme Court of the United States, whether the clause of the treaty which, until the inhabitants should be admitted into the Union, secured to them protection in the enjoyment of their liberty, property, and religion, bound the United States to recognize a right to go into the uninhabited parts of the ceded territory with slave property, and to maintain it there. All that part of the ceded territory which lay north of 36° 30′ north latitude, and west and north of what is now the State of Missouri, was a wilderness, inhabited only by savages, whose possessory title to the soil had not then been extinguished. If the treaty secured to an inhabitant of Louisiana, Orleans, or Missouri, not only protection in his rights of property where he was, but a right to take that property into the then uninhabited region, and maintain it there against any laws which the United States might see fit to make in respect to that region, the United States had subjected their internal affairs to the control of a foreign nation.

But the better opinion undoubtedly was that the stipulation of the treaty was temporary, and that as soon as any part of the ceded territory was incorporated into the Union it ceased to have any effect, and the inhabitants became possessed of the same rights as all other citizens of the United States, under the Federal Constitution.

NOTE A.—Here occurs an hiatus, best filled by the dissenting opinion of Mr. Justice Curtis in the Dred Scott case, 19 Howard, 393.—J. C. C.

NOTE B.—In the Appendix will be found a "Note to Chapter VIII.," concerning Florida, Spain, California, the Treaty of Guadalupe Hidalgo, and other subjects within the intended scope of this chapter, but for which the editor finds no manuscript.—J. C. C.

bill for this purpose was introduced and debated. The discussion on it foreshadowed the sectional feeling that was to follow. The bill was passed in the House, but was lost in consequence of a disagreement with the Senate on a single amendment. In the Sixteenth Congress, on the 8th of December, 1819, the memorials relating to the admission of Missouri were referred to a select committee. On the same day an application of that part of Massachusetts known as the district of Maine, presented on behalf of a convention, asked for admission into the Union before the last day of January, 1820, as a separate and independent state, and on an equal footing with the original states, by the style and title of "The State of Maine." This was referred to a select committee, which reported a bill for the purpose; and after a motion by Mr. Floyd, of Virginia, to make it the order of the day for the second Monday in January, had been negatived, it was made the order of the day for December 22. In the meantime, on the 15th of December, a resolution had been introduced by Mr. Taylor, of New York, for the appointment of a committee to consider the expediency of prohibiting by law the importation of slaves into all the territories of the United States west of the Mississippi. Such a committee was appointed, and thereupon Mr. Taylor moved to postpone the bill authorizing the people of Missouri to form a state constitution until the first Monday in the ensuing February. But it was postponed no later than the second Monday in January.

On the 21st of December a bill was reported for the admission of Maine, and was made the order of the day for the 22d. It was not taken up, however, in Committee of the Whole until the 31st of December. A difference of opinion then arose respecting the adjustment of the representation of Maine and Massachusetts, but instead of taking action on this part of the subject the House finally ordered the bill to be engrossed and read the third time, and on the 3d of January, 1820, it was passed. When the Missouri bill was taken up, on the 26th of January, there ensued a struggle on the restriction of slavery, proposed by Mr. Storrs, of New York, providing that forever thereafter neither slavery nor involuntary servitude (except the punishment of crimes whereof the party shall have been duly convicted) shall exist in the territories of the United States

lying north of the 38th degree of north latitude, and west of the river Mississippi, and the boundaries of the state of Missouri, as established by the bill; provided that the fugitives from labor or service claimed in any of the states might be lawfully reclaimed, and conveyed, according to the laws of the United States in such cases, to the person claiming such labor or service. On this a desultory debate ensued, ranging over the whole field, and embracing the topics of slavery, the bearing of the treaty with France on the rights of the inhabitants, the power of Congress to impose conditions which would bind the people of a state, and many kindred topics. This debate extended from the 26th of January to the 2d of March, 1820.

It is necessary to explain here how the admission of Missouri became complicated for a time with the admission of Maine. Henry Clay, of Kentucky, was at this time Speaker of the House. On the 30th of December, 1819, when the bill for the admission of Maine was taken up in Committee of the Whole, Mr. Clay left the chair and spoke as follows:

(I cite at great length from official reports of the debate.)

He was not opposed to the admission of the state of Maine into the Union. The intelligence and numerical strength of her population, her extent of territory, her separation from old Massachusetts by intervening territory, her position in relation to the other members of the Confederacy, all concurred to recommend the measure now proposed. But, before it was finally acted on, he wished to know whether certain doctrines of an alarming character—which, if persevered in, no man could tell where they would end—with respect to a restriction on the admission into the Union of states west of the Mississippi, were to be sustained on this floor. He wished to know what was the character of the conditions which Congress had a right to annex to the admission of new states; whether, in fact, in admitting a new state there could be a partition of its sovereignty. He wished to know the extent of the principles which gentlemen meant to defend in this respect; and particularly the extent to which they meant to carry these principles in relation to the country west of the Mississippi. On this subject, he said, there should be a serious pause; the question should be maturely weighed before this new mode of acquiring power was resorted

to which was proposed in regard to the state to be formed out of the present territory of Missouri. Heretofore, when the population and extent of a territory had been such as to entitle a territory to the privilege of self-government and the rank of a state, the single question had presented itself to admit or reject it without qualification. But new doctrines had sprung up on this subject, and, before we take a single step to change the present relations of the members of the Confederation, there should be a distinct understanding between the representatives from the various parts of the country as to the extent to which they are to be carried. If beyond the mountains Congress can exert the power of imposing restrictions on new states, can they not also on this side of them? If there they can impose hard conditions—conditions which strike vitally at the independence and power of the states—can they not also here? If the states of the West are to be subject to restrictions by Congress while the Atlantic states are free from them, proclaim the distinction at once; announce your privileges and immunities; let us have a clear and distinct understanding of what we are to expect. He would not, however, press this part of the subject, but proceed to notice another point which presented itself in respect to this bill, wishing the honorable gentleman under whose auspices this bill had been introduced into the House distinctly to understand that he had not the slightest indisposition to the reception of Maine into the Union on the footing of the other states of the Union.

Mr. Clay then adverted to the section, which had been stricken out of the bill, respecting the representation of Maine on this floor. Looking back to 1791, what then took place on a similar subject with this? The state of Kentucky, if he was not egregiously mistaken in the history of the times, was delayed eighteen months before she was permitted to come in, until Vermont also was ready; and the two states would be found connected together in the act providing for their representation in Congress. He asked whether this precedent from the statute-book might not be advantageously followed in regard to the two states now claiming admission into the Union, one being from the Northeast, the other from the West, as was the case in 1791. This, he said, was worthy of consideration. The precedent was from the early, and, as far at least as regards the construction of

the Constitution under which we act, the best times of the Republic. Whether such a union of the two states took place now or not, he wished to know what was to be done on the subject of the representation of Maine? Did the gentleman mean to follow up this bill by another providing specially for that object? The committee, he thought, ought not to rise and report the bill in its present shape without satisfactory information on that point.

Mr. Holmes rose in reply. The application from the people of Maine to be admitted into the Union as one of the states, he said, was a distinct subject presented to the consideration of the committee; and the question was, Shall Maine be, or not be, admitted into the Union? Upon that question he was prepared to support the affirmative. The other question, relative to the apportionment of representation between Maine and Massachusetts, he was ready to discuss now or at any other time; and the only reason why he had wished to expunge the section relative to that point from the present bill was that there was some uncertainty, from the practice which had hitherto prevailed on the admission of new states, as to the apportionment of the representation. For himself, he had entertained no doubt on the subject until he saw the precedent to which the gentleman had alluded. He had felt, no doubt, that when a state is formed from a portion of another state, and the relative proportion of the territory and population known, the representation should stand as at present until a new census was taken. But, he said, this precedent, with regard to Kentucky, had staggered him. That state had been formed from a portion of the territory of Virginia, and two representatives on this floor were given to Kentucky without diminishing the number of representatives from the state of Virginia. This was a precedent which he thought did not exactly accord with the principles of the Constitution, which laid down a different rule for the apportionment of representation. It was possible, he said, there was some reason, which we do not know, which induced the course pursued on that occasion. Possibly it was then determined that if a state sending fifty representatives should be divided into two states the original state should continue to send her fifty members and the new state should send twenty-five. If Congress had so determined, he apprehended they had determined against the provisions of the Constitution. Prob-

ably Congress then thought they had the power which they exercised, inasmuch as the existing apportionment of representatives among the states had been made by the framers of the Constitution, and not according to an exact enumeration of the people. Probably the people in that portion of the territory had increased so much faster than the rest as, in the opinion of Congress, to entitle them to the two representatives which were thus additionally given. But this precedent proved that, between one apportionment and another, the Congress have a right to modify that apportionment where circumstances make it necessary. However it might be settled in matter of form in the present case, the parties concerned would be satisfied that Maine has the seven representatives, which according to the last enumeration that portion of Massachusetts is entitled to, and Massachusetts would be content to have the remaining thirteen representatives to which her population entitled her. If the doctrine established in the case of Kentucky should be sustained on this occasion, Massachusetts would still have her twenty representatives and Maine would be entitled to seven. That doctrine would be monstrous, and he should not claim for Massachusetts the advantage of the precedent. The truth was, he said, in regard to this whole subject, that the separation of Maine from Massachusetts depended on a contingency, and Congress could defeat it if they would. Unless the consent of Congress thereto should be given between now and the 3d day of March next, the whole proceeding which had taken place was void, and the question would be referred back to Massachusetts. Several attempts had been made within the last twenty years to attain the object, which, as far as regarded the consent of Massachusetts and the people of Maine, was now accomplished. We have now a population of three hundred thousand, and are separated by the intervention of another state from old Massachusetts. Will any one say we ought not to be admitted into the Union? We are answered, Yes; and that, unless we will agree to admit Missouri into the Union unconditionally, we ought not to be admitted! I hope the doctrine did not extend quite as far as that.

[Mr. Clay here said, in an undertone, "Yes, it did."] I hope, said Mr. Holmes, the gentleman does not mean to put the question on that footing. The objects are wholly unconnected; and

if, on the subject of the proposed restriction on Missouri, I held not the opinion which I have heretofore expressed, if I were to be told that Maine was not to be admitted into the Union unless Missouri was also unconditionally admitted, I should forfeit the chance of Maine rather than forfeit my opinion. Mr. Holmes said he hoped, therefore, that the gentleman did not mean to connect this question with that; that he did not mean to say that, though Maine is entitled to admission, though her claims are fair and undeniable, she shall not be admitted unless another state should be admitted whose claims may not, in the opinion of a majority of this House, stand on the same footing. He trusted that Missouri would be admitted. The doctrines which the Speaker considered as dangerous he, too, disclaimed; but he equally disclaimed the doctrine that Missouri and Maine should be put on the same footing. They stand differently. In regard to Maine there is no contested question of restriction or non-restriction; she stands on her own ground; she shows that she has fulfilled the conditions required of her by Massachusetts, and asks your consent, which is necessary to her taking rank among the states. And how is it suggested that you shall answer her? Why, inasmuch that there is a dispute between Congress and the territory of Missouri, and there is no dispute respecting Maine, she is not to be admitted unless Missouri is admitted without condition! Mr. Holmes said he hoped these two subjects would not be united. He did not perceive any connection between them. He was perfectly willing to go into the consideration of the question of the representation of Maine, but he did not think it necessary now.

Mr. Livermore, of New Hampshire, said the question before the committee he took to be simply this: Whether the committee should rise and report the bill now before them. He asked the honorable gentleman from Kentucky whether he was of opinion that Congress could impose any restriction on Maine? That question the gentleman would, he knew, answer in the negative. Why, then, was the time of the House taken up in an unnecessary discussion? It had been said that if restrictions were proposed on Missouri, Maine and Missouri ought to come into the Union, hand and hand together. Now, Mr. Livermore said, it was very well known that every one who contended for the re-

striction on the new states beyond the Mississippi had gone on the ground that the territory acquired by France stood on a distinct footing, and not on the same footing as the old states. Why did not the gentleman, when the state of Alabama was admitted in the Union by a bill passed at this session, make the objections which he had now raised to the admission of Maine? That bill, however, had passed through this House with as much celerity as was usual with bills of a public nature, to say no more of it. If no difference of opinion existed as to the propriety of admitting Maine into the Union, why was the House impeded in its progress through the bill by arguments which applied to another question and not this?

Mr. Clay remarked that since the question was put he would say at once to the gentleman from Massachusetts, and his worthy friend the chairman of the Committee on the Post-office and Post Roads, with that frankness which perhaps too much belonged to his character, that he did not mean to give his consent to the admission of the state of Maine into the Union as long as the doctrines were upheld of annexing conditions to the admission of states into the Union from beyond the mountains. Equality is equity. If we have no right to impose conditions on this state we have none to impose them on the state of Missouri. Although he did not mean to anticipate the argument on this subject, the gentleman from New Hampshire would find himself totally to fail in the attempt to establish the position that, because the territory of Missouri was acquired by purchase, she is our vassal, and we have a right to affix to her admission conditions not applicable to the states on this side of the Mississippi. The doctrine, said Mr. Clay, is an alarming one, and I protest against it now, and whenever or wherever it may be asserted, that there are no rights attaching in the one case which do not in the other; or that any line of distinction is to be drawn between the Eastern and the Western States. It is a distinction which neither exists in reason, nor can you carry it into effect in practice. But, Mr. Clay said, he did not mean to go into this subject. It was proper and fitting, however, in his opinion, that this bill should be delayed.; that the House should not act on the one bill until it could also act on the other for the admission of a state in the West. But it seemed there was a particular aversion

to the connection of Maine and Missouri. If he was not much mistaken, Mr. Clay said, those who now objected to such an alliance were the advocates of the alliance in the case which he had quoted in the precedent, and had succeeded in keeping Kentucky out of the Union for some twelve or eighteen months because Vermont was not ready to come in; and, when ready, connected them in the same bill. I am glad to hear, said he, from the gentleman from Massachusetts, that the old and venerable commonwealth has given to Maine till the 3d of March to come into the Union, or rather has allowed to Congress till the 3d of March to admit her. It is a good long time to the 3d of March—at least sixty days—and in that time much light may be shed on the principles which are to govern us in the admission of new states into the Union. What occasion, then, for haste? The gentleman from Massachusetts was not unwilling to follow a part of the precedent of 1791; but when the other part of it was suggested for his imitation it was most unreasonable! The gentleman had himself shown that it was not now proper to act conclusively on this bill; for has he not told the House, asked Mr. Clay, that he has not prepared a proposition respecting the representation of Maine? When will he do it? Supposing we have a right to take seven representatives from Massachusetts and give them to Maine, what will be the condition of the gentlemen who now represent those seven districts of Massachusetts? But it was a question whether it was in the power of Congress to disfranchise Massachusetts by taking from her seven or any other number of her representatives. These matters ought to be duly considered, and the gentlemen should be prepared to act upon them. Why pass this bill with such speed, and after it passes proceed to consider the difficulties respecting the subject which the gentlemen acknowledged to exist? Suppose, after the law was passed, and difficulties respecting the representation in Congress should be discovered to be so insuperable that Maine could have no representation. Mr. Clay said he presumed she would not be willing to come into the Union on that footing, while her present situation was different, that portion of Massachusetts having, in fact, seven representatives in Congress. Suppose, said he, I was mistaken in my doctrine respecting restrictions on new states, and that you have a right to measure justice by different stand-

ards, why do not the friends of restriction come forward and propose a restriction on Maine—if not the same as that proposed to be imposed on Missouri, on some other point? To pass this bill in its present shape, he said, would be an act of half legislation; and it ought not to be sent to the other branch of legislature without giving to the state of Maine (what was of essential importance) the representation in the Union which was due to its numbers and required by its interests. If the gentleman wanted time to prepare the necessary amendments on this subject, Mr. Clay said, he would give him time by postponing the bill, at the same time repeating that he was not desirous to defeat the admission of Maine into the Union.

Mr. Whitman, of Massachusetts, said that the gentleman had avowed his object in opposing the progress of this bill with his usual and characteristic frankness, which he hoped would constitute a sure pledge that he would give up his opposition if it should appear not to be well founded. The gentleman had expressed his wish to unite the two questions of Maine and Missouri. It had sometimes occurred, Mr. Whitman said, that when one branch of a legislature refused its assent to a measure which had passed the other, that the object of the latter was obtained by tacking the obnoxious proposition to some favorite measure of the former; and as he understood the honorable speaker, he had declared that he would go on this principle in the admission of new states into the Union; and that in this case he would not admit Maine unless tacked to Missouri; he would admit both at the same time, and both on the same principle. Now there was no similarity in the two cases. The speaker would certainly do the gentlemen who were opposed to the admission of Missouri unconditionally into the Union the justice to believe that they were honest and sincere in their opposition to it, and that they did believe that Congress has a right to impose conditions on her admission, and they did further believe the proposed condition to be expedient. Here, then, was a part, perhaps a majority, of Congress believing in the right of annexing conditions to the admission of Missouri into the Union. How was it with regard to Maine? Why, not one individual member in this House—not the honorable speaker himself—supposed that any condition ought to be annexed to her admission; on the contrary, he had

avowed his belief that she ought to be admitted without condition. Ought not every case to stand on its own bottom? Would the speaker consider it consistent with sound principles to say that he believed Maine ought to be admitted, and yet refuse to admit her unless Missouri should also be received, as he wishes, unconditionally into the Union? Such a refusal would be a mere political expedient; it would be to accomplish, by improper means, what could not otherwise be accomplished; a contrivance to get the House to do what they do not approve, or leave them the alternative of omitting to do what, even according to the speaker's own position, ought to be done. Was it proper, Mr. Whitman asked, to make the interest of Maine a sacrifice to such a policy? Was it Maine, he asked, who stood in the way of the admission of Missouri, or was it something else? And, if not, ought Maine to fall a sacrifice to a scheme for compelling Congress to admit Missouri without any condition? He hoped the honorable speaker would revise his decision; and, if he did, Mr. Whitman was sure he would decide differently.

With regard to other grounds traversed by the speaker, which seemed only to come in aid of his main object, Mr. Whitman confessed himself to be in more doubt. He did not believe it was in the power of Congress to say that of twenty representatives which Massachusetts has on this floor seven should be sent home; nor did he believe it in the power of Congress to select the seven to be sent home. This difficulty, however, he believed, might be gotten over, but, he feared, not in the way which had been contemplated. He believed Congress might make a provision that the seven representatives from the districts in Maine should, for the present Congress, be considered as the representatives of Maine, and the remaining thirteen as the representatives of Massachusetts. This course, while within the power of Congress, could not but be acceptable to Massachusetts as well as to Maine. By authorizing the convention of the people of Maine to form a constitution of state government, Massachusetts must have been considered as consenting to have her representation curtailed. If the section reported by the select committee had been permitted to remain in the bill, a proviso of this description might have been added, and in this way every difficulty have been removed. However, Mr. Whitman said, he had not objected to

striking it out in deference to what he supposed the better judgment of several gentlemen from Massachusetts and Maine, who thought it better that this provision should be the subject of a separate bill. With respect to the apportionment of representation, he took occasion to say, he did not believe Congress was under any necessity of making it at the moment after the census was taken; he thought it might be made at any other and intermediate time. Whatever arrangement might be made, so as to reserve their respective portions of representation, he was sure both Massachusetts and Maine would be satisfied. The former would not expect to hold her whole present representation after the severance of Maine, as Virginia did after the state of Kentucky was formed from the territory within her limits.

The honorable speaker had given the House a piece of history which he had never heard before. He was apprehensive the honorable speaker might have been misinformed. He understood him to have said that Vermont and Kentucky had been tacked together, and the admission of one had been necessary to that of the other; and, further, that the objection to the admission of Kentucky came from the eastern and northern sections of the Union. This he had never heard before. If the gentleman judged from the fact that the statute-book showed them both to have been admitted at the same time, it was as fair to infer that the objection came from the South as that it came from the North. But be the fact in that case what it may, it ought to make no difference in regard to the admission of Maine. Because Congress may at any former period have done wrong, will the honorable speaker insist upon our doing so too. The speaker, he said, had not commended, but rather reprobated, the alleged delay of the admission of Kentucky for the purpose of including Vermont; and if he reprobated it in that case it was because the thing in itself was incorrect. If so, certainly the speaker would not persist now in contending for a measure which was then wrong, but would give it up as incorrect at all times. With respect to the question of imposing conditions on the admission of new states, Mr. Whitman pointed to the act for the admission of Louisiana into the Union. Were there no conditions there, he asked, which conflicted with the absolute sovereignty of an independent state? There were conditions imposed on Louisi-

ana infinitely more numerous than were proposed to be imposed upon Missouri. She was required to make and maintain a variety of municipal regulations which no other state had been required to do. One stipulation was that the trial by jury should be established and maintained. What principle could be nearer and dearer to the hearts of Americans than the right of establishing a judiciary, or regulating it as they thought proper? Yet, Mr. Whitman said, he had heard no one object to these restrictions. In relation to the states admitted in the Western country, provisions had been inserted in the act of admission, requiring that the lands of the United States should not be taxed; and not only so, but that lands of individuals, the lands given to soldiers, should not be taxed for a certain number of years. He asked whether the power of laying taxes was not one of the most sovereign which could be exercised; and if, in a particular like this, a condition could be imposed by Congress, could they not likewise impose the condition which had been contemplated in respect to Missouri? Mr. Whitman concluded by declaring the main ground taken by the honorable speaker to be wholly untenable, and that the only serious objection he had raised to the progress of the bill could be obviated, by an amendment, with the greatest ease.

Mr. Holmes again rose. The honorable speaker, in the course of his remarks, had said that equality is equity. So it is. I am disposed to proceed and apply that principle to the present case, and I ask the gentleman to go with me and do likewise. The United States were thirteen in number when they formed the present compact; and among its provisions was one that new states may be admitted into the Union to be formed out of the original with the consent of the states and of Congress. And how had equality proceeded since the adoption of the Constitution? A state had been formed from a part of the territory of Virginia, and one from North Carolina, and Ohio, Louisiana, Indiana, Mississippi, Illinois, and Alabama had been successively admitted from the territories. No division of any state had in the meantime taken place in the North or East, nor had any new state been erected there.

He trusted that he should not be accused of ever acting contrary to the principles of equality or equity; he had no wish that the North and East should have privileges not enjoyed by the

South and West — a doctrine against which he had protested in dangerous times, and against which he now protested. We are now told that our application is just, and we have certainly not been importunate; yet, unless we will do towards another section of the Union what we ourselves believe to be wrong, you will not do what in your consciences you believe to be right. The honorable speaker was mistaken, Mr. Holmes said he believed, with respect to the union of Kentucky with Vermont in their admission. Vermont was a separate state during the war; raised her own troops and paid them, and had a claim to admission wholly independent of any other state. Two representatives, however, were given to each state; the same representation being given to Kentucky, who was already represented, as to Vermont, who was before unrepresented. This certainly showed no particular partiality or favoritism to the East. As regards the present representation, it was not for Congress to decide who were to continue to be, and who to cease to be, members of the present Congress; but it was for this House, which was the sole judge of the elections and privileges of its own members. Congress had no more power over the representation of any state in Congress than this House had over the members of the Senate. The section which related to the representation, therefore, had been properly stricken out of the bill. With regard to the apportionment to be made of the further representation of Maine in this House until the next enumeration takes place, was there any fear that it would not be made according to the provisions of the Constitution? On this subject there was a perfect accord between Maine and Massachusetts: the latter had consented that the representatives from the districts contained in Maine should be considered as the representatives of the state of Maine, and that her representation should be proportionally reduced.

Mr. Holmes hoped that the subject of the representation of Maine in Congress would not be connected in the bill with that of her admission into the Union; neither, he hoped, would the Maine question be connected with that of Missouri. He would not refuse justice in one case unless injustice was done in another. Was it right to do so? Suppose we had said, when questions respecting the admission of new states have been proposed, that we would not admit them unless they would agree that

whenever application was made by the state of Maine for the purpose she should be admitted. That condition would have been wrong. Let each claim stand on its own footing. I ask the gentlemen to do as we have done, and as I, as an individual, shall do when the other subject presents itself for consideration. Do the gentlemen calculate on more liberality on the Missouri question when it comes up in consequence of the opposition now made to this bill? If they do, they are mistaken; the gentlemen in this House are not to be driven from their positions. Mr. Holmes concluded by saying that he had hoped that there would be a fair and liberal vote for the admission of Maine without condition; he yet hoped it, though from what had taken place there was some reason to fear there would not.

Mr. Clay said that with respect to uniting the two states of Maine and Missouri in one act he had not intimated any intention at present to connect them. But in reference to the case which he had referred to as a precedent for such a connection the gentleman from Massachusetts had professed his ignorance of it. The gentleman might never have heard of it, and, as he had so said, doubtless never had heard of it; but if the gentleman was not informed on the subject he (Mr. Clay) hoped he would allow to him the benefit he had derived from having participated, in some degree, in the transactions of that day. I can assure him, said Mr. Clay, that the proposition came from the North to delay the admission of Kentucky into the Union until Vermont was ready to come in. But the gentleman perceived great injustice in such a proceeding at the present day; on that head he would recommend to his recollection the old anecdote of the parson and the bull. He professed that he could not see the great injustice of a proposition, if now made, to connect the admission of the two states together. A state in the quarter of the country from which I come asks to be admitted into the Union. What say the gentlemen who ask the admission of this state of Maine into the Union? Why, they will not admit Missouri without a condition which strips it of an essential attribute of sovereignty. What, then, do I say to them? That justice is due to all parts of the Union; if your state shall be admitted free of condition, we see no reason why you shall take to yourselves privileges which you deny to Missouri; and until you grant them also to her we will

not admit you. This notion of an equivalent, Mr. Clay said, was not a new one; it was one upon which commonwealths and states had acted from time immemorial. But he did not mean to press this part of the subject; he would put it aside, and confine himself to the single point whether it was proper to pass this bill without incorporating in it some provision on the subject of the representation of Maine? This was the point on which he desired a decision before the bill passed. Were he to permit himself again to glance at the case of Missouri, he would say there was a wide difference, in one respect, between that case and the case of Maine; and that the former most urgently required the attention of the House. The one was in the actual enjoyment of the advantages of self-government—was already in the confederacy as a component part of a highly respectable state—was heard and represented by a phalanx of seven members on this floor; while Missouri was subjected to arbitrary government, for he held that whenever a people are subject to a government under an authority which is to them foreign, they being unrepresented, that government is arbitrary, whatever be the character of its measures—no boon from Heaven, in his estimation, being more inestimable than the privilege of a people to govern themselves, and no political state more intolerable than that of having laws —and those most solemn of all laws, constitutions—imposed upon a people without their consent. Precedents might be found for such proceedings, but, happily for the New World, not in this part of the globe but in the other hemisphere, and recently, too, at the close of one of the most memorable struggles in which any portion of the human race had ever been engaged. Missouri was unheard on this floor; she had not twenty votes to spring up in vindication of her rights and defence of her interests; this infant, distant territory, without a vote on the floor, was in no condition comparable to that in which Maine now stood. But, he said, he would not press this subject further.

There were difficulties, it was admitted, in regard to the representation of Maine; and it was questionable, at least, whether, under the Constitution, Congress could subtract from the number of representatives Massachusetts now has any portion of them. Could any state by her consent grant to Congress the power to do so? If in relation to one of its representatives, can it in rela-

tion to the whole of them? If not, in relation to what part? If by the consent of the state this may be done, how is that consent to be given—by the legislature, or by the whole people? If by the whole people, have the people of Massachusetts been consulted on the subject in the present instance? The legislature, it was true, had passed an act on the subject; but had the legislature competent authority to do so? Mr. Clay did not say that these difficulties were insuperable; he hoped they could be gotten over. But he thought the House ought not to be hurried; that they should take time to consider all the consequences of what they were about to do—the more as there was no great urgency in the business. He thought, he said, that Maine ought to be admitted into the Union; he thought the same of Missouri; and although he might be forced to withhold his assent to the admission of Maine, if a majority of this House should (which he trusted they would not) impose unconstitutional restrictions on the admission of Missouri, he should do it with great reluctance. But, in any event, this question respecting the representation of Maine ought to be understood; it ought to be understood which of the representatives of Maine were hereafter to be representatives of Massachusetts. There was nothing in the Constitution of the United States which required that a person should represent the district in which he resides; and the gentleman from Boston was as much the representative of the Maine part of Massachusetts as he who lived in that district of country. It would be seen, then, that if the difficulties surrounding this subject were not insuperable, they were yet of some magnitude. He therefore moved that the committee rise, report progress, and ask leave to sit again.

Mr. Holmes said that until the honorable speaker disclosed the whole extent of his objections to the bill it was impossible, either by argument or amendment, to obviate them; and the speaker had not yet disclosed them. Mr. Holmes said he wished to know if the objection which he had urged, on the score of the representation, was the only objection which he had to the passage of this bill. He wished to know, if that objection was gotten over, whether the speaker would not make the admission of Missouri a condition of the admission of Maine, and called upon him to know whether he should persist in his opposition to that bill unless this position was given up; for, if that was the object

of the gentleman there was no occasion for the committee's rising. The extent of my plan now is, said Mr. Holmes, that the members hereafter to be elected shall be according to the population of the two respective portions of the present state of Massachusetts. Is there any objection to this? Does the Constitution prescribe or authorize anything else? This is what the Congress can do, but they cannot go one step further. The difficulty in regard to the representation in the present Congress, if any, cannot be settled by bill, but must be settled by this House. And do the gentlemen mean to contend that a legislative act shall be postponed to settle a question in regard to members' seats which may hereafter arise? This would be a course which would forever postpone the admission of Maine. Mr. Holmes could not believe, he said, that there could be any serious difficulty on this subject, etc. He concluded by saying he wished this question to be answered: Whether the honorable speaker meant to make it a *sine qua non* to the admission of Maine that Missouri should previously be admitted without condition?

Mr. Clay said he had always the greatest disposition in the world to oblige the gentleman from Massachusetts, and had no objection to be interrogated by him as long as he pleased. The gentleman had asked him to make objections — against what? The gentleman had brought forward no proposition to which to state objections; and the objection was that there was no such proposition before the House. The bill, as reported, did contain a provision that Massachusetts should have hereafter thirteen and Maine seven representatives, but which of the present twenty were to be assigned to Maine and which to Massachusetts it did not provide. Mr. Clay said it did not belong to him, but to the gentleman from Massachusetts, to prepare an amendment on that subject. After these difficulties were gotten over, Mr. Clay said, he could satisfy the gentleman on the other point. If he had not already, however, been sufficiently explicit, he was afraid he should not be able to satisfy the gentleman on that head. The only question now was on the subject of the representation, which certainly ought to be adjusted by this bill. Mr. Clay said he found the gentleman was throwing out his net; it was quite evident he was not satisfied himself what was to be the rule on this head, and his colleague had acknowledged that it was a matter of some

difficulty, but thinks an amendment will put it all right. Well, if that was the matter, let the amendment be prepared, and let the committee rise to give the gentleman an opportunity of preparing it.

Mr. Storrs, of New York, said, besides the difficulty already stated, there was another point on which he wished some information; at the same time he thought it proper to declare that he was in favor of the admission of Maine into the Union without reference to Missouri. The Constitution declared that no state shall enter into any compact without the assent of Congress. There had been certain articles of stipulations agreed upon between Massachusetts and the people of Maine, among which was one, for example, securing to Maine her proportion of all moneys which should be received from the government of the United States, under the claims of the commonwealth, for militia service during the late war, etc. Ought not the consent of Congress to be given to these stipulations?

Mr. Holmes said that the clause of the Constitution which had been alluded to obviously referred to compacts or treaties with foreign powers, and not to agreements between states. But, if otherwise, the consent of Congress could be given after as well as before the making of the compact.

Mr. Foot, of Connecticut, said he rejoiced that the question on this bill was now narrowed down to one point—a difficulty in respect to the representation. Would it not, he asked, be in the power of the two states to settle this question between themselves without agitating it on this floor? Can we, said he, deprive Massachusetts of any part of her representation? She has twenty representatives on this floor, and will continue to have them. Is the objection to her keeping them to come from Kentucky? No; it is to come from Maine. If she has no objection, are we to object? Certainly not. Was there, Mr. Foot asked, any difficulty in regard to the right of a representative, after his election, to remove out of the state which he represents into another? He presumed not; for such cases had occurred, and no exception had been taken to the right in those persons to retain their seats. If Maine be willing, and Massachusetts be satisfied, ought not we to be? He could see no necessity for stumbling here for hours over this objection. He was happy, he remarked,

that the question was now stripped of every exterior consideration, and the House had to decide only on the plain question whether Maine should be admitted or not.

Mr. Storrs said he had merely thrown out the suggestion respecting the Constitutional provision regarding compacts for the gentleman from Massachusetts to consider it. Mr. Storrs added, he was the more induced to it from the earnest desire that Maine should not lose the benefit of her share of the moneys to be received from the United States under the Massachusetts claims.

Mr. Clay said he was glad the gentleman from Connecticut had furnished the House with some light to show where they were. But there was before the House no proposition on the subject of representation: it was that which he wished to see, and if the gentleman from Connecticut would prepare one, the committee would probably be obliged to him for giving them something definite to act on.

Mr. Foot said he was prepared to act on the subject before the House, no proposition being necessary on a matter which it would be properly left to Massachusetts and Maine to determine. This solution of the difficulty would happily relieve the subject from the perplexity under which the honorable speaker seemed so much to labor during his addresses to the House.

On the next day the subject of the representation of Maine was eliminated from the bill; on the 26th of January the Missouri bill was again taken up, and on the 8th of March, after a debate ranging over the whole subject of slavery, the bill was passed by 91 yeas against 82 nays, and sent to the Senate. In the Senate it was amended so as, in substance, to strike out the slavery restriction, and insert a proposition to exclude slavery from all the territory of the United States west of the Mississippi north of 36° 30′ latitude, except within the proposed state of Missouri. A disagreement between the two houses having thus resulted, a committee of conference recommended that the Senate recede from their amendments, and that the two houses agree in requiring the state of Missouri to prohibit slavery within her limits prospectively—that is, so as not to alter the condition or civil rights of any person then held to service or labor in the territory—and to insert a new section providing that in all that

territory ceded by France to the United States, under the name of Louisiana, which lies north of 36° 30′ north latitude, not included within the limits of the proposed state of Missouri, slavery and involuntary servitude, otherwise than in the punishment of crimes whereof the party shall have been duly convicted, shall be, and hereby is, forever prohibited, with a saving of the right to recover fugitives from service escaping into the state from any other state or territory where such service is lawfully claimed. The effect of this would have been that, while the state of Missouri would have been obliged to interdict the further increase of slaves in her limits, the whole territory north of 36° 30′ north latitude would have had slavery excluded from it by an act of Congress. The compromise finally effected was to strike out the slavery restriction on the state of Missouri, and to insert in the bill, in lieu of that restriction, the clause inhibiting slavery in the territory north of 36° 30′.[1]

Thus it appears that many of those who desired to impose the state restriction as a condition of admission into the Union receded therefrom, and accepted in lieu of it the exclusion of slavery from all the Louisiana territory lying north of 36° 30′. From the long and protracted discussions which took place it is apparent that the right of Congress to impose on a new state, as a condition of admission into the Union, a restriction such as was proposed, was not specifically affirmed or denied; but the decision was that it would be inexpedient to exact such a condition, and the concession was made that it was a better policy to provide that thereafter, in all the territory ceded by France north of a certain parallel of latitude, the authority of Congress should be exercised for the exclusion of slavery forever. Missouri thus came into the Union as a slave-holding state, with the same right to determine the condition of her inhabitants as every other state had always had and exercised, and the settlement was as-

[1] In the House the vote for removing the state restriction was 90 yeas against 87 nays, and the compromise was carried by a vote of 134 yeas against 42 nays. The title of the bill now became, "An Act to authorize the people of Missouri Territory to form a Constitution and State Government, and for the admission of such state into the Union on an equal footing with the original States, and to prohibit slavery in certain territories." The bill became a law on the 6th of March, 1820.

sumed to be perpetual as to all the remaining part of the Louisiana purchase north of the parallel. How and why this settlement was subsequently disturbed will appear hereafter.

The interval between the establishment of the Missouri Compromise in 1820 and the annexation of Texas in 1845, a period of fifteen years, embraced no legislation that involved the subject of slavery in new dominions of the United States. To all appearance a fixed condition of things had been determined, which was likely to remain undisturbed. In eight distinct instances, beginning with the First Congress and coming down to the year 1848, Congress had excluded slavery from the territory of the United States. In six distinct instances, beginning also with the First Congress and coming down to the year 1822, Congress had organized territorial governments in which slavery was recognized and confirmed. In all the regions derived under the treaty with France that lay north of the parallel of 36° 30′, and were not yet organized into territories, slavery was perpetually excluded by force of the agreement made in 1820, and known as the Missouri Compromise. It was a fair inference that in any future territories south of that line slavery might be allowed; but until the annexation of Texas all the territory to which the United States could lay claim, whether north or south of that parallel of latitude, had been impressed with the condition of freedom or slavery which Congress had seen fit to impose upon it. But at the end of this period of fifteen years after the date of the Missouri Compromise a portentous event threatened the peace and harmony of the Union.

Texas, a province of Mexico, was, before it became an independent country, to some extent settled by emigrants from the South and Southwestern States of the American Union. Revolting against the Mexican rule, the inhabitants of the country, by the decisive battle of San Jacinto, which was fought on the 21st of August, 1836, expelled the Mexican power and gained their independence. The separate nationality of Texas was acknowledged by the United States in March, 1837. Thereupon a still larger influx of Americans came from the more southern regions of the Mississippi valley, bringing with them numerous slaves; so that when the new republic of Texas was established it became a slave-holding country, bordering on the east upon Louisiana and

the Gulf of Mexico. During the nine years which followed the independence of Texas its annexation to the United States by treaty had been more than once attempted. At length, in 1844, under the presidency of Mr. Tyler, and while Mr. Calhoun was Secretary of State, the project of annexation was executed in a different mode. A negotiation between the government of the United States and the republic of Texas ended in March, 1845, in the adoption by the two houses of Congress of joint resolutions for the annexation of this foreign country to the American Union by admitting it as a state. Two grand objections to this measure, strenuously urged by different individuals and communities from different motives, made it a peculiar event in our Constitutional history. It was contended that the clause of the Constitution which empowered Congress to admit new states into the Union embraced only those which should have lawfully arisen within the existing limits of the United States; and therefore to bring a foreign country into the Union as a state, without first organizing for it a territorial government and then permitting the people of the territory to form a state constitution, was an unwarrantable stretch of the power to admit new states. The precedent of the Louisiana territory, and of all the legislation respecting its different parts, gave force to this view. But the people of Texas were in no mood to submit to the process of admission into the American Union through the territorial clause of the Federal Constitution. They had long had a complete government of their own, and if they were to come into the Union at all, they chose to enter it by converting their republic into a "state" modelled on the form in which that kind of policy is implicitly described in the Constitution of the United States. Accordingly the joint resolution for the annexation of Texas appeared March 1, 1845, and declared the consent of Congress that the "territory properly included within and rightfully belonging to the republic of Texas may be erected into a new state, to be called the state of Texas, with a republican form of government, to be adopted by the people of said republic by deputies in convention assembled, with the consent of the existing government, in order that the same may be admitted as one of the states of this Union." Under the overture thus made by the United States the new state of Texas was admitted into the

Union on an equal footing with all the other states December 29, 1845.

The other and more formidable objection to this measure was that Texas, by whatever process it might be brought into the Union, would come in as a slave-holding country, thus making a large addition to what was called "the slave power." It belongs to a subsequent chapter to trace the rise and progress of the anti-slavery agitation in the North, which had begun before the annexation of Texas was publicly proposed. But the conditions on which the annexation was finally accomplished, so far as they related to slavery, evince the grounds of dissatisfaction which this measure left to the people of the free states, and the added fuel which it furnished to an excitement already mounting to a great height.

Texas came into the Union under a stipulation to which the public faith of the United States was distinctly pledged, which allowed her thereafter to create within her limits, in addition to the state of Texas herself, four more states, of convenient size and having sufficient population, and all of them to be entitled to admission into the Union under the provisions of the Constitution. There was, however, one part of this stipulation which was valuable alike for all sections and interests. The states that might be formed south of the parallel of 36° 30′ were to be admitted into the Union with or without slavery, as the people of each state might desire; and in those that might be formed north of that line slavery or voluntary servitude, except for crime, was to be prohibited. This *express recognition* of the line of the Missouri Compromise, and its extension westward, although it might leave the larger number of states to be formed out of the territory of Texas lying south of it with slavery as a recognized condition, still constituted an important legislative affirmation of the limits of future extension of slavery. So long as the Missouri Compromise line should remain undisturbed, there never could be more than four new slave states brought into the Union, notwithstanding the vast extent of territory comprehended within the rightful boundaries of Texas. Its boundaries were to be adjusted by the government of the United States with Mexico. It was under these stipulations and provisions that the state of Texas, after its people had adopted a state constitution in conformity with the

requirements of the joint resolution of March 1, 1845, was admitted into the Union under another joint resolution approved December 27, 1845. By this last resolution the state of Texas was declared to be one of the United States, admitted into the Union on an equal footing with the original states in all respects. It is at once obvious that this precedent established a construction of the Constitution very different from that under which Louisiana was acquired. Louisiana was purchased from France under the treaty-making power, became a dependency of the Union, and so remained until different parts of it, first organized into territories, were admitted as states. Texas was at once admitted into the Union as a state by an act of legislation, without ever having passed through the territorial condition. But that one of the stipulated conditions which empowered her to divide herself into several states was never carried out.

But there was a consequence of the annexation of Texas that was to result in further acquisition of Mexican territory. Although it was held by the government of the United States that the annexation of Texas—an independent country with which during a period of nine years we had made treaties and carried on commerce—could not rightfully be made by Mexico a *casus belli*, there was some danger that Mexico would not regard it in the same light. Very soon, however, the relations between the United States and Mexico became complicated with matters partly independent of and partly connected with the annexation. Mexico was indebted to the United States in large unpaid instalments of money under a treaty, and there was a considerable amount of claims of the citizens of the United States upon Mexico which had occurred since that treaty took effect. The annexation of Texas to the United States made an adjustment of her boundaries with Mexico immediately necessary. Mexico was at this time in a state of revolution; and to find an executive government to which an American minister could be accredited for the purpose of settling amicably all questions involved in the existing relations between the United States and Mexico was a difficult undertaking. A minister, however, was sent in the autumn of 1845. He reached the city of Mexico in December, authorized to settle on fair terms all the pending questions. General Paredo had at that time become President of the Republic

of Mexico by one of the revolutions then common in that country. His government refused to receive the American envoy, who returned to New Orleans in the spring of 1846 to await instructions from Washington. In the meantime events in Texas were bringing the two countries to the brink of war. Before the passage of the joint resolutions of March 1, 1845, making an overture for the annexation of Texas, the United States had no military forces in that country. The convention of Texas that was to act on this overture was to be held on the 4th of July. In anticipation of its adoption of the offer made by the Congress of the United States, the American government thought proper to send a small body of troops into Texas. This force was to arrive in the early part of July. Already, however—that is, in June—strong bodies of Mexican troops were advanced towards the Rio del Norte, apparently with the purpose of invading Texas. In March, 1846, Colonel Zachary Taylor, commanding an American force of about four thousand men, moved forward to the Rio Grande, opposite to the town of Matamoras. The Mexican general commanding at Matamoras threatened Taylor with hostilities if he did not retire behind the river Nueces. Taylor remained in his position; and soon one of his reconnoitring parties was attacked and captured by the Mexicans. This occurrence, together with the refusal of Paredo's government to receive our minister, was treated by our executive as a state of war. On the 12th of May, 1846, Congress passed an act recognizing that a war existed between the United States and Mexico, and formally establishing it.[1]

How this war came to result in the acquisition by the United States of both California and New Mexico now remains to be briefly described.[2]

The acquisition of California, New Mexico, and Utah occurred under circumstances and at a time which made the mode of governing them an exciting and even dangerous question. Great changes had taken place in the feelings of the Northern and the Southern people respecting slavery during the quarter of a cen-

[1] In the Life of James Buchanan the author has traced more minutely the origin of this war and its justification. See that work, I. xxi.

[2] An attempt to fill the hiatus that here occurs is made in the Appendix in the "Note to Chapter VIII."—J. C. C.

tury which followed the enactment of the Missouri Compromise. From the establishment of the Constitution down to the admission of Missouri into the Union, in 1820, the legislation of Congress, in dealing with new territory, had proceeded upon the principle that slavery might be allowed or might be prohibited in shaping the territorial condition of such new possessions preparatory to their formation into states. The annexation of Texas was brought about under entirely new conditions, for it was already a slave-holding country, and its people insisted on coming into the Union as a state, and as one which tolerated that institution. Prior to the year 1820 the Northern opposition to an increase in the number of slave-holding states had been rested chiefly on political grounds. The subject had not taken the hold upon the moral and religious sentiments which afterwards became so strong. It was not until some of the anti-slavery leaders of the Whig party selected General Zachary Taylor as a candidate for the presidency, a position of which he was not ambitious, and for which he knew himself to be very little qualified; he was elected by a very considerable majority, in which, notwithstanding the fact that he was himself a slave-holder, seven of the free states were included. He was a soldier, and a blunt, upright man, with no civil experience, and with hardly any of the qualifications of a statesman. But he had great firmness of character, strong, good sense, and perfect honesty. He was inaugurated as president on the 4th of March, 1849.

Although it has sometimes, and generally, been the legislative practice of Congress, when admitting new states into the Union, to declare that they are admitted on an equal footing with the original states in all respects whatsoever, yet the Constitution does not require this declaration. It simply provides that "New States may be admitted by the Congress into the Union." The equality is an incident of the admission, which imports of itself that the state, after it has become a member of the Union, is to enjoy all the rights and privileges of such membership. But this in no way affects the conditions on which Congress may see fit to grant the admission. It is not necessary that those conditions should be such, and such only, as have been made with every other state that has been admitted under the power given in Section 3

of Article IV. Equality of membership in the Union means that every state shall enjoy the same rights and privileges as every other state. One of the rights of every member of the Union is a right to make covenants and agreements with the United States in any form in which the parties can unite. If, when it enters the Union, a new state makes a covenant with the United States in diminution or limitation of its sovereignty, in a way in which other states have not limited or diminished theirs, the new state is not placed in the Union on an inequality with the other states. There is not inequality in respect to any right, privilege, or standing as a member of the Union.

I have always regarded Section 3 of Article IV. of the Constitution of the United States as the source and the only source of the power of Congress, not only to admit new states, but to create and govern those peculiar dependencies which have come to be denominated "territories," but which should be kept in that condition no longer than is necessary to allow of their development into communities fit for the rights and privileges of statehood. It is thirty years since I had occasion to study this part of the Constitution and the legislation under it with peculiar care; and although the result in the case of Dred Scott, in the argument of which I took part in the Supreme Court of the United States in 1856–57, was not what I hoped for and endeavored to bring about, I venture to say that the doctrine for which I then contended, and which was accepted by Justices McLean and Curtis, is now almost universally conceded by constitutional lawyers in all parts of the Union. The doctrine was this: That Section 3 of Article IV. of the Constitution, primarily designed to provide a legislative authority and process for bringing new states into the Union, clothed the Congress of the United States with a penalty legislative power to dispose of the public property denominated "the territory" of the United States, as well as all other property of the United States, and with a penalty legislative power to form the settlers on the public domain into political communities, and to govern those communities so long as they should remain in a state of pupilage or preparation for admission into the Union as states.[1]

[1] See "The Constitutional Power of Congress over the Territories." An argu-

But as the formation and admission of new states was the primary design of the section, it follows that Congress is placed under the obligation of a public *trust* to permit such communities to become states, and to bring them into the Union as states when the people desire it and they have sufficient population and resources to sustain a state government, republican in its form and spirit. It is not a proper discharge of this public *trust* to keep any territory indefinitely in the condition of a territory, thereby keeping open a field for the continued exercise of Federal patronage and power. Territorial government is not self-government; and although it is necessary for a certain period for Congress to govern the settlers on the public domain—a period that may vary in different cases—yet where the territorial community has become so large and so prosperous that its people are entirely capable of governing themselves, it is contrary to the spirit, institutions, and, in my opinion, to the intent of the Constitution, to withhold from them the full panoply, rights and privileges, of statehood, and to keep them in subjection to a distant power, over which they have not even a partial control, as the citizens of every state in the Union have.

But as long as it is necessary for the territorial condition to continue, so long Congress properly discharges the public *trust* imposed upon it by the Constitution when it determines what shall be the social relations within the particular territory while it remains a territory. This is just as much within the province of Congress as it is to create the machinery of a territorial government, and accordingly it was, and rightfully, the practice of Congress, in organizing a particular territory, to prescribe whether the condition of slavery or involuntary servitude, for example, should or should not be allowed therein. This continued to be the practice down to the time when the existence of slavery in territories took no other form of public controversy; and undoubtedly the power of Congress, as the precedents presently to be cited will show, was exercised both for and against slavery, according to varying circumstances; and the authority of Con-

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ment delivered in the Supreme Court of the United States, December 18, 1856, in the case of Dred Scott, plaintiff in error, *vs.* John F. A. Sanford, by George Ticknor Curtis. Boston, Little, Brown & Company, 1857. [Contained in Appendix.—J. C. C.]

gress to act either way could only be referred to Section 3 of Article IV. of the Constitution. It is to the same source that the power to enact the laws against polygamy in the territories, which began to be enacted in 1862 and were re-enacted in 1882, must be referred.

But this matter of polygamy in Utah—where it has existed for forty years, and for a large part of which period it was practised without any interference on the part of the federal government, and under circumstances evincing at least great public indifference concerning it—has now assumed an entirely new aspect. Of the voters of Utah who are Mormons in religious faith—a class of religionists whose religious belief is supposed to sanction polygamy—about 95 per cent. cast their votes at a recent election in favor of the constitution, the provisions of which on the subject of polygamy are quoted at the head of this opinion. But few of the so-called "Gentiles" voted on this constitution. Of the votes cast against the constitution — 504 in number — only about one half were cast by Mormons. If the constitution is accepted by Congress as it is presented, and becomes the fundamental law of the new state of Utah, the Mormon population, which is very largely the majority, will be the governing people of the state. They have bound themselves to support and abide by a constitution which will limit their state sovereignty in the matter of polygamy by a public compact with the people of the United States. The question whether this will be a valid, efficient, and constitutional compact must be largely determined by the precedents which have been made when other new states have been admitted into the Union under certain conditions.

It is obviously immaterial, when a new state is admitted into the Union, whether the proposal of a peculiar condition or special compact on a particular subject is first suggested by Congress or is brought forward by the people who ask for admission under a constitution which they present. In either case, if the constitution, after it has received the sanction of Congress, contains a certain limitation of the state sovereignty, a compact has been made between the state and the United States, and the preliminary question is whether it will be a valid, efficient, and constitutional compact or condition of admission into the Union, by

whosoever proposed. On this question the precedents will throw a flood of light.

The states of Louisiana, Missouri, Arkansas, Minnesota, Kansas, Nebraska, and Colorado were formed in whole or in part out of the territory ceded by France to the United States in 1803.

Florida was formed out of the territory ceded by Spain in 1819.

California and Nevada were formed out of territory ceded by Mexico in 1848; and a part of Colorado was also acquired by that cession.

Of the present territories, New Mexico, Utah, and Arizona were formed out of territory claimed by Mexico; Washington, Dakota, Idaho, Montana, and Wyoming were respectively part of the French purchase; and Alaska was acquired from Russia by the treaty of March 30, 1867.

NOTE. — It will be seen that Mr. Curtis, whose manuscript for this chapter ends here, did not complete it according to the intention indicated at its beginning; some topics were not touched.—J. C. C.

CHAPTER IX.

Rise, Progress, and Consequences of the Northern Anti-Slavery Agitation. — It Provokes Counter Pro-Slavery Tendencies. — The Case of Dred Scott. — Mr. Douglas's Panacea of "Popular Sovereignty." — Disruption of the Democratic Party and Election of President Lincoln. — The Kansas-Nebraska Act and its Consequences.

The system of African slavery, which had long existed in our Southern States, might have come, and in all probability must have come, to an end without any political or social convulsion if it had been left to the operation of causes which were tending to its peaceful removal. It could not have lasted unchanged so long as the year 1865, even if there had been no civil war and no forcible emancipation. There were changes going on in the world at large which must have affected it; changes in commercial and industrial conditions, as well as in moral feelings, respecting such a form of labor and such a species of property. There were causes which had begun to operate in the slave-holding states before the anti-slavery agitation began in the North, which would have brought about material modifications of the system, and its gradual removal, if they had not been arrested by an unwise and unwarrantable interference. To judge rightly the degree of responsibility incurred by those who began and carried on the agitation is a duty which history should discharge, wherever it is written, without fear or favor.

It is not to be inferred from the special subject of the present chapter and the mode in which it will be treated that the sectional division which led to the designation of North and South, as descriptive of different groups of states, related solely to the matter of slavery. Whenever the original states acted in one body, either in the formation of the Articles of Confederation, or in the old Congress, or in the formation of the Constitution, or in

the Congress under the Constitution, there were sectional lines of division drawn, from time to time, between the states that came to be designated as the Northern and those which came to be designated as the Southern States; and these lines of division related to other things than slavery. Even at the commencement of the Revolution the original and acquired diversities of character in the early settlers of the states became the foundation of sectional feelings, and these feelings were enhanced by the geographical situation and the local employments of the people in different states. For a time these feelings gave way to the necessity for a common resistance to Great Britain, and a strong bond of sympathy grew up between the states. Yet sectional feelings were manifested in the Congress of the Confederation and in the army, to the great embarrassment of the Revolutionary government and of the feeble government of the Confederation, and made Washington's task as the leader of the Revolution exceedingly difficult, although the matter of slavery did not enter into these divisions. So, too, in the Constitutional Convention sectional difficulties arose, one of which related to navigation. When it was proposed on behalf of the Southern States that no navigation act should be passed by Congress without the assent of two thirds of the members present in each house, it was resisted by the Eastern States, who thought it for their advantage to have a bare majority of Congress able to pass such laws. At the same time the continuance of the slave-trade became a subject of contention in the framing of the Constitution. The Committee of Detail, which framed the first draft of the Constitution, left the slave-trade where it was left by the Confederation, without giving to Congress power to abolish it, or to lay a duty on imported slaves. This proposal was quite acceptable to the Southern but not to the Northern States; for most of the delegates from the latter considered that slaves should be placed under the general power of taxing imports, and a few of them thought that for moral reasons the slave-trade should be absolutely prohibited.

How these conflicting views and interests were finally adjusted in the convention has been described in the first volume of this work. It is there shown what each section gained or lost by the settlement. The Northern States gained the right to pass navigation acts by a bare majority; to tax the tonnage of foreign

nations for their own advantage as carriers; to lay a duty on foreign imports for their own advantage as manufacturers; to put an end to the slave-trade in twenty years, and so prevent, in a good degree, the increase of slave representation. They lost nothing but their share in the profits of the slave-trade, after enjoying it for twenty years more, as they had enjoyed it in the past. On the other hand, the Southern States gained the recognition of property in slaves by the Constitution, and the right to import slaves until the year 1808, and no longer. They conceded to the Northern States the right to lay duties on foreign merchandise for the protection of domestic manufactures. At that time the necessity for such protection was felt in the South as well as in the North. Thus were these great conflicting interests and aims disposed of by a comprehensive adjustment, designed to be permanent, and likely to be so unless disturbed by new causes for conflict and disagreement. To trace these causes in their development and operation, so far as they affected the slavery compromises of the Constitution, is the object of the present chapter.

And here, as in relation to other subjects, it is necessary to divide the history subsequent to the adoption of the Constitution into different periods, because there were successive periods in which new difficulties as they arose had to be met by new settlements; and those settlements were made, not by constitutional changes, but by adjustments and compromises in Congress, each of which was designed to be permanent, and was apparently certain to be so. In a former chapter, treating of the expansion of the Union and the admission of new states, I have designated the different periods in which new difficulties arose, and I shall follow substantially the same division in the treatment of the present subject.

Looking back, then, to what took place in Congress and the country soon after the adoption of the Constitution, we shall find that, notwithstanding the plain and clear intent of that instrument, slavery was made a topic of discussion by the introduction in Congress on the 11th of February, 1790, of "The Address of the Quaker Meeting," from certain Northern States, against the continuance of the African slave-trade, which the Constitution had tacitly permitted until the year 1808. At the same time there was presented "The Memorial of the Pennsylvania Aboli-

tion Society," praying for the abolition of slavery in the United States. Both of these were contrary to the spirit and the letter of the Constitution; and while it might be said that the memorialists contemplated and asked only for such constitutional changes as would accomplish their objects, yet they asked Congress, immediately after the Constitution had gone into operation, to take measures that would bring about a complete unsettlement of what had so recently and with so much difficulty been arrived at as an ultimate and permanent arrangement of a fundamental character. The consequence was an excited debate; the Southern members receiving the memorials in one spirit, and the Northern members receiving them in a very different spirit.

"The Address of the people called Quakers in their annual Assembly convened"—so denominated by themselves—proceeded distinctively from a religious body, and they urged religious motives as the ground of their own action, and called upon Congress to act upon the like motives. "Compliance with a sense of religious duty" and "Christian endeavors to remove reproach from the land" were prominently put forth as the basis of action by a legislative body whose powers were derived solely from a written Constitution of government then recently established. The language in which the Quakers couched what may be called the prayer of their Address is worthy of notice: "Earnestly desiring," they said, "that the Infinite Father of spirits may so enrich your minds with his love and truth, and so influence your understandings by that pure wisdom which is full of mercy and good fruits, as that a sincere and impartial inquiry may take place whether it be not an essential part of the duty of your exalted station to exert upright endeavors, to the full extent of your power, to remove every obstruction to public righteousness which the influence or artifice of particular persons, governed by the narrow, mistaken views of self interest, has occasioned, *and whether, notwithstanding such seeming impediments, it be not in reality within your power to exercise justice and mercy, which, if adhered to, we cannot doubt must produce the abolition of the slave-trade.*"

This was necessarily understood as a prayer to proceed to the consideration and adoption of measures to bring about the immediate abolition of the slave-trade, notwithstanding the Constitution had withheld from Congress for a period of twenty

years all power to prohibit the importation of persons whom the states might think fit to admit, and had only given to Congress power to lay an impost duty on slaves if it should be deemed expedient.

Considering that it was indispensably incumbent on them, as a religious body, to present religious motives as the true grounds of action on the part of Congress, the Quakers really asked for an immediate abolition of the slave-trade which the Constitution had sanctioned to a certain extent and for a certain period. They spoke of "the Federal connivance given to this abominable practice," and this must have been understood to refer to the countenance given to it by the Constitution, and as asking for measures to unsettle what had been solemnly settled by agreement between the states, embodied in the new fundamental law of the Union. It is not necessary for me to comment on the idea of presenting religious considerations and motives as the ground of action for a political body situated as the Congress of the United States was under the Constitution. I merely advert to it now as the first instance in which it was done.

The Memorial, presented on the day following that on which the Quaker Address was introduced in the House, was from "The Pennsylvania Society for Promoting the Abolition of Slavery, the Relief of free Negroes unlawfully held in Bondage, and the Improvement of the condition of the African race;" objects of benevolence which individuals could very properly promote in their own states. But this Memorial was an appeal to the Congress of the United States to promote these objects.[1] It spoke as follows:

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[1] This Memorial was signed by Benjamin Franklin, as president of the society. It is not probable that it was written by him, for it contains a reading of the Constitution that he would hardly have adopted if his attention had been directed to it. The writer of the Memorial apparently thought that he was quoting the Preamble of the Constitution; and he makes the common mistake of supposing that by the Preamble Congress is vested with a general power to promote the general welfare of the people of the United States, and to secure to them the blessings of liberty. The Memorial calls upon Congress to "loosen the bands of slavery, and promote a general enjoyment of the blessings of freedom," by exercising the "powers" which the memorialists assume to be vested in it; whereas the Constitution vested in Congress no powers over slavery in the states. The Quaker "Address," on the other hand, related only to the slave-trade.

"That mankind are all formed by the same Almighty Being, alike objects of his care, and equally designed for the enjoyment of happiness, the Christian religion teaches us to believe, and the political creed of Americans fully coincides with the position. Your memorialists, particularly engaged in attending to the distresses arising from slavery, believe it their indispensable duty to present this subject to your notice. They have observed with real satisfaction that many important and salutary powers are vested in you for 'promoting the welfare and securing the blessings of liberty to the people of the United States;' and as they conceive that these blessings ought rightfully to be administered without distinction of color to all descriptions of people, so they indulge themselves in the pleasing expectation that nothing which can be done for the relief of the unhappy objects of their care will be either omitted or delayed."

"From a persuasion that equal liberty was originally the portion, and is still the birthright, of all men, and influenced by the strong ties of humanity and the principles of their institution, your memorialists conceive themselves bound to use all justifiable endeavors to loosen the bands of slavery, and promote a general enjoyment of the blessings of freedom. Under these impressions, they earnestly entreat your serious attention to the subject of slavery; that you will be pleased to countenance the restoration of liberty to those unhappy men who, alone in this land of freedom, are degraded into perpetual bondage, and who, amidst the general joy of surrounding freemen, are groaning in servile subjection; that you will devise means for removing this inconsistency from the character of the American people; that you will promote mercy and justice towards this distressed race, and that you will step to the very verge of the power vested in you for discouraging every species of traffic in the persons of our fellow-men."

Here, then, was an application by a body of citizens of Pennsylvania to the Congress of the United States to act upon the subject of slavery within the states in order "to promote justice and mercy to a distressed race," and Congress was asked to step to the very verge of its power for discouraging every species of traffic in the persons of our fellow-men, which included as well the African slave-trade, the inter-state slave-trade, and the sale

of slaves by citizens of a state to each other. While, on the one hand, it was true that the Declaration of Independence asserted the natural equality of all men, and their inalienable right to life, liberty, and the pursuit of happiness, on the other hand it was not true that the Constitution of the United States adopted these assertions as the basis of its political arrangements. The principle on which the Constitution was framed was that the slavery of the African race was a condition existing in certain states under their local law, and it was so far recognized by the provisions of the later instrument that certain guarantees were given to it. In one sense this might be said to be inconsistent with the broad and sweeping assertions of the Declaration of Independence, but the inconsistency of itself proved that the Constitution was framed by and for the benefit of one race alone, and that all endeavors to loosen the bands of slavery in which men of another race were held must be addressed to the states in which they were held in bondage.

It will be seen hereafter that the most intelligent and zealous of the later "abolitionists" regarded the Constitution as "a pro-slavery instrument," and therefore they wished to destroy it. At the same time multitudes who acted with the founders of the anti-slavery societies which were established in 1831–32 supposed that the Constitution and the Declaration of Independence were alike in principle and purpose. From the year 1789 down to the beginning of the civil war this continued to be the belief of many persons in the North, who were carried along in the anti-slavery agitation which lasted for a period of about thirty years, and finally brought about a conflict of arms.

Taking the Quaker Address and the Abolition Memorial together, it was obviously necessary for Congress to do one of two things: either to let the Address and the Memorial lie on the table unanswered, or to answer them and to define with precision the powers which the Constitution had given or withheld. The debate which ensued in the House on the question of committing the Quaker Address manifests the sensitiveness of the Southern people on the subject.[1]

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[1] See Annals of Congress, 1st Congress (1789), pp. 1224, 1240, 1465, 1466, 1500, 1523.

The result of the discussion in Congress was the commitment of both memorials to a special committee by a vote of 43 yeas against 14 nays.[1] The report of the special committee was as follows:

"That from the nature of the matters contained in those memorials they were induced to examine the powers vested in Congress, under the present Constitution, relating to the abolition of slavery, and are clearly of opinion:

"First. That the general government is expressly restrained from prohibiting the importation of such persons[2] as any of the states now existing shall think proper to admit until the year 1808.

"Secondly. That Congress, by a fair construction of the Constitution, are equally restrained from interfering in the emancipation of slaves who already are, or who may, within the period mentioned, be imported into, or be born within, any of the said states.

"Thirdly. That Congress have no authority to interfere in the internal relations of particular states relative to the instruction of slaves in the principles of morality and religion, to their comfortable clothing, accommodation, and subsistence; to the regulation of their marriages, and the prevention of the violation of the rights thereof, or to the separation of children from their parents; to a comfortable provision in cases of sickness, age, or infirmity, or to the seizure, transportation, or sale of free negroes, but have the fullest confidence in the wisdom and humanity of the legislatures of the several states, that they revise their laws from time to time when necessary, and promote the objects mentioned in the memorials, and every other measure that may tend to the happiness of slaves.

"Fourthly. That, nevertheless, Congress have authority, if they shall think it necessary, to lay at any time a tax or duty not exceeding ten dollars for each person, of any description, the importation of whom shall be by any of the states admitted as aforesaid.

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[1] The members who voted against the commitment were all from Southern States.

[2] In the slave-holding states slaves were not "persons," but "chattels." Under the Constitution they were "persons" only for the purpose of calculating representation.—J. C. C.

"Fifthly. That Congress have authority to interdict, or (so far as it is or may be carried on by citizens of the United States, for supplying foreigners) to regulate the African slave-trade, and to make provision for the humane treatment of slaves, in all cases while on their passage to the United States or to foreign ports, as far as it respects the citizens of the United States.

"Sixthly. That Congress have also authority to prohibit foreigners from fitting out vessels in any port of the United States for transporting persons from Africa to any foreign port.

"Seventhly. That the memorialists be informed that in all cases to which the authority of Congress extends they will exercise it for the humane objects of the memorialists, so far as they can be promoted on the principles of justice, humanity, and good policy."

After a strenuous resistance on the part of the minority, the report of the special committee was finally ordered to be taken up in Committee of the Whole on the 17th of March. When the discussion came on in Committee of the Whole, a debate ensued on the general subject of slavery, as well as on the prayers of the memorials. The principal speech on the Southern side was made by Mr. William Smith, of South Carolina. He was well read in the history of slavery and the slave-trade, and, as might have been expected of a Carolinian, he made as effective a use of his materials as could have been made by any one. I think it well to quote the latter part of his speech, omitting the portion which related to slavery among the ancients:

"Another objection is, that slavery vitiates and debases the mind of the owner of this sort of property. Where," he asked, "is the proof of this allegation? Do the citizens of the Southern States exhibit more ferociousness in their manners, more barbarity in their dispositions, than those of the other states? Are crimes more frequently committed there? A proof of the absurdity of this charge may be found in the writings of those who wish to disseminate this mischievous idea, and yet, in their relations of facts, they themselves contradict it. They lay down principles which they take upon credit from others, or which they publish with sinister views, and when they enter into a detail of the history of those states, they overset their own doctrines. Thus, one writer tells us that the Southern citizen who is educated in prin-

ciples of superiority to the slaves which surround him has no idea of government, obedience, and good order, till he mingles with the hardy and free-spirited yeomanry of the North, and that after mixing with them he will return home with his mind more enlarged, his views more liberalized, and his affections rectified, and becomes a more generous friend to the rights of human nature. But hear what the Eastern traveller is to learn by visiting the enslaved regions of the South. He will see," says the same writer immediately after, "industry crowned with affluence, independence, hospitality, liberality of manners; and, notwithstanding the prevalence of domestic slavery, he will find the noblest sentiments of freedom and independence to predominate; he will extol their enterprise, art, and ingenuity, and will reflect that Nature is wise, and that Providence in the distribution of its favors is not capricious. Take another striking instance of this contradiction from Morse's geography. He says that there are more slaves than free persons in South Carolina, and mentions the mischievous influence of slavery on their manners, which, he observes, by exempting them from the necessity of labor, leads to luxury, dissipation, and extravagance, and savors too much of a haughty, supercilious behavior; that the inhabitants want that enterprise and perseverance which are necessary for the attainment of the arts and sciences; that they have few motives to enterprise, and too generally rest contented with barely knowledge enough to transact the common affairs of life. Now for the author's proofs; they are contained in these words:

"'Many of the inhabitants spare no pains nor expense in giving the highest polish of education to their children: literature has begun to flourish since the peace; several flourishing academies and colleges have been established; the ladies have an engaging softness and delicacy in their manners; theatrical exhibitions have been prohibited by law; gaming of all kinds is more discountenanced than in any of the Southern States; all denominations of religion are on an equal footing; commerce is flourishing; economy is becoming more fashionable, and science begins to spread her salutary influence among her citizens.' But was South Carolina, at the commencement of the war, with all her slaves, backward in her resistance to Great Britain? View the conduct of her citizens, their zeal and ardor in the cause of lib-

erty: their labor at Fort Sullivan. Are crimes more frequent in that country than in the other states? Are there more executions? I believe there have been as few as in any part of the continent, and those which have taken place have been generally of emigrant convicts, or fugitive wheelbarrow men; I would be bold to assert that in no state on the continent is there more order, sobriety, and obedience to good government; more industry and frugality; nor is there any trace of the influence of slavery on the character of her citizens.

"The French, so far from curbing and cramping the African trade with needless regulations, give large premiums upon every negro landed on their islands; in some instances as much as two hundred livres per head. Is that nation more debased than others? Are they not a polished people, sensible of the rights of mankind, and actuated by proper sentiments of humanity? The Spaniards encourage slavery; they are people of the nicest honor, proverbially so.

"The Romans and Greeks had slaves, and are not their glorious achievements held up as incitements to great and magnanimous actions? Sparta teemed with slaves at the time of her greatest fame as a valiant republic. The absolute power of the Lacedæmonians over the Helots is frequently spoken of by the ancient writers; they were not only the slaves of the commonwealth, but of every individual; they could not be set at liberty, neither could they be sold; hence arose a saying that a free man at Sparta was most a free man, and a slave most a slave.

"The system of the Roman policy with regard to slavery was still more severe. Slaves were not even under the protection of the laws; they were considered as things, *inter res*. A master, merely from caprice, might torture, dismember, and even murder his slave. If a slave did any damage exceeding his value, he was delivered to the person injured, who did with him what he pleased. Yet these slaves were of the same color as their masters, and equal to them in mental faculties; many of them were men of great learning—philosophers, poets, etc. Much had been said of the cruel treatment of slaves in the West Indies and the Southern States; with respect to the latter, I deny the fact from experience and accurate information, and believe in my conscience that the slaves in South Carolina are a happier people than the

lower order of whites in many countries I have visited. With regard to the West Indies, Lord Rodney and Admiral Barrington had both declared that they had spent some time in the West Indies, and that they had never heard of a negro being cruelly treated; that they had often spoken of their happiness in high terms, declaring that they should rejoice exceedingly if the English day-laborer were half as happy. Some have said that slavery is unnecessary; so far from it, that several essential manufactures depended on it. Indigo, cochineal, and various other dyeing materials, which are the produce of the West Indies, could only be raised by slaves; the great staple commodities of the South would be annihilated without the labor of slaves. It is well known that when the African slaves were brought to the coast for sale, it was customary to put to death all those who were not sold; the abolition of the slave-trade would therefore cause the massacre of the people.

"The cruel mode of transportation was another motive to this abolition; but it was to be presumed that the merchants would so far attend to their own interests as to preserve the lives and the health of the slaves on the passage. All voyages must be attended with inconveniences, and those from Africa to America not more so than others. As to their confinement on board, it was no more than was necessary; as to the smallness of space allotted them, it was more than was allotted to soldiers in a camp; for the measurement of cubical air breathed by the Africans, compared with that of soldiers in camp, was in favor of the former as thirty to seventeen; it was full as much as was allotted in ships of war to seamen, who, by the laws of England, were frequently, on their return to their families after a long and dangerous voyage, seized by violence, hurried away by a press-gang, and forced on another voyage more tedious and perilous than the first, to a hot and sickly climate, where several hundreds of them were stowed away in the hold of a vessel. In cases of disobedience the captain had a right for slight offences to inflict on them corporal punishment without the intervention of a court-martial, and in other cases they are punishable by very severe laws, executed by martial courts, established for that purpose. The same may be observed of the soldiers, who were frequently flogged severely for trifling offences; instances have been known

of their being put under the care of a surgeon, after receiving a small part of the intended flagellation, to refit them for the residue.

"Having thus removed the force of the observations which have been advanced against the toleration of slavery by a misguided and misinformed humanity, I shall only add that I disapprove of the whole of the report, because it either states some power sufficiently expressed in the Constitution, which is unnecessary, or it sets forth some power which I am clear Congress do not possess. The concluding paragraph is an extraordinary one. In what mode are the memorialists to be informed of our humane dispositions? Are we to send a special committee to inform them? Or is the speaker to write them a letter, or the sergeant-at-arms with the mace to wait on them? In short, Mr. Chairman, the whole of this business has been wrong from beginning to end, and as one false step generally leads to others, so has the hasty commitment of these memorials involved us in all this confusion and embarrassment. I hope, therefore, if any kind of report is agreed to, it will be something like that proposed by my colleague."

Mr. Smith was answered in a spirited but temperate manner by several of the Northern members, and the result was that two reports were ordered to be entered on the Journal, one being the report of the special committee as above given, and the other being the report of the Committee of the Whole. The vote was a close one—29 yeas to 25 nays. Here the matter rested indefinitely. This declaration by the first House of Representatives, putting an interpretation upon the powers of the Constitution in respect to the African slave-trade and the subject of slavery in general, remained an important landmark. It came to be universally acquiesced in until new difficulties, occasioned by a renewed agitation in the North, again brought the subject into consideration.

The Memorial of the Pennsylvania Society had stated that their association was formed several years previously to promote the abolition of slavery, and for the relief of those unlawfully held in bondage, and that similar institutions were then forming at home and abroad. So far as these associations were to be composed of foreigners, associated to promote the abolition

of slavery in our Southern States, they would be an unwarrantable interference with a matter of domestic concern to those states; and so far as they then were, or were to be, composed of citizens of states other than those in which the abolition was to be brought about, they would be equally unwarrantable. But it will be seen hereafter how far constitutional restraints were or were not attended to when the subsequent abolition societies were formed and took the field under circumstances that did not exist in 1789. At that time no addition to the area of slavery was contemplated, or was apparently likely to take place. The area of slavery was limited, and it was not until a later period that the expansion of the Union brought into consideration questions relating to an increase in the number of slave-holding states.

I have already described what took place in consequence of the acquisition of Louisiana, iu 1803, and the events which followed that acquisition down to and including the admission of Missouri into the Union in 1820. The settlement known as the Missouri Compromise had fixed the future condition of all territory of the United States in respect to African slavery, so far as it had not been fixed by previous settlements. Its grand principle was that, as to all the territory acquired by the Louisiana purchase lying north of the parallel of 36° 30′, slavery was to be and remain interdicted; and that as to the territory lying south of that parallel, Congress might permit it. This result being reached in 1820, it is now necessary to state succinctly what began to occur in about eight years afterwards in regard to the abolition of slavery where it was under the guarantee of the Federal Constitution.

It is to be noted that the first anti-slavery agitation was begun where it should have been, in slave-holding states, as early as 1815. Benjamin Lundy, of Quaker descent, was born in New Jersey in 1789. He settled in Virginia at the age of nineteen, and seven years afterwards, at the age of twenty-six, he organized an anti-slavery society which he called the "Union Humane Society." In a few months the membership embraced several hundred persons. In 1816 he published an "Appeal to Philanthropists." Next he began the publication of a paper called The Genius of Universal Emancipation. In the summer of 1824 he

travelled through the states of Virginia and North Carolina, making addresses and forming anti-slavery societies. In October of that year he went to Baltimore, and there renewed the publication of his paper called The Genius. "He was," says an author of great accuracy, "highly esteemed and well sustained in the slave states. Feeble in body and far from robust in mind, he still had the heart of a philanthropist, and the devotion of the early Christian Martyrs."[1] He had all the mildness of the Quaker spirit, and his methods for the abolition of slavery, at this early period, contemplated persuasion of the slave-holders, gradual emancipation, and some system of compensation to those whose property in slaves might be taken from them by public action of their own states. This was a perfectly legitimate kind of agitation; and if Lundy had confined his efforts to slave-holding states much good would have been done, for he had formed many anti-slavery societies in Virginia, North Carolina, and Maryland. Unfortunately, however, he went to Massachusetts to form similar societies, which would co-operate with those that he had already established in three of the slave states. His effort in Massachusetts, if it had been confined to such co-operation as citizens of a non-slaveholding state might properly afford, would have done no harm. But the danger was twofold; first, because his plans were liable to be misunderstood, and secondly, because he might be himself deflected from his original purpose. This turned out to be the case. An address which he delivered in the town-hall of Worcester, Massachusetts, on the 20th of August, 1828, was rightly understood by his hearers as proof, from a man who could speak from personal knowledge, that a very considerable part of the people of the Southern States in which he had carried on his work desired the abolition of slavery.[2] So far this was well. But Lundy next went to Boston, where he addressed a meeting of clergymen, urging a friendly co-operation with the people of the South in extinguishing slavery. There is extant a letter written by the Rev. Dr. William E. Channing to Daniel Webster, after he had heard Lundy. It touches so exactly the risks attending an anti-slavery

[1] The Kansas Crusade, by Eli Thayer. New York: Harper & Brothers, 1889.
[2] Ibid., p. 76.

agitation in a free state, and is so remarkably prophetic, that it should be quoted here.

"BOSTON, May 14th, 1828.

"MY DEAR SIR,—I wish to call your attention to a subject of general interest.

"A little while ago, Mr. Lundy, of Baltimore, the editor of a paper called The Genius of Universal Emancipation, visited this part of the country to stir us up to the work of abolishing slavery at the South, and the intention is to organize societies for this purpose. I know few objects into which I should enter with more zeal, but I am aware how cautiously exertions are to be made for it in this part of the country. I know that our Southern brethren interpret every word from this region on the subject of slavery as an expression of hostility. I would ask if they cannot be brought to understand us better, and if we can do any good till we remove their apprehensions. It seems to me, that before moving in this matter, we ought to say to them distinctly, 'We consider slavery as your calamity, not your crime, and we will share with you the burden of putting an end to it. We will consent that the public lands shall be appropriated to this object; or that the general government shall be clothed with power to apply a portion of revenue to it.'

"I throw out these suggestions merely to illustrate my views. We must first let the Southern States see that we are their *friends* in this affair, that we sympathize with them, and from principles of patriotism and philanthropy are willing to share the toil and expense of abolishing slavery, or I fear interference will avail nothing. I am the more sensitive on this subject from my increased solicitude for the preservation of the Union. I know no public interest so important as this. I ask from the general government hardly any other boon than that it will hold us together and preserve pacific relations and intercourse among the states. I deprecate everything which sows discord and exasperates sectional animosities. If it will simply keep us at peace, and will maintain in full power the national courts, for the purpose of settling quietly among citizens of the different states questions which might otherwise be settled by arms, I shall be satisfied

"My fear in regard to our efforts against slavery is, that we shall make the case worse by rousing sectional pride and passion for its support, and that we shall only break the country into two great parties, which may shake the foundations of government.

"I have written to you because your situation gives you advantages which perhaps no other man enjoys for ascertaining the method, if any can be devised, by which we may operate beneficially and safely in regard to slavery. Appeals will probably be made soon to the people here, and I wish that wise men would save us from the perils to which our very virtues expose us.

"With great respect your friend,

"WM. E. CHANNING."

The most unfortunate consequence of Lundy's visit to Boston was that he there came in contact with William Lloyd Garrison, a young printer of much more positive qualities than Lundy, and

of a very different spirit. Garrison was not at that time specially interested in the matter of slavery, but he soon became so from his intimacy with Lundy. He accompanied Lundy to Baltimore, to assist him in the publication of his paper, which was sustained mainly by subscribers and advertisers in the slave states, where he had been doing quiet but effective anti-slavery work. But Garrison's influence over Lundy and his paper became the very reverse of what it should have been. There were some three hundred anti-slavery societies in the slave states; but as soon as the members of these bodies saw individuals attacked by Garrison as personally responsible for the "sin" of slavery, they dropped off, and Lundy's work was frustrated. The South became imbittered against all anti-slavery men, however moderate, when it was found that Garrison dominated Lundy.

There have been, and there will probably continue to be, those who think that Garrison and the men with whom he afterwards became associated had to encounter an evil which was essentially a moral wrong, and that it was necessary to use vituperation and denunciation of the slave-holders in order to arouse the whole country to the enormity of a system which treated human beings as chattels. The historian, however, who has to trace the causes which finally led to a civil war, and who must deal with the acts of individuals and bodies of men as those of persons morally responsible for the mischief they have done, must estimate all such excuses according to their true value. The early "Abolitionists" were as much responsible for the consequences of their acts as any men ever were, and as all men must be. It is of no avail to plead that these men were fanatics. Fanaticism will account for peculiarities of individual character and conduct, but it does not absolve men from responsibility for the consequences of their acts. Zeal, persistency, and a steady pursuit of an object are good qualities in reformers; but unless they are accompanied by a wise adaptation of means to ends they will often do great mischief. With scarcely a single exception, the leading men who initiated and carried on the anti-slavery agitation in the North, and who became distinctively known as the "Abolitionists," had one common characteristic. They would not recognize the limits of human responsibility. Beginning with a disregard of constitutional obligations and restraints, and utterly discarding the

duties of citizenship, they went on until they had made and announced themselves enemies of the Union, and openly advocated its dissolution, because the Constitution gave a certain sanction to slavery. They proclaimed it as their "unalterable purpose and determination to live and labor for a dissolution of the present Union by all lawful and just, though bloodless and pacific means, and for the formation of a new republic that shall be such, not in name only but in full living reality and truth."[1] The lawful and just, though bloodless and pacific means, which they employed, consisted in the fiercest denunciation of all slave-holders, and the inculcation of the idea that the Constitution was a bond of iniquity, to be gotten rid of by destroying the union between the free and the slave states. It was a mere abuse of language to call such means bloodless and pacific. It might take a long time to break up the Union, but when the crisis should come it must necessarily be neither bloodless nor peaceful. It was sheer folly for men to suppose that the people of the slave-holding states would quietly submit to the destruction of all the guarantees and arrangements of the Constitution, or that a new republic could be formed in which there would be no slavery, without a civil war, and without an enormous sacrifice of life and property. It is no excuse for the early Abolitionists that they did not foresee a civil war. They ought to have foreseen it. Others foresaw it, and warned them. The popular instinct, in places where they carried on their early agitation, felt that a sectional division must result from it, and they were sometimes made objects of popular violence, which gave them the opportunity to play the part of martyrs. William Lloyd Garrison is the man who is chiefly responsible for the spirit and method of the anti-slavery agitation; and therefore, unwelcome as this portion of our national history may be, it is necessary to allude to his course after the death of Benjamin Lundy. As soon as Garrison was able to utter his fulminations in Lundy's paper he began to denounce the slave-holders as pirates, thieves, and robbers. Garrison was prosecuted, fined, and imprisoned in Maryland. He lay

[1] See the Resolutions adopted at the anniversary of the Massachusetts Anti-Slavery Society, January 23, 24, 1850, and similar resolutions passed in Ohio by anti-slavery bodies, quoted in Curtis's Life of Daniel Webster, II. 399–400, *note*.

in jail for forty-nine days, when Arthur Tappan, of New York, sent the money which secured his liberation. Lundy's paper and influence were now destroyed: he went to Philadelphia and started another paper, but in this effort he failed. "Misfortune followed misfortune, until in a few years, overwhelmed by poverty and disappointment, and exhausted by his ardent but ineffectual work for freedom, he departed from life."[1] Garrison, after his liberation from prison, wandered about for several months in a frame of mind that might have been expected from what he had undergone; for a man of his temperament could not see the error that he had committed. Imbittered against all who did not think as he did, he went to Boston and established a paper which he called The Liberator. He was a vigorous writer, and when, to his native command of nervous expression in idiomatic English was added the vituperative and denunciatory style which he employed for thirty years, it is not strange that his writings should have produced the effect at which he aimed.

It may seem singular that a press which was not only vindictive but avowedly and openly disloyal to the Union should have had readers in such a community as Massachusetts, and that its conductor should have acquired influence. But there are always large numbers of persons in such communities who can be influenced by their emotions when the writer who addresses them throws off all civil restraint, all political obligation, and all heed of consequences. In the first number of his paper Garrison said that he did not "wish to speak or write with moderation. Let Southern oppressors tremble! Let their Northern apologists tremble!" He never did speak or write with moderation. In his whole career he never suggested one practical measure by which slavery could be removed. Practical measures were not what he aimed at. Measures that statesmen could consider—that men in public life could weigh, examine, and advocate—formed no part of his objects. Southern oppressors were to "tremble," their Northern apologists were to "tremble." This meant that terror was to be excited; that a moral force was to gather which would sweep away all constitutional restraints, and destroy the bonds which held the Union together. If the deluge should come, no

[1] Thayer's Kansas Crusade, p. 80.

matter. To the deluge Garrison made no objection. Although it did not come exactly as he anticipated, no man exerted a more potent influence than he in bringing about that condition of things which resulted in the civil war. That the war brought about the abolition of slavery is a fact which many persons accept as ample compensation for all the evils of such a war; while the agency of the men who made that conflict inevitable is accounted to them for their glory, without any proper estimation of what might have been and must have been the consequence of dealing with slavery in a different spirit and by different methods. For it is unquestionably true that the work begun by Lundy in the South had done much good, and that if the kind of Northern co-operation outlined by Dr. Channing in his letter to Mr. Webster could have been brought about, a beginning could have been made from which the best results could have been augured. This is proved by what was taking place in Virginia at the time of the first formation of the anti-slavery societies which came into the field in the free states, the earliest of them dating from the year 1832. The societies organized by Lundy in the South had left a good impression before they were dissolved, because Lundy's methods were acceptable to the Southern people so long as they were not perverted by Garrison. In Virginia a conviction of the moral, social, and economical evils of slavery was spreading among the largest slave-holders. In their legislature Virginia gentlemen of character and influence could freely discuss and shape measures looking to a radical but gradual change because there was as yet no interference from without, such as came suddenly into activity after the anti-slavery societies were formed in the North.[1]

In 1831–32, Mr. Jefferson Randolph, a grandson of Thomas Jefferson, represented the county of Albemarle in the Assembly of Virginia. This was one of the largest slave-holding counties in the state. Mr. Randolph introduced a bill to effect a gradual and prospective emancipation of slaves. A debate ensued, in which all the evils of slavery were set forth quite as strongly as they

[1] The New England Anti-Slavery Society was organized in Boston on the 30th of January, 1832. The New York Society in October, 1833, and the National Anti-Slavery Society at Philadelphia in December, 1833. Affiliated local societies of the same kind sprang up at once in many towns and villages of the North.

ever have been anywhere. But Mr. Randolph did not press his bill to a vote, as the House was not prepared for action upon it. They, however, adopted a resolution declaring that "they were profoundly sensible of the great evils arising from the condition of the colored population of the commonwealth, and were induced by policy as well as humanity to attempt the immediate removal of the free negroes; but that further action upon the removal of the slaves should await a more definite development of public opinion." Randolph, who had thus taken the lead on this momentous subject, was again elected by his constituents.

In the midst of this state of things, and before the next meeting of the legislature, intelligence came from the North of the formation of anti-slavery societies, their aim, spirit, and temper. The aspect in which these proceedings presented themselves to people in the South was most alarming. Strangers coming together in the free states to assail all slave-holders as sinners, and to demand instant abolition, aroused fears of the most dangerous consequences to the safety of Southern homes, and an intense indignation against such an external interference with the domestic condition of the Southern States. A sudden revulsion of public sentiment in Virginia was followed by a similar revulsion everywhere in the South where an amelioration of the condition of the colored race was in consideration. This change of feeling led Southern statesmen to seek new devices for strengthening the political power of their section in the Union. The field became changed. The fact that slavery was a domestic institution of certain states, with which the citizens of other states could not rightfully interfere, ceased in the opinion of Southern men to be a sufficient barrier against Northern aggression. There came about a resolute purpose to enlarge the area of slavery, and thus to erect new barriers against external interference, by augmenting the power of the Southern section, as a section which had to defend itself on the theatre of national politics. In a short time a change took place in the Southern feeling respecting the institution itself, and many persons of pure and religious character began to defend it by religious sanctions and on religious grounds.

It was in the highest degree unfortunate that the movement in Virginia towards emancipation should have been thus arrested. Virginia had much influence throughout the other slave-holding

states, and although her legislation in regard to slavery in her own borders might not be immediately followed elsewhere, it was most important that her public men should be left undisturbed to frame measures that would show what could be effected. The first step which they contemplated was the immediate removal of the free negroes—a numerous population whose condition, as may be inferred from the language of the resolution adopted by the Assembly, appealed strongly to the "policy" as well as to the "humanity" of the state. The state alone could take the initiative in any scheme for colonizing her free blacks. But there were modes in which the Federal Government could aid Virginia by subsidiary legislation. There was no constitutional obstacle to a grant of a portion of the public lands to the state of Virginia for the purpose of applying the proceeds in aid of any system of colonization which the state might adopt. An experiment of the utmost consequence might thus have been tried with the assent of both the great sections of the country, and it cannot be doubted that if that assent had been given in Congress the experiment would have met with success. It was the very measure contemplated by those wise and judicious persons in the North who, although few in number, were anxiously considering how the North could co-operate with the South in the removal of slavery.[1] The first thing that needed to be done in such a state as Virginia was to remove the free negroes from contact with the slaves. The free negroes were not in general a valuable element in the labor of the state. Their removal being accomplished, action for the removal of *slavery* could have been followed without disturbance by a system of gradual emancipation, after a more definite development of public opinion had taken place. But that development of public opinion could not take place after the sudden irruption of the Northern anti-slavery societies into the field had changed the whole aspect of affairs—after it had become a study with Southern statesmen to find how they could erect new barriers for the defence of slavery by increasing the political power of their section in the Union. It was not their fault that such new barriers appeared to them to be necessary in their situation. It was the fault of those Northern agitators who proclaimed that the

[1] See the letter of Dr. Channing to Mr. Webster, quoted ante, p. 246.

Union itself was "an accursed thing," and that if immediate emancipation were not adopted the Union must be broken up. Thus it came to be considered in the South that the extension of slavery into new regions, by insisting on a right to carry it into the territories of the United States, thereby adding to the number of slave-holding states as each territory should become a state, was the great panacea against that Northern aggression which was accumulating a moral force for attacking slavery in the states where it had long existed. Against the effect of that force Southern men believed that the long-unquestioned right of a state to have the exclusive control of its domestic institutions had ceased to be sufficient. They did not cease to assert their rights under the Constitution, but they believed it to be necessary to increase their political power in the Union by laying hold of every legitimate means for increasing the number of slave states.

It is worthy of note that in the plans contemplated in Virginia in 1832–33, her public men were not deterred by the certainty that if those plans should go into successful operation the relative representation of their states in the lower house of Congress would be proportionately diminished. But now all this was changed. It became of the highest public necessity, in the view of Southern men, not only to adhere to their existing right under the Constitution to have the representation of their respective states include the stipulated three fifths of the slaves in reckoning the population of each state, but also that the Southern or slave-holding section of the Union, as a section, should secure an increase of its political power in the Union by adding new slave states at every opportunity.

It was only a few years after the occurrence in Virginia which I have above described that the new Southern attitude took definite shape. The movement in the Virginia legislature, which came to such an unfortunate end, took place in 1832–33. On the 12th of January, 1838, Mr. Calhoun embodied the Southern position in certain resolutions which he introduced in the Senate of the United States. These resolutions, covering every aspect of slavery which then presented itself, read as follows:

Mr. Calhoun's Resolutions—Friday, January 12, 1838.

1. *Resolved*, That, in the adoption of the Federal Constitu-

tion, the states adopting the same acted, severally, as free, independent, and sovereign states; and that each for itself, by its own voluntary assent, entered the Union with the view to its increased security against all dangers, *domestic* as well as foreign, and the more perfect and secure enjoyment of its advantages—natural, political, and social.

2. *Resolved*, That, in delegating a portion of their powers to be exercised by the Federal Government, the states retained, severally, the exclusive and sole right over their own domestic institutions and police, to the full extent to which those powers were not thus delegated, and are alone responsible for them; and that any intermeddling of any one or more states, or a combination of their citizens, with the domestic institutions and police of the others, on any ground, political, moral, or religious, or under any pretext whatever, with the view to their alteration or subversion, is not warranted by the Constitution, tending to endanger the domestic peace and tranquillity of the states interfered with, subversive of the objects for which the Constitution was formed, and, by necessary consequence, tending to weaken and destroy the Union itself.

3. *Resolved*, That this government was instituted and adopted by the several states of this Union as a common agent, in order to carry into effect the powers which they had delegated by the Constitution for their mutual security and prosperity, and that, in fulfilment of this high and sacred trust, this government is bound so to exercise its powers as not to interfere with the stability and security of the domestic institutions of the states that compose the Union; and that it is the solemn duty of the government to resist, to the extent of its constitutional power, all attempts by one portion of the Union to use it as an instrument to attack the domestic institutions of another, or to weaken or destroy such institutions.

4. *Resolved*, That domestic slavery, as it exists in the Southern and Western states of this Union, composes an important part of their domestic institutions, inherited from their ancestors, and existing at the adoption of the Constitution, by which it is recognized as constituting an important element in the apportionment of powers among the states, and that no change of opinion or feeling on the part of the other states of the Union in relation to

it can justify them or their citizens in open and systematic attacks thereon, with the view to its overthrow; and that all such attacks are in manifest violation of the mutual and solemn pledge to protect and defend each other, given by the states respectively, on entering into the constitutional compact which formed the Union, and as such are a manifest breach of faith, and a violation of the most solemn obligations.

5. *Resolved*, That the interference by the citizens of any of the states, with the view to the abolition of slavery in this District, is endangering the rights and security of the people of the District, and that any act or measure of Congress designed to abolish slavery in this District would be a violation of the faith implied in the cessions by the states of Virginia and Maryland, a just cause of alarm to the people of the slave-holding states, and have a direct and inevitable tendency to disturb and endanger the Union.

6. *And Resolved*, That any attempt of Congress to abolish slavery in any territory of the United States in which it exists would create serious alarm and just apprehension in the states sustaining that domestic institution; would be a violation of good faith towards the inhabitants of any such territory who have been permitted to settle with and hold slaves therein, because the people of any such territory have not asked for the abolition of slavery therein, and because, when any such territory shall be admitted into the Union as a state, the people thereof will be entitled to decide that question exclusively for themselves.

The final vote upon the adoption of these resolutions was:

Yeas—Messrs. Allen, Bayard, Benton, Black, Brown, Buchanan, Calhoun, Clay of Alabama, Clay of Kentucky, Crittenden, Cuthbert, Fulton, Grundy, Hubbard, King, Lumpkin, Lyon, Merrick, Nicholas, Niles, Norvell, Pierce, Preston, Rives, Roane, Robinson, Sevier, Smith of Connecticut, Strange, Tipton, Walker, White, Williams, Wright, Young—35.

Nays—Messrs. Clayton of Delaware, Davis, Knight, McKean of Pennsylvania, Prentiss, Robbins, Smith of Indiana, Swift, and Webster—9.

Massachusetts, Vermont, and Rhode Island were the only states that voted in the negative.

Although these resolutions asserted some undeniable truths, Mr. Webster and Mr. Clayton voted against them, because they could not affirm many of the propositions which they contained.

Mr. Calhoun's resolutions, tinged with his peculiar views respecting the relations of the states to the Federal Government, treated the territorial possessions of the United States as property belonging in common to the states as members of a confederacy, and made the government the agent of the states for the management and disposal of it. This was not in accordance with the territorial clause of the Constitution, unless that clause, in speaking of "the territory" or "other property belonging to the United States," meant to use the latter term as designating the states severally. There were two very strong reasons against this construction. First, wherever the Constitution uses the term "the United States," and wherever it uses the term "the states," the immediate context shows whether it means by the former the government established by and under the Constitution, and whether it means by the latter the states in their capacities as distinct political communities. Then, too, when the Constitution was established, some of the states held indefinite claims to lands lying westward towards the Mississippi River. But these claims were ceded by those states to the United States; and when the territorial clause spoke of "the territory" belonging to the United States, it referred to the Northwestern Territory, which had become the property of the United States, as the United States existed under the Articles of Confederation. But as no proper authority existed in the Congress of the Confederation to make rules and regulations respecting this territory, the territorial clause of the Constitution was framed so as to create this power in the new Congress; and the power was extended to "other property" of the United States, because it was expected that the United States would acquire other territorial property than the Northwestern Territory.

Coupled with his peculiar views concerning the ownership of territorial property, Mr. Calhoun's resolutions also assumed that a citizen of a state where slave property existed by the local law had an indefeasible constitutional right to emigrate with such property into any territory of the United States. If this was constitutionally sound it would follow that Congress could not

make a rule or regulation respecting any territory that would deprive the citizen of a slave-holding state of the right to emigrate into that territory and carry his slave property with him, with all its incidents and peculiarities. This, therefore, would have reduced the power to make rules and regulations to a mere power to sell or otherwise dispose of the public lands, and would have excluded the power to prescribe the conditions of social life within a territory, and might even exclude the power to establish civil government. This, however, became the Southern doctrine, as it was afterwards contended for in the case of Dred Scott.

The long period of comparative repose which followed the Missouri Compromise was not broken until the annexation of Texas in 1845 brought a foreign slave-holding republic into the Union as a state. Then followed the war between the United States and Mexico, in consequence of the annexation of Texas, which was a remote province wrested from Mexico by a revolution, and which had been for nine years an independent republic. During the progress of the war, which was quite likely to result in a further acquisition of territory by the United States, efforts were made in Congress to impose a restriction against slavery upon all territory that might be thus acquired. Among these efforts the so-called "Wilmot Proviso" became the occasion of much angry sectional feeling. To a bill pending in the House of Representatives for making peace with Mexico, David Wilmot, a Pennsylvania member, on the 6th of April, 1846, proposed the following amendment:

"*Provided*, That as an express fundamental condition to the acquisition of any territory from the Republic of Mexico by the United States, by virtue of any treaty which may be negotiated between them, and to the use by the executive of the moneys herein appropriated, neither slavery nor involuntary servitude shall ever exist in any part of said territory, except for crime, whereof the party shall first be duly convicted."

A motion to amend the amendment by inserting therein, after the word "territory," the words, "north of 36° 30′ north latitude," was negatived by a vote of 89 nays to 54 ayes. Mr. Wilmot's proviso thus stood as a proposition to inhibit the introduction of slavery into any and all territory that might be ceded by Mexico to the United States. In this shape it passed the

House by an affirmative vote of 83 yeas against 64 nays. It came up again on the 3d of March, 1847, with some modifications, and was then rejected by a vote of 97 in favor and 102 against it — the New England members voting for it and the Southern members voting against it. Its adoption by the House on its first introduction alarmed and wounded the Southern States. The proposal to exclude Southern men and Southern institutions from territories won by the common blood and the common treasure of the states caused a deep sense of injury in the feelings of the Southern people. In the North many of the legislatures passed resolutions approving the proviso; the Northern press and the Northern speeches in Congress were urgent for it; and although it was finally defeated in the House, it left a feeling in the South that rankled for a long time.

The Northern claim, as first embodied in the Wilmot Proviso, was that the whole of the territories of the United States should in effect be reserved for the citizens of states which did not recognize slave property; for although that proviso did not become a law, its doctrine made a sectional claim which entirely ignored all consideration of circumstances that might render it proper for Congress to allow of slavery in a particular territory. At the same time, by votes which they gave in Congress for the extension of the Missouri Compromise line of 36° 30′ to the Pacific Ocean, the Southern members evinced their willingness to settle the sectional dispute by a provision that would confine the restriction against slavery to territories north of that parallel. If this had been effected, and if no attempt had been made to repeal the Missouri Compromise, which was enacted in 1820, the peace of the Union might have remained undisturbed.

How the Southern doctrine grew and became strengthened in the minds of Southern people is apparent from one of a series of resolutions passed by the legislature of Virginia in 1847, and reaffirmed in 1849. It was at first aimed at the Wilmot Proviso, but it had also a larger application:

"*Resolved unanimously*, That all territory which may be acquired by the arms of the United States, or yielded by treaty with any foreign power, belongs to the several states of this Union, as their joint and common property, in which each and all have equal rights; and that the enactment by the Federal

Government of any law which should directly or by its effects prevent the citizens of any state from emigrating with their property of whatever description into such territory, would make a discrimination unwarranted by and in violation of the compromises of the Constitution and the rights of the states from which such citizens emigrated, and in derogation of that perfect equality which belongs to the several states as members of this Union, and would directly tend to subvert the Union itself."

It is now necessary to give some account of an intermediate doctrine respecting slavery in the territories which was not less inconsistent with the true interpretation of the territorial clause of the Constitution than that which was embodied in Mr. Calhoun's resolutions, or that which was set forth by the legislature of Virginia, or that which was embodied in the Wilmot proviso. This was the doctrine of "popular sovereignty," or, as it was vulgarly called, in the political slang of the day, "squatter sovereignty." Its author was Stephen A. Douglas, a senator from Illinois. This remarkable, very able, and energetic man, added to great ambition an indomitable will. He conceived of a method of dealing with the subject of slavery in the territories which would, as he believed, unite a majority of the people of both sections of the country, and form the basis on which a President of the United States could be elected. He had long been a prominent candidate for the office, and his personal qualities gave him a large following. He was not always consistent in his public conduct in respect to slavery in the territories.

During the administration of President Polk (1845–49), Mr. Douglas was chairman of the Senate Committee on Territories. A bill for the organization of a government for the territory of Oregon came into the Senate from the House. Mr. Douglas caused an amendment to be adopted which declared that the Missouri Compromise should remain in full force and binding for the future organization of the territories of the United States, in the same sense and with the same understanding with which it was originally adopted. The sense and understanding with which it was originally adopted were that north of the parallel of 36° 30′ slavery should be prohibited, and that south of that line new territories might be organized in which slavery could be established. The Senate adopted this amendment by a vote of 33

yeas against 21 nays. But the House disagreed to it, and the Senate receded from it. The analysis of the votes in both bodies shows that the Northern members were in general opposed to this reaffirmation of the Missouri Compromise line, and that the Southern members were in favor of it in its application to the territories lying west of Missouri. At what precise time Mr. Douglas changed his views on this subject cannot be determined. But when it became necessary, during the subsequent administration of President Pierce (1853–57), to provide territorial governments for the regions ceded by Mexico to the United States by the treaty of Guadalupe Hidalgo, Mr. Douglas conceived the project of repealing the Missouri Compromise. Putting forth all his energy, he carried the bill known as "The Kansas-Nebraska Act" through both houses, and persuaded President Pierce to sign it. It swept away the Missouri Compromise, and declared that it was the intent and meaning of the act that Congress should neither legislate slavery into nor out of the territories, but that the people of each territory should be at liberty to adopt and allow or to prohibit slavery, as they might see fit. The bill became a law on the 30th day of May, 1854.

While Mr. Douglas's bill for the organization of Kansas and Nebraska, including a repeal of the Missouri Compromise, was still pending, a movement was made by certain senators and members of the House by issuing an "appeal" to the people of the United States against it.[1] The Republican party was not then organized, but the elements for its organization were gathering, and one of the chief stimulants for its formation was the proposed repeal of the Missouri Compromise. The following embraces a portion of the "appeal:"

"Fellow-citizens,—As Senators and Representatives in the Congress of the United States, it is our duty to warn our constituents (?) whenever imminent danger menaces the freedom of our institutions and the permanency of our Union. [Were the people of the United States their *constituents?*]

[1] The "appeal" was dated January 19, 1854, and was signed by Senators Chase, of Ohio, and Sumner, of Massachusetts, and by Benjamin Wade and Joshua R. Giddings, of Ohio, Gerrit Smith, of New York, and Alexander De Witt, of Massachusetts, members of the House.

"Such danger, as we firmly believe, now impends, and we earnestly solicit your prompt attention to it. . . .

"We arraign this bill as a gross violation of a sacred pledge; as a criminal betrayal of precious rights; as part and parcel of an atrocious plot to exclude from a vast unoccupied region emigrants from the Old World, and free laborers from our own states, and convert it into a dreary region of despotism inhabited by masters and slaves.

"We appeal to the people. We warn you that the dearest interests of freedom and the Union are in imminent peril. Demagogues may tell you that the safety of the Union can be maintained only by submitting to the demands of slavery. We tell you that the safety of the Union can only be insured by the full recognition of the just claims of freedom and man. The Union was formed to establish justice and secure the blessings of liberty. When it fails to accomplish these ends, it will be worthless; and when it becomes worthless, it cannot long endure.

"We implore Christians and Christian ministers to interpose. Their divine religion requires them to behold in every man a brother, and to labor for the advancement and regeneration of the human race. . . .

"Let all protest, earnestly and emphatically, by correspondence and through the press, by memorials and resolutions of public meetings and legislative bodies, and in whatever mode may seem expedient, against this enormous crime."

Thus addressed, the people of the Northern States promptly responded to the call, in the very modes pointed out in this proclamation, as the "appeal" was styled in Congress. They were combustible, and this "appeal" supplied the torch. Forthwith the Northern regions of the Union were in a blaze of excitement. The pen, the press, the pulpit, the political forum, and the halls of legislation were put in requisition to resist the passage of the bill. As an exponent of the general feeling, the "protest" of the clergymen of New England may be taken. The object of the protest may be found in the circular which was "simultaneously sent to every clergyman in New England," and which was signed by Charles Lowell, Lyman Beecher, Baron Stowe, Sebastian Streeter, committee of clergymen of Boston, and was dated February 22, 1854. "It is hoped," the circular declares, "that every

one of you will append your names to it, and thus furnish to the nation and the age the sublime and influential spectacle of the *great Christian body of the North* united as one man in favor of freedom and of solemn plighted faith.

"If you have already, either as a private Christian or as a clergyman, signed any similar document, please to sign this also, as it is earnestly desired to embrace in this movement the clerical voice of New England.

"It is respectfully submitted whether the present is not a crisis of sufficient magnitude and imminence of danger to the liberties and integrity of our nation to warrant and even demand the services of the clergy of all denominations in arousing the masses of the people to its comprehension through the press, and even the pulpit."

Mr. Douglas, in defending himself in the Senate against the criticisms made on his repeal of the Missouri Compromise, rested "non-intervention by Congress with the slavery in the states or territories" on what he claimed to be the principle of former settlements, and explained his own course as follows:

"I do not like, I never did like, the system of legislation on our part by which a geographical line, in violation of the laws of nature and climate and soil, and of the laws of God, should be run to establish institutions for a people; yet out of a regard for the peace and quiet of the country, out of respect for past pledges, out of a desire to adhere faithfully to all pledges, and out of a desire to adhere faithfully to all compromises, I sustained the Missouri Compromise so long as it was in force, and advocated its extension to the Pacific. Now when that has been abandoned, when it has been superseded, when a great principle of self-government has been substituted for it, I choose to cling to that principle, and abide in good faith not only by the letter, but by the spirit, of the last compromise (namely, that of 1850, in which the right of framing their own constitutions, whether by the admission or prohibition of slavery, was conceded to Utah and New Mexico).

"Sir, I do not recognize the right of the Abolitionists of this country to arraign me for being false to sacred pledges, as they have done in their proclamation. Let them show when and where I have ever violated a compact. I have proved that I stood

by the compact of 1820 and 1845, and proposed its continuance in 1848. I have proved that the Free-soilers and Abolitionists were the guilty parties who violated that compromise then. I should like to compare notes with those Abolition confederates about adherence to compromises. When did they stand by or approve of any one that was ever made?

"Did not every Abolitionist and Free-soiler in America denounce the Missouri Compromise in 1820? Did they not for years hunt down ravenously for his blood every man who assisted in making that compromise? Did they not in 1845, when Texas was annexed, denounce all of us who went for the annexation of Texas and for the continuation of the Missouri Compromise line through it? Did they not in 1848 denounce me as a slavery propagandist for standing by the principles of the Missouri Compromise, and for proposing to continue the Missouri Compromise line to the Pacific Ocean? Did they not violate and repudiate it then? Is not the charge of bad faith true as to every Abolitionist in America, instead of being true as to me and the committee, and those who advocate this bill?

"They talk about the bill being a violation of the compromise measures of 1850. Who can show me a man in either house of Congress who was in favor of the compromise measures of 1850, and who is not now in favor of leaving the people of Nebraska and Kansas to do as they please upon the subject of slavery according to the provisions of my bill? Is there one? If so, I have not heard of him. This tornado has been raised by the Abolitionists, and the Abolitionists alone. They have made an impression on the public mind in the way which I have mentioned, by a falsification of the law and the facts; and this whole organization against the compromise measures of 1850 is an Abolition movement. I presume they had some hope of getting a few tender-footed Democrats into their plot; and acting on what they supposed they might do, they sent forth publicly to the world the falsehood that their address was signed by the senators and a majority of the representatives from the state of Ohio; but when we come to examine the signatures we find no one Whig there, no one Democrat there, none but pure, unadulterated Abolitionists. . . .

"Now I ask the friends and opponents of this measure to look

at it as it is. Is not the question involved, the simple one, Whether the people of the territories shall be allowed to do as they please upon the question of slavery, subject only to the limitation of the Constitution? . . .

"When you propose to give them a territorial government, do you not acknowledge that they are capable of self-government? Having made that acknowledgment, why should you not allow them to exercise the rights of legislation? Oh, these Abolitionists are entirely willing to concede all this, with one exception. They say they are willing to trust the territorial legislature, under the limitations of the Constitution, to legislate on the rights of inheritance, to legislate in regard to religion, education, morals, to legislate in regard to the relations of husband and wife, of parent and child, and guardian and ward, upon everything pertaining to the dearest rights and interests of white men, but they are not willing to trust them to legislate in regard to a few miserable negroes. That is their single exception. They acknowledge that the people of the territories are capable of deciding for themselves concerning white men, but not in relation to negroes. The real gist of the matter is this: Does it require any higher degree of civilization, intelligence, bravery, and sagacity to legislate for negroes than for white men? If it does, we ought to adopt the Abolition doctrine and go with them against this bill. If it does not, if we are willing to trust the people with the great, sacred, fundamental right of prescribing their own institutions, consistent with the Constitution of the country, we must vote for this bill as reported by the Committee on Territories. That is the only question involved in the bill."

Mr. Douglas was wrong in regard to several of the former settlements of the matter of slavery in territories, and he was essentially wrong in regard to the Compromise of 1850. His contention was that the principle of the Missouri Compromise was abandoned in the settlement of 1850, and that there was substituted for it, both by the letter and spirit of the last legislation, "a great principle of self-government"—namely, a right in the people of a territory to form their own institutions in their own way. In fact, the principle of the Compromise of 1850 was the reverse of this, and so had been the previous settlements. By the Missouri Compromise of 1820 slavery was excluded from all the terri-

tory ceded by France to the United States, lying north of 36° 30′, while Missouri was admitted into the Union as a slave-holding state. This constituted what was called the Missouri Compromise. It was a bargain between the sections, made for the purpose of reconciling the conflicting claims of the North and the South. By the compact between the United States and Texas (1845) slavery was agreed to be allowed in states that might be formed out of Texas, south of 36° 30′, if the people of such states should choose to have it. Under the Constitution of California (1849) slavery was excluded from that state by the will of its people. By the physical incapacity of all the rest of the territory acquired from Mexico (1848) to receive and sustain slavery, it was excluded from what is now New Mexico, Utah, and Arizona, as effectually as it could be by any legislation.[1]

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[1] I have elsewhere described the principle of the Compromise of 1850 as follows: "The United States had therefore reached on this subject *a fixed state of things*, in which it was unnecessary to have any further political agitation or discussion after the state of things had been recognized as fixed and immutable, so far as it could be affected by the legislation of Congress. The principle of the compromise adjustment of 1850 so recognized a fixed and settled condition of the whole subject. So long, therefore, as this principle should be adhered to there could be no further extension of slavery; it would be confined to the states in which it already existed, and to such new states as Texas, by her compact with the United States, had a right to make south of 36° 30′. Being thus circumscribed, the causes which would necessarily bring about its gradual extinction, and which nothing but further political agitation could impede, would be left to their full operation. As there would be no possibility of increasing the political power of the slave-holding section beyond its then fixed limits, if the principle of the adjustment of 1850 should be adhered to by a majority of Congress, it was a rational and sound expectation that slavery would have to yield to the influences that would finally make it an intolerable burden in the states to which it was confined. Mr. Calhoun saw this very clearly, and hence his struggle to restore and secure what he regarded as the just political 'equilibrium' between the two sections by obtaining an admission of the principle that the Constitution, *proprio vigore*, invested slave-holders with a right, which Congress could not restrict, to carry slavery into any territory of the United States. This equilibrium certainly was *not* secured by the Compromise of 1850, which admitted nothing like the principle for which Mr. Calhoun contended. On the other hand, Mr. Webster saw with equal clearness that if the people of the North would recognize that there was a fixed state of things in reference to the extent of slavery, then that that institution or relation would at once be left to the operation of causes for its final removal, which must begin to operate in the states where it remained; that those causes would be unimpeded by further political agitation; and that slavery would there-

In this attitude of affairs, the Missouri Compromise being repealed by the efforts of Mr. Douglas in 1854, it happened that there was living in the city of St. Louis a negro whose name was Dred Scott, and who was claimed to be a slave belonging to the estate of one Sandford. It is probable that the political motive of bringing about a judicial decision respecting the power of Congress to prohibit slavery in a territory may have had something to do with the institution of the suit that was brought in a federal court in the name of this negro. Scott himself first instituted a suit to establish his freedom in the state court of Missouri, where, after a trial, there was a verdict and judgment in his favor. The Supreme Court of the state reversed this judgment and remanded the case to the lower court. It then became known that very important political and constitutional questions were involved in the facts of this negro's personal history; and in order to have these questions raised so as to obtain a final decision of them in the Supreme Court of the United States, an action was brought in Scott's name as plaintiff against Sandford, who claimed Scott as a slave, in the Circuit Court of the United States for the District of Missouri. An arrangement was made by which the case in the state court was continued to await the decision in the federal court. A correct understanding of the questions at issue and of the result in the Supreme Court of the United States requires so much technical explanation that I avail myself here of a paper which I wrote and published in 1859, in which I gave an analysis of the case.

The plaintiff, Dred Scott, brought an action of trespass in the Circuit Court of the United States for the District of Missouri against the defendant, Sandford, for the purpose of establishing

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fore not become the motive or the occasion for secession and civil war. Hence his desire to have the people of the North recognize, act upon, and adhere to that fixed condition of all the territory of the United States on which the Compromise Measures of 1850 were founded. He always declared that, whenever and wherever it should be necessary to apply what was called the 'Wilmot Proviso,' he would apply it. But as the state of things was already fixed in regard to future slavery in new territories by circumstances that made that enactment unnecessary, he said he would not give useless irritation by resorting to it." (See an extract from a speech made by Mr. Webster at Springfield, Massachusetts, in 1847, in regard to the "Wilmot Proviso" and its uses, as quoted and applied to his position in 1850. Webster's Works, V. 349.)

his freedom; and according to the requirements of law, in order to gain the jurisdiction of the court, the plaintiff in his writ averred himself to be a "citizen" of the state of Missouri and the defendant to be a citizen of the state of New York. The defendant filed a plea in abatement, alleging that the plaintiff is not a "citizen" of Missouri, because he is a negro of African descent, his ancestors having been of pure African blood, brought into this country and sold as slaves. To this plea the plaintiff demurred; and, as by his demurrer he admitted the *facts* alleged in the plea, the sole question on the demurrer was the question of law, whether a negro of African descent, whose *ancestors* were slaves, can be a citizen of the United States for the purpose of suing a citizen of another state than his own in a circuit court. The circuit court gave judgment for the plaintiff on this question, and the defendant was ordered to plead to the merits of the action. He did so; and the substance of his plea in bar of the action was that the plaintiff was his (the defendant's) slave, and that he had a right to restrain him as such. Upon the issue joined upon this allegation the case went to trial upon the merits, under an agreed statement of facts, which ascertained in substance that the plaintiff, who was a slave in Missouri in 1834, was carried by his then master into the state of Illinois, and afterwards into that part of the Louisiana Territory in which slavery had been prohibited by the act of Congress called the Missouri Compromise, and was afterwards brought back to Missouri, and held and sold as a slave. The jury, under the instructions of the court, found that the plaintiff at the time of bringing his action was a slave, and the defendant obtained judgment. The plaintiff then sued out a writ of error to the Supreme Court of the United States, which removed the whole record into that court.

It will be observed that the record as brought into the Supreme Court presented two questions:

I. The question arising on the plea to the jurisdiction of the circuit court, whether a negro of African descent, whose *ancestors were slaves*, can be a *citizen*.

II. The question involved in the verdict and judgment on the merits, whether the plaintiff was a slave at the time he brought his action. This question involved, among others, the inquiry whether the Missouri Compromise, which prohibited the exist-

ence of slavery in the territory where the plaintiff was carried, was constitutional or not.

The importance and effect of the Dred Scott decision depend entirely upon the manner in which these questions were dealt with by the Supreme Court. If either of them was judicially decided by a majority of the bench in the same way, the decision constitutes a judicial precedent binding upon the court hereafter, and upon all other persons and tribunals, until it is reversed in the same court to just the extent that such decision goes. If either of them was not judicially decided by a majority of the bench in the same way, there is no precedent and no decision on the subject, and the case embraces only certain individual opinions of the judges. The following analysis will determine what has been judicially decided. The reader will observe that when the plea in abatement is spoken of, it means that part of the pleadings which raised the question whether a negro can be a citizen; the merits of the action comprehend the question whether the plaintiff was a slave as affected by the operation of the Missouri Compromise or otherwise. Keeping these points in view, every reader of the case should endeavor to ascertain the true answers to the following questions:

I. How many of the judges, and which of them, held that the plea in abatement was rightfully before the court on the writ of error, so that they must pass upon the question whether a negro can be a citizen?

Answer — Four: Chief-Justice Taney, and Justices Wayne, Daniel, and Curtis.

II. Of the above four, how many expressed the opinion that a negro cannot be a citizen?

Answer—Three: the chief-justice, and Justices Wayne and Daniel.

Mr. Justice Curtis, who agreed that the plea in abatement was rightfully before the court, held that a negro *may* be a citizen, and that the circuit court, therefore, rightfully had jurisdiction of the case.

The opinion of these four judges on this question are to be regarded as judicial, they having held that the record authorized and required its decision. But as there are only three of them on one side of the question, and there is one on the other, and

there were five other judges on the bench, there is no judicial majority upon this question unless two at least of the other five concurred in the opinion that the question arising on the plea in abatement was to be decided by the Supreme Court, and *also* took the same view of that question with Justices Taney, Wayne, and Daniel.

But, in truth, there is not one of the other five judges who concurred with the chief-justice and Judges Wayne and Daniel on either of the above points.

Judge Nelson expressly avoided giving any opinion upon them. Indeed, he seems to have leaned to the opinion that the plea in abatement was not before him; but after saying there may be some question on this point in the courts of the United States, he goes on to say: "In the view we [I] have taken of this case, it will not be necessary to pass upon this question; and we [I] shall therefore proceed at once to an examination of the case upon its merits." He then proceeds to decide the case upon the merits, upon the ground that even if Scott was carried into a region where slavery did not exist, his return to Missouri, under the decisions of that state, is to be regarded as restoring the condition of servitude. Judge Nelson has never given the opinion that a negro cannot be a citizen, or that the Missouri Compromise was unconstitutional, or given the least countenance to either of these positions.

Judge Grier, after saying that he concurred with Judge Nelson on the question embraced by his opinion, also said that he concurred with the chief-justice that the Missouri Compromise Act was unconstitutional. He neither expressed the opinion that a negro cannot be a citizen, nor did he intimate that he concurred in that part of the opinion of the chief-justice; on the contrary, he placed his concurrence in the disposal of the case as ordered by the court expressly upon the ground that the plaintiff was a slave, as alleged in the pleas in bar.

Judge Campbell took great pains to avoid expressing the opinion that a free negro cannot be a citizen, and has given no countenance whatever to that dogma. He said at the commencement of his opinion, after reciting the pleadings: "My opinion in this case is not affected by the plea to the jurisdiction, *and I shall not discuss the question it suggests.*" Accordingly, in an elaborate

opinion of more than twenty-five pages 8vo, he confines himself exclusively to the question whether the plaintiff was a slave; and he adopts or concurs in none of the reasoning of the chief-justice, except so far as it bears upon the evidence which shows that the plaintiff was in that condition when he brought his suit. He concurred with the rest of the court in nothing but the judgment, which was that the case should be dismissed from the court below for want of jurisdiction; and that want of jurisdiction, he takes good care to show, depends, in his view, on the fact that the plaintiff was a slave, and not on the fact that he was a free negro of African descent, whose ancestors were slaves.

Thus there were only three of the judges who declared that a free negro of African descent, whose ancestors were slaves, cannot be a "citizen" for the purpose of suing in the courts of the United States, and whose opinions on this point are to be regarded as judicial because they were given under the accompanying opinion that the question was brought before them on the record. As *three* is not a majority of *nine*, the case of Dred Scott does not furnish a judicial precedent or judicial decision on this question.

With regard to the other question in the case—that arising on what has been called the merits—the reader will seek an answer to the following questions:

I. Of the judges who held that the plea in abatement was rightly before them, and that it showed a want of jurisdiction in the circuit court, how many went on, notwithstanding their declared opinion that the case ought to have been dismissed by the circuit court for that want of jurisdiction, to consider and pass upon the merits which involved the question of the constitutional validity of the Missouri Compromise?

Answer.—Three: the chief-justice, and Judges Wayne and Daniel.

II. Of the above three judges, how many held the Missouri Compromise Act unconstitutional?

Answer.—Three: the same number and the same judges.

III. Of the judges who did not hold that the question of jurisdiction was to be examined and passed upon, and gave no opinion upon it, how many expressed the opinion on the merits that the Compromise Act was void?

Answer.—Three: Judges Grier, Catron, and Campbell.

IV. Of the remaining three judges, how many gave no opinion upon either of the two great questions—that of citizenship, or that of the validity of the Compromise?

Answer.—One: Judge Nelson.

V. Of the remaining two judges, how many, who held that the question of citizenship was not open, still expressed an opinion upon it in favor of the plaintiff, and *also* sustained the validity of the Compromise?

Answer.—One: Judge McLean.

VI. The remaining judge (Curtis) held that the question of citizenship was open upon the record; that the plaintiff, for all that appeared in the plea in abatement, was a citizen, and consequently that the circuit court had jurisdiction. This brought him necessarily and judicially to a decision of the merits, on which he held that the Compromise Act was valid.

Thus it appears that six of the nine judges expressed the opinion that the Compromise Act was unconstitutional. But in order to determine whether this concurrence of six in that opinion constitutes a judicial decision or precedent, it is necessary to see how the majority is formed. Three of these judges, as we have seen, held that the circuit court had no jurisdiction of the case, and ought to have dismissed it, because the plea in abatement showed that the plaintiff was not a citizen; and yet, when the circuit court had erroneously decided this question in favor of the plaintiff, and had ordered the defendant to plead to the merits, and, after such plea, judgment on the merits had been given against the plaintiff, and he had brought the record into the Supreme Court, these three judges appear to have held that they could not only decide *judicially* that the circuit court was entirely without jurisdiction in the case, but could also give a *judicial* decision on the merits. This presents a very grave question, which goes to the foundation of this case, as a precedent or authoritative decision on the constitutional validity of the Missouri Compromise Act, or any similar law.

If it be true that a majority of the judges of the Supreme Court can render a judgment ordering a case to be remanded to a circuit court, and there to be dismissed for a want of jurisdiction, which three of that majority declare was apparent on a

plea in abatement, and these three can yet go on in the same breath to decide a question involved in a subsequent plea to the merits, then this case of Dred Scott is a judicial precedent against the validity of the Missouri Compromise. But if, on the other hand, the judicial function of each judge who held that the circuit court was without jurisdiction, for reasons appearing in a plea to the jurisdiction, was discharged as soon as he had announced that conclusion, and given his voice for a dismissal of the case on that ground, then all that he said on the question involved in the merits was extra-judicial, and the so-called "decision" is no precedent. Whenever, therefore, this case of Dred Scott is cited hereafter in the Supreme Court as a judicial decision of the point that Congress cannot prohibit slavery in a territory, the first thing that the court will have to do will be to consider and decide the serious question, whether they have made, or could make, a judicial decision that is to be treated as a precedent, by declaring opinions on a question involved in the *merits* of a judgment, *after* they had declared that the court which gave the judgment had no *jurisdiction* in the case.

When it is claimed, therefore, in grave state-papers or elsewhere, whether in high or low places, that the Supreme Court of the United States, or a majority of its judges, has authoritatively decided that Congress cannot prohibit slavery in a territory, it is forgotten or overlooked that one thing more remains to be debated and determined—namely, whether the opinions that have been promulgated from that bench adverse to the power of Congress do, in truth and in law, constitute, under the circumstances of this record, an actual, authoritative, judicial decision.

The case of Dred Scott, plaintiff in error, *vs.* John F. A. Sandford, was first argued in the Supreme Court of the United States at the December term, 1855. It was held by the court under advisement, and serious differences of opinion arose among the judges. At the December term, 1856, the court ordered a reargument on the following specific questions:[1]

[1] At the time when this order was made Mr. Montgomery Blair had charge of the case for Scott. He requested me to aid him two or three days before the case was called. I replied that on the question whether a free negro could be a "citizen," there was not time for me to make the necessary preparation, but that

I. Whether, after the plaintiff had demurred to the defendant's first plea to the jurisdiction of the court below, and the court had given judgment on that demurrer in favor of the plaintiff, and had ordered the defendant to answer over, and the defendant had submitted to that judgment and pleaded over to the merits, the appellate court can take notice of the facts admitted on the record by the demurrer which were pleaded in bar of the jurisdiction of the court below, so as to decide whether that court had jurisdiction to hear and determine the cause?

II. Whether or not, assuming that the appellate court is bound to take notice of the facts appearing upon the record, the plaintiff is a citizen of the state of Missouri within the meaning of the eleventh section of the Judiciary Act of 1789?

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on the question of the power of Congress to prohibit slavery in a territory I thought I could be of use even at so short a notice, for the subject was not new to me. It was agreed between us that I should argue the latter question, and that Mr. Blair should argue the former one. The court had allowed four hours on each side for the argument. Mr. Blair gave me an hour, and reserved three for himself. I was satisfied with this arrangement, for I knew that I could say in an hour all that was needful on the question assigned to me. [See Mr. Curtis's argument in Appendix.—J. C. C.] Mr. Reverdy Johnson and Mr. Geyer, one of the senators from Missouri, were on the opposite side. My argument was based chiefly on the history and purpose of the territorial clause of the Constitution, which, I contended, had invested Congress with plenary legislative power to prohibit or allow, in a territory of the United States, any social institution whatever, including slavery. The counsel on the other side argued with great force the Southern doctrine of an inalienable right of a citizen of a slaveholding state to emigrate with his slave property into a territory of the United States, and there hold such property, with all its incidents and peculiarities, so long as the territorial condition continued. Mr. Johnson, especially, was very emphatic in asserting the Southern doctrine as it had been expressed by Mr. Calhoun and other Southern authorities. The case attracted great public attention, and at the time of the argument the court-room was filled by a large audience, consisting of members of the bar and senators and representatives. Of all the persons in that assembly, including the judges and the counsel, the spectators and the officers of the court and the present writer, I am, with the exception of one of the doorkeepers, the only survivor. I have spoken of the Southern doctrine, but it was not universally held by Southern public men at that time. Mr. Crittenden, senator from Kentucky, and Mr. Badger, senator from North Carolina, both expressed to me in private their concurrence in my argument. Mr. Badger had voted in the Senate for the repeal of the Missouri Compromise, in compliance with what he deemed to be the wishes of his constituents, but it was not his personal opinion that the slavery restriction was unconstitutional.—G. T. C.

What I have called the Southern doctrine had come to be a contention which could alone encounter the growing determination in the North to exclude slavery from every territory of the United States; and, as this was now a political question on which a new party, of a sectional character, was rising into importance in the free states, it was deemed by Southern men to be of great importance to procure a decision of the Supreme Court of the United States adverse to the power of Congress to prohibit the introduction of slavery into any of the territories. In the pursuit of this object the true ground was lost sight of. If Congress could not prohibit the introduction of slavery, it could not recognize, confirm, and establish it. If the power of Congress was a full legislative authority over the conditions of social life in a territory, it included both the power to prohibit and the power to permit and regulate the condition of servitude. This was a very important consideration for the South, but it was overlooked by those who desired to establish the right of emigration into a territory by the citizens of a state who might choose to bring slave property with them. How the case of Dred Scott came to result as it did in the Supreme Court of the United States should now be stated, for it affords a melancholy proof of what misfortunes may occur when judges yield to or take into consideration the political aspects of constitutional questions.

There is strong reason to believe that after the second argument Chief-Justice Taney was not disposed to adopt the Southern view of either of the questions on which the court had ordered the reargument. This was stated to be the fact by Mr. Justice Wayne in conversation with a Southern senator while the court had the case under advisement. Judge Wayne made strenuous exertions to convince the chief-justice that if a majority of the court should decide these questions as he (Wayne) wished them to be decided, all further agitation on the subject would be quieted, and therefore that for public reasons this should be the disposition of the case. It was in vain that Justices McLean, Nelson, and Curtis, in the conferences of the court, explained in the strongest terms that such a result, instead of putting an end to the agitation in the North, would only increase it, and that the influence of the court, its estimation in the country, and its true dignity, rendered it most unadvisable to have it understood that the de-

cision of these very grave and serious constitutional questions had been influenced by considerations of expediency. Judge Wayne was thoroughly conscientious in his belief that the court had it in its power to put an end to the excitement prevailing throughout the Union, and there can be no doubt that he was honestly convinced that the Southern doctrine was the true one. He had sufficient influence to persuade the chief-justice to take the course which he afterwards did take. He told the senator that he had exerted this influence, that he had succeeded, and that he had thus gained a very important point for the peace and quiet of the country.[1] Never was there a greater mistake, as the sequel proved.

When the court came to dispose finally of the case of Dred Scott, a somewhat unusual course was taken. The chief-justice wrote and read from the bench an opinion which purported to be, and was in form, the opinion of the court, and it was so reported by the official reporter.[2] This opinion, after a long and elaborate discussion of all the questions in the case, ended as follows:

"Upon the whole, therefore, it is the judgment of this court that it appears, by the record before us, that the plaintiff in error is not a citizen of Missouri in the sense in which that word is used in the Constitution; and that the Circuit Court of the United States for that reason had no jurisdiction in the case, and could give no judgment in it. Its judgment for the defendant must consequently be reversed, and a mandate issued directing the suit to be dismissed for want of jurisdiction."

The meaning of this was that Scott did not become emancipated by being taken by his master into a region where slavery was prohibited by an act of Congress, because Congress had no constitutional power to impose the restriction against slavery

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[1] The senator to whom I refer above, and who repeated to me many years afterwards what Judge Wayne said to him, was the late Hon. David L. Yulee, one of the senators from Florida at the time of the argument of the Dred Scott case. It was confirmed by what I knew from another source to have taken place in the conferences of the judges. Mr Yulee informed me that Judge Wayne, in direct terms, told him that he had gained a triumph for the Southern section of the country, by persuading the chief-justice that the court could put an end to all further agitation of the subject of slavery in the territories.—G. T. C.

[2] 19 Howard's Reports, p. 399 et seq.

which was embraced in the Missouri Compromise Act; that Scott, being a slave at the time when his action was brought in the Circuit Court of the United States, could not be a "citizen," and, therefore, that the circuit court had no jurisdiction to entertain the case at all. If this had been in truth concurred in at all points by a majority of the judges, there would have been reason for regarding it as a judicial decision. But the analysis above given of the conclusions of the different judges, as formally announced by themselves, severally, shows that there was no concurring majority in anything but the conclusion that the circuit court be directed to dismiss the suit for want of jurisdiction.

The chief-justice's opinion was followed by the delivery of a separate opinion of each of the other judges, and the mode in which each of them treated the constitutional and the technical questions arising on the record has been given in the above analysis.[1]

On the day when the opinions of the judges were read in court, the editor of a paper in New England procured a copy of the dissenting opinion of Judge Curtis, and as soon as he could print it it was scattered broadcast through the North, where it was almost universally received as the true constitutional view of all the questions in the case. It was everywhere said in the free

[1] It is but an act of justice to a great and good man to take notice here of a calumny that was industriously circulated against Chief-Justice Taney, and that has had extensive popular credence from that day to this. He was charged, without the slightest truth, with having said from the bench that "a negro has no rights which a white man is bound to respect." In the view which he took of the question whether a negro could be a "citizen" in the sense of the Constitution, he deemed it necessary to make an historical review of the state of opinion and feeling about the African race which was prevalent throughout the civilized world at the time of the adoption of our Constitution. All that he said on this subject was a mere description of the way in which the African was regarded both in Europe and America; and it was on historical facts, as he viewed them, that the chief-justice based his opinion that, at the time of the adoption of the Constitution, negroes were not regarded as citizens or members of the body politic. "They had," he said, "for more than a century before, been regarded as beings of an inferior order . . ." The calumniators of the chief-justice entirely ignored the fact that he spoke of a past state of opinion and feeling, and imputed to him as his personal opinion the atrocious sentiment that a negro has no rights which a white man is bound to respect. The slander had its effect, and it is probable that there are multitudes at this day who believe it.—G. T. C.

states that the youngest judge on the bench had triumphantly refuted the reasoning and conclusions of the opinion which was put forth officially as the opinion of the court. It became the general conviction of the Northern section of the country that the true law of the whole case was to be found in the dissenting opinion of Judge Curtis. Its lucid and powerful reasoning, its accurate and extensive learning, its calm earnestness and exact discrimination made it, in the judgment of nearly all readers competent to understand such a document, conclusive upon every question with which it dealt; and it so happened that, in the view which its author took of his judicial duty under the actual state of the record, it was necessary for him to review and dispose of every question that had been argued at the bar or that arose upon the technical attitude of the case. At the same time very little attention was paid, in the North or in the South, to the inquiry whether there had been in truth an authoritative decision of the court on the constitutional power of Congress to prohibit slavery in a territory, or on the question whether a free negro could be a citizen. It was generally assumed that the court had judicially decided these questions according to the Southern doctrine, and throughout the North the court suffered in the estimation and respect of the people. In the South the supposed decision was hailed as proof that the Southern contention had always been right. In one section the cry was raised that "the slave power" had captured the Supreme Court. In the opposite section the cry was raised that the "Abolitionists" and the "Free-soilers" had attempted to capture the court and had signally failed.

It was but a little more than two years since the Missouri Compromise was repealed in the "Kansas-Nebraska Act," and this repeal was followed by a great excitement. Wherever it was believed that the Supreme Court had lent its weighty authority to the doctrine that the restriction against slavery was unconstitutional, a storm burst forth. Slavery, said the Northern agitators, will now go by its own force into every territory of the United States; the number of slave states will be indefinitely increased; the country will become one great slave-holding republic; the free states will have to succumb to this encroachment; and as a negro, although free, cannot be a citizen and has no rights, every member of the African race is virtually reduced to a condition of

servitude. Slavery, said the Southern agitators, is now judicially settled to be a condition which every slave-holder has a right to carry into every territory of the United States; we can make any territory into a slave state which we choose to add to our existing number; and henceforth our political power in the Union is secure. Its security rested on a very slender foundation.

If due attention had been paid to the important inquiry whether there had been a decision, in the proper judicial sense, the clamor that was raised in the opposite sections of the country would probably not have reached to such a height. But the state of the two chief and oldest of the political parties throughout the Union was then such as to lead to disintegration and disruption of the bonds that had formerly held each of them in a strong organization, extending most beneficially throughout the two sections. Out of the discordant materials composing the Whig and the Democratic parties—made discordant by the slavery questions—a new party was to arise. To the state of parties, therefore, I now turn. It shows how things were tending towards a disruption, first, of many political, social, and religious organizations, and, secondly, towards a disruption of the Union itself. Next after the repeal of the Missouri Compromise, the action of the Supreme Court in the case of Dred Scott was the most potent factor in producing and aggravating these tendencies.

The official representative bodies of both the Whig and the Democratic parties had affirmed the Compromise of 1850 in their respective conventions, although there was great opposition to the new Fugitive Slave Law in almost all the free states. The action of the Supreme Court in the case of Dred Scott took place very early in the administration of President Buchanan. His immediate predecessor, Franklin Pierce, had been elected by a very large majority of the electoral votes, partly because the Whig and the Democratic parties in the main supported the compromise measures of 1850, as a final and permanent settlement, and partly because the immediate partisans of General Scott, the Whig candidate, were not trusted by a large part of the voters. Yet, notwithstanding the great majority with which the administration of President Pierce came into power, several causes operated to bring about a great change in the parties of the country. One of these was his approval of the Kansas-Nebraska Act, which,

it was believed, had been gained from him by Mr. Douglas, through a misuse of his influence. President Pierce was a very upright and patriotic man, and while Mr. Douglas's attitude towards him may have been somewhat overbearing, there can be no doubt that he was convinced that the good of the country required that the Southern view in respect to slavery in the territories should prevail. He and his immediate political friends held the same doctrines afterwards enunciated in the so-called opinion of the Supreme Court in the Dred Scott case.[1] But neither the whole weight of authority which usually belongs to an administration—and especially to one that has come into power with a great majority of electoral votes—nor the influence of the Democratic party, could prevent the growth of a new party which was to gather additional recruits from both the old ones, which was already in the field, and which was to have "Freedom" inscribed upon its banners.

Franklin Pierce received 105 electoral votes more than were necessary for a choice, and, in the whole number of votes which he received, 254 were those of every free state excepting Massachusetts and Vermont, and of every slave state excepting Kentucky and Tennessee. General Scott, his Whig competitor, received only 54 electoral votes. The remarkable approach to unanimity shown in the election of President Pierce, and the majority given for his successor, Mr. Buchanan, make it apparent that, but for the consequences of Mr. Douglas's division of the Democratic party by his doctrine of "popular sovereignty," the Democratic party might have again successfully encountered the Republican organization which elected Mr. Lincoln in 1860. But Mr. Douglas was still an aspirant for the presidency, and he was an aspirant for it on his peculiar platform, which made an intermediate ground that could satisfy neither those of the North, who aimed to exclude slavery from every territory of the United

[1] One of the gentlemen who had been members of President Pierce's cabinet, Mr. Caleb Cushing, was a member of the legislature of Massachusetts at the time of the supposed Dred Scott decision. He was very outspoken in his condemnation of the doctrine held in the dissenting opinions of Justices McLean and Curtis, although that doctrine was fast becoming the conviction of the public in the free states, and, in fact, was destined to become the ultimate result of the constitutional questions involved in the case.—G. T. C.

States, nor those of the South who maintained the right of every slave-holder to take his slave property into any territory, and to hold it there until a state constitution should be framed. In 1859, before the respective parties were to make their nominations for the presidency, Mr. Douglas put forth an elaborate exposition of his doctrine of "popular sovereignty." He chose as the vehicle of its circulation a popular monthly,[1] and it was afterwards reprinted and extensively distributed in a pamphlet.

It was the purpose of this ingenious paper to maintain that the people of a territory had a right to decide, independently of the will of Congress, whether the institution of slavery should or should not exist among them while they still remained in the territorial condition. His argument went the entire length of the assertion that, in reference to local concerns and internal polity, the people of a territory are sovereign in the same sense in which the people of a state are sovereign. In order to establish what he called "popular sovereignty in the territories," he undertook to define the dividing line between federal and local authority; and he placed it, in respect to the territories, where it is in respect to the states. He summed up the whole discussion in the following principle: "That every distinct political community, loyal to the Constitution and the Union, is entitled to all the rights, privileges, and immunities of self-government in respect to their local concerns and internal polity, subject only to the Constitution of the United States." If this was true, what did the territorial clause of the Constitution mean? That clause must have meant either that the territories are dependencies of the United States, subject to the legislative power of Congress in respect to their local concerns and internal polity, or else that they are independent political communities, with the same rights of local self-government as those possessed by the states. The states, for example, have the exclusive right to regulate the institution of marriage within their own borders; and so have the territories, if their people are sovereign in the same sense as the people of a state are sovereign. On the other hand, if the people of a territory are a subordinate and dependent political community, they have just those rights of self-government which Congress may see fit to

[1] Harper's Magazine for September, 1859.

confer upon them. Mr. Douglas did not draw the dividing line between federal and local authority, in respect to the territories, where he should have drawn it. He made the same line of division as that which obtains between the federal and the state powers. In respect to subjection to the Constitution of the United States, no one ever supposed that Congress is not bound to observe the prohibitions and restraints of the Constitution, in legislating for a territory, just as it is bound to observe them in legislation that is to operate within the states. All the limitations imposed by the Constitution on the legislation of Congress apply to its legislation wherever it is to operate. The mistake made by Mr. Douglas, in his effort to maintain "popular sovereignty in the territories," was that he made it the same kind of sovereignty as that of the states. The true distinction was not likely to be drawn by ordinary minds, for it involved very important constitutional discriminations. But there was an *ad captandum* force in the cry of "popular sovereignty," which could reach and influence Democratic voters in a presidential election; and however Mr. Douglas may have persuaded himself that he was contending for a great and true "principle," he certainly availed himself of a captivating idea which would secure political followers in the Democratic party. But it did not secure acceptance in the South among men who were capable of understanding the true constitutional distinctions between a territory and a state. It rather increased the tendency in the South to resort to the supposed right of every citizen of a slave-holding state to settle in a territory, and to carry with him his property in slaves, as a right resulting from the idea that the territories are the common property of the states, as constituent members of the Union. The sequel will show that Mr. Douglas's doctrine led to that disruption of the Democratic party which made it possible to elect Mr. Lincoln upon a platform that rejected "popular sovereignty in the territories," and also rejected and encountered the doctrine maintained by the Southern wing of the Democratic party.[1]

[1] It is one of the disadvantages and defects of territorial government that it does not vest in the people of the territory a full right of self-government; that it obliges them to be at all times subject to the will of Congress, so far as that will is not restrained by the Constitution. For this reason the wisest territorial organ-

The origin of the Republican party dates from the year 1854, after the repeal of the Missouri Compromise. It was composed at first of several different factions—partly of one called the Liberty party, partly of one called the Free-soil party, and partly of the Abolition wing of the Whig party, and of others who were disgusted with the repeal of the Missouri Compromise. On the 27th of September, 1854, an Anti-Nebraska Convention was held in Auburn, New York, which passed a resolution recommending that a convention of delegates *from the free states* be held in Syracuse, New York, on the 4th of July, 1856, to nominate candidates for the presidency and vice-presidency of the United States for the next presidential election. It was by this assembly at Auburn that the name "the Republican organization" was adopted for the new party. The proposed convention of the free states was held in Philadelphia, and by this convention John C. Frémont, of California, was nominated as the candidate of the Republican party for the presidency, and William L. Dayton, of New Jersey, as the candidate for the vice-presidency. The sectional character of this organization is shown by the resolutions adopted as the platform of the new party, which denied the authority of Congress, of a territorial legislature, and of any individual or association of individuals to give legal existence to slavery in any territory of the United States while the present Constitution shall continue; and which also declared that the Constitution confers upon Congress sovereign power over the territories for their government, and that, in the exercise of this power, it is both the right and the duty of Congress to prohibit in the territories those "twin relics of barbarism, polygamy and slavery."

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izations that have been framed have aimed to bestow on the territorial legislature a large degree of power; but even in the best of these there has always been a reserved power in Congress to revise and disallow the territorial legislation; and their governors and higher judicial officers have always been appointed by the federal power, and have not been chosen by the people. The true course to be pursued is to terminate the territorial condition, and to admit the territory as a state of the Union as soon as it can be done with safety and in consistency with certain requirements. At the same time, there can be no question that a territory is a subordinate and dependent political community, not possessed of any sovereignty at all. This would have been learned long ago if it had not been for the vexatious matter of slavery.

This coupling together of polygamy and slavery as twin relics of barbarism was designed to draw into the Republican party those who felt scandalized by the existence of polygamy in Utah, where it had obtained some footing after the emigration of the Mormons into that region from Illinois. No great accession of voters, who felt that polygamy was an evil to be eradicated by Congress, could be expected to accrue to the new party. Slavery continued to be the main subject of agitation, and on this subject there was a manifest inconsistency in the platform; for if Congress had the sovereign power over the territories which was claimed for it, it was equally a power to prohibit or to legislate for its establishment or permission. Among the extreme advocates of the Southern doctrine there was a similar inconsistency, for they denied the power of Congress to prohibit slavery in any territory, and consequently they denied the power to allow it. Thus, in the presidential election of 1856, when Mr. Buchanan was elected, the Republican party was in the field with a platform and candidates representing an entire exclusion of slavery from any territory, while in the South preparations were making for a sectional attitude of just the opposite character. It was, however, because Mr. Buchanan was an acceptable candidate throughout the Southern States, and in the free states of New Jersey, Pennsylvania, Indiana, Illinois, and California, that the evil of a disruption of the Democratic party was postponed until the next election.

It had for a long time appeared to the public men and people of the South that no friendly co-operation in the removal of slavery could be expected from the North, since the anti-slavery agitators in that section proposed to reach the object by breaking up the Union. One of the earliest of the documents put forth by the American Anti-Slavery Society, called their "Tract No. 1,"[1] was an elaborate argument to prove that the Constitution of the United States was a "pro-slavery instrument." It was a document drawn up with much ability, and its positions were correctly assumed. It maintained that the slavery compromises agreed to in the formation of the Constitution, and embodied in its arrangements, including the provision for a return of fugitives

[1] See Tract No. 1 in Appendix.—J. C. C.

from service, gave to the Constitution the character which they imputed to it, making it a pro-slavery instrument. It was entirely true that the Constitution had given a sanction to slavery, as an institution and a form of property existing in some of the states (eleven out of the thirteen), and had made a union between free and slave states, in which rights were guaranteed to the latter by the fundamental law of the land. The early "Abolitionists" were perfectly consistent in maintaining that this was the character of the Constitution, but the conclusions which they drew from perfectly correct premises put them outside of the pale of the Union, as a body of citizens who renounced the obligations of citizenship. Their "Tract No. 1," which passed through many editions and was extensively circulated, appealed to all consistent anti-slavery men not to hold office and not to vote under such a Constitution. Such a renunciation of the duties of citizenship, by persons living under and enjoying all the other benefits of the Constitution, made a body of persons who could not be considered in any other light than as promoters of a revolution; and when to this was added the resolutions passed in the assemblies of the Abolitionists, announcing their hostility to the Union and their determination to labor for its destruction, it was inevitable that the people of the South should cast about to provide new means for its preservation. In the earlier history of the Union there had been no special efforts to extend the area of slavery for political purposes. The cultivation of cotton and a few other staples had formed the principal motive for carrying slave-labor into regions where new and fertile lands invited its introduction; and the earlier legislation of Congress, in the organization of territories contiguous to the states where it had long existed, had permitted its introduction in such new regions. But the aggressions of the Northern anti-slavery agitators, which began in the year 1832 and were carried on for a period of about thirty years, added to the producing and economic objects of the planting interests a strong motive for increasing the political power of the Southern section. The people and public men of the South were far-seeing in regard to the methods for doing this; and if they changed their opinions and feelings in regard to the rightfulness of such a relation as that between master and slave, and sought for religious grounds on which to defend what

was elsewhere coming to be regarded as a great moral wrong, they did only what might have been expected, and what should have been foreseen at the North as the inevitable consequence of the mode in which the anti-slavery agitation was there begun and carried on.

The disproportion and dissimilarity between the means employed by the Abolitionists and the means that should have been employed make a most striking part of this unfortunate history. In Virginia the slave-holders, in their discussions of the subject in their own legislature, did not ignore the original moral wrong of slavery, but they considered it chiefly in its economical aspects, for they had begun to learn that slave-labor was profitable only under conditions such as did not exist in so old a state. Slaves, as property, were valuable in Virginia for the purpose of breeding other slaves that could be sold in states farther south and in the Southwest. But as a form of labor, profitable in Virginia to the slave-holder or to the state, it was already seen that the system was no longer what it had been. If the Northern anti-slavery agitators had discussed the economical aspects of slavery, as they might have done, instead of spending their whole force on its moral aspects, there might have been a different effect produced. It was the fierce denunciations which they fulminated against the slave-holders as thieves, pirates, and robbers, and their avowed purpose to break up the Union, which brought about in the South a determination to strengthen and increase the political power of that section.

Recurring now to the presidential election of 1860, the reader will have to note a singular state of parties, quite unprecedented, and to observe how it came about that the influence of the Democratic party, as the only organization that could encounter the Republican party, was frustrated, and Mr. Lincoln became president by a combination of the free states alone. This was the first time that such a result had occurred; and, although it afforded no excuse for an attempt to disrupt the Union, since Mr. Lincoln was not the less President of the United States although he did not receive the electoral vote of a single Southern state, yet it is important to trace the causes which led to the secession of the Southern States in 1860–61, and which furnished the only plausible justification they ever had for that step.

Foremost among the grounds for its justification, in the minds of the people of those states, was the platform on which Mr. Lincoln was nominated and elected, and the fact that he was elected by the votes of the free states alone. This fact was of very little consequence, standing by itself. But the character of the "Chicago platform" of the Republican party, on which Mr. Lincoln, a citizen of a Northern state, was elected president, and Mr. Hamlin, a citizen of another Northern state, was elected vice-president, disclaimed with great precision the idea that Congress could in any way act upon slavery in the states; but in regard to slavery in the territories it contained the following resolution:

"That the normal condition of all the territory of the United States is that of freedom; that as our republican fathers, when they had abolished slavery in all our national territory, ordained that no person should be deprived of life, liberty, or property without due process of law, it becomes our duty by legislation, whenever such legislation is necessary, to maintain this provision of the Constitution against all attempts to violate it; and we deny the authority of Congress, of a territorial legislature, or of any individuals, to give legal existence to slavery in any territory of the United States."

This explicit declaration, thus made the political creed of the Republican party, coupled with the election of candidates for the presidency and the vice-presidency from the free states alone, made it certain that there was to be a trial of political strength between the two sections of the Union. It tendered to the South an issue which could not be avoided. It asserted a new political doctrine, and one that was a departure from the former legislation of Congress, which had both prohibited and allowed slavery in territories previously organized. It rejected the principle of the Missouri Compromise, which had made a parallel of latitude the limit of division of the territories into those where slavery might and those where it might not be allowed. It was, too, a reading of the Constitution diametrically opposed to the Southern reading. It must, therefore, be assumed that the political men who framed for the Republican party the "Chicago platform" *meant* to bring about an antagonism between the North and the South on this subject, by having it made the principal issue in a presidential election.

The condition of the political parties at this time was such as to render it extremely uncertain what the result would be. If the Democratic party had been in a situation to avail itself of a union of all its forces upon a basis that would bring together its Northern and its Southern wing, the evil of a triumph, or of an apparent triumph, of the North over the South might have been avoided. Such a union might have been effected on a ground that would sufficiently antagonize the Republican platform, if Mr. Douglas and his friends had not been in the field with his doctrine of "popular sovereignty." The leading men of the Northern and Southern wings of the Democratic party, without affirming the extreme Southern ground respecting slavery in the territories, might have fallen back upon the principle of action which had been made the basis of former legislation, by reaffirming the practice of prohibiting or allowing slavery in a particular territory according to circumstances. This was prevented by Mr. Douglas's aspirations for the presidency.

There was at this time a remnant of the Whig party known as the "Old Line Whigs," and consisting of those who had not been absorbed into the Democratic or into the Republican party. They were strong in the states of Virginia, Kentucky, and Tennessee, and they had some strength in Massachusetts. They kept up an organization, and nominated John Bell, of Tennessee, as their candidate for the presidency, and Edward Everett, of Massachusetts, as their candidate for the vice-presidency. It would have been better if they had not made any nomination of candidates, and had thrown their votes for the Democratic nominees. But this they could not do consistently with their principles, after the schism in the Democratic National Convention which assembled at Charleston in the month of April, 1860, and was thence adjourned to Baltimore, where it became disrupted for a time.

At Charleston it was soon found that no platform could be framed that would be acceptable both to the Northern and the Southern wing of the Democratic party, and that there could be no agreement on candidates. After many unsuccessful efforts to unite the delegates on a platform, fifty ballotings for a candidate for the presidency were taken down to the 3d of May. During these ballotings some of the Southern delegates seceded from the convention. The highest number of votes received at any time

by Mr. Douglas amounted to 152½, 202 being necessary to a nomination. The convention then adjourned, to meet at Baltimore on the 18th of June, with a recommendation that the party in the different states fill up the vacancies which had occurred in their respective delegations. When the convention assembled at Baltimore a dispute about the delegates entitled to seats ended in a disruption of the convention into two bodies, the one distinctly Northern, the other distinctly Southern. The Northern convention nominated Mr. Douglas as its candidate for the presidency, and Herschel V. Johnson, of Georgia, as its candidate for the vice-presidency, both on the platform of "popular sovereignty" in the territories. The selection of a Southern candidate for the vice-presidency was made upon the assumption that Southern votes could be obtained for the ticket. But when it came to the election Mr. Douglas and Mr. Johnson obtained only the electoral votes of New Jersey (3) and of Missouri (9). The Southern Democratic convention nominated John C. Breckinridge, of Kentucky, as its candidate for the presidency, and Joseph Lane, of Oregon, as its candidate for the vice-presidency, upon an extreme Southern platform which embodied the claim of all slaveholders to settle in a territory with their slave property, and to hold it as such during the existence of the territorial condition. The selection of a Northern candidate for the vice-presidency by this wing of the Democratic party was made on the assumption that Northern votes could be obtained on a basis that antagonized both Mr. Douglas and Mr. Lincoln. Mr. Breckinridge and Mr. Lane obtained 72 electoral votes, being those of Delaware (3), Maryland (8), North Carolina (10), South Carolina (8), Georgia (10), Louisiana (6), Mississippi (7), Alabama (9), Arkansas (4), Florida (3), and Texas (4). Not a single free state gave its electoral votes to the candidates who represented the extreme Southern doctrine. On the other hand, Mr. Lincoln and Mr. Hamlin received the electoral votes of every free state, and not one vote of a slave-holding state. The electoral votes of the free states amounted in the aggregate to 180, 28 more than were necessary to a choice. Mr. Bell and Mr. Everett, the candidates of the "Old Line Whigs," obtained the votes of Virginia (15), of Kentucky (12), and of Tennessee (12)—39 in all. These significant figures show very distinctly that if the Democratic party had not

become hopelessly divided by reason of the efforts of its Northern wing to force upon the South an unacceptable candidate on an unacceptable platform, Mr. Lincoln would probably not have been elected, for with a united Democratic party it would only have been necessary to wrest from Mr. Lincoln 28 electoral votes, and these might have been obtained from Virginia, Kentucky, and Tennessee.

It was one of the most serious aggravations of this result of the election, in the feelings of the Southern people, that this opportunity to prevent the election of a Northern sectional candidate upon a sectional platform had been frustrated by the conduct of the Northern wing of the Democratic party. The political and public men of the South believed themselves forced to antagonize an extreme Northern doctrine by a Southern doctrine equally extreme in regard to slavery in the territories. They thus lost all prospect of obtaining the electoral votes of a single free state, and the result was, that after the election the people of the South became more and more confirmed in their apprehensions and fears respecting the purposes and aims of the Republican party, which had succeeded in electing a president by the votes of the free states alone, on a platform of a sectional character. The North, they said, has triumphed over us, and now we must look into the armory of our constitutional doctrines for measures adequate to this exigency. And, as always happens when sectional feelings and passions are aroused, the people of the North believed more and more in the Southern purpose to make one great slave-holding republic, in the place of the republic of their fathers.

In the account which I have given in a former chapter of the history of opinion concerning the nature of the Constitution, the reader has seen the germs of the doctrine of state secession from the Union, and that to a large extent it had become a conscientious belief in Southern minds. I have shown that, while Mr. Calhoun was not himself a secessionist, the doctrine of secession as a constitutional right was a logical consequence of his opinions concerning the nature of the Union under the Constitution. In his later years Mr. Calhoun had not many followers out of his own state of South Carolina. But a new generation of public men had grown up in the South, and a new state of things had

arisen, in which the "right of revolution," as an inalienable right of a people who deemed themselves oppressed, was very likely to be confounded with the supposed constitutional right of secession. In times of great public excitement, such as accompanied and followed the election of Mr. Lincoln, individuals do not always know on what justification they mean to defend their public conduct, or on what precise grounds they are acting. At such times men act together in masses, and they do not analyze the political doctrines on which they suppose that they act; or, if they do analyze them, the analysis is apt to end in a fusion of ideas that are widely asunder. No more remarkable phenomena can be found in history than the rapidity with which the people of the Southern States were, for a time, swept out of the Union. It has been customary, with a certain class of writers, to assert that secession was the breaking out of a long-standing conspiracy to destroy the government of the Union. It is difficult to prove a negative, and it is often quite as difficult to prove an affirmative. Who were the conspirators? Where and when was the conspiracy formed? How was the destruction of the Union to be brought about? No answer can be made to these questions that ought to satisfy a rational being. What history can with certainty affirm is, that no conspiracy of individuals could have carried the Southern States out of the Union if it had not found a willing people. It is more than probable that the public men and politicians of the South were stimulated by their people into secession, than it is that they led the people into that rash and fatal error. The events that were occurring in the summer of 1860, ending in a triumph of the North over the South, as the people of the South regarded it, caused a rapid spread of the conviction among the people of the latter section that their safety required a separation from the people of the free states, and the establishment of an independent government. To devise the means of doing this was the work of their statesmen. The doctrine of a constitutional right of secession, as a right resulting from the nature of the Union, furnished the means of taking the first step. The public men of the South could argue this doctrine from certain premises, which might be more or less correct, and many of them maintained it with much ability. It was for their people to accept and carry it out by public acts and by what

they deemed appropriate measures. In the framing of their measures and public acts the supposed right of state secession was necessarily the groundwork of all their proceedings, although individuals and masses of men may have, consciously or unconsciously, mingled with it the right of revolution in determining their own conduct. But the official ground taken in the public proceedings was the alleged constitutional right of secession. The people of the Southern States, in their formal documents and public acts, did not rest on the right to make a revolution. They justified themselves before the world by assuming in their ordinances of secession, adopted in their several state conventions, that they had a reserved right to repeal the acts by which they had formerly ratified the Constitution of the United States, and that this reserved right was a legitimate deduction from the nature of the Constitution. Powers, they said, delegated by different sovereign peoples to a common agent can be rescinded by the sovereign principals. If the political powers granted by the Federal Constitution were, in truth, delegated to a common agent, and were not irrevocably ceded to a government proper, the position of the secession ordinances was correct and defensible. If, on the contrary, political powers were ceded by the Constitution to a government which was made supreme in its appropriate sphere, they could not be reserved by those who had granted them. Which of these two opposite views of the Constitution was the true one could be and was argued out in various ways; but, after every form of argument had been resorted to, it became necessary to refer the dispute to the arbitrament of the sword.[1]

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[1] Among the facts which tend strongly to refute the existence of a long-standing conspiracy to break up the old Union is the organization and establishment of the Confederate government. If a conspiracy had existed, such as has been often charged, the conspirators should have been ready with a scheme of confederation, deliberately and fully prepared to take effect between the states, as soon as they had seceded from the Union. No such scheme was prepared, although the supposed conspirators must have been men quite able to bring one forward at a moment's notice. The truth is that the first Confederate government was a provisional organization, rather hastily framed, and growing out of events as they transpired. Its history may be read in Mr. Jefferson Davis's account of its formation, and in the events which followed in rapid succession after the state of South Carolina had adopted her ordinance of secession. (The student should see Davis's *Rise and Fall of the Southern Confederacy.*)

All the secession ordinances were modelled on that of South Carolina, which was the first one that was adopted. The one that now lies before me is the Ordinance of the state of South Carolina. The Ordinance of South Carolina was adopted on the 20th of December, 1860; that of Georgia on the 19th of January, 1861. In both states, as well as in all the others, the ordinance was debated and passed in state conventions consisting of delegates of the people of the state. These state conventions, according to all American practice and precedent, are held to be the representatives of the state sovereignty. The Ordinance of the state of South Carolina read as follows: [1]

THE STATE OF SOUTH CAROLINA.

At a convention of the people of the state of South Carolina, begun and holden at Columbia on the seventeenth day of December, in the year of our Lord one thousand eight hundred and sixty, and thence continued by adjournment to Charleston, and there by divers adjournments to the twentieth day of December, in the same year.

AN ORDINANCE

To dissolve the Union between the state of South Carolina and other states united with her under the compact entitled the Constitution of the United States of America.

We, the people of the state of South Carolina, in convention assembled, do declare and ordain, and it is hereby declared and ordained, that the ordinance adopted by us in convention on the twenty-third day of May in the year of our Lord one thousand seven hundred and eighty-eight, whereby the Constitution of the United States of America was ratified, and all acts and parts of acts of the General Assembly of this state ratifying amendments of the said Constitution, are hereby repealed; and that the union now subsisting between South Carolina and other states under the name of the United States of America is hereby dissolved.

Done at Charleston the twentieth day of December, in the year of our Lord one thousand eight hundred and sixty.

D. F. Jamison,
Delegate from Barnwell and President of the Convention.

There was thus asserted a right inherent in the people of the state to repeal, rescind, and abrogate every former act of the state which had adopted or amended the Constitution of the United States. The union subsisting between the state of South Caro-

[1] Compare the Constitution of the Confederate States and the Constitution of the United States. The latter was the general model on which the former was framed, but there was a departure from some of the provisions of the earlier in the later instrument. Both constitutions in Appendix.—J. C. C.

lina and other states united with her under the name of the United States of America was declared to be dissolved, and South Carolina was declared to be in full possession of those rights of sovereignty which belong to a free and independent state. If this could be accomplished by such a declaration, it certainly was accomplished.[1]

Everything was done by the Southern States in accordance with those principles of public action which had from the first been held to be the mode in which the sovereignty of a state could be and must be exercised. The Constitution of the United States had been adopted and ratified in every state by a convention of its people. If the right to repeal and rescind these acts of ratification and adoption existed, it must be exercised by the people of a state assembled in convention. The whole question turned upon the supposed reserved right of a state to repeal and rescind the acts by which it had ratified and adopted the Constitution of the United States; and in the nature of things this question could only be finally determined by a resort to physical force, or by a trial of strength between the states which had seceded and those which still adhered to the Federal Government.

An extreme case may be supposed which would have tested the question in the same manner in which it was actually tested. Let it be supposed that all the states but one, Pennsylvania or New York, for example, had seceded from the Union as South Carolina, Georgia, and other states did; that the seceded states had formed a confederate government, and that a civil war had ensued between the new confederate government and the one state which adhered to the Federal Union under the Constitution. If that state had been strong enough to carry on a war against the new confederate government, it must have carried on that war upon the same rights and powers by which the war was carried on between the minority of states which established the Confederate

[1] The great instrument that was adopted by the delegates of the thirteen colonies assembled in the Colonial Congress declared that they were and ought to be free and independent states. But if the government of Great Britain should not choose to accept the Declaration of Independence as a conclusive severance of the colonies from the dominions of the British crown, there was no mode in which their independence could be established excepting by waging a successful war of a revolutionary character.

Government and the majority of states which adhered to the Federal Union; for it was only under the Constitution of the United States that a war could be prosecuted to defend, maintain, and preserve the Union as it existed under the Constitution. If the one state had succeeded by physical force in crushing the confederate government, the result would have been the same as that which attended the triumph of the federal arms in 1865, when the states which adhered to the Federal Union were a majority, and the states which adhered to the Confederate Government were a minority. On the other hand, if the one state had been defeated in its effort to preserve the government established by the Constitution, that government would have been at an end, and the right of secession would have been confirmed and established by the arbitrament of physical force to which it was referred. That arbitrament may seem to have been a strange one to settle a civil and political question, but it was the only one that could be resorted to.

The Ordinance of South Carolina was adopted unanimously in her convention, and was signed by the officers of the convention and by every delegate. In the Georgia Convention a spirited opposition to the ordinance, led by Alexander H. Stephens, was kept up until the ordinance was adopted by a majority of the convention. The Union men of Georgia made a gallant resistance, but after their state had seceded, they had no alternative but to submit or to put themselves in opposition to the will of their state. Many of them held such principles, in regard to the ultimate allegiance due from a citizen of a state to the authority of the state, that they could not do this. Most of them, like Mr. Stephens and other prominent and patriotic men, deemed it their duty to unite with their fellow-citizens in making a country and a government for themselves. Mr. Stephens became vice-president of the Confederate Government. There was a similar Union party in most of the other Southern states, excepting South Carolina, but it was nowhere so strong as it was in Georgia. The existence of this party, however, in greater or less numbers, in all the states which seceded, and their final submission to the step taken by their states, afford another strong proof that secession was not the work of a conspiracy. There was a strong disposition in the North during the civil war, and for some time after-

wards, to impute to Southern men who first endeavored to prevent secession and then submitted to it something more than inconsistency. Great moral wrong was charged upon them, and many of them were regarded as traitors of the deepest dye, because they held that their allegiance was ultimately due to their states. But this was a matter for their individual judgments. The paramount authority of the Federal Government over the citizens of a state, when contrasted with the authority of the state, was a political question on which men of the most conscientious and upright character might honestly hold opinions diametrically opposite to those held in the North. As in all such conflicts, where a people undertake to establish an independent government for themselves, individuals who take an active part in the efforts to bring about that result, whether in military or civil life, can escape the penalty of treason only by success. Treason against the United States is defined in the Constitution as consisting only "in levying war against them, or in adhering to their enemies, giving them aid and comfort." Strictly speaking, every person who took an active part in carrying on the war waged by the Confederate States against the United States committed treason. If arraigned for it in a court of the United States, the fact that the war was waged by a confederation of sovereign states which had absolved their citizens from allegiance to the United States would not afford an answer to the charge. Whether it was wise, in any sense, to hold any person to answer a charge of treason in a criminal court, whether he acted in military or in civil life, is a question that need not be anticipated here.

An episode of a very troublesome nature, one of the consequences of the repeal of the Missouri Compromise, as it was embraced in the Kansas-Nebraska Act, is now to be described. This was the struggle, made from opposite sections of the Union, to have Kansas become a free or a slave state, as the one or the other result might be brought about by previous occupation of the ground. The avowed purpose of the Kansas-Nebraska Act was not to legislate slavery into or out of any territory, but to leave the people thereof free to shape their own institutions in their own way. This purpose could not be declared in legislation without opening such a region as Kansas to an internecine

contest between pro-slavery and anti-slavery settlers. It was a region of fertile soil, of mild and salubrious climate, bordering on the east upon one slave-holding state, Missouri, and approaching in its southeastern corner to the confines of another slave-holding state, Arkansas. Within the borders of the territory were comprehended 82,080 square miles of country, well watered and well timbered. It was adapted to both slave labor and free labor, but it was an imperative duty resting upon Congress to determine, at the time of the organization of the territory, what was to be its condition. Instead of discharging that duty, the act of organization threw the territory open to a contest between settlers from the free states and settlers from slave states, without any fixed character whatever that would determine whether it would ultimately become a free or a slave state. The consequence was a rush and a collision which involved great confusion, some bloodshed, and inflamed the passions of the opposite sections of the Union for several years. Prior to the year 1850 no territory had been organized without having a character impressed upon it one way or the other, as a dependency of the United States in which slavery might or might not be allowed; so that in every instance, while the people of the territory would have the sovereign right to continue or abolish slavery when they should become a state, it would be known beforehand whether it was to be a free or a slave state.[1] But now, departing from the statesmanlike policy and wisdom of their predecessors, and renouncing their plain duty, Congress left the people of Kansas to determine for themselves whether they would or would not have slavery. "Squatter sovereignty," or "popular sovereignty in the territories," was to have full operation.

The history of the Kansas struggle has been written, and writ-

[1] In the settlement of 1850, by the so-called "Compromise Measures," no restriction against slavery was imposed upon the territories of New Mexico and Utah, because the soil and climate and the general features of the country as effectually excluded slave labor as it could be excluded by the legislation of Congress. Mr. Webster pronounced the application of the "Wilmot Proviso" to these territories a mere abstraction. See his speech of the 7th of March, 1850, and his last speech in the Senate, delivered July 17, 1850. Life of Daniel Webster, by the present writer, Vol. II., chaps. xxxv., xxxvi.

ten well, by a person who was engaged in the effort to make it a non-slaveholding state. While I do not entirely concur in this writer's views, I can heartily commend the thoroughness and clearness with which he has described the organization and operations of the "Emigrant Aid Society," which was formed in the Northern States, and which conducted bands of emigrants into Kansas, for the purpose of making it practically certain that it would not become a slave state. It was a force directed and managed with great skill and energy, but a force of the opposite character entered the territory from the opposite section of the Union, and made the contest a struggle for supremacy between Northern and Southern settlers. The struggle lasted for three years, and it ended in the control of the territory by the anti-slavery interest, because the pro-slavery interest, although violent and aggressive, was not so well managed as the affairs of the Emigrant Aid Society. In the course of the struggle it was for a good while doubtful whether mere anarchy would ever be succeeded by a settled condition of public affairs, in which the will of a majority of the people could make itself felt in orderly and lawful methods. If Congress had performed its duty in the act which organized the territory, instead of leaving it to the operation of Mr. Douglas's plan of "popular sovereignty," no such struggle would have taken place. Kansas was composed partly of territory ceded by France to the United States in 1803, and partly of territory ceded by Texas in the settlement of the boundaries in 1850. There was therefore no reason why, in the act organizing the territory of Kansas, the long-settled policy of prohibiting or allowing slavery, according to the circumstances of the case, should not have been continued. The proceedings in Congress, looking to the organization of territorial government for both Kansas and Nebraska, began in 1853 and lasted until May, 1854. The bill which became a law on the 30th of May, 1854, was that in which Mr. Douglas inserted his repeal of the Missouri Compromise restriction, which then applied to the whole region included in Nebraska and Kansas. All that was needful was to leave the restriction untouched; and if thereafter the battle-ground, covering the constitutional power of Congress to impose that restriction, were to be made in the Supreme Court of the United States, there was much less probability of a result against the power than there was after Congress

had repealed the restriction already existing.[1] Nebraska lay north of Kansas, and being formed out of a part of the territory ceded by France in 1803, and lying north of the parallel of 36° 30′, it was subject to the restriction of the Missouri Compromise of 1820. It was organized as a territory by the same Act of May 30, 1854, which organized the territory of Kansas, and which swept away the anti-slavery restriction, but it did not become the scene of such a violent struggle as that which took place in Kansas. If Kansas should become a free state, it was certain that Nebraska could not become a slave-holding state. There was a pro-slavery faction among the settlers in Nebraska, but it was not so large or so aggressive as the same faction in Kansas. An act of Congress to enable the people of Nebraska to form a constitution and state government, and for the admission of the state into the Union on an equal footing with the original states, was passed April 10, 1864, during the first term of Mr. Lincoln's presidency. This act was at first rejected by the people of the territory through the influence of the pro-slavery faction; but afterwards the territorial legislature framed a constitution, which was submitted to the people and was ratified. Under it the territorial legislature applied for the admission of Nebraska into the Union as a state. This Constitution, however, contained provisions unacceptable to Congress as it was then constituted. It was ratified by the people of the territory during the civil war, when the Republican party exercised the whole authority of the Federal Government. A bill for the admission of Nebraska into the Union passed the House January 15, 1867, and passed the Senate with an amendment January 16th. It was vetoed by President Johnson, but notwithstanding the veto it passed the Senate on the 8th of February and passed the House on the 9th. This bill was carried through the two houses because it contained, as a fundamental condition precedent to the admission of the state, that the word "white" should be stricken out of the constitution. This word, if it had remained in the constitution, would have had the effect of confining the elective franchise to white persons alone. It was afterwards certified to the Presi-

[1] The writer to whose account of the Kansas struggle, or Kansas crusade, I have referred, is the Hon. Eli Thayer, whose book is quoted above. He does not give the history of Nebraska. His reports and those of the Emigrant Aid Society, which he was so instrumental in organizing, were confined to Kansas.

dent of the United States that the word had been stricken out; and thereupon the president, by the authority conferred upon him by the act, issued his proclamation declaring the state admitted into the Union, March 1, 1867. Kansas was admitted into the Union as a state by a law passed January 29, 1861, after the anti-slavery settlers had succeeded in making it certain that it would be a free state.

CHAPTER X.

Could the Civil War have been Avoided?—Its True Basis.—Objects for which it could be Rightfully Prosecuted.—President Buchanan's Course in Preparing to Encounter Secession.—Neglect of Congress to Provide Him with the Necessary Means.—The Course of Mr. Jefferson Davis and Other Southern Men while They Remained in Congress.

A calm review of the period over which I have now passed will hardly lead to the conclusion that the civil war was a necessity, if we take into view the causes which brought it about. After it was begun—after the country was divided into hostile sections, and different groups of states, each of which had long possessed an organized government, were led by the Federal Government on the one side, and by the Confederate Government on the other—it was necessary that it should be prosecuted to the end. The issue that was made was on the alleged constitutional right of state secession from the Union, and until this issue had been finally determined by the wager of battle, one way or the other, there could be no peace. In this sense, and for this reason, the war was a necessity. But it is a very different question whether the state of things between the North and the South, which culminated in secession and civil war, could not have been avoided. This state of things was produced by causes which history must analyze, and which were complex and numerous; and while these causes were mainly due to the great fact of slavery, and operated to create a state of feeling in which masses of men and individuals acted with little wisdom, yet there is a question, and a serious one, whether the whole matter of slavery could not have been dealt with by different methods and in a different spirit. It may be said with perfect truth that if the removal of slavery had been approached in the beginning of the

period which is to be described in this chapter, in the way in which it might have been approached, and had been acted on throughout that period by methods that were within the reach of the people of both sections, we might have escaped an assertion of the doctrine of secession, and might have avoided the necessity for a suppression of that doctrine by physical force. But this view of a portion of our national history presupposes that mankind are wiser, more considerate, and less under the dominion of passion and prejudice than they unfortunately often are, especially in free countries, where popular feeling acts directly upon the government, and forces, or seems to force, its way into all measures of legislation and public action. The government of the United States, under the Constitution, was so limited in its powers, in respect to matters that touched the internal policy and condition of the states, that whenever any action in the states was contemplated, it was both in the power and was the duty of that government to abstain from interference with it. But then the government of the United States has always been a popular one. It has always been liable to be acted on with great force by popular feeling, and hence it may be wrenched out of its appropriate sphere, if those who administer it for the time being are not both firm and intelligent in discriminating between its powers and the rights of local self-government vested in the states. There never was much difficulty in making these necessary discriminations when there was any disposition in any quarter to attack the slavery that existed in the states. But when it came to the expansion of the Union, and questions of organizing new territories to become new states arose, the matter of allowing or prohibiting slavery therein presented a field of public action into which the popular feelings and interests of different sections found their way, because of the conflicting doctrines of Congressional power over the territories which prevailed between the North and the South. If, as I have already pointed out, there had been a firm and consistent adherence to the policy which had been adopted in the earlier days of the republic—a policy by which slavery was allowed in or excluded from particular territories according to circumstances—there would have been no occasion for the assertion of the Northern doctrine that Congress could not constitutionally permit the introduction of slavery into any territory, and

no occasion for the assertion of the Southern doctrine that Congress could not constitutionally exclude it.

I have described the repeal of the Missouri Compromise restriction, and the consequences of that repeal, because they greatly aggravated the tendencies of the two sections to divide irreconcilably on this matter of slavery in the territories; and I have described the effect of the Dred Scott case, because it deepened the purposes of the North, on the one hand, to maintain the exclusion of slavery from every territory, and the purposes of the South to carry slavery into every territory where it could obtain a footing. When it came to be a popular cry in the North that the whole of the republic was to be either slave-holding or non-slaveholding, it was inevitable that rational methods should give place to a trial of strength between the two sections, first at the polls, and secondly by the arbitrament of civil war. The supposed right of state secession from the Union afforded to the South the refuge which they desired from the Northern claim that slavery should not be permitted in any territory. The denial of the right of secession afforded to the North the means of asserting what they considered as a constitutional authority of the Federal Government to prevent its assertion. The precipitation of an actual conflict of arms by the conduct of South Carolina after she had adopted her ordinance of secession, and the doctrine which she maintained of the effect of her ordinance in revesting the property of the United States within her borders, which she had by solemn deeds ceded to the United States, made it indispensable for the Federal Government to assert its authority by the suppression of every physical, military, and civil obstacle to the exercise of the federal powers throughout the Union. This brings me, therefore, to the true basis of the civil war and to the consideration of its nature.

The true basis of the civil war is to be found in what was, in general, the official action of the Federal Government in its prosecution. But in the official action of that government during the last year of President Buchanan's administration, before the first signal for war was given by the attack on Fort Sumter, in the harbor of Charleston, will be found a very important foreshadowing of the true constitutional doctrine on which the war was for the most part waged. Individuals in the North, in and out of pub-

lic station, and masses of men, held very wild theories respecting the right of the Federal Government to prosecute the war, and the objects to be accomplished by it. But these theories, although they occasionally did much harm, are of little importance in comparison with the official action of the Federal Government. The extravagant ideas which prevailed more or less throughout the North led to the impression in Europe that the people of that section were fighting for dominion, and were bent upon subjugating the people of the Southern States by a military conquest, after which some new kind of government would be established, with its authority based upon the sword.

But in the acts and public proceedings of the Federal Government are to be found what was the true basis of the war, and the objects to be attained by it. If some of these acts and public proceedings were not always consistent with a sound constitutional theory, they were so in the main; and after the reader has passed through the period of "reconstruction," he will find a wise recurrence to a theory which has brought the Constitution of the United States out of many perils, and has saved it for ourselves and our posterity.

In November, 1860, it was apparent that the state of South Carolina was about to adopt an ordinance of secession from the Union, and to assume the attitude of an independent state. It therefore became the official duty of President Buchanan to encounter the alleged right of state secession, to meet the assertion of this right by an official denial of it on behalf of the government of the United States, and to exercise all the powers with which the president then was or might thereafter be clothed by Congress, to prevent any obstruction to the execution of the laws of the United States within the borders of South Carolina. But not only was the government then unprepared with physical means for resisting such an emergency, but its legislation was inadequate for the purpose. The federal collector of the revenue in the port of Charleston might be driven from the custom-house; the federal judges, the marshal, and other civil officers of the United States might resign their offices. No means of executing the laws of the United States through the courts would remain available to the president. All the machinery for asserting the supremacy of the Constitution and the laws of the United

States would become inoperative. Yet that supremacy must be maintained. How was it to be done?

Congress was to assemble early in December. Could the president take any steps to prevent the Convention of South Carolina from adopting an ordinance of secession? He could do this only by forcibly breaking up and dispersing that body. This would be the assumption of a power not warranted by the Constitution, and it would resemble, if it did not actually amount to, the making war upon a state. There were, at this time, persons of some consideration who, regarding secession as revolution, held that the government of the United States had an inherent right of self-preservation, and could adopt any measures necessary to forestall and prevent a revolution aimed at its destruction. But the right of secession was not asserted as a right to make a revolution, however true it might be that secession would in effect be revolution. It was asserted as a right existing under the Constitution, deducible from the nature of the Union as a confederacy between sovereign states.

In any action, therefore, by the executive of the United States, it was necessary to base all measures upon the true answer to the inquiry whether any right of secession as a reserved right of every state existed. Proceeding in a regular, orderly, and constitutional method—and not as an executive ruler exercising the powers of self-preservation supposed by some persons to be inherent in the Federal Government when a threatened revolution was impending—the president first took the official opinion of the attorney-general as to his powers and duties. It is not necessary here to repeat in detail the questions submitted by the president to the first law officer of the government, or to state the answers at length.[1] It is sufficient to say that the official advice which the president received was, that his duty of faithfully executing the laws of the United States could only be performed by such means and in such a manner as Congress had prescribed; that he could not accomplish a legal purpose by illegal means, or break the laws himself in order to prevent them from being violated by others; that the

[1] I have elsewhere expressed my entire concurrence in this opinion of Attorney-General Jeremiah S. Black to the president. (See Life of James Buchanan, by the present writer, II. 325.) This opinion was dated November 20, 1860.

legal means at the disposal of the president, in case of any forcible obstruction of the laws, were at present insufficient for the emergency; but that, for the protection of the public property in South Carolina, the president had a right to take such measures as might seem necessary. Passing, then, to the most important practical questions of all, the opinion of the attorney-general concluded as follows:

"If it be true that war cannot be declared, nor a system of general hostilities carried on by the central government against a state, then it seems to follow that an attempt to do so would be *ipso facto* an expulsion of such state from the Union. Being treated as an alien and an enemy, she would be compelled to act accordingly. And if Congress shall break up the present Union by unconstitutionally putting strife and enmity and armed hostility between different sections of the country, instead of the domestic tranquillity which the Constitution was meant to insure, will not all the states be absolved from their federal obligations? Is any portion of the people bound to contribute their money or their blood to carry on a contest like that?

"The right of the general government to preserve itself in its whole constitutional vigor by repelling a direct and positive aggression upon its property or its officers cannot be denied. But this is a totally different thing from an offensive warfare to punish the people for the political misdeeds of their state government, or to enforce an acknowledgment that the government of the United States is supreme. The states are colleagues of one another, and if some of them shall conquer the rest, and hold them as subjugated provinces, it would totally destroy the whole theory upon which they are now connected.

"If this view of the subject be correct, as I think it is, then the Union must utterly perish at the moment when Congress shall arm one part of the people against another for any purpose beyond that of merely protecting the general government in the exercise of its proper constitutional functions."

So rapid was the course of events at this time that, when Congress assembled, the state of affairs had become exceedingly threatening. South Carolina led the way in the secession movement, in the belief that the other cotton-producing states would follow her example; and although, as yet, their course was some-

what uncertain, the president had, in his annual message, to encounter officially the alleged right of secession, and also to do everything in his power to isolate the state of South Carolina from the other states of that region, and to prevent, if possible, the spread of the secession movement. Accordingly, a large part of his message of December 3, 1860, was occupied with a discussion of the doctrine of secession; and there are few documents on the records of the government to which a sound constitutional lawyer can more readily assent than he can to this message of President Buchanan.[1]

Drawing his materials from the most important and authentic sources of our constitutional history, the president sustained with great force and perspicuity the doctrine which had always been acted on by every branch of the government from the time of its first establishment. "In order," he said, "to justify secession as a constitutional remedy, it must be on the principle that the Federal Government is a mere voluntary association of states, to be dissolved at pleasure by any one of the contracting parties. If this be so, the confederacy is a rope of sand, to be penetrated and dissolved by the first adverse wave of public opinion in any of the states. In this manner our thirty-three states may resolve themselves into as many petty, jarring, and hostile republics, each one retiring from the Union without responsibility whenever any

[1] I confine my assent to what was laid down by Mr. Buchanan in this message to his exposition of the nature of the Constitution, and to his admirable argument against the supposed right of secession. I do not concur in what he said of the action of the Supreme Court in the Dred Scott case. Mr. Buchanan always regarded the Southern view of the right to carry slave property into a territory as sound, and he contended that the Supreme Court had *judicially affirmed* that right. My reasons for not regarding the action of a majority of the judges as an authoritative judicial decision have already been given. Neither do I think that Mr. Buchanan's recommendation of constitutional amendments to meet the existing sectional difficulties was in all respects wise or practicable. I refer more especially to his proposal of an amendment affirming the right to carry slave property into the territories, and to protect it there until they should be admitted into the Union as states. In the temper of the North at that time such an amendment could not have been adopted. Of his other explanatory amendments, it is only necessary to say that the Constitution had always been interpreted as he would have desired, by all branches of the government, although there were numerous individuals everywhere in the North who would not admit that the official interpretations of the Constitution had been correct.—See Buchanan's messages. Also the writer's Life of Buchanan, II. 337.

sudden excitement might impel it to such a course. By this process a Union might be entirely broken into fragments in a few weeks, which cost our forefathers many years of trial, privation, and blood to establish. Such a principle is wholly inconsistent with the history as well as the character of the Constitution."

The whole argument of this lucid message was conducted to the conclusion that the alleged right of a state to secede from the Union was "met and refuted by the conclusive arguments of General Jackson, who, in his message of the 16th January, 1833, transmitting the nullifying ordinance of South Carolina to Congress, employs the following language:

"The right of the people of a single state to absolve themselves at will, and without the consent of the other states, from their most solemn obligations, and hazard the liberty and happiness of the millions composing this Union, cannot be acknowledged. Such authority is believed to be utterly repugnant both to the principles upon which the general government is constituted, and to the objects which it was expressly formed to attain."

Coming, then, to the actual crisis in which the government was placed, the message inquired:

"What, in the meantime, is the responsibility and true position of the executive? He is bound by solemn oath, before God and the country, 'to take care that the laws be faithfully executed,' and from this obligation he cannot be absolved by any human power. But what if the performance of this duty, in whole or in part, has been rendered impracticable by events over which he could have exercised no control? Such, at the present moment, is the case throughout the state of South Carolina, so far as the laws of the United States to secure the administration of justice by means of the federal judiciary are concerned. All the federal officers within its limits, through whose agency alone these laws can be carried into execution, have already resigned. We no longer have a district judge, a district attorney, or a marshal in South Carolina. In fact, the whole machinery of the Federal Government necessary for the distribution of remedial justice among the people has been demolished, and it would be difficult, if not impossible, to replace it.

"The only acts of Congress on the statute-book bearing upon this subject are those of the 28th of February, 1795, and 3d March,

1807. These authorize the president, after he shall have ascertained that the marshal, with his *posse comitatus*, is unable to execute civil or criminal process in any particular case, to call forth the militia and employ the army and navy to aid him in performing this service, having first by proclamation commanded the insurgents 'to disperse and retire to their respective abodes within a limited time.' This duty cannot, by possibility, be performed in a state where no judicial exists to issue process, and where there is no marshal to execute it, and where, even if there were such an officer, the entire population would constitute one solid combination to resist him.

"The bare enumeration of these provisions proves how inadequate they are, without further legislation, to overcome a united opposition in a single state, not to speak of other states who may place themselves in a similar attitude. Congress alone has power to decide whether the present laws can or cannot be amended so as to carry out more effectually the objects of the Constitution.

"The same insuperable objections do not lie in the way of executing the laws for the collection of the customs. The revenue still continues to be collected, as heretofore, at the custom-house in Charleston, and should the collector unfortunately resign, a successor may be appointed to perform this duty.

"Then, in regard to the property of the United States in South Carolina. This has been purchased, for a fair equivalent, 'by the consent of the legislature of the state,' 'for the erection of forts, magazines, arsenals,' etc., and over these the authority 'to exercise exclusive legislation' has been expressly granted by the Constitution to Congress. It is not believed that any attempt will be made to expel the United States from this property by force; but if in this I should prove to be mistaken, the officer in command of the forts has received orders to act strictly on the defensive. In such a contingency the responsibility for consequences would rightfully rest upon the heads of the assailants.

"Apart from the execution of the laws, so far as this may be practicable, the executive has no authority to decide what shall be the relations existing between the Federal Government and the state of South Carolina. He has been invested with no such discretion. He possesses no power to change the relations heretofore existing between them, much less to acknowledge the in-

dependence of that state. This would be to invest a mere executive officer with the power of recognizing the dissolution of the confederacy among our thirty-three sovereign states. It bears no resemblance to the recognition of a foreign *de facto* government, involving no such responsibility. Any attempt to do this would, on his part, be a naked act of usurpation. It is, therefore, my duty to submit to Congress the whole question in all its bearings."[1]

It was very unfortunate that at this time, when President Buchanan thus discharged his constitutional duty of giving Congress information of "the state of the Union," and pointed out to the two branches of Congress what was needful to be done, the dominant majority in both houses was indisposed to take any action to strengthen the hands of a president who was soon to go out of office. The Southern members of both houses, although they were of the same political party as the president, were most of them believers in the right of secession. They were waiting to see how their states would act, and, in the event of their seceding from the Union by the same step that South Carolina was about to take, these Southern senators and representatives would undoubtedly consider that their paramount duty was to their states. On the other hand, the Republican members of both houses did not choose to adopt legislation suggested by President Buchanan which would have to be executed by the incoming president. They thought proper to await the accession of President Lincoln, and to be governed by what he and his advisers might propose. Thus a golden opportunity for strengthening the hands of the executive, without regard to the party relations of the present incumbent of the office, was lost. When President Buchanan, in the course of the rapidly following events which occurred between the beginning of December, 1860, and the 4th of March, 1861, asked for specific measures of legislation of the utmost importance and of immediate necessity, he could get nothing done. Yet his attitude in regard to secession ought to have satisfied the Republican party that what he was seeking it was their duty to provide. His message of De-

[1] The student will find in chapters xvii. and xviii. of Vol. II. of Curtis's "Life of Buchanan" a fuller discussion of this great message.—J. C. C.

cember 3, 1860, so far as it dealt with the supposed right of secession, was received throughout the Northern section of the country as a sound and satisfactory exposition of the Constitution. Of course it was not so received in the South, where the doctrine of the constitutional right of secession was spreading with great rapidity.

But the Republican party in that Congress did not merely neglect their duty as legislators. They misconstrued the president's message, by treating it as a denial by the president of any power to enforce the laws against the citizens of a state after secession, and even after actual insurrection, because he had maintained that the Federal Government could neither prevent a state from adopting an ordinance of secession nor make war upon *a state;* whereas it was the whole purpose of the message to maintain the right of the Federal Government to use force, if necessary, to compel *individuals* to obey the laws of the United States, notwithstanding their state had seceded from the Union. The message was not so interpreted by the disunionists of the South. They saw clearly enough that the doctrine of the message was opposed to every branch of the doctrine of secession; and after the message became public the leading disunion men in Congress denounced it, and held aloof from Mr. Buchanan. It was their policy to accept the issue as the president had made it. They were just as ready to have the whole controversy turn on the question of a constitutional power in the Federal Government to enforce its laws after secession as they were to accept the issue of coercing a state to remain in the Union.

It is important, both as a matter of constitutional history and in reference to what was soon to take place, that President Buchanan's course through the remainder of his administration should be correctly understood. It is not to be measured by the party feelings or objects of the time. It should be judged by a grave historical inquiry into its correctness; for it had much to do with the basis on which a war was to be conducted, if a war to maintain the supremacy of the Constitution should become necessary in consequence of an actual obstruction to the exercise of its authority. While the message maintained that the Federal Government could not make war upon a state, or prevent a state from adopting an ordinance of secession, it asserted with equal

power that the Constitution authorized that government to use an armed force to put down every obstruction to the execution of the laws of the United States throughout the Union. The distinction between coercing a state and coercing individuals to obey the laws of the United States was made plain. When, at a little later period, the Confederate Government was formed, composed of a confederacy of sovereign states, each having a distinct government of its own, and a territorial civil war was begun, the area of the United States being divided for the time being into two hostile and warring nations, the true attitude of the Federal Government was not changed. Although it had to act as a belligerent, and to conduct the war according to the usages of civilized nations, it had still to preserve the character of a constitutional sovereign; and while it was authorized to use all the powers of making war that were vested in it by the Constitution, it could use those only. It was a war undertaken to defend and preserve the Constitution, and not to destroy it or set it aside. It was a war waged to restore the Union by removing all obstacles to the exercise of the powers that were vested in the Union. How far this basis of the war was consistently acted upon, and how far vague and latitudinarian ideas of what was authorized by "the war-power" were intruded into the proceedings of the Federal Government, will be seen hereafter.

Proceeding upon the theory that her ordinance of secession, which was adopted unanimously by her convention on the 20th of December, 1860, had made her an independent state, South Carolina at once acted towards the government of the United States as a foreign nation would act towards another nation. The governor transmitted to the president a copy of the ordinance under the great seal of the state. On the 22d three commissioners were appointed to proceed to Washington, and open negotiations as between independent governments. It was evidently expected by the authorities and people of South Carolina that their commissioners would be received and treated with as diplomatic agents. They arrived in Washington on the 26th. At this time Major Anderson, the federal commander in the harbor of Charleston, occupied Fort Moultrie with a small garrison. This was one of the forts belonging to the United States, built on land ceded many years before by the state of South Carolina to the United

States in full property. On the night of the 25th, Anderson secretly dismantled Fort Moultrie, spiked his cannon and his gun-carriages, and transferred his troops to Fort Sumter, which was nearer to the city and commanded it. His reason for doing so was that he expected to be attacked, and he believed that his instructions authorized him to occupy either of the forts in which he could best defend himself. The authorities of the state chose to treat this removal to Fort Sumter as an aggressive act, and they demanded that he be ordered back to Fort Moultrie, else that they would dislodge him. The intelligence of this removal did not reach the South Carolina commissioners in Washington until the morning of the 26th. The first and only interview that they had with the president was on the 28th. They were not received by him as ambassadors or in any diplomatic capacity, but merely as eminent private citizens of South Carolina. There is extant a memorandum drawn up by the president in his own handwriting, giving an account of what took place at this interview.[1] From this paper it appears that, although told by the president that he could recognize them only as private gentlemen, and not as commissioners of a sovereign state, and that they must appeal to Congress for any redress that they had come to seek, the commissioners demanded that, as a preliminary to any negotiation, Major Anderson and his troops must be immediately withdrawn, not only from Fort Sumter but from the harbor of Charleston. On the following day they repeated this demand in writing, adding, "Under present circumstances they [the federal troops] are a standing menace which renders negotiation impossible, and, as our recent experience shows, threatens to bring to a bloody issue questions which ought to be settled with temperance and judgment." This was a plain intimation that if the troops were not withdrawn they must be expelled by force. The president, considering that to comply with this demand would be to admit the right of South Carolina to secede from the Union, refused to listen to it.

The basis of this extraordinary demand was the assertion that, by her ordinance of secession, South Carolina had not only dissolved all relations between her citizens and the United States,

[1] Life of James Buchanan, II. 372 et seq.

but that the ordinance had of its own force revested in her property which she had conveyed to the United States by solemn deeds. This consequence of the doctrine of secession afforded a remarkable illustration of its extravagance. It was subsequently adopted and enforced by some of the disunion members of Congress who came to the aid of the commissioners, but it was never admitted by President Buchanan. It was an attitude of evil omen, for any peaceful solution of the difficulty created by the claim of South Carolina, that her ordinance of secession had by its own force made her an independent state, and a nation foreign to the United States.

It was the president's purpose, as he declared to the commissioners at the personal interview which he gave them on the 28th of December, to bring the whole subject before Congress in such a manner as to cause that body to express an authoritative opinion on secession and other dangerous questions then before the country, and adopt such measures for their peaceful adjustment as might possibly relieve even South Carolina herself, or might, at least, prevent the other cotton states from following her example. He did not expect that Congress would authorize or desire him to surrender the forts; but he believed it would be beneficial to have Congress declare that the doctrine of secession was one that could not be adopted by any department of the government, as he had declared that it could not be adopted by the executive. Every Northern member of both houses should have done everything in his power to second and promote the purpose of the president. On the 8th of January, 1861, he sent to both houses a special message, which is so important that I here quote it at length.

PRESIDENT'S MESSAGE, JANUARY 8, 1861.

"*To the Senate and House of Representatives:*

"At the opening of your present session I called your attention to the dangers which threatened the existence of the Union. I expressed my opinion freely concerning the original causes of those dangers, and recommended such measures as I believed would have the effect of tranquillizing the country and saving it from the peril in which it had been needlessly and most unfortunately involved. Those opinions and recommendations I do

not propose now to recommend. My own convictions upon the whole subject remain unchanged.

"The fact that a great calamity was impending over the nation was, even at that time, acknowledged by every intelligent citizen. It had already made itself felt throughout the length and breadth of the land. The necessary consequences of the alarm thus produced were most deplorable. The imports fell off with a rapidity never known before, except in time of war, in the history of our foreign commerce; the treasury was unexpectedly left without the means which it had reasonably counted upon to meet the public engagements; trade was paralyzed; manufactures were stopped; the best public securities suddenly sunk in the market; every species of property depreciated more or less; and thousands of poor men, who depended upon their daily labor, were turned out of employment.

"I deeply regret that I am unable to give you any information upon the state of the Union which is more satisfactory than what I was then obliged to communicate. On the contrary, matters are still worse at present than they then were. When Congress met, a strong hope pervaded the whole public mind that some amicable adjustment of the subject would speedily be made by the representatives of the states and of the people which might restore peace between the conflicting sections of the country. That hope has been diminished by every hour of delay, and as the prospect of a bloodless settlement fades away the public distress becomes more and more aggravated. As evidence of this, it is only necessary to say that the treasury notes authorized by the Act of 17th December last were advertised, according to the law, and that no responsible bidder offered to take any considerable sum at par at a lower rate of interest than twelve per cent. From these facts it appears that, in a government organized like ours, domestic strife, or even a well-grounded fear of civil hostilities, is more destructive to our public and private interests than the most formidable foreign war.

"In my annual message I expressed the conviction, which I have long deliberately held, and which recent reflection has only tended to deepen and confirm, that no state has a right by its own act to secede from the Union, or to throw off its federal obligations at pleasure. I also declared my opinion to be that,

even if that right existed and should be exercised by any state of the confederacy, the executive department of this government had no authority under the Constitution to recognize its validity by acknowledging the independence of such state. This left me no alternative, as the chief executive officer under the Constitution of the United States, but to collect the public revenues, and to protect the public property so far as this might be practicable under existing laws. This is still my purpose. My province is to execute, and not to make the laws. It belongs to Congress exclusively to repeal, to modify, or to enlarge their provisions, to meet exigencies as they may occur. I possess no dispensing power.

"I certainly had no right to make aggressive war upon any state, and I am perfectly satisfied that the Constitution has wisely withheld that power even from Congress. But the right and the duty to use military force defensively against those who resist the federal officers in the execution of their legal functions, and against those who assail the property of the Federal Government, is clear and undeniable.

"But the dangerous and hostile attitude of the states towards each other has already far transcended and cast in the shade the ordinary executive duties already provided for by law, and has assumed such vast and alarming proportions as to place the subject entirely above and beyond executive control. The fact cannot be disguised that we are in the midst of a great revolution. In all its various bearings, therefore, I commend the question to Congress, as the only human tribunal, under Providence, possessing the power to meet the existing emergency. To them exclusively belongs the power to declare war, or to authorize the employment of military force in all cases contemplated by the Constitution; and they alone possess the power to remove grievances which might lead to war, and to secure peace and union in this distracted country. On them, and on them alone, rests the responsibility.

"The Union is a sacred trust left by our Revolutionary fathers to their descendants; and never did any other people inherit so rich a legacy. It has rendered us prosperous in peace and triumphant in war. The national flag has floated in glory over every sea. Under its shadow American citizens have found pro-

tection and respect in all lands beneath the sun. If we descend to considerations of purely material interest, when, in the history of all time, has a confederacy been bound together by such ties of mutual interest? Each portion of it is dependent upon all, and all upon each portion, for prosperity and domestic security. Free-trade throughout the whole supplies the wants of one portion from the productions of another, and scatters wealth everywhere. The great planting and farming states require the aid of the commercial and navigating states to send their products to domestic and foreign markets, and to furnish the naval power to render their transportation secure against all hostile attacks.

"Should the Union perish in the midst of the present excitement, we have already had a sad foretaste of the universal suffering which would result from its destruction. The calamity would be severe in every portion of the Union, and would be quite as great, to say the least, in the Southern as in the Northern States. The greatest aggravation of the evil, and that which would place us in the most unfavorable light both before the world and posterity, is, as I am firmly convinced, that the secession movement has been chiefly based upon a misapprehension at the South of the sentiments of the majority in several of the Northern States. Let the question be transferred from political assemblies to the ballot-box, and the people themselves would speedily redress the serious grievances which the South have suffered. But, in Heaven's name, let the trial be made before we plunge into armed conflict upon the mere assumption that there is no other alternative. Time is a great conservative power. Let us pause at this momentous point and afford the people, both at the North and South, an opportunity for reflection. Would that South Carolina had been convinced of this truth before her precipitate action! I therefore appeal through you to the people of this country to declare in their might that the Union must and shall be preserved by all constitutional means. I most earnestly recommend that you devote yourselves exclusively to the question how this can be accomplished in peace. All other questions, when compared with this, sink into insignificance. The present is no time for palliatives; action, prompt action, is required. A delay in Congress to prescribe or to recommend a distinct and practical

proposition for conciliation may drive us to a point from which it will be almost impossible to recede.

"A common ground on which conciliation and harmony can be produced is not unattainable. The proposition to compromise by letting the North have exclusive control of the territory above a certain line, and to give to Southern institutions protection below that line, ought to receive universal approbation. In itself, indeed, it may not be entirely satisfactory; but when the alternative is between a reasonable concession on both sides and a destruction of the Union, it is an imputation upon the patriotism of Congress to assert that its members will hesitate for a moment.

"Even now the danger is upon us. In several of the states, which have not yet seceded, the forts, arsenals, and magazines of the United States have been seized. This is by far the most serious step which has been taken since the commencement of the troubles. This property has long been left without garrisons and troops for its protection, because no person doubted its security under the flag of the country in any state of the Union. Besides, our small army has been scarcely sufficient to guard our remote frontiers against Indian incursions. The seizure of this property, from all appearances, has been purely aggressive, and not in resistance to any attempt to coerce a state or states to remain in the Union.

"At the beginning of these unhappy troubles I determined that no act of mine should increase the excitement in either section of the country. If the political conflict were to end in a civil war, it was my determined purpose not to commence it, nor even to furnish an excuse for it by an act of this government. My opinion remains unchanged, that justice as well as sound policy requires us still to seek a peaceful solution of the questions at issue between the North and the South. Entertaining this conviction, I refrained even from sending reinforcements to Major Anderson, who commanded the forts in Charleston harbor, until an absolute necessity for doing so should make itself apparent, lest it might be regarded as a menace of military coercion, and thus furnish, if not a provocation, a pretext for an outbreak on the part of South Carolina. No necessity for these reinforcements seemed to exist. I was assured by distinguished and up-

right gentlemen of South Carolina[1] that no attack upon Major Anderson was intended, but that, on the contrary, it was the desire of the state authorities, as much as it was my own, to avoid the fatal consequences which must eventually follow a military collision.

"And here I deem it proper to submit, for your information, copies of a communication, dated December 28, 1860, addressed to me by R. W. Barnwell, J. H. Adams, and J. L. Orr, 'commissioners' from South Carolina, with the accompanying documents, and copies of my answer thereto, dated December 31.

"In further explanation of Major Anderson's removal from Fort Moultrie to Fort Sumter, it is proper to state that, after my answer to the South Carolina 'commissioners,' the War Department received a letter from that gallant officer dated December 27, 1860, the day after this movement, from which the following is an extract:

"'I will add, as my opinion, that many things convinced me that the authorities of the state designed to proceed to a hostile act [evidently referring to the orders, dated December 11, of the late Secretary of War].

"'Under this impression, I could not hesitate that it was my solemn duty to move my command from a fort which we could not probably have held longer than forty-eight or sixty hours, to this one, where my power of resistance is increased to a very great degree.'

"It will be recollected that the concluding part of these orders was in the following terms: 'The smallness of your force will not permit you, perhaps, to occupy more than one of the three forts; but an attack on, or attempt to take possession of, either one of them, will be regarded as an act of hostility, and you may then put your command into either of them which you may deem most proper to increase its power of resistance. You are also authorized to take similar defensive steps whenever you have tangible evidence of a design to proceed to a hostile act.'

"It is said that serious apprehensions are to some extent entertained, in which I do not share, that the peace of this district

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[1] Messrs. McQueen, Miles, Bonham, Boyce, and Keitt, members of the House of Representatives from South Carolina, on the 8th of December, 1860.

may be disturbed before the 4th of March next. In any event, it will be my duty to preserve it, and this duty shall be performed.

"In conclusion, it may be permitted to me to remark that I have often warned my countrymen of the dangers which now surround us. This may be the last time I shall refer to the subject officially. I feel that my duty has been faithfully, though it may be imperfectly, performed; and whatever the result may be, I shall carry to my grave the consciousness that I at least meant well for my country."

After this message had been read in the Senate, Mr. Jefferson Davis produced and had read a copy of the last letter which the South Carolina commissioners addressed to the president. It was couched in very insulting language. Every member of the Senate, of whatever judicial party, should have taken care that immediate and correct information should be given to the people of the United States, in the official record of the proceedings of the Senate concerning this correspondence. "Such," says Mr. Buchanan, "was the temper of that body at the time, that this letter [of the commissioners] was received and read and entered upon their journal. . . . It is worth notice that, while this letter of the commissioners was published at length in the *Congressional Globe*, among the proceedings of the Senate, their previous letter to the president of the 28th of December, and his answer thereto of the 31st, were never published in this so-called official register, although copies of both had accompanied his special message. By this means the offensive letter was scattered broadcast over the country, while the letter of the president, to which this professed to be an answer, was buried in one of the numerous and long after published volumes of executive documents."[1] Whether Mr. Davis designed it or not, the effect of this imperfect publication of the correspondence between the commissioners and the president was to inflame the sectional feeling of the country more and more. In the North the president was misunderstood; in the South the commissioners were applauded for the attitude they had taken. Had the Senate pro-

[1] See President Buchanan's Defence of his Administration, page 184.

ceeded at once and directly to deal with the subject of secession as they should have done, the North would have been in a far better condition to demand and support the steps proper to be taken to strengthen the hands of the executive.

Mr. Davis may not have desired to lead or influence his own state, or other Southern states, to unite with South Carolina in the secession movement. But it is certain that while he remained in the Senate he vigorously defended the course of South Carolina. From first to last he insisted that South Carolina, after she had adopted her ordinance of secession, was an independent power. He was active in demanding that the troops of the United States should be withdrawn from the harbor of Charleston, that the forts should be surrendered to the paramount sovereignty of a state now become a foreign nation; and he scouted and ridiculed the idea that the federal executive could employ a military force in executing the laws of the United States within the dominion of a state which had withdrawn the powers that she had formerly shared with the Federal Government. If this was true of South Carolina, it would be equally true of Mississippi if that state should secede from the Union.[1]

The apathy that prevailed in Congress among the political followers of the incoming administration was in part produced by an unwillingness to believe that there would be a civil war. Yet all the proceedings of the authorities of South Carolina made it manifest that her right to secede from the Union must be admitted by the Federal Government, or that the possession of the public property in the harbor of Charleston must be maintained by force. Nothing could be more hostile and threatening than the attitude which the authorities of that state assumed. Not only did they demand, as a *sine quâ non* preliminary to any effort to arrive at a peaceable result, that the United States should admit the effect which they claimed to have been produced by the ordinance of secession in revesting in the state the property which the state had conveyed absolutely to the United States, but they proceeded to act as if the state alone was to

[1] In my Life of President Buchanan I have given every consideration to Mr. Davis's position that I conceive an historian should give who aims to be just and impartial.

decide this question. They committed a very distinct act of aggression, without waiting or asking for an explanation of Major Anderson's removal from Fort Moultrie to Fort Sumter. On the very next day after the night when his removal was made they seized by a military force two of the three federal forts in the harbor of Charleston, and displaced the flag of the United States by the flag of the state. On the same day the palmetto flag (the flag of the state) was raised over the federal custom-house and post-office in Charleston, and every officer of the customs—collector, naval officer, surveyor, and appraisers—resigned his office. "And this," said the president, in a letter addressed by him to the South Carolina commissioners, on the 31st of December, "although it was well known from the language of my message that as an executive officer I felt bound to collect the revenue at the port of Charleston under existing laws. In the harbor of Charleston we now find three forts confronting each other, over all of which the federal flag floated only four days ago; but now over two of them this flag has been supplanted, and the palmetto flag has been substituted in its stead. It is under all these circumstances that I am urged to withdraw the troops from the harbor of Charleston, and am informed that without this negotiation is impossible. This I cannot do; this I will not do. Such an idea was never thought of by me in any possible contingency. But the inference is that I am obliged to withdraw the troops from the only fort remaining in the possession of the United States in the harbor of Charleston, because the officer then in command of all the forts thought proper, without instructions, to change his position from one of them to another. I cannot admit the justice of any such inference. At this point of writing I have received information, by telegram, from Captain Humphreys, in command of the arsenal at Charleston, that it has to-day—Sunday, the 30th—been taken by force of arms. It is estimated that the munitions of war belonging to the United States in this arsenal are worth half a million of dollars. Comment is needless. After this information, I have only to add that while it is my duty to defend Fort Sumter, as a portion of the public property of the United States, against hostile attacks, from whatever quarter they may come, by such means as I may possess for this purpose, I do not perceive

how such a defence can be construed into a menace of the city of Charleston."[1]

The military events and movements which transpired from the period at which I have now written down to the close of Mr. Buchanan's administration do not need to be recited here in any further detail than is necessary to show the attitude in which Mr. Buchanan left the government to his successor. The reader has seen the result of the first mission from South Carolina to the

[1] In the year 1848 the present writer passed five or six weeks in South Carolina. He was treated with the greatest kindness and hospitality by many of the most eminent citizens of the state and their families. One thing struck him very forcibly at the time. Among most of the persons of different positions with whom he came in contact, he noticed a tone of feeling about the Union which he never met with elsewhere. It seemed to him from the time when he entered the state that he had crossed a frontier which separated the United States from South Carolina. Everything centred in the state. Her citizens seemed to feel as if the Union were an object of very little importance. This kind of state pride, not manifested in a way to be offensive to a stranger from another part of the country, was yet held with a lofty assumption that made one very unwilling to take any notice of it among persons who were all extremely kind in every personal relation. This was twelve years before the civil war began. But it is not strange that when the events which led to the war were about to transpire they should have found in South Carolina a people extremely prone to embrace and act upon the doctrine of secession, and to carry their feelings about the importance of their state to extravagant lengths. The writer does not mean to intimate that there were no Union men in South Carolina at the time of his visit; men who had the same feelings towards the government of the United States that were common to intelligent persons in other states. There were a few such men in South Carolina in the time of nullification (1830–33), men of great eminence. But they were even then overborne by the state pride that was felt by the great body of their fellow-citizens; and when the crisis of 1860 came, there was no Union party in the state of any consequence. Whether this condition of things was to be attributed wholly to the fact that the men of property and high social position were slave-holders may perhaps be doubtful; for there certainly was not in other slave-holding states the same feeling about the Union at the time to which the writer refers. All that he saw of slavery at that time presented itself to him in its best aspect—as a system in which the slave-holders discharged every duty to their dependents in a most conscientious manner. There was little suffering, because there was little cruelty; and in the few instances in which individuals had had bad masters, the law and the force of public opinion had corrected the evil. One unpleasant aspect alone, as slavery appeared at that time to a stranger, was the transportation of slaves going westward for sale, towards Texas and other regions in the Southwest. They appeared to be a happy lot of negroes of all ages and both sexes, content with their lot, and looking forward with light hearts to new scenes.

president. It was followed by another, instituted under somewhat different circumstances. Keeping a vigilant eye upon what was occurring in the harbor of Charleston, the president thought proper, early in January (1861), to send reinforcements to Major Anderson. On the 30th of December General Scott, the lieutenant-general of the federal army, formally requested the president to permit him to send a secret expedition from New York, with two hundred and fifty recruits, army munitions, and sustenance stores, to reinforce Fort Sumter. The necessary orders were issued on the 31st to send the sloop-of-war *Brooklyn* from Fortress Monroe to Fort Sumter forthwith. But the orders were not sent from Washington on that day, although they were in the hands of General Scott. It was determined that the better plan, to secure secrecy and success and reach the fort, would be to send a fast side-wheel steamer. A steamer called the *Star of the West* was substituted for this purpose. She sailed from New York on the 5th of January with the reinforcements on board. She arrived off the harbor of Charleston on the 9th; was fired upon, as she was attempting to enter the harbor, by order of General Pickens, the Governor of South Carolina, and returned without entering. Anderson would have been entirely justified in taking this attack on a vessel sailing under the flag of the United States as an act of war. Taking, however, what he considered the most prudent course, he sent a flag of truce to the governor, stating that he presumed the act was unintentional, but demanding an official disavowal of it within a reasonable time, otherwise he should consider it an act of war, and should fire on any vessel within reach of his guns which might attempt to enter or leave the harbor. South Carolina was, therefore, in the attitude of a power completely independent of the United States, and preparing with great vigor to drive the United States out of the harbor of Charleston. The governor did not disavow, but justified, the act of firing on the *Star of the West;* and on the 11th of January he sent two members of his executive council to Major Anderson, with instructions to present to him "considerations of the gravest character, and of the deepest interest to all who deprecated the improper waste of life, to induce the delivery of Fort Sumter to the constituted authorities of South Carolina, with a pledge, on its part, to account for such public property as may be in your

charge." This offer to account for the property of the United States introduced a new element into the situation, with which Anderson did not consider himself competent to deal. The alternative plainly presented was, that if the demand for the surrender of the fort was not complied with war must ensue. Anderson, therefore, referred the whole matter to Washington, and sent one of his officers to represent him before the president. The governor sent the attorney-general of the state to represent the "constituted authorities of South Carolina," and to make the same demand on the president that had been made on Major Anderson. The two officials arrived in Washington on the 13th of January. There was thus instituted an attempt to have a new negotiation between the authorities of South Carolina and the president. In the meantime a partial truce-of-arms was agreed upon between the governor and Major Anderson, which referred only to the harbor of Charleston, and which would terminate when Anderson received instructions how to act. But the truce rendered it impossible for Anderson to ask for or the president to send him reinforcements while it lasted. All that the president could do was to learn what the governor's envoy had to say, and then decide again that Fort Sumter could not be surrendered. The president declined to hold any conversation with the governor's messenger, and required that all communications should be in writing. To this Colonel Hayne, the governor's representative, assented. Certain Southern senators now interposed in aid of South Carolina. By their advice the letter of Governor Pickens to the president, which had been brought by Colonel Hayne, was not delivered. The senators undertook to influence the president to prevent the calamity of civil war by withdrawing the troops from Fort Sumter. There is extant a detailed memorandum drawn up by the president, which gives an account of this intervention of a few of the Southern senators. From this it appears that the result of a long discussion was not only a reiterated refusal to surrender the fort, but a refusal to make any stipulation not to send reinforcements to Major Anderson, or to negotiate for a sale of the forts and the valuable property to South Carolina, as a matter not within the constitutional authority of the president. Finding that the intervention of the senators had accomplished nothing, Colonel Hayne addressed an angry letter to the president on the 8th of Febru-

ary, and then suddenly left Washington. His letter was not delivered to the president until after he had gone. It was returned to him on the same day on which it was received, directed to Charleston, with the following indorsement: "The character of this letter is such that it cannot be received. Colonel Hayne having left the city before it was sent to the president, it is returned to him by the first mail."

It is now necessary to recur to contemporaneous events that were occurring in the southwest region of the country and in Virginia. Before the 4th of February, 1861, the six states of South Carolina, Mississippi, Florida, Alabama, Georgia, and Louisiana had successively adopted ordinances of secession from the Union. The conventions of these several states appointed delegates to a congress which assembled at Montgomery, in the state of Alabama, on the 4th of February. This body framed a constitution for a new confederacy, which was styled "The Confederate States of America." It was to continue in force for one year, unless it should be suspended at an earlier period by a permanent organization. Jefferson Davis, of Mississippi, became President, and Alexander H. Stephens, of Georgia, Vice-President of the Confederacy. No popular election of a congress was ordered, but the legislative powers of the new government were vested "in this congress now assembled until otherwise ordered." [1]

What the disunionists of South Carolina had all along expected and desired was now accomplished. The patriotic aim of President Buchanan to isolate her from the other cotton states, and to prevent the spread of the secession movement, was frustrated by the failure of the federal Congress to second his efforts. A confederacy of six powerful states was formed, embracing a region where the simple staple of cotton would afford great pecuniary resources, and each of those states had an organized local government of the usual form. They numbered 2,656,948 white inhabitants and 2,312,046 blacks. The colored population were perfectly quiet and submissive, not comprehending at present what the separation of their states from the United States had

[1] It has been often noticed that the provisional constitution of the Confederate States was not submitted to the vote of the respective states, but their acquiescence and submission dispelled whatever objection could be made on this score.—J. C. C.

to do with their condition. The white population comprehended a race very fit to furnish excellent soldiers, men accustomed to command and to obey, and, almost without exception, adhering to their respective states as their only sovereign. This was a formidable power, springing into existence between the 20th of December, 1860, and the 4th of February, 1861. If this power should come to the aid of South Carolina, in the effort to drive the troops of the United States from the forts in the harbor of Charleston which belonged to the Federal Government, war must inevitably ensue, unless the Federal Government should admit the whole theory of secession and all its consequences.

In the Senate, so much of the president's annual message of December 3, 1860, as related to the disturbed state of the country, and the measures proper to meet it, was referred to a select committee of thirteen members. This committee was singularly composed. It consisted of five Republicans—Senators Seward, Collamore, Wade, Doolittle, and Grimes; five members from slave-holding states—Senators Powell, Houston, Crittenden, Toombs, and Davis; three Northern Democrats—Senators Douglas, Bigler, and Bright. The Republican members were all adherents of the "Chicago platform," on which President Lincoln had been elected. The senators from slave-holding states, with the exception of Mr. Crittenden, who was a Whig, had been supporters of Mr. Breckinridge in the late election. Mr. Douglas, who had stood on his own platform of "popular sovereignty," and Mr. Bigler and Mr. Bright, were supposed to have been placed on the committee to act as mediators between the Northern and the Southern sections, which had ten other members represented in equal numbers. It was therefore from the first very uncertain whether such a committee could unite in a report. But at the first meeting of the committee, on the 21st of December, a step was taken which rendered united action by such a body impracticable. This was the passage of a resolution which provided that no proposition should be reported as the decision of the committee unless it was sustained by a majority of each of the classes composing the committee; and it was defined that the senators of the Republican party were to constitute one class, and the senators of the other parties were to constitute the other class. This was a remarkable proof that the country was already divided into two sections,

diametrically opposed to each other in reference to the matter of slavery in territories of the United States. Senators were not to act on their individual convictions of what was best for the Union. They were to act as representatives of opposite sections. There was very little probability that the Republican senators would abate one jot from the Chicago platform. There was very little probability that the Southern senators would recede from the extreme Southern doctrine of a right to carry slavery into every territory in which it could obtain a footing. Moreover, the five Southern senators, with the exception of Mr. Crittenden, were believers in the right of secession; and if a Southern confederacy should be formed, these senators would go with their state. Whatever might have been expected from the mediation of the three "Northern Democrats," they could cause no proposition to be adopted unless it were first assented to by the five Republican or the five Southern senators. Ordinarily eight members of the committee, if its action had not been restricted by the resolution adopted at the outset, might have shaped a report. The five Republican senators were not likely to unite in anything recommended by the three "Northern Democrats." The three Northern Democrats were not likely to persuade the five Southern senators to adopt their views. The restriction proves very clearly the opposite sectional attitude of the Republican and of the Southern senators, and the responsibility assumed by the former. It also proves the entire unwillingness of four of the Southern senators to have the Republicans assume that responsibility. If the Committee of Thirteen should fail to agree on a report, the result would be that the South would have a further plausible excuse for seceding from the Union.

The sequel shows that a result which might have been anticipated speedily came about. Of all the members of the Committee of Thirteen, the man whose patriotism was the broadest and most comprehensive was John J. Crittenden, of Kentucky. He was at a time of life when ambition ceases to influence. He had enjoyed all the political honors of the republic save the presidency, and for that he never was an aspirant. He was a singularly wise man, of great experience, perfect command of temper, and a very able constitutional lawyer. Although he represented a slave-holding state, he was no lover of slavery, and

no believer in the extreme Southern doctrine; and he had an independence of character that was not to be controlled by the demands of constituents. Moreover, Kentucky was a "border state," and her electoral vote had not been given to Mr. Breckinridge in the late presidential election, but to John Bell, of Tennessee, the candidate of the "Old Line Whigs." Mr. Crittenden now saw very clearly that unless some compromise could be effected between the North and the South the Union could not be preserved; that the states of the South and Southwest would follow the example of South Carolina; and that in that event the border states could with great difficulty be prevented from joining a Southern confederacy. He foresaw that the first drop of blood that might be shed, however the conflict might be precipitated, would be the signal for a civil war. He therefore addressed himself to the task of bringing about a compromise that would save the Union from disruption, and would isolate South Carolina, which had already seceded. On the 22d of December he submitted to the Committee of Thirteen a "joint resolution," which he had already offered in the Senate, and which became known as the "Crittenden Compromise." It proposed certain amendments of the Constitution which would reconcile the conflicting claims of the North and the South, by yielding to the South the right to take slavery into the territories south of the parallel of 36° 30′, and excluding slavery from all territories north of that line; with the further provision that when any territory north or south of that line, within such boundaries as Congress might prescribe, should contain a population requisite for a member of Congress, it should be admitted into the Union, with or without slavery as the state constitution adopted by the people might require. This was as reasonable a proposal as could have been made, considering the situation of the Union at that time. It involved no sacrifice for either section that ought not to have been made. Whether the Supreme Court had or had not made an authoritative judicial decision in the Dred Scott case, the best mode to meet the difficulty was to treat it as a political question, to be disposed of by mutual concessions between the slave-holding and the non-slaveholding states. Whether in the temper of the two sections at that time Mr. Crittenden's proposed constitutional amendment

could have been adopted, it is quite certain, if his "joint resolution" had passed both houses on the recommendation of the Senate's Committee of Thirteen, the sense of the people of the United States could have been appealed to, and in all probability, if civil war had not already commenced, the amendments would have been carried. They yielded nothing to the South but what was reasonable. They did not propose, like President Buchanan's suggested amendments, to admit the Southern claim of a right to carry slavery into every territory because the Supreme Court had affirmed that right. They treated the question of slavery in the territories as any other political question, to be settled by fair and just compromise. There was time to make this compromise. When Mr. Crittenden offered his proposition to the committee, South Carolina alone had seceded, and the conventions of the six other cotton states had not assembled. The Republican senators had only to sacrifice the dogma of the "Chicago platform;" the Southern senators had only to accept a settlement which would have been in accordance with the long-established policy of Congress in respect to the territories. "The sacrifice," said Crittenden, "to be made for its preservation [the Union] is comparatively worthless. Peace and harmony and union in a great nation have never been purchased at so cheap a rate as we now have it in our power to do. It is a scruple only, a scruple of as little value as a barleycorn, that stands between us and peace and reconciliation and union; and we stand here pausing and hesitating about that little atom which is to be sacrificed."

The Chicago platform had asserted that the *normal* condition of all the territory of the United States is that of freedom; and it denied the authority of Congress, of a territorial legislature, or of any individuals to give legal existence to slavery in any territory of the United States. The language was ambiguous in another respect, for it asserted the duty by legislation, wherever such legislation should be necessary, "to maintain this provision of the Constitution against all attempts to violate it;" thereby implying that there was a provision of the Constitution which made the normal condition of the United States that of freedom. As a party platform designed for a rallying-cry in a presidential election, these assertions were effective in combining all the elements

of opposition to slavery in support of the Republican candidates. But as propositions of constitutional law they were not sound; and when it came, in the Senate's Committee of Thirteen, to the question of making the sacrifice which Mr. Crittenden asked of his Republican colleagues, it was not too much to expect that statesmen would be willing to sacrifice the mere dogma of a party platform. Nor was there much danger that the constituents of these Republican senators would hold them to a strict account for making the sacrifice. The public mind throughout the North tended strongly to support, and looked with hope to, the "Crittenden Compromise,"[1] for it was generally perceived that it afforded the last chance of reconciling the two sections.[2]

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[1] See "Crittenden Compromise" in Appendix.—J. C. C.

[2] The ultimate fate of the Crittenden Compromise marks very strongly the temper of the Republican party. After it was defeated in the Committee of Thirteen, it was apparent that it could not be carried by the requisite two thirds of both houses of Congress. But it might be submitted to the people of the United States by another process, so that they could by their votes express themselves to be in favor of it. Accordingly, Mr. Crittenden, on the 3d of January, 1861, before any state excepting South Carolina had seceded, introduced into the Senate a substitute for it, in the shape of the following joint resolution:

"Whereas, the Union is now in danger," etc.

[Under the title, "The Great Compromises," I have assembled in the Appendix the "Crittenden Resolutions" and the other attempted or accomplished "compromises" relating to slavery.—J. C. C.

At this juncture the president sent to the two houses his special message of January 8, 1861, a part of which was intended to inform them of the situation of things in the harbor of Charleston, while the remainder of it was directed to the expediency and necessity of allowing the people to express their will on Mr. Crittenden's proposition. Memorials of an earnest character, from all quarters of the Union, even from New England, urging the passage of the Crittenden Compromise were now presented in the Senate. On the 14th of January Mr. Crittenden made an unsuccessful attempt to have his substituted resolution considered. It was postponed, first to the 15th, and again to the 16th. On the 16th Mr. Crittenden obtained its consideration by a majority of one vote, all the Republican senators voting against it. It was smothered afterwards by the tactics of the Republicans. Mr. Clark, senator from New Hampshire, offered a substitute preamble and resolution of an entirely opposite character, and affirming the doctrine of the Chicago platform. His motion was carried by 25 yeas against 23 nays, all the Republican senators voting for it. Mr. Crittenden's resolution remained buried under the Clark amendment until the 2d of March, when it was defeated by 20 votes in the negative against 19 in the affirmative. This was after the Southern disunionist senators had left that body. It is quite apparent that if the Repub-

In justice, however, to the Republican party—and this is as far as history can go in explanation of the course of its leading men—it should be considered that they had determined it to be necessary to antagonize the Southern claim of a right to carry slavery into every territory by an equally strong and a diametrically opposite doctrine. The evil of such a course was that, in the condition of things between the North and the South at that time, the result would necessarily be a sectional division in the election of a president; for Southern men of no political party could place themselves before their constituents on the "Chicago platform," nor could there be a presidential election conducted in the free states on the basis of that platform, without drawing into the Republican party and combining into one strong organization men who held the most radical views, as well as men who held only moderate and reasonable views, on the subject of slavery. The whole tone of the discussions in the North during the election tended strongly to alarm the people of the South. It produced a belief in their minds that an election of a president on the basis of the "Chicago platform" would result in efforts to destroy slavery, as an institution no longer compatible with the continued existence of freedom in the Northern States. On the other hand, if the Southern people had not given way to this belief, and had, through their leading men in Congress, manifested a willingness to accept the "Crittenden Compromise," the danger, from the result anticipated from the apparent sectional triumph of the North over the South by the election of Mr. Lincoln, might have been averted.

But in the temper of the men who represented the two sec-

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lican senators had in the middle of January been willing to submit Mr. Crittenden's proposition to a vote of the people, it was entirely in their power to do it. But they did not choose to recede, or to appear to recede, from the "Chicago platform," notwithstanding Mr. Crittenden's earnest appeal to them to sacrifice a "scruple not worth a barleycorn" to any real interest of the country; they would not make the sacrifice. Their political dogma was of more importance to them than anything else. They had carried the presidential election upon it, and to them it seemed an unnecessary or at least an inexpedient inconsistency to abate anything from its assertions. This attitude, however, made it quite certain that unless something useful should result from the proposed "peace convention," it would be in the power of South Carolina, backed by the Montgomery government, to precipitate the country at any time into a civil war.

tions in Congress there was little prospect that a settlement could be reached. All of the Republican members of the Senate's Committee of Thirteen voted against the Crittenden Compromise. Under the resolution adopted by the committee this secured its rejection. In addition to this, the two Southern members of the committee, Mr. Davis, of Mississippi, and Mr. Toombs, of Georgia, also voted against it, thereby manifesting their determination not to recede from the Southern claim which had been asserted by the Southern States which had given their electoral votes to Mr. Breckinridge.

Bad, however, as was this condition of affairs, there was still hope that something might be done to preserve the peace and harmony of the Union. Virginia had not given her electoral vote to Mr. Breckinridge, and her public men and her people were anxious to make an effort for peace. The intervention, by Virginia, between the Federal Government and South Carolina and other Southern states which were preparing to secede, might be successful, provided it should be conducted with prudence and discretion. On the 19th of January, 1861, three days after the *Star of the West* was fired upon in the harbor of Charleston, and six days after the arrival of Colonel Hayne in Washington as an agent of South Carolina, the General Assembly of Virginia adopted resolutions inviting all the states to send delegates to a "peace convention," which would be empowered to recommend measures for a settlement of all the sectional difficulties so as to avoid a civil war. At the same time the General Assembly sent ex-President Tyler to Washington as a commissioner to concert with President Buchanan measures that might prevent a collision in South Carolina; and they also sent a commissioner to South Carolina and the other states which had seceded or might thereafter secede, in order to procure an agreement to abstain from all acts calculated to produce a collision of arms between the states and the government of the United States during the sitting of the "Peace Convention." Mr. Tyler was also a member of the convention. As the reader has seen, the states of South Carolina, Mississippi, Florida, Alabama, Georgia, and Louisiana had seceded from the Union by the 4th of February, and on that day their Congress assembled at Montgomery in Alabama. Of the provisional government

formed by this Congress Mr. Jefferson Davis had become president.[1]

The authorities of South Carolina immediately began to look to the Montgomery government for directions. They asked the Congress at Montgomery to do something definite in regard to Fort Sumter, and to appoint a general to lead the attack on the *fort*, or whether it should be done under the superintendence of Governor Pickens, who said "the fort must be taken before Lincoln takes his seat." At this time the Montgomery government did not propose to proceed to this extremity. On the 19th of February they appointed commissioners to proceed to Washington and negotiate for a peaceful separation of their states from the Union. The Washington administration, which looked with great hope to the Peace Convention, could not, while that body was in session, do anything more than prepare secretly a small expedition, and hold it in readiness to sail whenever Major Anderson should signify that he felt insecure in Fort Sumter. The Montgomery government did not yet approve of the taking of Fort Sumter before Mr. Lincoln's inauguration.[2] The Peace Convention assembled at Washington on the 4th of February. Twenty-one states were represented by one hundred and thirteen commissioners. It was a body composed of men of the highest respectability. Some of them were men of national reputation. From the "border states" came some of their most remarkable

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[1] It is not necessary to detail here the efforts made by the representatives of Virginia to bring about an agreement to abstain from all hostilities. They are fully detailed in my Life of President Buchanan, II. 439 et seq. They resulted in no distinct agreement.

[2] The reader will find in my Life of President Buchanan a full account of the reception which the Montgomery commissioners met with in Washington. They were not recognized by the president as diplomatic agents of a lawful government, and nothing came of their mission. Peaceable secession could not be acceded to by the president, and the Montgomery commissioners did not appeal to Congress. It is probable that at this time the Montgomery government were disposed to do everything in their power to prevent a war. At all events, they meant to have it so appear to the world. While they saw clearly that there must be a war if they persisted in their present attitude, they shaped their measures so as to have it appear that they had endeavored to obtain the assent of the Federal Government to the peaceful separation of their states from the Union. This policy strengthened them with their constituents and with the people of the South generally. At the same time they did not omit preparations for war.

and distinguished citizens, earnestly bent upon restoring and saving the Union. One month only of the session of Congress remained. It was necessary that within that short period the convention should agree on amendments of the Constitution, to be submitted to Congress in season for their adoption by both houses. There could be, however, no good accomplished unless a decided majority of the commissioners from the border and the Northern States should agree on the amendments that might be proposed. It was found that the same spirit which had led every Republican senator to oppose the "Crittenden Compromise" would probably defeat the purpose for which the convention had assembled. That spirit animated a sufficient number of the commissioners from the Northern States to frustrate the efforts of those who represented the "border states," and who did not insist on extreme Southern views. There was, however, an extreme Southern element among the delegates from Virginia and North Carolina, and these delegates, although few in number, often coalesced with the extreme Northern delegates from Massachusetts and Vermont. At length, however, on the 27th of February, an amendment of the Constitution, not such as the wisest members of the body preferred, but one that it would have been safe for both sections of the Union to accept, was adopted by the convention, and on the same day it was reported by the convention through ex-President Tyler, their president, to the two houses of Congress, with a request that it be submitted by Congress to the state legislatures. In the Senate it was immediately referred to a select committee, on motion of Mr. Crittenden. He reported a joint resolution, proposing this amendment of the Constitution, but he was unable to get a direct vote on it. He then tried to have the amendment of the Peace Convention substituted for his own. His motion was rejected by a large majority (28 to 7). This was followed by the rejection of Mr. Crittenden's own amendment, as has been already stated, by a vote of 20 against 19. In the House of Representatives, the proposal of the Peace Convention was not even allowed by the speaker to be presented, and every effort to have it considered was resisted by leading Republican members. Yet the amendment proposed by the convention was less favorable to the South than the Crittenden amendment, and for this reason it should have been more acceptable to the

Republican members; yet it encountered the opposition of every Republican member in both houses. Its best recommendation was that it presented a basis of compromise which, if accepted by the North, would have been preferred by the people of the border states, instead of the ultimatum of their secession from the Union.[1]

There was thus lost the last favorable opportunity for reconciling the two sections of the country. And here it may be proper to pause and consider what importance there was for either section in the claim about which each was so tenacious, and whether there was any method by which a safe result could be reached excepting by some compromise and a sacrifice of something on each side. Nearly all public action in free countries, and nearly all legislation, in serious matters, is necessarily the result of compromise. That tenacity of opinion and purpose which refuses all accommodation is often produced by party spirit, or by individual incapacity to act upon broad and public considerations of what is for the good of all, and generally by a combination of both of these unfortunate influences. If, at the time of the formation and adoption of the Constitution of the United States, a state of things had existed similar to that which existed in 1860, it could neither have been framed nor adopted. In almost all its great and most important features the Constitution was a series of compromises; and after it had been in operation for many years there was more than one juncture when the Union must have gone to pieces if the willingness and the power to make compromises had not prevailed in Congress. This was the case in 1820, and again in 1850. In 1860 the willingness and the power to reconcile conflicting sectional claims were far less than they were in 1820 or 1850, on account of the peculiar political condition of the country and the exaggerated sense of the importance of its own claims felt by each of the two sections. The Republican party, comprehending the political force of every free state, and flushed with the recent victory in the presidential election, was wedded to the dogma of the "Chicago platform." In the Southern States, with the exception of Virginia

[1] In the Life of President Buchanan will be found an accurate analysis by him of the proceedings of the Peace Convention.

and Tennessee, which had given their electoral votes to Mr. Breckinridge, the public men and their constituents adhered with equal strength to an extreme Southern claim. The border states alone, in which might be reckoned Virginia, Kentucky, and Tennessee, contained public men and populations capable of interposing and reconciling the extreme Northern and Southern sections. Yet this could be done only by compromises, such as had heretofore saved the Union, in crises in which compromise alone could effect anything. History must therefore candidly and impartially examine the importance to either section of the claim to which each adhered with so much tenacity.

I am by no means disposed to depreciate the importance of the question of slavery in the territories of the United States at any period in our political history. It was a question that arose out of the fact that the Union was a Union of slave-holding and non-slaveholding states, and one that possessed a large public domain. But I have read over political history in vain if I have not found in it ample evidence that at all times this question was one which required for its safe treatment the magnanimous and unselfish spirit in which all such national difficulties must be met. I must again refer to the early policy of the founders of the republic; for that policy shows most distinctly that it was deemed wisest and safest to make a fair partition of the territorial dependencies of the Union between the two sections of the country, so far as to agree that slavery should be prohibited in some territories and allowed in others according to circumstances. There was some force in the claim of the slave-holding states of an equal right to occupy the public domain with slave labor, although it was not true that under the Constitution of the United States this species of property could be carried into a territory against the express will of Congress. There was some force, too, in the claim that the settlers on the public domain, if the greater part of them had emigrated from free states, should have their wishes consulted so far as to make free labor the fundamental condition of society, and not to introduce slave labor along with it. The conditions which dictated the provision of the Ordinance of 1787 in reference to the Northwestern Territory, and the provision made in the Constitution for empowering Congress to do what the old confederation of states could not,

have been described. Slavery was interdicted by the ordinance, because the settlers of the Northwestern Territory were already unwilling to have slaves among them; and this was done with the full consent of the slave-holding states. When other territory came to be acquired by the United States, at different periods, it was found that a just spirit of fairness and equity required that in some territories slavery should be allowed if the inhabitants desired it. When, in 1820, a portentous conflict between the North and the South threatened more serious dangers than had been ever before encountered, the Missouri Compromise line was resorted to; and if that compromise, after being in force for many years, had not been disturbed, the Union would not have had to encounter still greater perils.

In 1860 the claim of the North, as embodied in the Chicago platform of the Republican party, was that slavery should not, under any circumstances, be allowed to go into any territory of the United States. Yet this was a claim on which it was not necessary to insist, for it was quite practicable to fall back upon the early policy of agreeing that in certain territories slavery should be prohibited, and that in certain others it might be allowed, according to circumstances. All that it was necessary to sacrifice was the *dogma* of a party platform. This dogma could not be adhered to in any expectation that the South would accept it. On the other hand, it was not necessary for the South to insist on their extreme right to carry slavery into every territory. The South might have sacrificed so much of this claim as tended to produce in the North a belief, or to bring about the profession of a belief, that the whole republic was in danger of becoming slave-holding, and that to prevent this a President of the United States must be elected on the Chicago platform. The only alternative, however, after all efforts at a reasonable compromise had failed, was a civil war, for the seceded states were bent upon maintaining their independence at every hazard, when the Peace Convention terminated its labors and Congress had rejected its proposal.

It would be unjust to impute to the people of the South generally that their principal reason for accomplishing their independence was because of the mere fact that a president had been elected by the votes of the free states alone. It was the circum-

stances attending the election, the composition of the Republican party, the fear that their state institutions, their social fabric, and their property were in danger, which produced in them the determination to make for themselves a separate country, and to establish a power by which the independency of the states could be preserved. For a similar reason, it would be unjust to impute to the people of the North generally a desire to dominate over the people of the South. The people of the North were influenced by a conscientious belief that the Chicago platform was both a true reading of the Constitution, and necessary to be enforced. This belief was produced by the teachings of their leading men, in whose harangues and writings, during the election, there was a great spirit of exaggeration, and sometimes an inflammatory tendency. This is often the case in national elections, and in that of 1860 the nature of the subject on which it turned tended to produce a profound excitement. So it was in the South, where equally unsound constitutional doctrines were maintained, and where grave and anxious apprehensions could be excited in the minds of a sensitive people.

CHAPTER XI.

1865–1867.

CONSTITUTIONAL POLICY OF PRESIDENT LINCOLN FOR THE RESTORATION OF THE SOUTHERN STATES TO THE UNION.—THE SAME POLICY FOLLOWED BY PRESIDENT JOHNSON. — MISCHIEVOUS EFFORTS OF THE FREEDMEN'S BUREAU.—RECONSTRUCTION OF THE SOUTHERN STATES DEVISED BY THE RADICAL REPUBLICANS IN CONGRESS.—NATURE AND PURPOSES OF THE SCHEME.—NO WARRANT FOR IT IN THE CONSTITUTION.

So long as the government of the United States should endure, the Union would be indestructible save by a complete accomplishment of the independence of the Confederate States. From the beginning of the contest to its close, the theory constantly maintained by the Federal Government, and by most of the people of the states which supported it, was, that the ordinances of secession had not taken the Southern States out of the Union. It necessarily followed that unless they should achieve their independence by force of arms they would still be in the Union after the war was ended.[1] I have in a former chapter

[1] It has been very pointedly and truly said that "there were only two ways by which they could possibly have gotten out legally, by force of their ordinances, or by force of arms. As the legality was denied and the resort to force was a failure, the conclusion was unavoidable that they were in the Union, subject to all the requirements and entitled to all the privileges of the Constitution." (Why the Solid South? or, Reconstruction and its Results. Baltimore: R. H. Woodward & Company, 1890.) This book, the production of the Hon. Hilary A. Herbert, a member of Congress from Alabama [now Secretary of the Navy, 1895.—J. C. C.], and other Southern gentlemen, is a most timely publication. The short passage above extracted is taken from Chapter III., which relates to reconstruction in North Carolina. This chapter was written by the Hon. Zebulon B. Vance, then one of the senators in Congress from that state. Reconstruction in each of the Southern States is separately treated by a citizen of that particular state. It is the most important contribution to the history of that period that has

referred to the wild ideas that prevailed somewhat in the North, during the earlier stages of the war, respecting the results to be obtained by it. That idea found some representation in Congress. But the official action of the Federal Government, during the progress of the war down to its close, and until the period of reconstruction, was not seriously affected by it, although the official action was often much embarrassed by the efforts of individuals and factions to force it into the assumption of unwarrantable and unconstitutional powers.[1]

The government of the United States, in order to defend its own existence, maintain the just supremacy of the Constitution, and vindicate its rightful authority over the individual inhabitants of every state, was obliged to act for a time both as a con-

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yet been made; and it derives its chief value from the fact that the writers were all of an age to take part, and did take part, in either a civil or military capacity, in the effort of their states to obtain independence.

[1] In 1862 I was officially invited to deliver before the municipal authorities of the city of Boston, where I had always previously resided, the Fourth-of-July oration, according to an annual custom which had been established from a very early time. It was the most gloomy period of the war. McClellan was then gallantly fighting his way towards Richmond, followed by that noble Army of the Potomac which he had himself formed. The forces which he had been allowed to take with him, admirably disciplined and instructed as they had been, and successful as they had been in the beginning of the Peninsular campaign, were yet insufficient to enable him to reach and capture the city which was the seat of the Confederate Government. On the 25th of June he informed the Secretary of War, by a frank telegraphic statement, of his inferiority in point of numbers, compared with the forces under the command of his great antagonist, General Lee, and made known the disadvantages under which he must fight the impending and decisive battle, at the same time saying, "I will do all that a general can do with the splendid array I have the honor to command, and if it is destroyed by overwhelming numbers, can at least die with it and share its fate." This was the latest public news of his position that had been received down to the time when it was necessary for me to complete my preparation for speaking publicly of the true objects of the war, and the rightful authority of the Federal Government to put down all obstructions to the sway of the Constitution and laws of the United States throughout the Union. In no community were extravagant theories respecting the results to be aimed at in the prosecution of the war carried to greater lengths than they were in the one in which I was to address the public mind. I thought proper to deal with the true nature of the Constitution and the Union, and especially to encounter the false ideas which were so rife among those who might hear or read me. (See oration in Appendix.) My oration was received with great disfavor by a considerable part of a crowded audience, and the speaker was regarded by that portion of his hearers as a "disloyal" person.

stitutional sovereign and as a belligerent. As a constitutional sovereign, its powers were limited and defined by a written constitution. As a belligerent, it had, while the necessity for suppressing an insurrection should continue, all the rights which by the usages of war, as regulated by the law of nations, belong to a power engaged in carrying on a war against a public enemy. But the question always was, during our late civil war, Who was the public enemy? Was it the states, as communities and bodies-politic, or was it individuals and organized bodies of individuals; or, in other words, was the public enemy, against whom the Federal Government was waging the war, the states which had organized the Southern Confederacy for the purpose of securing their independence, or was it the unlawful confederacy and the military power which it wielded? Would it follow, if that unlawful confederacy should be suppressed and its military power destroyed, that the states would be subjected to the same rights of conquest as would be acquired when one nation wages war against another nation and is successful in the end? Or, would it not rather, and inevitably, follow that the states would not have been conquered at all; that the only conquest would be over insurgent individuals, and an unlawful and unconstitutional military power?

These questions were easily solved by the principles of both public and constitutional law. Conquest of a foreign country gives absolute unlimited sovereign rights, but a nation never makes or can make such a conquest of its own territory. When a hostile power, either from without or within, takes and holds possession and dominion over any portion of national territory, as the Confederate Government did for a time over a large portion of the national territory of the United States, and the nation by force of arms expels or overthrows the enemy and suppresses hostilities, it acquires no new title, and merely regains possession of that of which it had been temporarily deprived. The nation acquires no new sovereignty, but merely maintains its previous rights. When the United States, in the late civil war, took possession of a district then held by an unlawful and insurrectionary force, they merely vindicated their pre-existing title, and they acquired no new title. Confiscation of property or rights may be unlimited where a nation obtains a conquest

over another nation. The treaty of peace, to which the conquered nation is forced to submit, generally regulates the extent to which the conquest shall be carried. But after our civil war was ended, the Constitution was left just as it was before the war began; the United States had just the same sovereign rights as before, and no others. Moreover, there was no treaty of peace to be made, as there is where the war is between one nation and another; and there was no power by which such a treaty could be made. It followed that the states would be in the same situation after the war was ended as they were before it was commenced; and this was perfectly true from the beginning of the whole contest, although its truth was more or less obscured by the aims and ideas of individuals and factions.

Undoubtedly the doctrines of secession assumed that each state which seceded was, by force of its ordinance, out of the Union as soon as its ordinance had been adopted, and that this was its situation during the entire progress of the war. Those who maintained this theory probably did not foresee that, in the event of its denial by the Federal Government, and in the event of a complete suppression of the military power of the Southern Confederacy by the forces of the United States, it would follow that the states would be exposed to a claim on the part of the United States that they were legally out of the Union. So, too, those who claimed that, by the suppression of the unlawful military power of the Confederate Government, the states had become subject to the consequences of a military conquest, assumed that they were out of the Union by force of their ordinances of secession when the war began. Thus the Northern disunionists—as they may be justly termed, since they rejected the Union that existed under the Constitution — played into the hands of the Southern disunionists, who in like manner rejected the only tenable ground of the Constitution. But the government of the United States, in its official action, rejected the theory of secession and all its consequences from the beginning of the contest, and consequently it could not, without glaring inconsistency, claim that it had acquired any new sovereignty or any new rights or powers by suppressing the hostile military power of the Southern Confederacy. The reconstruction of the Southern States, after the war was ended, was inconsistent with the doc-

trine which had been all along maintained in the official action of the Federal Government.

At an early period in the war, as early as 1861, Mr. Thaddeus Stevens, a member of Congress from Pennsylvania, a man of no inconsiderable force of intellect and character, broached the radical doctrine that the Constitution and the laws of the United States were suspended where they could not be enforced; that those who had defied them could not invoke their protection, and that Congress could legislate for such rebellious territory outside of, and without regard to, the Constitution. Even if the first part of this proposition were true, it did not follow that the last would be so. If the Constitution and the laws were suspended in the rebellious territory, it was still a territory over which they had a rightful supremacy; and when the obstructions to their being enforced had been removed, Congress could deal with the territory only under the Constitution, for the Constitution alone gave to Congress any authority over it. It could not be regarded as foreign territory conquered by the United States, for there can be no conquest by a nation of a part of its own dominions.

Mr. Charles Sumner, senator in Congress from Massachusetts, in certain resolutions which he introduced on the 11th of February, 1862, laid down a doctrine similar to that of Mr. Stevens; namely, that a state, by attempting to secede, had committed suicide, and its soil had become territory subject to the supreme control of Congress. This idea of state suicide was perhaps the most extravagant of all the theories maintained by the radical wing of the Republican party. If a state of the Union can commit suicide, it can destroy its own political existence as a state; its soil remains the property of the former individual owners, while the political jurisdiction remains in the people who formerly constituted the state, but who, after the self-inflicted death of the state, have no government until they have established a new one. In such a condition of things, precisely how Congress is to assume the supreme control is not apparent. If resort should be had to the territorial clause of the Constitution, the difficulty would be that the territory was not the property of the United States, and the United States never had the ownership of the soil nor the exclusive political jurisdiction which they have over

all regions which are not comprehended within the limits of some state. The only mode in which Congress could exercise supreme control would be to treat the territory just as if it were conquered from a foreign nation; a consequence which neither the public law nor the Constitution admits. The opposite theory, the only one that is consistent with the Constitution, is that a state of the Union is indestructible, and just as incapable of self-destruction as it is of all other modes of terminating its existence.

These radical theories, however, were put forward in anticipation of a final suppression of the insurrection by the military power of the United States. They ran entirely counter to the declaration made by Congress in July, 1861, that the war was waged "to *defend* the Constitution and all laws passed in pursuance thereof, and *to preserve the Union*, with all the dignity, equality, and rights of the several states unimpaired; that as soon as these objects were accomplished the war ought to cease." It was foreseen by the radical faction of the Republican party that a question would come, whether it was for the Congress or the executive to take the necessary steps for reinstating the revolted states in their normal positions as members of the Union. As the war was avowedly prosecuted for the purpose of keeping those states in the Union, as constituent members of it, with all their dignity, equality, and rights unimpaired, it would follow that when those objects had been accomplished, it would be for the executive, as the authority by which the war had been conducted, to determine when the war was ended, and to take such measures as might be necessary to enable the several states to resume their places in the Union, or to assist them in doing so. But the radicals of the Republican party did not mean that the executive should perform this function or exercise this authority. They were well aware that President Lincoln meant to pursue the spirit of the resolutions which Congress had adopted in 1861, and that all the reconstruction which he would consent to carry out would be, simply, restoration of civil government in the insurgent, but still existing, states, by the people thereof, aided, so far as might be necessary, by the military power of the United States in the promotion of the public peace and good order. In his message of December 8, 1863, he proposed the plan which he intended thereafter to follow. In this message he said:

"Looking now to *the present and the future*, and with reference to a resumption of the national authority within the states wherein that authority has been suspended, I have thought proper to issue a proclamation, a copy of which is herewith transmitted." It was clearly in the province of the executive to issue this proclamation, for he held the power to pardon all offences against the United States, and it was as the executive authority of the United States, and as the commander-in-chief of the armies of the United States, that he was then prosecuting the war for the accomplishment of the objects which Congress had declared were the sole objects to be aimed at. The proclamation offered pardon to all those who would swear "henceforth" to support the Constitution of the United States, and that when those who, accepting this amnesty, shall have taken the oath of allegiance, each "*being a qualified voter by the election laws of the several states existing immediately before the so-called act of secession and excluding all others, shall re-establish a state government, which shall be republican in form and in nowise contravening said oath; such shall be recognized as the true government of the state.*" Beyond all doubt, everything promised by this proclamation was within the province of the President of the United States. It left nothing to be done by the Congress, excepting to admit the senators and representatives, duly qualified, who might present themselves for admission into the respective houses of Congress, after their states had re-established state governments in accordance with the terms and spirit of the proclamation. There could be no necessity for Congress to act under that provision of the Constitution which 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 the application of the legislature, or of the executive [of the state] when the legislature is not in session, against domestic violence." This provision of the Constitution applied to cases where a state needed the guarantee of the United States that it should have a republican form of government, in contradistinction to every form of monarchy, or needed the aid of the United States to prevent invasion or to suppress domestic violence. If it had any application to the condition of things existing during the progress of the civil war

waged to keep the revolted states in the Union, or the state of things existing when the war was ended, there would be occasion for the action of Congress only so far as might be necessary to determine the republican character of any state constitution under which a state might claim to be recognized as a member of the Union, or to adopt such measures as might be necessary to enable the executive to carry out and fulfil the promises of his proclamation. It was for the president to determine, in the first instance, whether a state constitution had been framed and adopted in accordance with his proclamation; after that, it was for Congress to determine, in the exercise of its authority to admit members to seats in the respective houses, whether the constitution was republican in form, and had been adopted in accordance with the terms of the proclamation. There was no authority in any department of the Federal Government to prescribe any other qualifications for voters in the establishment of the new state constitution excepting those which had been prescribed in the president's proclamation, for these were the only qualifications which would be compatible with a restoration of the states, "with all their dignity, equality, and rights unimpaired." But it was contemplated by Mr. Stevens and other radical leaders of the Republican party to make a basis of suffrage in the revolted states that would include the negroes, before those states should be recognized as members of the Union; and hence they resorted to the theory that those states were out of the Union, and were subject to be treated as conquered provinces, or as states which had committed suicide. President Lincoln's plan left the question of suffrage in the hands of those who were qualified to vote under the laws existing at the date of secession. His proposition was that each insurgent state, at the time of its rehabilitation, must decide for itself whether it would adopt negro suffrage. But this did not suit the radical wing of the Republican party. If Mr. Lincoln's plan had been adhered to throughout, there never would have been witnessed what came to be called "reconstruction," with all its evils, mischiefs, and disasters. But unhappily the death of Mr. Lincoln prevented the only safe and consistent plan of restoring those states to their proper places in the Union.

It has been often said that the death of Mr. Lincoln, at the

time it occurred, was a great calamity for the whole country, and especially for the South. This is true. He was a man singularly constituted, in most respects, to meet, as President of the United States, an entirely unprecedented juncture in the affairs of this country. He was not a fanatic, and he was not an enthusiast. While he detested negro slavery, he knew that it was recognized in the Constitution of the United States as a local institution existing in certain of the states of the Union and exclusively under their control. Even when the question had come to be whether the states should resume their places in the Union with slavery or without it, he declared that what he wanted was the Union without slavery if he could have it, with slavery if it must be so; and when the question of negro suffrage loomed in the future, in the event that slavery should be abolished in some way, he never designed or desired that any other course should be taken excepting one that would leave the question of suffrage entirely in the hands of the people of each state, to be regulated as they should see fit. He knew well that it could only be after a training for freedom and for the exercise of the rights of citizenship that the negroes of the South could be safely intrusted with the ballot. No country would be fit to live in which should be dominated by uneducated and ignorant blacks just emancipated from a condition of abject servitude. The proclamation which Mr. Lincoln issued on the 22d of September, 1862, purporting to emancipate the slaves, was a military measure designed to facilitate the operations of the Union armies, and was not regarded by him in any other light. As a civil edict, changing or abolishing slavery, it had no force. It could only be by the adoption of an amendment of the Constitution of the United States that slavery could be legally ended by any exercise of federal influence. Mr. Lincoln never contemplated the application of force to compel the Southern States to abolish slavery, nor did he contemplate the use of force to compel them to adopt negro suffrage. He knew that neither could be consistent with the Constitution and the Union. He made use of military force to bring about practical emancipation wherever the Union armies might penetrate.

The effect of his proclamation was that the negroes, with some exceptions, abandoned their masters, both within and without the Union lines; but none of them were ever legally emanci-

pated until the adoption of the Thirteenth Amendment, which was declared on the 18th of December, 1865, to have become part of the Constitution.

When Mr. Lincoln's message of December 8, 1863, was sent into Congress, that body had begun to put forth the claim that the legislative department had exclusive jurisdiction over the question of reconstruction, by virtue of the clause in the Constitution which declares that "the United States shall guarantee to every state in this Union a republican form of government." Mr. Lincoln's position was that the executive could, of his own authority, aid the people of the Southern States to establish governments for themselves. This portended a breach between the president and Congress, and the opening for this breach soon came about. For, in July, 1864, a bill was passed, by a small majority in each house, "to guarantee to certain states a republican form of government." This bill did not give the ballot to the negroes, but it asserted the jurisdiction of Congress, and provided expressly that the president should, by proclamation, recognize the state governments established under it only "after obtaining the consent of Congress." Mr. Lincoln did not permit this bill to become a law. He withheld his approval of it, and did not return it. On the 9th of July he publicly assigned his reasons for this course. He said that the bill was received by him only one hour before the adjournment of Congress; yet, in order to avoid a final rupture with Congress, he went so far as to add that he considered the system of restoration which the bill proposed was "one very proper for the loyal people of any state choosing to adopt it." It is quite apparent that he was opposed to its being forced on any state by law, for he said that he would at all times be "prepared to give the executive aid and assistance to any such people," that is to say, to any people who should choose to adopt the congressional plan, "when the insurrection should be suppressed." It is therefore certain that Mr. Lincoln did not yield to the claim of Congress of exclusive jurisdiction over the subject of reconstruction of the Southern States. He contemplated restoration of those states to their proper places in the Union by the aid of the executive. He was nominated by his party for re-election to the presidency after his plan of restoration was fully known to them and to the whole country; and he was nominated with the highest

encomium for his "practical wisdom," his "unselfish patriotism," and "his unswerving devotion to the Constitution." In November, 1864, he received 212 electoral votes out of 223. If he had lived, while it is not certain that his whole party would have deserted him, it is highly probable that the radical portion of it would have been hostile to him; and if the circumstances had been the same as they became when his successor, Andrew Johnson, had to assume the office of president, there would have been an effort to impeach him. For, when he refused to approve the bill sent to him by Congress in 1864, the radicals in the Senate and in the House, led in the former by Mr. Benjamin Wade, and in the latter by Mr. Henry Winter Davis, bitterly denounced him for having perpetrated "a studied outrage on the legislative rights of the people."

On the 5th of December, 1864, Mr. Lincoln sent his last annual message to Congress. In it he said: "They [the insurgents] can at any moment have peace simply by laying down their arms and submitting to the national authority under the Constitution. . . . In stating a single condition of peace, I mean to say that the war will cease on the part of the government whenever it shall have ceased on the part of those who began it."

When the session of Congress terminated on the 4th of March, 1865, it was apparent that the Southern Confederacy was about to collapse, and Congress did not venture on any reassertion of its right to reconstruct the Southern States. Mr. Lincoln therefore had an unobstructed field for his policy of restoration. Shortly before his death he prepared a proclamation for the restoration of North Carolina to the Union, but it was not issued by him. At the first meeting of the cabinet held after his death this proclamation was read, and was unanimously adopted as the policy of the administration. It was issued by President Johnson on the 29th of May, 1865.[1]

[1] Mr. Johnson was inaugurated as President of the United States on the 14th of April, 1865, just as the Southern Confederacy fell. In forty days from the date of the surrender of General Johnston there was not a single confederate soldier in arms. Submission to the authority of the United States was everywhere complete. Courts were established; the postal service was rehabilitated; tax-collectors and tax-assessors went about their business.

At this time all that was needed was that the military power of the United States should be present in districts where there was some disorganized condition of society, to keep order and protect life and property. These facts are of the utmost importance, because they show the wide difference between the policy of the executive, that was steadily followed from the time when it was shaped by President Lincoln in 1862, down to March, 1867, when Congress concluded to destroy the state governments which the people, acting in accordance with that plan, had established for themselves — some of them under the supervision of Mr. Lincoln, and others under the supervision of Mr. Johnson.

And now the question recurs, whether it was not within the province of the executive to do just what that department of the government undertook to do? In the first place, the President of the United States, being the executive head of the government, had conducted the war and all its operations as commander-in-chief, and it was for him to ascertain and announce when the war was ended. The war was a civil, and not a foreign or international war. It was no less a war, however, although it was waged by the government of the United States to suppress an insurrection. It was not a war against states or communities, but a war against organized bodies of individuals, who were in arms in opposition to the lawful authority of the United States, and a war against an unlawful confederacy, whose military power it was necessary to suppress by force. Individuals who had committed treason against the United States might be punished according to the constitutional definition of treason, and under the limitations imposed by the Constitution, upon trial and conviction for that offence. But there could be no forfeiture of the state autonomies, because the war was waged for the sole purpose of restoring those states to the Union, with all their dignity, rights, and powers unimpaired. The question was, when was the war ended? and this it was the province of the president to determine and announce. Had it been a foreign war, it must have been ended by a treaty of peace negotiated by the president and confirmed by the Senate. But being a civil war, prosecuted against insurrectionary forces, it was not to be ended by a treaty of peace. It was to be ended by the determination of the point of time at which all practical op-

position to the authority of the United States had ceased throughout the Union. This it was for the president to determine and make known. Accordingly, a proclamation was issued by President Johnson on the 2d of April, 1866, which, after reciting all the previous official action of the executive or the legislative departments of the government in respect to the war, announced "that on that day the insurrection which had previously existed in the states of Georgia, South Carolina, Virginia, North Carolina, Tennessee, Alabama, Louisiana, Arkansas, Mississippi, and Florida, is at an end, and is henceforth to be so recognized." In all the subsequent judicial or other official action of the government of the United States this date has been regarded as the termination of the war. It was only when Congress, in March, 1867, chose to say that the war was not ended, but that it still subsisted, that any opposition was manifested to the president's determination and announcement that it was at an end, and was thenceforth to be so considered. His authority to make this future acceptation of its termination was the same as his authority to determine and proclaim that all hostilities were at an end.

In the next place, inasmuch as nothing was needful but for the executive to preserve good order in the lately insurgent states until the people thereof could frame and establish state governments for themselves, it was for the president to render them aid in doing so, so far as he might by prescribing the conditions on which individuals could receive executive amnesty, and be permitted, as citizens of their respective states, to participate in the formation and establishment of state governments.

But this policy, suited to the situation, and eminently practical as well as constitutional, was not adapted to the plan of forcing negro suffrage upon the people of those states. It contemplated only the inclusion of a very limited number of negroes within the elective franchise, and it did this only by way of suggestion to those who were to consider and act upon it; whereas, to suit the radical wing of the Republican party, a wholesale inclusion of all the adult male negroes was necessary to the policy which that faction had all along resolved should prevail. The first symptom of their purpose appeared when Congress sent to President Lincoln the bill which he did not allow to become a law. But it was not until the first reconstruction act was passed

on the 2d of March, 1867, over President Johnson's "veto," that the issue was directly made between the president and Congress.

It is remarkable that the conservative elements of the Republican party did not prevent the rupture between Congress and President Johnson. But this was due partly to the singular composition of that party, partly to certain idiosyncrasies in Mr. Johnson's character and temper, partly to an early determination of the radicals to quarrel with him, and partly to the fact that, under such circumstances, violent and extreme men are generally able to accomplish their objects in the end. The grand purpose to force negro suffrage upon the South was the animating motive of the radical faction, and to this end it was necessary for them to impair and counteract the influence of a president whom they disliked and distrusted.

The composition of the Republican party as represented in Congress, at the time of Mr. Johnson's accession to the presidency, was unfavorable to the prevalence of conservative ideas. There were a few men in both houses of Congress who were not disposed to go to extreme lengths or to adopt violent measures. But they were too few to prevent the passage of bills over the president's veto. Moreover, among their constituents they had not the support requisite to encourage them in a safe and constitutional course of action. They did not like to encounter the rebuke of those among their constituents who were disposed to think that anything was preferable to a division in the party. If Mr. Lincoln had lived, it is more than probable that, without dividing his party, he would have been able to prevent the radical portion of it from carrying disastrous and imprudent measures. But Mr. Lincoln and Mr. Johnson were very different men. The former was a very eminent leader and founder of the Republican party, and his influence over it, and consequently over its measures, was far greater than that of any man of his time. The latter had been made vice-president with very little real knowledge of the man, and solely because in his own state of Tennessee he had been a steady and consistent defender of the Union and the Constitution.

Born and reared in what is sometimes called humble life, Mr. Johnson had raised himself by his own exertions and abilities to positions of importance in his own state. His opinions were ex-

tremely democratic, and his feelings led him to a hatred of the classes who considered themselves above him, and whom he weakly regarded as his foes. But he was a perfectly honest man, and a patriot of indomitable courage and great strength of purpose when he believed that he was in the right. His knowledge of the Constitution was not inferior to that of most public men. He had been a senator in Congress, and had learned the nature and the machinery of the Federal Government. He was not of the higher order of statesmen, but when he became president he was as well qualified to perform the duties of that office as many men whose lot has fallen upon more peaceable times, and who have discharged its functions with more or less success. His misfortune was that, with great strength of convictions and perfect honesty of purpose, he yet had to fulfil the duties of the presidency without a party willing to support him, and with one that was determined to thwart him. His best resource, outside of himself, was in a single member of his cabinet, the Hon. Henry Stanberry, attorney-general, a constitutional lawyer of great eminence and a man of no ambition save to render to his official chief all the aid that his abilities and knowledge could furnish. Mr. Johnson was of an unyielding temper, and he never could feel it to be his duty to yield to men whose purposes he disapproved, in order to gain from them political support—men who did not appreciate his patriotism, and never could give him credit for good motives or recognize the wisdom of his course.

The president's proclamation appointed William H. Holden provisional governor of North Carolina, with authority to call a convention to frame a constitution for the government of the state. Similar proclamations followed for South Carolina, Georgia, Alabama, Florida, and other states. That there was an identity of plan between the policy of President Lincoln and that pursued by President Johnson is certain. Neither of them contemplated negro suffrage any further than it might be voluntarily conceded by the conventions which were to frame the new state constitutions. Mr. Lincoln, in a letter which he addressed to Governor Hahn, of Louisiana, shortly before his death, said: "Now you are about to have a convention which, among other things, will probably define the elective franchise. I barely suggest, for your private consideration, whether some of the colored people may

not be let in, as, for instance, the very intelligent, and especially those who have fought gallantly in our ranks. *But this is only a suggestion, not to the public, but to you.*" On the 15th of August, 1865, Mr. Johnson wrote to Governor Sharkey, of Mississippi: "If you could extend the elective franchise to all persons of color who can read the Constitution of the United States in English and write their names, and to all persons of color who own real estate valued at not less than two hundred and fifty dollars, you would completely disarm the adversary and set an example that other states will follow." [1]

It has been said by those who ought to know, that while Mr. Lincoln would have been glad to have the states, in regulating the suffrage, make certain exceptions in favor of the negro, these exceptions would not amount to ten per cent. of the colored male adults in any Southern state, and could, therefore, have done no harm. And that Mr. Lincoln's letter also shows clearly that he thought it would be an unwarrantable interference for the President of the United States to do more than make a private suggestion about the matter. Mr. Johnson's suggestion to Governor Sharkey, of similar tenor, was not merely private, and was not intended to be withheld from the public. Neither Mr. Lincoln nor Mr. Johnson intended to have negro suffrage brought about by any kind of compulsion.[2]

On the assembling of the Thirty-ninth Congress, December 4, 1865, Mr. Thaddeus Stevens introduced and carried through the House, under the previous question and without debate, a resolution to provide for a joint committee of fifteen to report on the condition of "the states which formed the so-called Confederate States of America." The Senate promptly concurred in this resolution, and afterwards, on the 23d of February, 1865, finally agreed that neither house should admit any member from the late insurrectionary states until the report of the joint committee on reconstruction, thereafter to be made, should be finally acted on. Thus the Congress placed itself in open opposition to the plan of restoration which President Lincoln had inaugurated, and which

[1] By the "adversary" Mr. Johnson obviously meant the radical portion of the Republican party, who found fault with the policy of restoration which his predecessor had projected, and which he was then pursuing.

[2] See, also, Why the Solid South? p. 7.

President Johnson was engaged in carrying out. The condition of the states which had formed the Confederate States of America was at this time, that the people of North Carolina, South Carolina, Georgia, Alabama, Louisiana, Mississippi, Arkansas, and Tennessee had reorganized their state governments in accordance with the president's plan.[1]

Thirty-seven states had adopted the Thirteenth Amendment to the Constitution of the United States abolishing slavery, and of these five of the states which had formerly seceded are included in the official count. The conventions of all the formerly seceded states had revoked or declared null and void their ordinances of secession. All the offices in the new governments of North Carolina, South Carolina, Alabama, Georgia, and Louisiana were filled by original Union men, or by those who, having received the president's pardon, had taken the oath of allegiance to the United States. The laws were in full operation. Senators and representatives from most of those states were in Washington, asking to be admitted to seats in Congress, and, so far as the people of those states could do the work of restoration, it was completed. The condition of public feeling throughout these states was ascertained by General Grant, who had been requested by President Johnson to visit them and report upon it. His report was made December 18, 1865. In it he said:

"I am satisfied the mass of thinking men in the South accept the present situation of affairs in good faith. The questions which have hitherto divided the sentiment of the people of the two sections, slavery and state rights, or the right of the state to secede from the Union, they regard as having been settled forever by the highest tribunal—that of arms—that man can resort to. I was pleased to learn from the leading men whom I met that they not only accepted the decision arrived at as final, but, now the smoke of battle has cleared away and time has been given for reflection, that the decision has been a fortunate one for the whole country, they receiving like benefits from it with those who opposed them in the field and in the council."

Here, then, was a condition of affairs most favorable to a

[1] President Johnson so reported to Congress shortly after it assembled in December, 1865.

speedy restoration of those states to their proper places in the national councils, by the admission of their senators and representatives to seats in Congress. The question whether it belonged to the executive or to Congress to take the initiative in measures necessary to enable those states to form state governments loyal to the United States was of very little real importance. It was rather a theoretical question than a practical one; and inasmuch as the necessary steps had been taken by the executive, and taken in accordance with all the requirements that could properly be demanded, it was incumbent on patriotic men to waive an unimportant claim on the part of the legislative power, and to permit the executive measures to take full effect. But this was not to be, because there were other requirements which intervened for the promotion of party objects and plans. To permit the Southern States to come back into the Union, without having first granted to the negroes the right of suffrage, would be to lose the opportunity to use the colored race not only as allies of the Republican party, but as mere tools in the hands of party managers. It was not enough that some of the new state governments, and the people which had instituted them, had ratified the Thirteenth Amendment of the Federal Constitution which abolished slavery, and that the others were morally certain to do so: they confined the right of suffrage to white men, as it was and always had been confined in some of the New England States.

Lest it may be supposed that I have uncharitably imputed to the Republicans in Congress a purpose of a party character, I think it proper to cite here the declarations of several of their most prominent men. It will not be doubted that Mr. Thaddeus Stevens knew what he himself aimed at. He said on the floor of the House that if the late Confederate States were admitted to representation in Congress under the presidential plan, without any changes in the basis of representation, those states, with the Democrats "that would be elected in the best of times in the North," would control the country; and on the 14th of December, 1865, he said, "According to my judgment they [the insurrectionary states] ought never to be recognized as capable of being counted as valid states until the Constitution shall have been so amended as to make it what its makers intend-

ed, and so as to secure ascendency to the party of the Union." In Mr. Stevens's view the party of the Union was, of course, the Republican party and no other. His plans were twofold: first to reduce the representation to which the slave-holding states were entitled under the Constitution; secondly, to enfranchise blacks and disfranchise whites. This was well calculated to keep the late insurrectionary states out of the Union until the Constitution had been so amended as to accomplish his objects, and after that to have the control of those states in the hands of those whom Mr. Stevens regarded as the party of the Union.

Mr. Charles Sumner was a leading radical senator, and his declarations were no less frank and open than those of Mr. Stevens. On a bill pending in the Senate to give the ballot to negroes in the District of Columbia, as his colleague, Mr. Henry Wilson, declared, in his "History of Reconstruction," to be "both as a right and as an example," Mr. Sumner said: "Now to my mind nothing is clearer than the absolute necessity of suffrage for all colored persons in the disorganized states. It will not be enough to give it to those who can read and write; you will not in this way acquire the voting force which you need here for the protection of Unionists, whether white or black. *You will not secure the new allies* who are essential to the national cause." The "new allies" were to be the negroes who had just been emancipated from a condition of abject servitude, and they were to be the allies of the Republican party, and not to be permitted to become allies of the Democratic party. Without education, without capacity either to read or write a ballot, or to write their own names, or even to understand what they were voting for or what voting was, they were, nevertheless, to have the right of voting. Surely this was a scheme well adapted to obtain a great mass of voters who would be mere machines in the hands of unscrupulous party managers. The "national cause" for which the new allies were to be secured was the cause of the Republican party, which assumed to be the only party of the Union.[1]

[1] Recent Republican writers have not hesitated to declare that the purpose of the reconstruction acts was political and partisan; that reconstruction was resorted to in order to preserve the ascendency of the Republican party after the Southern States had been admitted to representation in Congress. (Twenty Years of Congress, by the Hon. James G. Blaine; American Constitutional Law, by

One ostensible reason for the passage of the reconstruction acts was that the Southern legislatures, which were established under the president's plan of restoration, had passed laws which were said to have the effect, and were presumably intended, to reduce the negroes to slavery for half the year. This imputation, countenanced by persons of distinction in the Republican party, has ever since been accepted, perhaps by a majority of people at the North, as a full justification for the reconstruction measures, and indeed as creating a necessity for them.[1] A just regard for truth, and for the situation of things in the Southern States which passed these laws, will enable any one to see that, so far from their being objectionable, they were not only necessary for the public welfare, but that any considerate government would have adopted them for the benefit of the very class whom they affected. So long as slavery existed there were no vagrants, idle persons, or paupers among the blacks. Every slave belonged to some master who was the absolute owner of his labor, who was responsible to the state for his or her decent maintenance, and whose interest it was to keep him or her employed. Self-support was a thing unknown to the Southern slaves. Some of them might be idle and some might be vicious, but so long as they remained slaves none of them were in a condition to become a public charge upon the state unless they had been convicted of some crime. When the practical emancipation came, which was the effect of President Lincoln's proclamation, the negroes flocked into the cities and towns, and the consequence was that great numbers of them, who were capable of earning a livelihood, were unwilling to do so. The main body of them became possessed by

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Judge J. Clark Hare.) Indeed, no one at the present day can doubt that Senator Wilson spoke the truth about the purposes of his party when he said in the Senate, on the 15th of March, 1867: "With the exercise of practical judgment, with good organization, scattering the great truth and the facts before the people, a majority of these states will, within a twelvemonth, send here senators and representatives who think as we think, speak as we speak, and vote as we vote, and will give their electoral votes for whomsoever we nominate as president in 1868." So it proved.—J. C. C.

[1] See Mr. Blaine's strictures on these laws, in the second volume of his Twenty Years of Congress. Mr. Blaine was apparently oblivious that his own state of Maine, as well as other New England states, had similar laws respecting vagrants, idlers, etc

the idea that, in some way, the government was to take care of them; and when the Freedmen's Bureau, of which I shall speak presently, was established, they saw in that extraordinary engine the means by which their expectations were to be realized. General Grant reported in December, 1865, that the negroes refused to make contracts for their labor, and were waiting for government aid. In the Southern States generally there had never been any statutes to compel industrious habits, as there had long been in New England. No community in the world, situated as the Southern States were after the close of the war, could have omitted to pass such laws as were enacted in the South to prevent idleness and vagrancy. So long as slavery existed, the slaves themselves were entirely unaccustomed to look to public authority for support, or to any authority but that of their masters. Some of them were idle and some were vicious; but it was for their master to correct such propensities, or to bear with them as well as he could. In general the slaves were docile and industrious; and self-interest made the masters, for the most part, careful and humane. Many of them fulfilled their duties to their slaves in the most exemplary manner, and according to the highest Christian precepts. Such a system might, and undoubtedly did, produce bad masters, but they were the exceptions. Public opinion frowned upon them, and for cruelty and neglect they were not seldom made amenable to the law. As a laboring peasantry, whose labor was the property of a master, the slaves in our Southern States were, on the whole, a happy and well-cared-for race.

In any community, such as the Southern States were before and at the close of the civil war, a sudden change from slave labor to free labor must of necessity produce much idleness and vagrancy; and if the supply of free labor should become greater than the demand, there must be a great disorganization of society. The writer whom I have already quoted has given a description of the state of things in Alabama at the close of the war, which is applicable to most of the states in the South at that time.

"It is difficult to convey any proper idea of the wretchedness that prevailed in Alabama at the close of our civil war. Thousands of white men who were totally unaccustomed to labor

found themselves in extreme poverty, and in many cases father, husband, brother, or son—the last and only hope—was sleeping in a soldier's grave. The state had lost of her citizens by the war, including the disabled, 25,227, more than 20 per cent. of those who could now have been counted upon as bread-winners. The credit system had been universal, but now all credit was gone; provision crops had gone to feed both confederate and federal armies; plough stock had most of it been destroyed or carried away; negro laborers were demoralized, and flocked into towns and camps around Freedmen's Bureau agencies; and, to fill the cup to the brim, a severe drought came with its afflictions, so that the crops of corn and small grain throughout the state in 1865 were not more than one fifth the usual amount."[1] As this extract refers to the Freedmen's Bureau, a careful account of that machine should now be given. Its avowed design was to take the freedmen—two millions of emancipated slaves—under the protection of the Federal Government. Its practical operation was to increase the demoralization of the negroes, to encourage them to look to the government for the supply of their wants, and to render them unwilling to make contracts for their labor. If the bureau had been officered by persons who understood the negro, and had been long accustomed to him, such an engine would have done comparatively little harm. But, unfortunately, very few Southern men were trusted by the dominant power at Washington. It was deemed necessary to treat Southern men as natural enemies of the negro; and the bureau was designedly officered by men from the North who would and did make use of their power for political purposes. With a few exceptions, the officers of the Freedmen's Bureau were the worst kind of adventurers that were ever intrusted with such powers and placed in such responsible positions. Coming from the North, they were as a matter of course politicians, seeking in the South for wealth and office. The bureau was first established by an Act of Congress passed March 3, 1865. When the bill was pending in the Senate, Senator Fessenden, of Maine, said: "You give these creatures [the freedmen] to the kind protection of broken-down politicians and adventurers and decayed ministers of the gospel, and make them over-

[1] Why the Solid South?—Reconstruction in Alabama, p. 29.

seers to make fortunes out of the poor creatures." The law made the agents of the bureau guardians of the freedmen, with power to make their contracts, settle disputes with employers, and care for them generally. Between the agents of the bureau and the citizens of the states into which they were sent there could be no sympathy. "In general, the bureau agent had not been a soldier. His past experience, his present avocation, and his aspirations for the future, all differentiated him from the veteran, who had learned on the battle-field to respect his foe, and who found in his own approving conscience and the gratitude of his country sufficient reward for the services he had rendered. . . . They [the bureau agents] were not to be content with robbing the negro; they were to become statesmen, and traffic and barter away the credit of the State." [1]

As might have been expected, the effect of all this was that the bureau agents established themselves in the confidence of the colored people, with vast opportunities to control their votes. Throughout the whole region of the late Confederacy there came to be a phrase that at the agencies of the Freedmen's Bureau "the bottom rail was on top." In the same ratio in which this delighted the negroes the whites were exasperated. "Many people," says the same writer, and he was well qualified to know, "who believed that the newly emancipated slave needed a guardian to take care of him, believed, also, that if he only had the ballot he could take care of himself and the country too. In fact, the sentiment in favor of universal suffrage was already strong [in the North], even in the spring of 1865; and it was natural for every bureau agent who might have a turn for politics to conclude that, with the bureau's help, Mr. Stevens and his friends might eventually succeed in giving the negro the ballot. The bureau agent was 'the next friend' of the negro. With negro suffrage this official's fortune was made. Without it, of course, this stranger had no hope of office at the South. It was not therefore to his interest, if he had political aspirations, that there should be peace between the races." [2] The idea that the lands of their for-

[1] Why the Solid South?—Reconstruction in Alabama, p. 30.

[2] The report made to the president by General Grant, after his visit to the South, gave information which he obtained from the few conscientious men connected with the bureau. The general was at this time unconnected with politics,

mer owners were to be divided among them did not originate with the negroes. It came from the agents of the Freedmen's Bureau, whom the negroes naturally believed; and this belief was widely spread throughout the Southern States. It was a powerful means for attaching the newly emancipated slaves to the bureau, and of holding them in a compact mass until the ballot should be given to them. It had also a potent influence in rendering the negroes unwilling to make contracts for their labor, and thus to produce the idleness and vagrancy which the laws that were enacted by the new legislatures in the states where the president's plan of restoration had taken effect were designed to meet.

If the framers of the Southern laws against idleness and vagrancy had looked into the statute-books of several of the New England States for models, they would have found very early ones which were aimed at vagrancy and idleness, and which made use of the same terms. Some of them were more stringent in their operation than those which were passed in the South in a condition of things that never existed—to the same extent, at least—in New England. Whether the Southern legislators did or did not copy from the New England laws—and it does not appear that they did—a comparison shows a most striking similarity in purpose and language. The law passed in Alabama, which may serve as an example for the others, declared, "stubborn and

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and his testimony is therefore of great importance. "The belief," he said, "widely spread among the freedmen of the Southern States, that the lands of their former owners will at least in part be divided among them, has come from the agents of this bureau. This belief is seriously interfering with the willingness of the freedmen to make contracts for the coming year. . . . Many, perhaps the majority, of the agents of the Freedmen's Bureau advise the freedmen that by their own industry they must expect to live. . . . In some instances, I am sorry to say, the freedman's mind does not seem to be disabused of the idea that he has a right to live without care or provision for the future. The effect of the belief in the division of lands is idleness and accumulations in camps, towns, and cities." Whether this belief was entertained by a larger or a smaller number of the freedmen, it must have affected the great mass of them more or less. The most ignorant of them—and these were by far the majority—could not understand the folly of such an expectation. The few who could understand that this was an idle expectation were naturally carried along with the great body of their race. Practically, their former owners were powerless to counteract this mischievous idea, inculcated for a sinister purpose by men who made use of it to obtain their own objects."

refractory servants," and "servants who loiter away their time," to be vagrants. It provided that they might be brought before a justice of the peace and fined fifty dollars, and in default of payment they might be hired out on three days' notice by public outcry for the period of six months. A law of Rhode Island (Revision of 1872) provided that, "If any servant or apprentice shall depart from the service of his master, or otherwise neglect his duty," he might be arrested on oath to be made by the master in writing, and be committed to the state workhouse for correction. In Alabama there were no workhouses as there were in Rhode Island, and consequently, in the former state, the delinquent must be hired out to service—a milder and less degrading punishment than commitment to a workhouse.

The apprentice law passed in Alabama was substantially the same as the corresponding law of Connecticut. The former imposed a fine not exceeding five hundred dollars on any person who should entice a minor apprentice from the service of his master. The latter imposed a fine not exceeding one hundred dollars, with the alternative of imprisonment for a term not exceeding six months.

It is unnecessary to pursue this comparison into further details. Massachusetts, Vermont, Rhode Island, Connecticut, and Maine had laws respecting "vagrants," "idlers," "servants," "masters," "mistresses," etc., quite as severe as any that were passed in the South after the emancipation of the negroes, and some of them much more severe; yet those New England States never were situated as the Southern States were—never had government bureau agents demoralizing their laborers, and never had half the amount of vagrancy and idleness that was produced in the South by the sudden change from slave labor to free labor, and by the mischievous effect of the Freedmen's Bureau.[1]

[1] To this day the State of Maine has a law which is perhaps more obnoxious to criticism than any similar law that exists elsewhere. In a community like Maine, where industry and thrift are marked characteristics of nearly the whole population, the few exceptions are likely to be severely dealt with. By the Revised Statutes of that state (1883), it is provided that "whoever goes about from town to town, or from place to place in any town, asking for food or shelter, or begging, . . . shall be deemed a tramp, and be imprisoned at hard labor for not more than fifteen months. . . . If a tramp enters a dwelling-house, or kindles a fire in the highway, or on the land of another, without the consent of the owner

The 1st of January, 1866, passed by without the expected division of land among the negroes, and they were beginning to see the necessity for exerting themselves. But the demoralization had been so extensive that it would require a long time and very careful management to bring about a condition of labor that would admit of a settled and productive state of society. In the meantime the plan of negro suffrage was under consideration in Washington and before the people of the North; and the chief, ostensible, and professed reason for enforcing it upon the South was that the Southern state governments, which had been organized according to the president's plan of restoration, had passed laws which were alleged at the North and were believed to have been designed to reduce to practical slavery as many of the freedmen as could be reduced by such means.

The elections in the North, in the year 1866, went generally in favor of the Republicans, and the radical faction were much strengthened. The Southern States were wholly without representation in Congress. Now, therefore, was the time for the "reconstruction" of those states! The first Reconstruction Act was passed March 2d, and the supplementary one on the 23d of March, 1867. Both of them were passed over the vetoes of President Johnson, which clearly demonstrated that they were beyond the constitutional powers of Congress, as well as inconsistent with his proclamation of April 2, 1866, and with what had been done under it, Congress tacitly assenting thereto. I am now, therefore, to analyze these extraordinary measures, premising that at the time of their passage the insurrection which had previously existed in the states of Georgia, South Carolina, Virginia, North Carolina, Tennessee, Alabama, Louisiana, Arkansas, Mississippi, and Florida was at an end, as declared by President Johnson in his proclamation, and that in each of those states there was a state government organized according to the requirements of the proclamation, and organized by the people of those states in good faith.

It has sometimes been supposed that a legislative body can enact anything to be true which it chooses to assert. Whether

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or occupant, . . . he shall be punished at hard labor in the state-prison for not more than two years." Such laws may be necessary, but they certainly bear very hard upon the poor. They are probably mitigated by a mild administration.

it was for the president or for Congress, as an original question, to determine that the insurrection was at an end in the states mentioned in the proclamation announcing the fact, it was a fact on the 2d of April, 1866, and it could not be contradicted by any legislative enactment to the contrary. It was not a legal fiction that the insurrection was at an end; it was a fact to be officially ascertained and announced. The most appropriate authority for this purpose was the President of the United States.

The first Reconstruction Act (March 2, 1867) was entitled "An Act to provide for the more efficient government of the rebel states." Its preamble declared:

"Whereas, no legal state governments or adequate protection for life or property now exist in the rebel states of Virginia, North Carolina, South Carolina, Georgia, Mississippi, Alabama, Louisiana, Florida, Texas, and Arkansas;

"And whereas it is necessary that peace and good order should be enforced in said states until loyal and republican state governments can be legally established."

Here was an assertion of several things which were not true, and could not be made true excepting by the legal fiction that whatever a legislative body chooses to assert as a fact *is* a fact. First, it was not true that the states enumerated were still "rebel" states. This was equivalent to the assertion that the war was not ended; whereas, the president's proclamation of April 2, 1866, had declared that it was ended at that date, and was thereafter to be so considered. Next, it was not true that the existing state governments were illegal or disloyal. They were established, with the assent of the President of the United States, by a body of people composed of individuals who had received the executive pardon for former offences against the United States; and the president's proclamation had declared that "there now exists no organized armed resistance of misguided citizens or others to the United States in the states of Georgia, South Carolina, Virginia, North Carolina, Tennessee, Alabama, Louisiana, Arkansas, Mississippi, and Florida, and the laws can be sustained and enforced therein by the proper civil authority, state or federal, and the people of the said states are well and loyally disposed, and have conformed or will conform

their legislation to the condition of affairs growing out of the amendment to the Constitution of the United States prohibiting slavery within the limits and jurisdiction of the United States."

In the third place, it was not true that no adequate protection for life or property existed in those states. This assertion was based upon a report made by a committee of thirteen members of the two houses of Congress, appointed to inquire into the condition of the late Confederate States. Mr. Blaine has said that "it was foreseen that in an essential degree the fortunes of the Republican party would be in the keeping of the fifteen men who might be chosen."[1] For the accomplishment of party objects the committee was well constituted. For the purposes of truth, fairness, and justice it was very ill constituted. Twelve Republicans were placed on it, and only three Democrats; one from the Senate and two from the House. Made up as Congress was at that time, and aiming as the Republicans were to find a plausible excuse for the reconstruction measures, it was a matter of course that this report should be taken as a truthful picture of the Southern States. But the writer or student of history who shall read the evidence taken by the committee will come to the conclusion that it was a very untruthful picture of the condition of those states.[2] The following is a truthful account of the proceedings of the committee, given by the writer to whom I have frequently referred:

"The field from which testimony was to be drawn was the unrepresented South. On the sub-committee which took testimony as to Virginia, North Carolina, South Carolina, Georgia, Alabama, Mississippi, and Arkansas, there was not a Democrat to call or to question a witness. The only hope of fair play lay in the magnanimity or sense of justice of men who had already voted to refuse admission to the Southern members, and who were placed upon the committee with the expectation, as Mr. Blaine has indicated, that they would take care of the Republi-

[1] Blaine's Twenty Years of Congress, vol. ii. p. 127.

[2] Mr. Blaine believed that he was writing history when he wrote his "Twenty Years." As an historian, instead of saying, "That report *is to be* taken as an absolutely true picture of the Southern States at that time," he should have said that *it was* so taken by a majority in Congress, in order to carry out their purpose to secure the fortunes of the Republican party.

can party. There is not space here to discuss the evidence of the witnesses who chose or were chosen to come before these gentlemen. It consists of hundreds of pages of speculative testimony, hearsay, etc.

"The crimes committed, in the most peaceful times, within eighteen consecutive months, among any population of eight millions, would, if industriously arrayed, make a fearful record. To make that arraignment of the late Confederate States was the task to which this able committee addressed itself in 1866.

"The situation in these states was peculiar. When the surviving soldiers returned from the field, around their desolated homes they found four millions of slaves suddenly manumitted. The returning soldiers were themselves more or less affected by that demoralization which is an unfailing consequence of protracted war. The negroes were demoralized by their newly found freedom. They turned, for the most part, a deaf ear to the advice of their old masters, and listened with avidity to the tales that were bruited about, said to have come from the stranger friends who had freed them, to the effect that the lands of their rebel masters were to be confiscated and divided among them. It is impossible that, under such circumstances, however earnestly all good citizens might strive for the general good, there should not have been friction between the races. Yet notwithstanding the extraordinary and unprecedented conditions, there was, to General Grant, nothing, as his report already quoted shows, in the situation there in the fall of 1865 that was not creditable to the masses of the people. General Grant was not in politics. The gentlemen of the committee of fifteen were; and a few words as to the treatment of one state, as a sample, will suffice to show that the methods employed were such as to allow no rational expectation of reaching correct conclusions. As to the condition in Alabama, only five persons, who claimed to be citizens, were examined. These were all Republican politicians. The testimony of each was bitterly partisan; under the government of the state as it then existed no one of these witnesses could hope for official preferment. In his testimony each was striving for the overthrow of his existing state government, and the setting up of some such institutions as followed under Congressional reconstruction. When this reconstruction had finally

taken place, the first of these five witnesses became governor of his state; the second became a senator in Congress; the third secured a life position in one of the departments at Washington; the fourth became a circuit judge in Alabama, and the fifth a judge of the Supreme Court of the District of Columbia—all as Republicans. There was no Democrat in the sub-committee, which examined these gentlemen, to cross-examine them; and not a citizen of Alabama was called before that sub-committee to answer or explain their evidence. Of the report of this committee, based upon evidence taken by such methods, Mr. Blaine permits himself to say (vol. ii. p. 9), 'That report is to be taken as an absolutely truthful picture of the Southern States at that time.'" [1]

After making the assertions on which I have commented, the first Reconstruction Act proceeded to divide "said rebel states into military districts," and to make them "subject to the military authority of the United States as hereinafter prescribed." I know of no way in which to characterize this measure excepting to bring it to the test of public and constitutional law. Tried by that test, it was an arbitrary subjection of those states to military occupation and conquest, as if the war had been waged by the United States against a foreign nation, instead of being a civil war to suppress insurrectionary organizations of individuals who were resisting the Constitution and laws of the United States. There is no theory that can be applied to the provisions of the reconstruction acts, excepting that of military conquest and occupation of the states in question. Moreover, the object avowedly aimed at was such as might be appropriately aimed at in the conquest of a foreign country. This object was to depose one body of people as the sovereign authority of the state, and to create another sovereign people, composed in great part of newly emancipated slaves, who were to receive the ballot by a grant from Congress, in the same law which undertook to subvert the existing government of the state.

It has sometimes happened, when a foreign country has been conquered and invaded by its enemy in an international war, that the conqueror has subverted the former government, and

[1] Why the Solid South? pp. 19, 20.

has set up another. Something like this was done by the allied sovereigns of Europe when they occupied France in 1815, after the final overthrow of Napoleon. They restored the Bourbons to the throne against the wishes of a large majority of the French nation. But this was not done without some plausible ground of public law. By the Treaty of Fontainebleau, Napoleon had renounced for himself all claim to the government of France; and the island of Elba had been assigned to him as a dominion which he could govern as emperor. His escape from Elba, his resumption of his former rule in France, supported by his old army, and by a majority of the nation, was followed by the battle of Waterloo, which ended in his utter defeat and his flight to the sea-coast, where he went on board the British frigate *Bellerophon*, without, however, surrendering himself to the arbitrary disposal of the British government. It was then that the allied sovereigns, in full military possession of France, dictated to the French people a new submission to the rule of the Bourbon dynasty, in order that there might be a government with which those sovereigns could make treaties and be assured of their being kept. But our Southern States, when the reconstruction acts were passed, were subject to none of the rights of conquest; there was no treaty to be made between them and the United States; and their people, who had organized state governments in accordance with the president's proclamation, were the rightful sovereigns in each of them respectively. Those governments could not be deposed by the power of the United States without a gross violation of all sound constitutional principles, even if the excuses given for deposing them had been much more plausible than they were.

It is a very grave thing to subvert the sovereignty of an American state, or to lessen or diminish it. If it can ever be done at all—if the people who always have governed the state as its sovereign are to be set aside, and a new people is by an external power to be created and be made the sovereign—it can only be done by an amendment of the Constitution of the United States which will deprive the sovereign people of such rights as they can be deprived of by that process, and these are very few. It must be remembered that at the time when the reconstruction acts were passed the Thirteenth Amendment of the Federal Con-

stitution, abolishing slavery everywhere within the limits of the United States, had been adopted by twenty-seven states, including eleven of the Southern states. But the Fourteenth Amendment, declaring who shall be citizens of the United States and of the state wherein they reside, and the Fifteenth Amendment, which prohibited the states from denying or abridging the right of voting on account of race, color, or previous condition of servitude, had neither of them been adopted. Congress, in March, 1867, imposed negro suffrage upon the Southern states by an act of legislation, without any constitutional warrant for such an enactment. It is true that the Thirteenth Amendment, abolishing slavery, empowered Congress to enforce it by appropriate legislation. But it was a mere pretext of appropriate legislation for Congress to assume that the negroes were in danger of being practically reduced to slavery by the laws against vagrancy and idleness enacted by the new state governments in the South. At most, those laws could comprehend but a portion of the colored people, and even in regard to these the provisions were not a re-enslavement, or anything of that nature. To give the ballot to the negro was not an appropriate or a necessary means of preventing his re-enslavement, nor was he in danger of being re-enslaved. To give him the ballot was a useful means to procure the new political allies which the Republican party desired to obtain. But what and who were these new voters, thus suddenly incorporated among the sovereign people of a state? They were men incapable of judging what was for their own interest, incapable of anything but blind obedience to party leaders; untrained in civil knowledge, and without capacity to perceive that their former condition of servitude had been so done away with that they were not exposed to a re-establishment of that or any similar condition. Of what value to himself was it to a negro to be able at the polls to record his protest against laws which required him to earn his bread by the sweat of his brow? If he was a descendant of Adam, he was under the same divine law that the Almighty imposed upon the whole race. If he was of another and distinct race, he was still subject to human law. If he was told by those who had constituted themselves, or had been constituted by an external power, as his special guardians and protectors, that he must vote to prevent or abolish laws aimed against idle-

ness and vagrancy, he would know nothing of the necessity which led to their enactment, while their enactment might have been for his own good. A wise and beneficent government, which meant to do the best thing for the colored race, would have refrained from putting it in the power of that race to control legislation which might be for their best interest, and for the best interest of society. If emancipation, compelled by federal power, had been followed by some system of care for the negroes which had no ulterior political object, and which sought nothing but their good, at least no mischief would have been done. We should have been spared the long antagonism between the two races which began under the Freedman's Bureau and the reconstruction acts, and has lasted until the present day. As things now are, the only hope for a final and satisfactory adjustment of the relations between them is to leave them free from external political interference, and to let private benevolence and state authority do what they can to promote the education which is so necessary to make universal suffrage a tolerable condition of society. When the number of negroes who can at least read and write has been largely increased by such means of education as now exist in the South, qualifications for the right of suffrage can be established with the willing assent of the colored people who may possess the qualifications required, in common with men of all other races. It is always found that those who possess such qualifications are disposed to insist that others shall be required to have them.

Taking the two reconstruction acts together, the system, the process, and the means were as follows: The first military district was to consist of the state of Virginia; the second was to embrace North Carolina and South Carolina; Georgia, Alabama, and Florida were to be the third; Mississippi and Arkansas the fourth; and Louisiana and Texas the fifth. It was made the duty of the president to assign to the command of each district an officer of the army not below the rank of brigadier-general, and to detail a sufficient military force to enable such officer to perform his duty and enforce his authority within the district. It was made the duty of the commanding general in each district "to protect all persons in their rights of person and property, to suppress insurrection, disorder, and violence, and to punish

or cause to be punished all disturbers of the public peace and criminals; and to this end he may allow local civil tribunals to take jurisdiction of and to try offenders, or when, in his judgment, it may be necessary for the trial of offenders, he shall have power to organize military commissions or tribunals for that purpose, and all interference under color of state authority with the exercise of military authority under this act shall be null and void." It was further provided, "That all persons put under military arrest by virtue of this act shall be tried without unnecessary delay, and no cruel or unusual punishment shall be inflicted, and no sentence of any military commission or tribunal hereby authorized, affecting the life or liberty of any person, shall be executed until it is approved by the officer in command of the district, and the laws and regulations for the government of the army shall not be affected by this act, except so far as they conflict with its provisions; Provided, that no sentence of death under the provisions of this act shall be carried into effect without the approval of the president."

A more complete subjection of a people to military government could not be framed under any circumstances; and to this subjection the people of ten states, aggregating eight millions of inhabitants, were reduced by the Congress of the United States. Proceeding upon the theory that the states enumerated were still "rebel states," and that all civil government therein was "provisional only," and "in all respects subject to the paramount authority of the United States at any time to abolish, modify, control, or supersede the same," the reconstruction acts established a military power of supreme authority over every one of those states, to be exercised at the pleasure of the commanding general whenever he saw fit to disallow the action of civil tribunals in the trial of persons whom he chose to regard as offenders. There could thus be no trial by jury if the commanding general should not allow it, but all offences were, if he should so determine, to be tried by military commissions or tribunals, and by such rules of evidence as military tribunals see fit to adopt. The only mitigations of this system were that cruel and unusual punishments should not be inflicted, that sentences should not be executed until approved by the commanding general, and that no sentence of death should be carried into effect without the approval of the president.

Military men are not always the best fitted for the exercise of such enormous powers even in small communities, such as a city or province that is subjected to the powers of conquest, and placed for the time being under martial law. The officers of the army of the United States, at the time of the reconstruction acts, were in some cases men of high character and acquirements; but none of them was accustomed to the exercise of powers of such a transcendent character: and when it is considered that these powers were to be exercised over eight millions of people, and that the president might be obliged to go as low as the rank of brigadier-general in the selection of a commanding officer for any of the military districts, history, in recording and characterizing such a scheme, may well be astonished by its audacity and its arbitrary nature, and at the same time may be able to see how well it was adapted to bring about the consequences which it produced. Some of the officers put in command of the several military districts were as well fitted to exercise such powers as military men could be; others were very ill-fitted for it; while some of the subordinate officers put in command of particular states were destitute of the knowledge, discretion, and wisdom that could alone make tolerable the exercise of such an authority. It was not, however, the personal fitness or unfitness of the officers intrusted with this authority that constituted the chief objection to the system. The decisive objection to it was that without necessity, and in order to subvert the existing state governments and to make a new sovereign people, including the newly emancipated slaves, eight millions of people were subjected to military government. President Johnson did as well as he could in appointing the commanding generals for the military districts, but the whole system was based upon the assumption that the civil governments existing in those states were merely provisional, and were subject to the paramount authority of the United States to do with them just what Congress might choose to do; and in order to carry out this assumption those states were subjected to military domination during the process of reconstruction.

Mr. Johnson held the reconstruction acts to be unconstitutional, and at one time it was quite probable that they would be so declared by the Supreme Court of the United States. Several ineffectual efforts were made to get them before the court. At

length, however, one McCardle, who had been punished for some alleged offence by a military tribunal in Mississippi, brought the question of the constitutional validity of the reconstruction acts before the court. A motion was made to dismiss his appeal, and was denied. The case was then argued on the merits on the 9th of March, 1867, and the court took the case under advisement. In the meantime, a bill depriving the Supreme Court of jurisdiction over such appeals was passed in great haste through both houses, and finally became a law, over the president's veto, on the 27th of March, 1867. It is remarkable that the reconstruction acts made no provision for appeals to any civil tribunal from sentences of the military commissioners; and when it was found that the Supreme Court already had jurisdiction in such appeals, haste was made to take it away. A decision favorable to the laws would have been of great value to the Republican party; but they did not venture to incur the risk of an adverse decision, which was the most probable result. So bad a precedent as this has not been since followed in legislation. It could only have been resorted to at a time when it was deemed necessary for party purposes to enforce such a system as the reconstruction acts.

In some respects an historical parallel might be drawn between the scheme of our reconstruction acts and one of a similar character that was adopted by Cromwell in 1655. He had ruled with absolute power as protector since the 16th of December, 1653. His government, in consequence of the war with Holland, was in want of money; and it was also deemed necessary to prevent royalist risings in many parts of the country. The protector divided all England and Wales into districts, and placed over each of them a major-general. These officers were authorized, among other things, to exact from "delinquents" a decimation of their estates for their past offences. No great amount of money was thus obtained, and after a short time the scheme was abandoned. The government of the United States, as it was wielded by the Republican party in 1867, with a majority in Congress sufficient to override the veto power of the president, was not looking for money. It was seeking to hold the Southern States in subjection until their existing governments should be subverted, and a new sovereign people should be created in each of them by "the paramount authority of the United States." By the new sovereign

people, thus to be created, a "loyal and republican state government was to be established, which was to supersede the governments that were regarded as disloyal," and treated as provisional only. The Congress of the United States at that time had no such power as that wielded by Cromwell after he became protector. He ruled, it is true, by an "instrument of government" adopted in 1653, which was dictated by himself and his council of officers. But his title, "Lord Protector of the Commonwealth of England, Scotland, and Ireland, and the Dominions and Territories there unto belonging," was held to embrace *de jure*, and did embrace *de facto*, a far greater power than any king of Great Britain and Ireland had exercised for several centuries. The Congress of the United States ruled by a written Constitution of limited and defined powers. *De jure* it could exercise no other powers; and although the government of the United States had carried on a civil war to suppress an insurrection, it had been suppressed in 1865. From that time forward the *de facto* powers wielded by the Federal Government had not, before the passage of the reconstruction acts, been such as to have amounted to a gross departure from the Constitution. But now, in order to supplant the governments existing in the Southern States, and to make a new sovereign people for each of them that would include the lately emancipated slaves, a scheme was devised which could find no warrant in the Constitution of the United States, and which must be regarded in history as a usurpation. Why the irregularities and undue assumptions of power which mark this proceeding are now to be considered as cured, will be explained hereafter.

The Fourteenth Amendment of the Constitution was proposed by Congress to the state legislatures on the 16th of June, 1866. It declared all persons born or naturalized in the states, and subject to the jurisdiction thereof, to be citizens of the United States and of the state wherein they reside. It prohibited every state from making or enforcing any law which shall abridge the privileges or immunities of citizens of the United States, and from depriving any person of life, liberty, or property without due process of law, and from denying to any person within its jurisdiction the equal protection of the laws. It further provided that when the right to vote at any election for the choice of electors for President and Vice-President of the United States, representa-

tives in Congress, the executive and judicial officers of the state, or the members of the legislature thereof, is denied to any of the male inhabitants of such state, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such state.

This would not directly have the effect of enfranchising the negroes in the Southern States. In the case of their not being allowed to vote at the elections designated, the only effect would be to reduce proportionately the basis of representation of the states in Congress. If a state chose to incur this reduction, it was left at liberty to do so. But the amendment also contained a provision to disfranchise certain persons who were of course very numerous in the Southern States. This provision was as follows:

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

The sole function of Congress, under the power to amend the Constitution, is to prepare such amendments as three fourths of both houses may see fit, for the consideration of the state legislatures, or to call a convention of all the states to frame and prepare amendments. When amendments are prepared by the Congress, it has no further duty to perform, excepting to declare whether they have or have not been ratified by the legislatures of three fourths of all the states, or by conventions in three fourths thereof. What Congress could constitutionally do in 1867 was to propose the Fourteenth Amendment to the legislatures existing at the time in the several states; and in each of the Southern states there was a legislature, just as well as there was in every other state. Any species or form of compulsion exerted by the Federal Government to coerce the people of any Southern state into the adoption of the amendment was

precisely the same kind of usurpation that it would have been in any other state, if such compulsion had been used in any other. Perfect freedom in the adoption or rejection of any amendment is a fundamental right of every state, implied in the framework of the amending power.

But Congress, in 1867, did not see fit to pursue the constitutional course. It adopted a method of proceeding in ten states that was entirely aside from the Constitution, and that was at variance with the method of proceeding in all the other states. In the latter, no coercion of any kind was used, and none would have been tolerated. In the former, the reconstruction acts, which applied only to those ten states, set aside the existing state governments, and provided for the formation of a new government in each of them, to be created by a convention of delegates elected by the male citizens of the state, twenty-one years old and upward, of whatever race, color, or previous condition, who had been resident in the state for one year previous to the day of such election. One government, which was certain to reject the proposed amendment, was deposed to make room for another government which would certainly ratify it. This was done by a process which came to be called "reconstruction." It was a process that could not be applied to all the states alike, and for this reason, even if there had been no other, it was not within the scope of the amending power. That power never contemplated action upon an amendment by any bodies excepting the "legislatures" or "conventions" in the several states. It will presently be seen that in six states the bodies which were counted officially as among the ratifying bodies were neither "legislatures" nor "conventions" in the sense of the Constitution. They were bodies organized for the express purpose of bringing about a seeming ratification. This is a blot on our constitutional history which no writer can omit to notice. The framers of the reconstruction acts probably gave very little thought to the article of the Constitution which embraces the amending power. If they considered it at all, they made it read as if it had empowered two thirds of both houses, whenever it should appear that a proposed amendment was not likely to be ratified by the legislature of any state, to take measures to constitute a new legislature which would be certain to ratify it.

Congress in 1867 was a body long accustomed to the sound of the doctrine that powers must be exercised without looking for them in the Constitution. Apparently they did not regard the process of reconstruction as warranted by the Constitution, for the object to be accomplished in the Southern States required the creation of a new sovereign people in each of them. Although the last clause of the Fourteenth Amendment authorized Congress to enforce its provisions by appropriate legislation, it could only be after the amendment had been duly ratified, and had become part of the Constitution, that this power of enforcing its provisions could be resorted to. The power did not embrace an authority to subvert the sovereignty of any state by such a process as that of the reconstruction acts. Those acts were not such an enforcement of the provisions of the amendment as the amendment itself contemplated. Its provisions could be enforced after, but not before, it had become part, and had been officially proclaimed to be a part, of the Constitution.

Resuming now the thread of the narrative, it is to be noted that the Fourteenth Amendment, proposed on the 16th of June, 1866, had not been acted on when the reconstruction acts were passed. When it was acted on by the states, there were thirty-seven states in the Union, and the mode in which the Secretary of State proclaimed the result throws a very strong light on the nature of the proceeding in six of the states, namely, Delaware, Maryland, Virginia, North Carolina, South Carolina, and Georgia. Mr. Seward, a cautious statesman, was Secretary of State under President Johnson, as he had been under President Lincoln. It was his official duty, under an act of Congress passed April 20, 1818, to certify whether an amendment had, by being duly ratified, become a part of the Constitution.

His proclamation bearing date of the 20th of July, 1868, declared that from official documents on file in his department the Fourteenth Amendment had been ratified by the "legislatures" of the states of Connecticut, New Hampshire, Tennessee, New Jersey, Oregon, Vermont, New York, Ohio, Illinois, West Virginia, Kansas, Maine, Nevada, Missouri, Indiana, Minnesota, Rhode Island, Wisconsin, Pennsylvania, Michigan, Massachusetts, Nebraska, and Iowa (twenty-three states); and that in the six states of Arkansas, Florida, North Carolina, Louisiana, South Carolina, and

Alabama it had been ratified "*by newly constituted and established bodies avowing themselves to be and acting as the legislatures respectively*" of those states. This remarkable difference in the language used to describe the two groups of the ratifying bodies was designed. The secretary could not affirm that the "newly constituted and established bodies in the six states were the "legislatures" of those states. He could only describe them as bodies "avowing themselves to be and acting as the legislatures of those states respectively." They were thus only *de facto* legislatures; or bodies assuming to be legislatures. *De jure*, they were not the legislatures contemplated by the amending power of the Constitution. If it was constitutionally competent to the existing legislatures of the twenty-three states to ratify the proposed amendment because they were *de jure* the legislatures of those states, it was not competent to bodies that were only *de facto* legislatures to give valid ratifications in the exercise of the amending power. This glaring discrepancy suggested itself to the secretary on an inspection of the official papers on file in his department, and he made his proclamation accordingly. He was evidently aware that it must depend upon future events, and not on the arbitrary will of Congress, whether the amendment would become valid by some process which would, on the principles of public law, cure this great irregularity.[1]

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[1] Secretary Seward, in his proclamation, had to notice another doubtful question in regard to the ratifications of two states, each of which had a legislature that was both a *de jure* and a *de facto* one. These were Ohio and New Jersey. It appeared from the official papers of those states on file in the State Department that after having ratified the amendment, the legislatures of those states had passed resolutions "respectively withdrawing the consent of those states to the aforesaid amendment." This, in the judgment of the secretary, made it "a matter of doubt and uncertainty whether such resolutions are not improper, invalid, and ineffectual for withdrawing the consent of the said two states, or either of them, to the aforesaid amendment." Putting the result, therefore, hypothetically, the secretary certified that "*if* the resolutions of the legislatures of Ohio and New Jersey ratifying the aforesaid amendment are to be deemed as remaining of full force and effect, notwithstanding the subsequent resolutions of those states which purport to withdraw the consent of those states from such ratification, *then* the aforesaid amendment has been ratified in *the manner heretofore mentioned*, and *so* has become valid to all intents and purposes as a part of the Constitution of the United States." The requisite three fourths of all the states in the Union was thus made up by counting the ratifications given by the six Southern states through bodies claim-

It could not be, and it was not expected, that the legislatures existing in the Southern States when the reconstruction acts were passed would ratify the Fourteenth Amendment. Men who had fought through a long and bloody war to establish an independent country could not vote to disfranchise themselves and their fellow-citizens; could not consent to exclude from public office, federal or state, a large class of the most intelligent and important of their own people; could not consent that federal power, exerted through the process of amendment, should determine who were to be deemed citizens of a state; could not consent to render invalid the debts contracted by their state in carrying on the late civil war, thus detroying state securities in which much private property was invested. These and many other things embraced in the Fourteenth Amendment might be very reasonably exacted by the United States, if there was any process by which they could be exacted in the exercise of the power to amend the Federal Constitution. But a process was devised which was one of coercion. It left to future determination the very serious question whether the ratification thus extorted from six states could become valid. This was a most dangerous mode of exercising the amending power, for although future events might render valid that which was in itself invalid, great risks must be incurred.

The process devised for this purpose by the reconstruction acts was to treat the governments existing at the time of the passage of the acts as merely provisional, and as having no other authority than such as the commanding general of the district

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ing to be "legislatures," as valid, and by adding thereto the ratifications of Ohio and New Jersey, in order to make up the requisite number of twenty-nine states. If this mode of ratifying an amendment of the Constitution shall hereafter be regarded as a precedent, a construction will be put upon the amending power widely at variance with its terms and its purpose. But, in truth, the whole process was one outside of the scope of the amending power; and it must necessarily be that when such a process of amendment is resorted to, it must depend on future events whether an amendment, thus purporting to have been adopted, is to be regarded as having become valid under the principles of public law, which are deemed to cure irregularities in and departures from the legal and constitutional method of public action. The official proclamation relating to the Thirteenth, Fourteenth and Fifteenth Amendments will be found in the Appendix to the present volume.—J. C. C.

might allow; to authorize a convention of delegates to be elected by the male citizens of the state, twenty-one years old and upward, of whatever race, color, or previous condition, who had been resident in the state for one year previous to the day of such election, except such as may be disfranchised for participation in the rebellion, or for felony at common law; to authorize the convention thus chosen to frame a constitution of government in conformity with the Constitution of the United States in all respects, which constitution of the state government must provide that the elective franchise shall be enjoyed by all such persons as have the qualifications fixed by the act for electors of delegates; to have the constitution so framed ratified by a majority of the persons voting on the question of ratification, who are qualified by the act as electors of delegates. It was then further provided that, "when such constitution shall have been submitted to Congress for examination and approval, and Congress shall have approved the same, and when the state, by a vote of its legislature elected under said constitution, shall have adopted the amendment to the Constitution of the United States prepared by the Thirty-ninth Congress, and known as Article XIV., and when said article has become a part of the Constitution of the United States, said state shall be declared entitled to representation in Congress, and senators and representatives shall be admitted therefrom on their taking the oath prescribed by law, and then and thereafter the preceding sections of this act shall be inoperative in said state; *provided* that no person excluded from the privilege of holding office by said proposed amendment to the Constitution of the United States shall be eligible to election as a member of the convention to frame a constitution for any of said rebel states, nor shall any such person vote for members of such convention."[1]

The concluding sections of the supplementary act were in the following words:

SEC. 4. *And be it further enacted*, That the commanding general of each district shall appoint as many boards of registration as may be necessary, consisting of three loyal officers or persons, to make and complete the registration, superintend the election, and make return to him of the votes, list of voters, and of the

[1] Section 5 of the first reconstruction act.

persons elected as delegates by a plurality of the votes cast at said election; and upon receiving said returns, he shall open the same, ascertain the persons elected as delegates, according to the returns of the officers who conducted said election, and make proclamation thereof; and if a majority of the votes given on that question shall be for a convention, the commanding general, within sixty days from the date of election, shall notify the delegates to assemble in convention at a time and place to be mentioned in the notification, and said convention, when organized, shall proceed to frame a constitution and civil government according to the provisions of this act and the act to which it is supplementary; and when the same shall have been so framed, said constitution shall be submitted by the convention for ratification to the persons registered under the provisions of this act at an election to be conducted by the officers or persons appointed or to be appointed by the commanding general, as hereinbefore provided, and to be held after the expiration of thirty days from the date of notice thereof, to be given by said convention; and the returns thereof shall be made to the commanding general of this district.

SEC. 5. *And be it further enacted*, That if, according to said returns, the constitution shall be ratified by a majority of the votes of the registered electors qualified as herein specified, cast at said election, at least one half of all the registered voters voting upon the question of such ratification, the president of the convention shall transmit a copy of the same, duly certified, to the President of the United States, who shall forthwith transmit the same to Congress, if then in session, and if not in session, then immediately upon its next assembling; and if it shall, moreover, appear to Congress that the election was one at which all the electors in the state had an opportunity to vote freely and without restraint, fear, or the influence of fraud, and if the Congress shall be satisfied that such constitution meets the approval of a majority of all the qualified electors in the state, and if the said constitution shall be declared by Congress to be in conformity with the provisions of the act to which this is supplementary, and the other provisions of said act shall have been complied with, and the said constitution shall be approved by Congress, the state shall be declared entitled to representation, and senators and representatives shall be admitted therefrom as therein provided.

SEC. 6. *And be it further enacted*, That all elections in the states mentioned in the said "Act to provide for the more efficient government of the rebel states" shall, during the operation of said act, be by ballot, and all officers making the said registration of voters and conducting said elections shall, before entering upon the discharge of their duties, take and subscribe the oath prescribed by the act approved July second, eighteen hundred and sixty-two, entitled, "An act to prescribe an oath of office:" *Provided*, That if any person shall knowingly and falsely take and subscribe any oath in this act prescribed, such person so offending, and being thereof duly convicted, shall be subject to the pains, penalties, and disabilities which by law are provided for the punishment of the crime of wilful and corrupt perjury.

SEC. 7. *And be it further enacted*, That all expenses incurred by the several commanding generals, or by virtue of any orders issued, or appointments made by them, under or by virtue of this act, shall be paid out of any moneys in the treasury not otherwise appropriated.

SEC. 8. *And be it further enacted*, That the convention for each state shall prescribe the fees, salaries, and compensation to be paid to all delegates and other

officers and agents herein authorized, or necessary to carry into effect the purposes of this act not herein otherwise provided for, and shall provide for the levy and collection of such taxes on the property in such state as may be necessary to pay the same.

SEC. 9. *And be it further enacted,* That the word "article," in the sixth section of the act to which this is supplementary, shall be construed to mean "section."

It must be allowed that the framers of the first reconstruction act did their work thoroughly, so far as congressional enactment could do it. But in the second and supplementary act, passed twenty-one days after the first one, they made the scheme still more effectual. This was done by making it the duty of the commanding general in each district, before the 1st of September, 1867, to cause a registration to be made of the male citizens of the United States twenty-one years of age and upwards, resident in each county or parish in the state or states included in his district, which registration shall include the persons qualified to vote for delegates under the act of March 2, 1867 (the first reconstruction act). The persons registering were to take and *subscribe* an oath declaring their qualifications. There could be very few of the negroes who could know the meaning of the oath, and probably there were not five of them in a thousand who could subscribe their names, if there were even that number. After the completion of the registration, an election of delegates to a convention was to be held for the purpose of establishing a constitution and civil government for each state loyal to the Union; the convention to consist of the same number of members as the most numerous branch of the Legislature of such state in the year 1860, to be apportioned among the several districts, counties, and parishes of the state by the commanding general, giving to each representation the ratio of voters registered, as nearly as might be.

At the election of delegates to the convention, the registered voters were to have written or printed on their ballots the words "For a Convention" or "Against a Convention." The persons appointed by the commanding general to superintend the election, and to make returns to him of the votes given, were to count and make returns of the votes for and against a convention. The commanding general was to ascertain and declare the total vote in each state for and against a convention. If a majority of the

votes should be for a convention, it was to be held as provided in the act; if a majority of votes should be against a convention, none was to be held under the act. It was provided, however, that the convention should not be held unless a majority of all the registered voters should have voted on the question of its being held.

It is obvious that negroes who could neither read nor write, and who would, of their own intelligence, know nothing of the meaning of voting for or against a convention, must be guided by persons who would put the ballots into their hands; and, under such circumstances, the ballot would express the will of those who directed the voter how to vote.

Finally it was provided, by the supplementary act, that all expenses incurred by the commanding generals, or by virtue of any orders issued, or appointments made by him under or by virtue of the act, should be paid out of any moneys in the treasury not otherwise appropriated. Thus, with the Treasury of the United States to draw upon for defraying the expenses of this proceeding, and with the army of the United States to execute it, there was no lack of means for the fruition of the plan. In addition to this the convention of each state was to prescribe the fees, salaries, and compensation to be paid to all delegates and other officers and agents authorized by the act, or necessary to carry into effect its purposes, and the conventions were to provide for the levy and collection of such taxes on the property in each state as might be necessary to pay the same.

It has been my duty to describe the scheme of the reconstruction acts as it appears on the face of the statutes, and to bring it to the test of all the constitutional power that could be said to be applicable to the situation of the Southern States after the close of the civil war. Objectionable as the scheme was — obnoxious as it was to the charge that it was a proceeding entirely unwarranted by the Constitution of the United States—it was yet a scheme that was capable of an honest and fair execution, if any scheme could be which was designed to subvert the sovereignty of American states by supplanting the sovereign people, who constituted the state after the civil war as they had constituted it before. How the scheme of reconstruction worked — whether it was pursued in consistency even with the provisions of the laws which established it—must be described in another chapter.

CHAPTER XII.

RECONSTRUCTION RECONSTRUCTED.—GROSS INCONSISTENCY IN CARRYING OUT THE SCHEME.—CONGRESS ACTS IN BAD FAITH TOWARDS THE WHITE PEOPLE OF THE SOUTH.—DISASTROUS CONSEQUENCES OF NEGRO SUFFRAGE UPON THE SOUTHERN STATES.—HOW IT WAS DONE.

IT has been seen in the preceding chapter that the process of reconstruction was to consist in the following stages:

First. A registration of voters under the direction of the commanding general of each military district; the registration to include all adult male citizens of the United States, twenty-one years of age and upward, resident in each county or parish in the state or states included in the district, and to include all adult males of whatever race, color, or previous condition who shall have taken and subscribed an oath setting forth their own qualifications.[1]

Second. An election by the registered voters of delegates to a constitutional convention, at which election the voters were to have written or printed on their ballots for delegates the words "For a Convention," or the words "Against a Convention."

Third. The holding of the convention, if one had been voted for by a majority of the votes given, provided a majority of all the registered voters had voted on the question of holding it.

Fourth. The framing of a constitution and civil government for the state by the convention of delegates, according to the provisions of the first reconstruction act and the supplementary act.

Fifth. The submission of the constitution, by the convention, for ratification, to the persons registered as voters, at an election

[1] Many of the terms of this act could not possibly have been understood by any but a small fraction of the negroes, even with such explanation as they were likely to get from the officers of registration. Nor could many of them have subscribed the oath except by making their "mark."

to be conducted by the person or persons appointed by the commanding general; such election to be held after the expiration of thirty days from the date of notice thereof to be given by the convention; and the returns of the election to be made to the commanding general.

Sixth. The remaining stage of the process, after all the others had been gone through, was prescribed by the fifth section of the supplementary act as follows:

"SEC. 5. *And be it further enacted*, That if, according to said returns, the constitution shall be ratified by a majority of the votes of the registered electors qualified as therein specified, cast at said election, at least one half of all the registered voters voting upon the question of such ratification, the president of the convention shall transmit a copy of the same, duly certified, to the President of the United States, who shall forthwith transmit the same to Congress, if then in session, and if not in session, then immediately upon its next assembling; and if it shall, moreover, appear to Congress that the election was one at which all the electors in the state had an opportunity to vote freely and without restraint, fear, or the influence of fraud, and if the Congress shall be satisfied that such constitution meets the approval of a majority of all the qualified electors in the state, and if the said constitution shall be declared by Congress to be in conformity with the provisions of the act to which this is supplementary, and the other provisions of said act shall have been complied with, and the said constitution shall be approved by Congress, the state shall be declared entitled to representation, and senators and representatives shall be admitted therefrom as therein provided."

It is thus apparent that here was a process for creating a new state government by a body of voters a large part of whom had never before participated in any political proceeding; who were to vote by written or printed ballots for delegates to a constitutional convention, and on the question whether or not there should be a convention held. These voters could neither write a ballot nor read one; they could cast only such ballots as might be put into their hands. The framing of a constitution for an American state is the highest and most important act of sovereignty that can be performed by a free people before its ratification; and to be able to read and understand a constitution, or, if

not able to read it, then to understand its provisions when read by others, is essential to all safe political action. It could not be pretended that many of the lately emancipated slaves could know what the framing of a constitution is, or what its provisions were when it was framed, excepting as they were told by other persons; and under such circumstances the votes given at any stage of the proceedings, from first to last, could hardly express the will of any persons but those who should undertake to bring about such a result as they desired, from one or another motive, to accomplish. When the people of an American state hold a convention to frame a new state constitution, they always prescribe how its ratification shall be conducted and shall be officially ascertained. They, or their appointed officers, are the sole judges. They do not shape things so as to refer the result of their action to any other authority. In the reconstruction process, proceeding upon the theory that there was no sovereign people in any of the Southern States competent to frame and establish a constitution for the state, because the state was not in the Union and was not to be admitted into the Union until a new sovereign people had been created and had framed and ratified a constitution acceptable to Congress, the reconstruction acts contemplated a proceeding of an entirely anomalous character, in no sense in accordance with any theory excepting that the Southern States were out of the Union, and could only be admitted into the Union again upon such conditions as Congress saw fit to impose. Yet this process was not applied to any one of twenty-three of the states. In regard to those twenty-three states no coercion of any kind was used to bring about a ratification of the Fourteenth Amendment. In the Southern States the Fourteenth Amendment, passed by the Thirty-ninth Congress, was required by a subsequent Congress to be adopted by a vote of the legislature elected under the constitution framed by the new sovereign people who were then created by the Congress itself. Under the amending power of the Federal Constitution the sole function of Congress is to submit a proposed amendment to the legislature of each state, or to a convention in each state. It has been seen in the preceding chapter that the ratifying bodies in six of the states were not in a constitutional sense "legislatures," but only bodies avowing themselves to be, and acting as, legislatures. When the Four-

teenth Amendment had been submitted by the Thirty-ninth Congress to the legislatures of the several states, it was entirely beyond the control of any succeeding Congress. In states where universal suffrage, or something approaching to it, prevails, it often happens that men are allowed to vote in the elections of public officers who are very ill qualified to know the merits of candidates, or to judge of the political questions involved in the election. But the evils thus produced bear no comparison to the evils that may be produced when the fundamental law of a state is to be revised, or to be superseded by a new one, and a very large mass of illiterate and ignorant voters are included in the right of suffrage. In the territories of the United States, when they are to be transformed into states, it is for Congress to prescribe how constitutional conventions are to be instituted, who may vote for the delegates, and who may vote on the ratification of the constitution that is proposed. But in the states of this Union Congress has no such authority; and it could only be on the assumption that the Southern States were not in the Union when the reconstruction scheme was resorted to that it could have a shadow of justification.

When Napoleon III. undertook to transform the French Republic into an empire, he ordered an election to be held by the French people, under military supervision, at which it was to be determined whether the constitution of an empire, which he caused to be framed and submitted, should be adopted. But although he caused that constitution to be submitted to a very wide suffrage, he did not create for France a new sovereign people. This was done by an American Congress; and in no country in the world in which political society was to be remodelled, in modern times, has history been obliged to record a scheme so radical and dangerous as that of the reconstruction of our Southern States in the year 1867. The danger arose from the existence of a great mass of people who were incapable of knowing what participation in government is, and from the determination of a political party in the North to make use of those people as new political allies, who owed their freedom and therefore owed their allegiance to that party.[1]

[1] The last reconstruction act was passed March 23, 1867. On the 11th of May

The reconstruction scheme was the same in effect as if many thousands of adult males had been brought into a state from without, had been allowed to vote in the formation and adoption of a constitution, and had voted as they were told to. Although the reconstruction acts made voters of all the adult males who had been resident in the state for one year, yet the negroes were no more a component part of the people of the state than they would have been if they had never before been in the state at all, and had been brought there for the very purpose of voting. The Fourteenth Amendment to the Constitution of the United States, which proposed to make all persons born or naturalized in a state citizens of the state, had not become a part of the Constitution when the reconstruction acts were passed; and when those acts made the negroes voters, they were merely emancipated slaves, under the guardianship of the Freedmen's Bureau. Although born in a state, they were not and could not become citizens of the state until the Fourteenth Amendment had been adopted. They were made voters on the very question whether they should become voters, and this was done by an act of Congress. The same act made them voters on the question of whether they should become citizens of the states in which they were born. Surely, in the whole history of political action, there never was such a scheme as this for reconstructing the sovereign people of a state.

Such was the scheme of reconstruction. Bad as it was in principle — objectionable as it always must be to suddenly extend suffrage to the most ignorant classes — yet the scheme embraced provisions which would have palliated many of its unfortunate consequences if Congress had kept faith with the white people of the South, to whom pledges had been given by the reconstruction acts. The reason why the public faith of the Federal Government was not kept as it should have been is

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in that year Senator Henry Wilson, of Massachusetts, a prominent radical leader in the Republican party, made a political speech at Montgomery, in Alabama, to a great crowd of whites and blacks, in which he said that the Republican party had entitled itself to the votes of all colored men, because that party had brought about their emancipation from slavery. Mr. Wilson was only a representative, although he was a good representative, of a feeling among the Republicans which existed then and has existed since.

to be found in the fact that the dominant majority in Congress were determined to make political allies of the colored people, to enable them to control the legislation of the Southern States. A concise description of the mode in which reconstruction was worked out in Alabama and other states will make this apparent.

There were two grand provisions in this scheme which had a common object and a common purpose, and each of which was the complement of the other. The first was that there should be a registration of voters, conducted under military supervision. These registered voters were to be the sovereign people of the state, and a majority of those registered was to decide every step in the proceeding, from the institution of a convention down to the formation of a constitution. In the second place, the constitution was to be submitted to this body of registered voters, and unless an actual majority of that body should vote in favor of it, it could not be ratified even though it had received every vote which was polled. When the supplementary act making this provision was before the Senate of the United States, it was objected to by Senator Wilson, of Massachusetts, as a proposition to enable the rebel leaders to take advantage of all persons who are hostile to their views, and of all persons who cannot go to the polls to vote. Undoubtedly it was a departure from the usual method of voting, which has been to have the decision made by a majority of those who see fit to vote, whether the question is on the adoption of a constitution, the choice of public officers, or anything else. But this special provision had a purpose: it was to enable the colored people to obtain the control of the state. It was anticipated that they would register in great numbers, and that in every stage of the proceedings they would outnumber the whites. Accordingly the Senate, not yielding to the objection that this provision would give an advantage to the rebel leaders, refused to strike it out of the bill. When the bill became a law, therefore, Congress had given a distinct pledge that the constitution thus framed by the action of a majority of the registered voters should not go into operation unless it was voted for by a majority of those registered. If the citizens of the state wished to defeat the constitution by registering and then abstaining from voting, they would do only what the reconstruction acts empowered them to

do. No one could anticipate that Congress would disregard and violate its own enactment.

For a time all seemed likely to go on as well as it had been planned.

General John Pope was appointed commanding general of the military district composed of the states of Georgia, Florida, Alabama, and Mississippi. General Wager Swayne took command of the state of Alabama, with his headquarters at Montgomery. For nearly eighteen months previous to this time the state had a government organized according to the president's plan of restoration. The courts of the state were in full operation. But now a federal military force, stationed at the capital of the state, was about to take the steps provided by the reconstruction acts for overthrowing the existing state government and setting up another. General Pope, on the 21st of May, 1867, ordered the registration of voters required by those acts. It was devolved on General Swayne to appoint the registration officers in Alabama. He appointed three Republicans for each of forty districts. A large majority of the registrars were colored men. While this registration was going on during the daytime, the Union League was organizing at night at each of the places of registration; and into this league the negroes who had come to be registered were initiated under an oath (sworn to "in the presence of God and three witnesses") "to vote only for, and for none but, those who advocate and support the principles set forth by the league, to fill any office of power, profit, or trust in either the state or general government." This league was a secret order, and the initiation was by signs, grips, and passwords, as printed in a key "for the use of officers of the council only." The initiating officer addressed the neophyte in these words: "With closed and uplifted hands repeat after me the Freedmen's Pledge—To defend and perpetuate Freedom, Political Equality, and an indivisible Union, I pledge my life, my fortune, and my sacred honor. So help me God."[1]

[1] The reader will be forcibly reminded of the Anti-Masonic excitement which swept through the country in 1835, when it was believed that members of a Masonic lodge who had been initiated by the secret ceremonies and oaths of those lodges were not to be trusted as public officers or as jurymen. A secret pledge of his life, fortune, and sacred honor by a negro to vote only for persons of a

On the 31st of August General Pope ordered an election of delegates to a constitutional convention to be held on the 1st of the succeeding October, and to be conducted for three days. At this election 18,553 white men voted for delegates, thus swelling the number of registered voters required by the reconstruction acts for instituting the convention. Other white men attempted to frustrate the reconstruction policy by refusing to register, and consequently they did not vote. The convention met on the 5th of November (1867). Some of the members were natives of the state, seeking to get the best government that could be framed; many were grossly ignorant negroes; many were Northern politicians, who had come to be known in the South as "carpet-baggers."[1] It was computed that the place of nativity of ninety-seven out of one hundred of the delegates was Northern: thirty-one of them were from Vermont, Connecticut, Massachusetts, Pennsylvania, Maine, New Jersey, New York, Ohio, Canada, and Scotland. The qualification of residence in the state for one year previous to the election could easily be sworn to. These Northern men were to act, by their votes in the convention, on such questions as the disfranchisement of certain classes of the white citizens, on mixed schools, intermarriage of the races, and other

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certain description was not an avowed part of the statutory scheme of reconstruction; but when it was conducted by men supervising the registration of voters at the same time and place, it became a very powerful means for controlling the negro vote on every decision on which the negroes were to vote. In the Union League the negroes were bound to vote for those who would advocate and support certain principles set forth by the league itself. Outside of it they were told, by members of Congress who came down to inculcate the idea, that their allegiance was due to the party which had given them freedom and the ballot. Distinguished soldiers like General Swayne told them the same thing. If an open association had been organized to instruct the negroes in what voting is, and to give them some degree of information in an honest way, a fair amount of good might have been done. But the Union League was not organized for such a purpose. It was organized for the purpose of binding the negroes to obey blindly the behests of those who claimed their allegiance to a political party; and for this purpose it was a very effective machine in the hands of the men who devised it. All this while there was a general proscription going on against whites and blacks who did join the Democratic party. Negroes who ventured to act with that party were often expelled from the colored churches.

[1] This term, which seems to have been adopted into our political nomenclature, was first used in the South to describe men who had come from the North, and bringing all their worldly goods in gripsacks or "carpet-bags."

constitutional provisions of the utmost importance. An overwhelming majority of the constituency which elected the delegates was composed of colored men, so that the black man's party was in full control. All the members of the convention, including the whites, were at first in favor of the reconstruction policy of Congress. But as the discussions progressed some of the delegates began to waver; and after the adjournment thirteen of them issued an address protesting against the constitution which had been framed, because it tended to abuse and degrade the white population, because it authorized mixed schools, and did not prohibit the intermarriage of the races.[1] The latter provision, at least, was of the most transcendent consequence in a state like Alabama, and the question of mixed schools, or public schools composed of both white and colored children, was of almost equal importance.

When the constitution, with what it did and what it omitted to do, was promulgated, the white people were much depressed. They saw no prospect for them of a fair participation in the government of the state. Some of them removed into Texas; others went to the North and West, and there was a considerable emigration to Brazil.[2] The departure from the state of so many of the white inhabitants was checked, however, by the revival of a hope that the congressional plan of reconstruction would ultimately fail; for in the fall elections of 1867 in the North, the states of New Jersey, Pennsylvania, Ohio, Connecticut, and California became Democratic states on anti-negro suffrage resolutions, and Ohio gave a majority of 50,000 against the suffrage amendment to the Federal Constitution.

But the reconstruction scheme, notwithstanding this Northern opposition, was not destined to fail. One change took place in Alabama, however, which was favorable to an honest administration of the scheme for the remaining stages. On the 28th of December, 1867, General Pope was relieved of command in the mil-

[1] There was a "Judiciary Committee" in this convention, on which there were some leading white Republicans, the majority being colored men. This committee unanimously reported against amalgamation of the races; yet the convention tabled it, many members of the committee who had concurred in the report receding from their position.

[2] This emigration was encouraged by the government of Brazil for a time.

itary district, and General Meade, a much more conservative and a much wiser man, was appointed in his place. General Swayne was also relieved from the command in Alabama early in the following January.

The election in Alabama for the ratification or rejection of the constitution was ordered to be held on the 1st, 2d, and 3d of February, 1868, and its friends and its foes prepared for the conflict.

The law of Congress provided that at this election officers to carry on the new government should be chosen, to take office, however, only upon the event of the ratification of the constitution.

It so happened that when the first reconstruction bill was about to be passed in the Senate of the United States, Senator Sumner became the author of a phrase which truly described the nature of the proceeding. He said that he would vote for the bill, but that he did not like to see "new states born of the bayonet." Mr. Sumner had always been a consistent opponent of military government, and he well knew how objectionable it is to employ military power in the supervision and control of proceedings for framing and adopting a constitution. But he did not carry his opposition to the bill any further than to confess his regret that Congress should employ the military for the purposes of reconstruction. Every state that was reconstructed under the acts of Congress was, in truth, "born of the bayonet," for nothing less than military power could have carried the scheme into full effect.

Another declaration made by Mr. Sumner's colleague from Massachusetts—Senator Wilson, afterwards Vice-President of the United States—is worthy of note. It has been seen that one clause in the reconstruction act of March 2d required that a majority of the registered votes should be cast, else the constitution would not be ratified, although it might have received every vote that was polled. Mr. Wilson said that this was "a proposition to enable the rebel leaders to take advantage of all persons who are hostile to these terms, and all persons who could not go to the polls to vote." But a motion to strike it out was voted down. It became a part of the law, and it was not to be expected that Congress would afterwards disregard and violate its own enactment.

In order to a correct understanding of the result of the election, and of the subsequent action of Congress, it is now necessary

to explain what took place. The conservative party of the state made great efforts to defeat the ratification of the constitution, and thereby to defeat the election of state officers under it. Their plan was to register and then abstain from voting. This was an entirely proper effort on the part of those who were opposed to the constitution. It was, in fact, invited by the provision of the statute, which, honestly interpreted, meant that the constitution should not become operative unless it appeared affirmatively that it met the approval of a majority of all the qualified electors in the state. After the registration had been completed, the whole number of qualified electors in the state was ascertained.

General Meade protracted the time for holding the election from three to five days, so as to give all the registered voters a full opportunity to vote. An analysis of both the reconstruction acts will show to any one who is accustomed to construe statutes that it was for the commanding general of the military district to ascertain and declare the result of the election. The returns of the election were to be made to him. It was to be conducted by and under persons appointed by him. He had the registration before him, and it was for him to determine and certify whether the constitution had been voted on and ratified by a majority of the registered electors. If, "according to said returns," the constitution had been ratified by a majority of the votes of the registered electors, cast at the election, it was for the president of the convention to transmit a copy of it to the President of the United States. But whether it had or had not been so ratified, the president of the convention was to be officially informed by the commanding general; and neither the President of the United States nor Congress could lawfully disregard the commanding general's attestation of the fact of ratification or non-ratification.

Such is the proper interpretation of the statutes under which the reconstruction was to be conducted. But in the last act (section 5) there was a reservation to Congress, notwithstanding all the provisions of both laws, of a power to accept or reject the entire proceeding at pleasure, upon the theory that the whole matter of the readmission of the Southern States into the Union was in the uncontrolled and unlimited discretion of Congress. How this theory was carried out is now to be stated.

The proposed constitution for the state of Alabama was beaten at the election. It failed of ratification by 8114 votes. This prevented, therefore, the official existence of the persons who had been voted for at the same election as state officers. But if Congress would declare that the constitution had been ratified, these persons would obtain the offices. The election had been held under military supervision, and all the elected officers were persons who favored the ratification of the constitution. Charges of frauds in the election were gotten up by some of the Republicans, and while General Meade was investigating them a delegation proceeded to Washington to present these charges to Congress. The House Committee on Reconstruction did not wait to hear from General Meade; and, indeed, there was no ground on which to base the charges of fraud. There was no mode in which it could be declared that the constitution had been ratified, excepting to change the law under which the election had been held. Before the election took place the House Committee[1] . . .

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[1] See Appendix, Note to Chapter XII.—J. C. C.

CHAPTER XIII.

THE PRESIDENTIAL ELECTION OF 1876. — THE ELECTORAL COMMISSION.—ITS UNCONSTITUTIONAL CHARACTER, AND ITS PARTISAN DECISIONS.

WHETHER Samuel J. Tilden or Rutherford B. Hayes was elected President of the United States in 1876 is a question that does not come within the scope of this constitutional history. It is a question about which individuals have fixed beliefs, according to their party affiliations; and it is, moreover, a question of far less importance than the one which will be considered in the present chapter. The all-important question—the one that will concern the people of the United States so long as their present form of government shall endure—is whether the *process* by which Mr. Hayes was declared to have been elected was conducted according to the Constitution. In treating of this question I shall be obliged to speak of the political parties whose contest for the possession of the executive office brought about the unprecedented legislation which was resorted to for the purpose of bringing it to a close; for although the legislation did not expressly name the two parties, it was so framed as to make it easy for one of them to gain a victory over the other. In consequence of the procedure that was resorted to, although Mr. Hayes became president *de facto*, it can never be said that he became president *de jure*. The people of the United States will, therefore, always have reason to regard this as the most unfortunate occurrence in the history of their government, unless the conduct of the Supreme Court of the United States in regard to the question of legal-tender money is entitled to that bad pre-eminence.

The following are the constitutional provisions relative to the choice of a president and a vice-president which were in force in the year 1876:

ARTICLE II.

SECTION. 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:

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 an Office of Trust or Profit under the United States, shall be appointed an Elector.

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.

ARTICLE XII.

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

From these constitutional provisions it is to be inferred—

First, That "counting" means more than a bare arithmetical enumeration; that it is a *quasi*-judicial function, the discharge of which requires the ascertainment of the lawful right to act as electors that is claimed by or for the persons who appear upon

the "certificates" to have so acted, and whose votes are to be included in the count or excluded therefrom, according to the certificate in each case, when judged by all the proofs proper to be taken into consideration, it shows that the persons giving electoral votes had or had not a lawful right to give them. This function, judicial in its nature, is to be performed by the Senate and the House of Representatives, in the presence of each other, after the president of the Senate has, in their presence, opened all the certificates. The Constitution uses the terms "lists of all persons voted for," and the term "certificates;" but both of these terms refer to the same official paper, which is to be examined in the discharge of the function of counting the electoral votes that purport to have been given for a president and a vice-president respectively. This function is to be performed by a body constituted by the Senate and the House of Representatives when assembled together for the purpose. This assembly, which I denominate "the Presidential Convention," has no other function to perform excepting that of counting the electoral votes. It has no legislative power, although it may adopt rules for the proper and orderly conduct of its own proceedings.[1]

Second. The electors are required to meet in their respective states, to vote by ballot for president and vice-president, naming in their ballots the person voted for as president, and in distinct ballots the person voted for as vice-president. They are to make distinct lists of all persons voted for as president and all persons voted for as vice-president, and of the number of votes for each, which lists they are to sign and certify, and transmit sealed to the seat of the government of the United States, direct to the president of the Senate. Thus it appears that the electors are both officers clothed with the authority of casting the electoral votes of the people of their respective states, and also that they are to certify the votes so cast by them.

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[1] The body that is composed of the two houses of Congress, when they are in the presence of each other for the purpose of counting the electoral votes, might be called "the Electoral Convention." But as the phrase "Electoral Commission," which designates a very different body, has passed into history, I prefer the phrase "Presidential Convention" to designate the body to which I refer. The word "presidential" is not very good English, but it has been sanctioned by usage. Noah Webster adopted it.

The first precedent of counting the electoral votes occurred at a time when there were many members in the two houses of Congress who had been members of the convention which framed the Constitution, and they and the whole body of the members must have known what the terms of the Constitution meant. There were no conflicting certificates. The presiding officer of the Senate gave notice to the House that the Senate was ready to proceed to the duty of counting the electoral votes. Thereupon the members of the House, preceded by their speaker, entered the Senate chamber, and both bodies being thus assembled in joint meeting, the presiding officer of the Senate, acting as the presiding officer of the joint assembly, announced that the two houses "had met" for the purpose of counting the electoral votes, and that he, in their presence, had opened all the certificates and had counted the votes, which he read from a tabulated statement as follows: For George Washington, 67 votes; for John Adams, 34 votes; the remaining votes being scattered between ten different persons.

This, therefore, was a case where all the counting necessary was a simple enumeration of the votes given for the respective persons as they appeared on the face of the certificates, which were in no instance disputed or questioned. When the next occasion arose for counting the electoral votes the proceedings were somewhat varied. This was when Washington was again elected president and John Adams was again elected vice-president for the term commencing March 4, 1793, and terminating March 3, 1797. On this occasion the Senate proposed that a joint committee be appointed to ascertain a mode of examining the votes for president and vice-president, and of notifying the persons who shall be elected of their election, and for regulating the time, place, and manner of administering the oath of office to the president. The House concurred in this proposal, and on the 12th of February, 1793, the joint committee reported that tellers be appointed on the part of each house;[1] and thereupon, on the 13th

[1] Bouvier, in his Law Dictionary, gives one of the meanings of "Teller": a person appointed to receive and count votes at an election—a scrutineer. This definition is quoted from Bouvier by our American lexicographer, Mr. Worcester. The sense in which the word "teller" was used in the proceedings of 1793 was that of a person appointed to enumerate or count votes, and to scrutinize them, if necessary, and to report accordingly.

of February, the two houses assembled, the certificates of the electors of the fifteen states in the Union, which came by express, were by the vice-president opened, read, and delivered to the tellers appointed for the purpose, who, having examined and ascertained the votes, presented a list of them to the vice-president, which list was read to the two houses as follows: For George Washington, 132; for John Adams, 77; for George Clinton, 50; for Thomas Jefferson, 4; for Aaron Burr, 1. Thereupon the vice-president declared that George Washington had been unanimously elected President of the United States for the period of four years to commence on the 4th day of March, 1793, and that John Adams had been elected by a plurality of votes Vice-President of the United States for the same period. After this proceeding the vice-president delivered the duplicate certificates of the electors of the several states, received by post, to the secretary of the Senate, and the two houses then separated. From this second precedent it appears that the two houses, even in a case where there were no disputed certificates, did not regard it as a duty of the vice-president to count the electoral votes; that they appointed tellers, who, on behalf of the two houses, were to perform the function, judicial in its nature, of ascertaining and declaring to each house the result of the election; and thus the proceeding, at this early period, became impressed with a character which it has had ever since, down to the year 1876.

On the 1st of March, 1792, Congress passed "An act relative to the election of a President and Vice-President of the United States, and declaring the officer who shall act as president in case of vacancies in the office both of president and vice-president." This law made it the duty of the executive authority of each state to cause three lists of the names of the electors of the state to be made and certified, and to be delivered to the electors before the first Wednesday in December; and the electors were required to annex one of the lists to each of the lists of their votes. It also prescribed how the list should be transmitted to the seat of government; but the only provision that it made respecting the opening and counting of the votes was that "on the second Wednesday in February succeeding every meeting of the electors the certificates shall then be opened, the votes counted, and the persons who shall fill the offices of president and vice-

president ascertained and declared agreeably to the Constitution." This law, therefore, left it to each joint assembly of the two houses to ascertain and declare the persons who had been chosen in such manner as they might see fit, and as would be in accordance with the Constitution. The first precedent of counting the electoral votes occurred in 1789. The act of March 1, 1792, was passed before the second precedent occurred; but it assumed that the first precedent had fixed the mode of counting the votes in a case where there were no conflicting certificates.

On the 12th of December, 1803, Congress proposed the Twelfth Amendment of the Constitution, which would change the provisions of the original Constitution so as to require the electors to name in their ballots the person voted for as president, and in distinct ballots the person voted for as vice-president. They were to sign and certify the lists, and transmit them, sealed, to the seat of government of the United States, directed to the president of the Senate. The proposed amendment then repeated the existing provision of the Constitution in the following words: "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 amendment was declared to have been adopted in 1804.

At the election for the term commencing March 4, 1801, and ending March 3, 1805, there was no choice of a president or a vice-president by the electors, the electoral votes for Thomas Jefferson and Aaron Burr being equal. The House of Representatives, agreeably to the Constitution, had to make the choice. Mr. Jefferson received the votes of ten states as president, and Mr. Burr the votes of four states, and became vice-president. The votes of two of the states were in blank, and it was so declared.

Before the election for the term commencing March 4, 1805, and ending March 3, 1809, Congress passed, on the 27th of March, 1804, an act supplementary to the act of 1792. This was rendered necessary in consequence of the proposal of the Twelfth Amendment of the Constitution. The supplementary act made provision to meet the contingency of the adoption of the constitutional amendment prior to the next presidential election. It did not change the former law in respect to the counting of the electoral votes or displace the former precedents. The provi-

sions of these two acts became embodied in the Revised Statutes, sections 135 to 143.

Thus it appears that the legislators of that day devised a method of proceeding which would admit, in any case where a certificate was disputed, of an investigation into the rights of the persons who had acted as electors to act in that capacity. If nothing but a bare enumeration of the votes returned by the certificates was required, the tellers would so report to the joint assembly of the two houses; but if it appeared that any certificate was disputed, the tellers would so report; the two houses would investigate the facts in the presence of each other, and would act upon them according to the result of the investigation.

When Mr. Madison was elected president for the term commencing March 4, 1809, and ending March 3, 1813, the House sent a message to the Senate informing that body that the House was ready to attend to the opening of the certificates and counting the electoral votes for president and vice-president. When the resolution for this purpose was before the House (February 7, 1809), Mr. Randolph (John Randolph, of Roanoke) objected to the presiding officer of the Senate taking the chair at the joint meeting of the two houses, it being proposed that the Senate attend in the hall of the House. In that case, Mr. Randolph said that the speaker was the proper person to preside. Mr. Randolph's objection was obviated by a resolution that when the Senate had entered the House the speaker relinquish the chair to the president of the Senate, the officer designated by the Constitution to open the certificates. It is important to note this attention to minute forms, because it evinces how careful the members of the House then were in making precedents under the Constitution. The proceedings that took place are thus described in the Annals of Congress:

"The time for counting the votes having arrived, the members of the Senate, preceded by their sergeant-at-arms, entered the representatives chamber, Mr. Milledge, the president *pro tempore*, took the speaker's chair, and the members took their seats on the right hand of the chair. The tellers were ranged in front, and the clerks of each house on the right and left of the tellers. The president of the Senate opened the electoral returns, one copy of which was handed to the teller of the Senate, Mr. S. Smith, who

read it; the tellers of the House, Messrs. Nicholas and Van Dyke, comparing the duplicate returns handed to them. When this business, which occupied about two hours, was concluded, the tellers handed their report to the president of the convention, who was proceeding to read it, when Mr. Hillhouse observed that the returns from one of the states appeared to be defective, the governor's certificate not being attached to it. He thought that this might be as proper a time to notice it as any. Nothing further being said on the subject, however, the president of the Senate read the following statement of the votes as reported by the tellers:

"Recapitulation of the votes of the electors for President of the United States:

James Madison	122
Charles C. Pinckney	47
George Clinton	6
Total	175

"For Vice-President of the United States:

George Clinton	113
Rufus King	47
James Langdon	9
James Madison	3
James Monroe	3
Total	175

"The president of the Senate, pursuant to a joint resolution of the two houses of the 7th instant, then announced the state of the votes to both houses of Congress, and declared 'that James Madison was duly elected President of the United States for four years, to commence on the fourth day of March next; and that George Clinton was duly elected Vice-President of the United States for the like term of four years, to commence on the said fourth day of March next.' The members of the Senate then retired in the same order in which they entered."

Long before the year 1876, therefore, it had come to be both written and unwritten law that the counting of the electoral votes should be by a process that would bring before the two houses, assembled in joint meeting, the right of persons to act as electors

who appear in the certificates to have so acted. It resulted from the nature of the proceeding, as settled by the precedents, that when there were no conflicting certificates "counting" was simply an arithmetical enumeration; but that when a question was raised which set of two or more rival sets of electors was the lawful one, the two houses must determine it. It also resulted from the Constitution, from the legislation and the precedents, that the function of counting the electoral votes cannot be vested by Congress in any other body, or be devolved upon any other body than the two houses assembled in joint meeting. The act of Congress passed January 29, 1877, under which the Electoral Commission was constituted, must be tried by this test. If it devolved on another body than the two houses the duty and power of deciding who had been elected president and vice-president—or took from the two houses the determination of any question arising on the certificates—it was an unconstitutional law, and the process by which Mr. Hayes was declared to have been elected was not conducted in accordance with the Constitution. The fact that the process was assented to by both of the political parties of the time can add nothing to its constitutional validity.

The government of the United States has been administered by a successful party for so long a period that it must now be considered that political parties are a kind of necessity. But it is very questionable whether the political parties of the time being should be recognized in legislation, which is to prescribe how such a constitutional function as that of counting the electoral votes for a president and a vice-president is to be performed. The reason assigned in 1876–77 for constituting the Electoral Commission was that each of the two parties in Congress had a fixed determination to bring about a declaration of the choice of its own candidates.

A belief prevailed that the Democrats had succeeded in the election. It was shared by Mr. Hayes, the Republican candidate for the presidency; by General Grant, who was then President of the United States; by Mr. Roscoe Conkling, the eminent senator from New York; and by many other prominent Republicans.

The steps that were taken to change this belief are now to be

described.[1] The avowed and ostensible reason assigned for instituting the Electoral Commission was that the law embodied in the Revised Statutes, from section 135 to 143, relative to the counting of the electoral votes, which contained all the legislation on the subject, was entirely inadequate for the contingency that had arisen. But in order to describe what the contingency was, and to assign to each of the political parties its just responsibility for it, it is necessary to show how their conduct brought it about. The supposed contingency arose in consequence of proceedings of representative and prominent men taken before the certificates of the electoral votes had reached Washington. The whole number of electoral votes then in the Union was 369 — 185 votes were necessary to elect a president and a vice-president. A difference of one vote would turn the scale. At the time of the meeting of the electoral colleges, in December, 1876, a majority of the returning boards in Florida, Louisiana, Oregon, and South Carolina was composed of men notoriously open to influences of a dangerous character. The election took place on the 7th of November. The majority claimed by the Democrats was one only. If, by any process of making up the official returns in either of the states above named, that one vote could be secured for the Republican candidates, the public belief might be changed, and the offices might be secured for that party. It was a desperate undertaking, but the stake was vast, and the temptation was as great as the stake.

Mr. W. E. Chandler, when he reached New York, could only figure out for Hayes 166 electoral votes. It appeared that the Democrats claimed as absolutely certain but 184 votes; but it was probable, and was believed, that they had obtained 185. The Republicans, being sure of only 166 votes, required nineteen more to make a majority. These nineteen votes must come from Florida, Louisiana, and South Carolina. Mr. Chandler immediately conceived and put into operation a bold plan of operations. It was to deny and contradict the Democratic claim that a majority of Tilden electors had been chosen, and to take instant measures to secure the nineteen Republican votes necessary from Florida,

[1] I condense an account of these transactions from a book entitled, A Political Crime—The History of the Great Fraud. By A. M. Gibson, New York: William S. Gottsberger, 11 Murray Street, 1885.

Louisiana, and South Carolina, or as many of them as possible. Mr. W. E. Chandler's first step was to send, in his own name, and in that of the chairman, Mr. Zachariah Chandler, despatches to the Republican governors of Florida, Louisiana, and South Carolina, inspiring them with hope, and at the same time telling them that the seating of Hayes depended on the result of the counting in their respective states. Telegrams of the same import were sent to other men in the same states.[1]

These despatches bear date November 7th, but W. E. Chandler testified before the Potter Committee that they were "really written and sent on the morning of the 8th." He arrived at the Fifth Avenue Hotel in New York after midnight of the 7th.

Mr. Chandler's plan embraced the following points: First, to claim the election of Hayes unequivocally, and to persist in claiming it through every channel; second, to send emissaries to Florida, Louisiana, and South Carolina to operate with the returning boards; third, that ample pecuniary means be provided for all contingencies; fourth, that communication be opened with the president and the secretary of war as soon as possible, so as to secure for the returning boards protection by troops of the United States.

All parts of this plan were carried out as its author had devised them. He selected Florida as the scene of his own operations. In that state the powers of the Returning Board, or Board of Canvassers, were simply ministerial; they had no discretionary powers; they could only canvass the returns as the county returning officers forwarded them, and declare the result. A majority of the board were Republicans. They were supposed to be weak men, but were believed to be honest. To have the countenance and support of the President of the United States

[1] The following were the despatches:

To Florida: "The presidential election depends on the vote of Florida, and the Democrats will try and wrest it from us. Watch it, and hasten returns. Answer immediately." Also: "Hayes defeated without Florida. Do not be cheated in returns. Answer when sure."

To Louisiana: "The presidential election depends on the vote of Louisiana, and the Democrats will try and wrest it from you. Watch it, and hasten returns. Answer immediately."

To South Carolina: "Hayes is elected if we have carried South Carolina, Florida, and Louisiana. Can you hold your state? Answer immediately."

was of great importance to Mr. W. E. Chandler and the men who were to embark with him in the scheme. The name of General Grant would have great weight with the Republican party, and would give encouragement and confidence to the men in Florida, South Carolina, and Louisiana, on whose co-operation the success of the scheme depended. The president was in Philadelphia, attending the closing ceremonies of the exhibition which had been held in commemoration of the centennial anniversary of the Declaration of Independence. The secretary of war, J. D. Cameron, was in Philadelphia. He had the confidence of General Grant, and had much influence with him. Notwithstanding the unanimity with which Mr. Chandler and other Republican managers insisted that Mr. Hayes was elected, the president did not agree to it. He, however, merely expressed a negative opinion. How his co-operation was obtained is a part of the secret history of the affair, which has since become publicly well known. General Grant's belief that Mr. Tilden had been elected alarmed the Republican managers, who were gathered at the Fifth Avenue Hotel, in New York. It was necessary for them to establish safe means of communicating with the president and secretary of war, in Philadelphia. They could not use the wires of any telegraph company or trust unknown telegraphers. A private wire connected a private house in New York with Philadelphia. An arrangement was made for connecting this wire with one running into the hotel where the president and secretary of war were staying. By this means confidential communication was established between the Republican managers, who were gathered at the private house in New York, and the president and secretary of war, in Philadelphia. The president was requested to send federal troops into the three states of Florida, Louisiana, and South Carolina, to prevent any outbreak, and to protect the Republican canvassers. It was also urged upon him that gentlemen of high political standing and eminent personal respectability be invited to go to the capitals of the different states to secure a fair count of the votes. The president yielded his assent to both of these requests, which came to him from his political friends. On the night of November 9th, at a late hour, the following despatches were sent to Washington:

PHILADELPHIA, *November* 9, 1876, 10.40 P.M.

To General W. T. Sherman, Washington, D. C.:

Order four companies of soldiers to Tallahassee, Florida, at once. Take them from the nearest points, not from Louisiana or Mississippi, and direct that they be moved with as little delay as possible.

J. D. CAMERON, Secretary of War.

PHILADELPHIA, *November* 9, 1876, 11 P.M.

To General W. T. Sherman, Washington, D. C.:

In addition to the four companies ordered to Tallahassee, order all troops in Florida to the same point, and if you haven't more than the companies named, draw from Alabama and South Carolina. Advise me of receipt of this and your action.

J. D. CAMERON, Secretary of War.

PHILADELPHIA, *November* 9, 1876, 11.15 P.M.

To General W. T. Sherman, Washington, D. C.:

Telegraph General Ruger to proceed at once to Tallahassee, Florida, and upon his arrival there to communicate with Governor Stearns. Say to him to leave affairs in South Carolina in hands of an entirely discreet and reliable officer.

J. D. CAMERON, Secretary of War.

These orders were obeyed, and the Secretary of War was informed of their execution. The next day the president telegraphed General Sherman as follows:

PHILADELPHIA, *November* 10, 1876.
(Received at Washington, *November* 10, 1876, at 2.16 P.M.)

To General W. T. Sherman, Washington, D. C.:

Instruct General Augur, in Louisiana, and General Ruger, in Florida, to be vigilant with the force at their command, to preserve peace and good order, and to see that the proper and legal boards of canvassers are unmolested in the performance of their duties. Should there be any grounds of suspicion or fraudulent counting on either side, it shall be reported and denounced at once. No man worthy of the office of president would be willing to hold the office if counted in, placed there by fraud; either party can afford to be disappointed in the result, but the country cannot afford to have the result tainted by the suspicion of illegal or false returns.

U. S. GRANT.

This order to General Sherman was intended for the public, and was given forthwith to the press. The president was evidently anxious to satisfy the public that he would not be a party to "fraudulent counting." He concluded that he had not expressed exactly his idea, and therefore sent from the Centennial Grounds the following despatch to General Sherman:

PHILADELPHIA, *November* 10, 1876.
(Received at Washington, *November* 10, 1876, 2.12 P.M.)

To General W. T. Sherman, Washington, D. C.:

Send all the troops to General Augur he may deem necessary to insure entire quiet and a peaceable count of the ballots actually cast. They may be taken from South Carolina unless there is reason to expect an outbreak there. The presence of citizens from other states, I understand, is requested in Louisiana, *to see that the Board of Canvassers make a fair count of the votes actually cast.* It is to be hoped that representatives and fair men of both parties will go.

U. S. GRANT.

Nothing could be more irregular, improper, or unlawful than this interference from without, whether it was on the part of the President of the United States, or whether it was on the part of public or private men who were not citizens of the states in question. Presidential electors are officers of the respective states for which they are chosen by the people thereof. The returning board of each state is to examine the popular votes, to decide who have been chosen electors, and to certify the same to the two houses of Congress. If in the three cases of Florida, South Carolina, and Louisiana there was reason to fear that the returning boards would not act honestly, there was nothing to be done but to wait until they had acted, and then to impeach the certificates which they had granted by adducing evidence when the certificates should come before the two houses of Congress. If there was no reason to fear that popular violence in either of those states would prevent the returning boards from peaceably performing their functions, nothing could justify the sending of United States troops into the state in anticipation of such violence, unless the application should be made in due form to the President of the United States by the governor of the state if the legislature was not in session, or by the legislature if it was in session, asking for aid to protect the state authorities against domestic violence. The only despatch asking for troops came from Governor Stearns, of Florida, on the 9th of November, which said, "We shall need an army to protect us." This was not such an application as was authorized and required by the Constitution of the United States. To act upon it as President Grant did was to act outside of the Constitution and not within it. Consequently, all the troops sent into either of the three states were there unlawfully. The Presi-

dent of the United States is not authorized to employ a military force for the purpose of preserving order within a state unless he acts strictly within the Federal Constitution.

The consequence of this interference from without was what might have been expected. In Louisiana the canvassers were without exception Republicans, and in Florida only one was a Democrat. The commanding generals were directed by the president to ascertain whether there were any "grounds of suspicion of fraudulent counting." They could not do this unless they had been directed to supervise the reception as well as the canvassing of the returns; but this would have cast suspicion upon the integrity of the returning boards. Before the president's despatches were sent to General Sherman the polls had been closed two whole days, and the returns of the votes actually cast, excepting from remote counties and parishes in Florida and Louisiana, were in Tallahassee and New Orleans. There was, therefore, no possibility of fraudulent counting, unless it was done by the returning boards.

On the night of Tuesday, November 7, 1876, tidings of disasters came from every quarter to the rooms of the National Republican Committee, in the Fifth Avenue Hotel, New York City. Long before the dawn of the succeeding morning the members of the committee and the throng of anxious inquirers had sought repose with the conviction that their party had met its Waterloo. Just after the last of the managers had left, William E. Chandler arrived from New Hampshire.[1] He found only a few clerks in the committee rooms, who quickly told him what the situation seemed to be. The chairman, the secretary, everybody, had gone away believing that victory perched on the banners of their adversaries. Mr. Chandler took up the despatches, and read them through. The outlook was indeed desperate. Later telegrams only confirmed the earlier bad news. The only comforting account came from the New York Times office, which was to the effect that the Democrats claimed as abso-

[1] "I wish to state here that when I arrived at the Fifth Avenue Hotel, before daylight on the morning of the 8th of November, I found the committee rooms vacant; everybody had gone to bed. There was no one at the hotel (meaning the committee rooms) except a clerk." W. E. Chandler's Testimony, H. R., Mis. Doc. No. 21, Forty-fifth Congress, Third Session, p. 527.

lutely certain but 184 electoral votes. But, on the other hand, Chandler could only figure out for Hayes 166 electoral votes. There were 369 electors, and if the Democrats were certain of 184 they only needed one more to give them a majority of all the electoral votes. The Republicans, only having sure 166, required nineteen votes to make a majority. It was clear that the nineteen votes must come from Florida, Louisiana, and South Carolina. Here, then, was the opportunity to retrieve disaster. Chandler's plan of operations was instantly conceived, and the execution thereof immediately begun. He dictated and had sent in his own name and in that of the chairman, Zach Chandler, despatches to the governors of Florida, Louisiana, and South Carolina which inspired them with hope, but left no doubt that upon the result of the counting in their respective states the seating of Hayes depended.[1] These were followed by other telegrams of like import to men in the same states. Before noon the next day the news from the Pacific coast confirmed the despatches of the previous night which said California had been carried by the Democrats. When Zach Chandler and others, who had left the night before dispirited and hopeless, returned to the committee rooms the next morning they found W. E. Chandler, who quickly explained the situation and, with the skill of a Machiavelli, outlined the scheme heretofore mentioned. Its chief features being the clamorous assertion that Hayes was elected, and defiant persistence in its repetition; the sending of agents who could be trusted for skill and lack of scruple to the three states to be managed; the provision of a plenty of money for all requirements; and the procuring of ample protection of the returning boards by the military. The New York *Times* had, at his suggestion, that morning claimed the election of Hayes and Wheeler on the assertion that Florida, Louisiana, and South Carolina had been carried by the Republicans.

Mr. Chandler proposed to take charge of the work in Florida, and to go thither at once. A credit must be opened for him at the Centennial Bank of Philadelphia,[2] whose officers were his friends, and could be trusted to keep accounts which would not

[1] *Ante*, p. 407.

[2] H. R., Mis. Doc. No. 31, Forty-fifth Congress, Third Session, p. 471.

prove troublesome in the future. He selected Florida as the scene of his operations because he knew the powers of the board canvassers of that state were simply ministerial, and great delicacy and ingenuity of management, as well as bold, decisive conduct, might be required to accomplish their purposes. In Louisiana and South Carolina there were many bold, unscrupulous, and resourceful men who might be relied on in any emergency, provided they were encouraged by the presence of prominent Northern Republicans who could speak authoritatively of the future, and provided, also, the authorities in Washington spoke in no uncertain tones, and emphasized their utterances with the proper display of military power.

As the members of the National Committee and the local party managers of New York City gathered at the headquarters, Wednesday, they were informed of the exigencies of the situation, and the desperate measures necessary to bring Mr. Hayes in. The chairman had promptly sent the famous but untruthful despatch, to which he undeviatingly adhered, "Hayes has 185 electoral votes and is elected." That day and night the arrangements for men and means to be sent to Florida, Louisiana, and South Carolina were made, and before Thursday evening they were on their way. W. E. Chandler left Wednesday night for Florida, and from Lynchburg, Virginia, wrote the following letter to Zach Chandler—under cover to M. A. Clancy:[1]

THE ARLINGTON, LYNCHBURG, VA., *November* 9.

MY DEAR SIR,—Please think over and guard every possible contingency in all the states. Ascertain what the laws of every Hayes state are about vacancies. There is danger of some form being neglected, especially in Oregon, which is so far away, and has a Democratic governor. Will Senator Edmunds give his best thought to this subject, and notify every Hayes state what precautions to adopt—to search their state laws carefully, and obey them literally?

Colorado must especially be looked after, and the danger of bribery of the legislature guarded against.

I got delayed overnight and shall omit Raleigh, but went to see Chamberlain about Oranges before eating the latter (Florida before reaching there). I will telegraph Clancy, and will sign Everett Chase, and you may telegraph me same way, care the governors, and sign Clancy, and not Z. C., *and don't telegraph unless necessary.* Remember Crapsey was to telegraph J. J. Ridenour, Fifth Avenue. You left that off the cipher.

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[1] H. R., Mis. Doc. No. 31, Forty-fifth Congress, Third Session, p. 526.

Thomas J. Brady,[1] with a force of special agents of the Post-office Department, followed Mr. Chandler, bearing also a sum of money for immediate use. The Department of Justice ordered its available detectives to report to Chandler at the earliest moment in Tallahassee. William A. Cook, of Washington, at Chandler's suggestion, was sent to Columbia, South Carolina, to overlook operations at that point, and messengers were despatched to New Orleans, bearing sinews of war and intelligence that representative men would follow immediately. There was absolute silence preserved about these movements. The telegraph was resorted to only in cases of necessity, as W. E. Chandler had advised.

The reiterated despatch of Zach Chandler, "Hayes has 185 electoral votes and is elected," was interpreted by Hayes himself as without serious significance. In an interview published in the Cincinnati papers[2] Thursday morning the defeated candidate said: "I think we are defeated, in spite of recent good news. I am of the opinion that the Democrats have carried the country and elected Tilden, as it now seems necessary for the Republicans to carry all the states now set down as doubtful to secure even a majority of one. I don't think encouraging despatches ought to be given to the public now, because they might mislead enthusiastic friends to bet on the election and lose their money. I do heartily deprecate these despatches."

It was an undertaking from which timid men would have shrunk with fear, and which honorable men would have contemplated with horror. It was absolutely known Thursday evening that the people of Florida and Louisiana had chosen Democratic electors. Therefore, the will of the people must be disregarded. The result determined by the constitutional methods at the polls must be reversed. In Louisiana the machinery provided by an alien and wholly irresponsible government might be abused for this unholy purpose. The election law, enacted in defiance of the state constitution to enable a few scoundrels to continue their corrupt and detestable rule, prescribed certain methods by which the people might be disfranchised. Unless these were

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[1] H. R., Mis. Doc. No. 31, Part IV., Forty-fifth Congress, Third Session, p. 59.

[2] New York Sun, November 9, 1876. Despatch from Cincinnati.

strictly observed the Returning Board, as will be seen hereafter, could not legally reject a single vote which had been returned by the election officers. However, the Returning Board was composed of desperate men who would scruple at nothing, provided they were protected and assured of adequate rewards.

In Florida the situation was altogether different. The Board of State Canvassers was not vested with discretionary powers. Ministerial powers alone were devolved upon them by the statute. To canvass the returns received from the returning officers, and formally announce the result was the extent of their powers. The larger part of the Board of Canvassers were Republicans. While no one supposed them to be strong men, they were not regarded as dishonest.

Mr. George W. Childs has discovered to us the fact that "an eminent Republican senator" and other "leading Republicans" were early at his office to meet General Grant the morning after the election, and the unanimity with which they, "notwithstanding the returns," insisted that Hayes was elected. Grant, Mr. Childs asserts, did not agree to this, but contented himself with merely expressing a negative opinion. Undoubtedly this expression of General Grant's opinion was quickly communicated to the chairman of the National Republican Committee in New York. It is certain that on the following day there was great perturbation manifested by the Republican managers gathered at the Fifth Avenue Hotel. It was deemed of the utmost importance that certain persons should have safe means of communicating with the president and the secretary of war in Philadelphia.

While the president and the secretary of war were at the Continental Hotel in Philadelphia, a connecting wire was arranged so as to make confidential conversation practicable between those high officers and the managers of the Republican party at their headquarters in the Fifth Avenue Hotel, New York.

The first and most important thing was to secure the fullest possible co-operation of the president. The situation was carefully and ingeniously explained, and the utmost stress was laid upon the conditions of affairs in Florida, Louisiana, and South Carolina. The imminent danger not only of an outbreak was dwelt upon, but it was insisted that the lives of the Republican

canvassers would not be safe unless an overwhelming force of federal troops were present to awe the turbulent populace and restrain daring Democratic leaders. It was urged that gentlemen of high political standing and eminent personal respectability ought to be invited to go to the capitals of the different states to secure a fair count of the votes. It is not to be wondered at that the president, under these circumstances, should have accorded all that was asked by his party friends. The responses from the president were satisfactory, and that very night the orders were issued.[1]

The federal troops in South Carolina[2] had, two weeks before the November election, been increased by ordering thither every available man on the Atlantic seaboard from Fortress Monroe northward, making in all thirty-three companies stationed in different parts of that state. Ten of these companies, with two from Atlanta, Georgia, with General Ruger in command, were sent to Florida, under orders to act in conjunction with Governor Stearns. Three full regiments had already been ordered to New Orleans before the last despatch to General Sherman was sent by the President.[3] The two telegrams of the president of November 10th to General Sherman were not in accordance with the arrangement made the preceding night over that private wire. Their language shows that Grant was endeavoring to guard against some apprehended excess of zeal. Their tone is confirmatory of Mr. Childs's statement about Grant's belief in Tilden's election. The commanding generals were directed, first, "to see that the proper and legal boards of canvassers are unmolested in the performance of their duties;" second, "should there be any grounds of suspicion of fraudulent counting on either side, it should be reported and denounced at once." The first direction could be carried out easily enough.

There was no danger whatever of the "boards of canvassers" being molested in the performance of their duties. General Sherman,[4] who was ordered to New Orleans, arrived there on the 15th, and reported on the 16th that there was "very little excite-

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[1] *Ante*, pp. 409, 410.

[2] H. R., Ex. Doc. No. 30, Forty-fourth Congress, Second Session, pp. 17–22.

[3] Ibid., p. 27.

[4] Ibid., p. 41.

ment" and "no appearance of any trouble." It was, of course, entirely within the scope of executive authority to have instructed General Augur, in Louisiana, and General Ruger, in Florida, in the event of an outbreak, to co-operate with the local authorities "to preserve peace and good order." No other use of the federal troops was justifiable, and in strict compliance with law even that could not be ordered until the governors of the respective states had reported that they were unable to preserve the peace and protect all classes of citizens against domestic violence, unlawful combinations, or conspiracies.[1]

But how were the commanding generals to discover whether there were "any grounds of suspicion or fraudulent counting on either side," and to whom were they to report and denounce it? The counting was to be done by the canvassing boards. In Louisiana the canvassers were without exception Republicans, and in Florida only one was a Democrat. How could the commanding generals ascertain whether there were any "grounds for suspicion of fraudulent counting" unless they had been directed to supervise the reception as well as the canvassing of the returns? But this would have cast suspicion on the integrity of the returning boards. Was this not the object of the president's semi-military orders? "A fair count of the votes actually cast" was precisely what the Republican managers did not want. Fair and honest returns of the "votes actually cast" would have made Samuel J. Tilden the next President of the United States. Before the president's remarkable despatches were sent to General Sherman the polls had been closed two whole days and the returns "of the votes actually cast," save from remote countries and parishes in

[1] The only despatch asking for troops came from Governor Stearns, of Florida, on November 9th, and was as follows: "We shall need an army to protect us. Our special train, leaving here last night for the Chattahoochee to despatch couriers to verify and secure intact the returns from western countries, was Ku-kluxed a few miles west of here, and the train thrown from the track, which was torn up and blocked in several places. Give us quickly all the protection possible." This despatch was sent to Philadelphia to the president by George W. Childs, who also informed him of the consultation to be held that night over Jay Gould's private wire. The statement about special train being Ku-kluxed was untrue. There was no obstruction on the track. It was merely an ordinary accident on a Florida railroad which was in bad condition at that time. Mis. Doc. No. 42, Forty-fourth Congress, Second Session, pp. 435, 436.

Florida and Louisiana, were in Tallahassee and New Orleans. There was, therefore, no possibility of "fraudulent counting" unless it was done by the returning boards.

The direction to report and denounce at once "grounds of suspicion of fraudulent counting on either side" did not embarrass the visiting statesmen. They were determined to interpret to suit themselves the president's instructions. The further declaration that "no man worthy of the office of president would be willing to hold the office if counted in, placed there by fraud," was without other meaning to average politicians than high-sounding words intended to deceive the public and cloak evil designers.

The intention was to use the machinery of the returning boards to return as elected the Republican electors of Florida, Louisiana, and South Carolina, regardless "of the votes actually cast." No fear was entertained of this not being done in Louisiana and South Carolina. The character of the Republican officials in those states was known. They could be depended upon if properly "protected" and adequately "encouraged." The "encouragement" was en route, and the action of the president and secretary of war left no doubt as to their co-operation by the use of the army. In Florida the conditions were less favorable. There were doubts as to the powers of the Returning Board as well as the dependence to be placed in the members thereof.[1] But the troops were on hand, and so was W. E. Chandler. The sinews of war were coming.

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[1] W. E. Chandler telegraphed to Zach Chandler from Tallahassee, November 13th, as follows: "Florida swarming with prominent Democrats. Send some Republican lawyers and eminent men. Send Jones to E. A. Rollins, Phila. Have Arthur William warm men acting cold."

According to Chandler's account of his cipher to the Potter Committee (p. 471, H. R., Mis. Doc. No. 31, Forty-fifth Congress, Third Session), "send Jones to E. A. Rollins, Phila.," meant send $2000 to Centennial Bank, Philadelphia, so I can draw from it. "Have Arthur William warm men acting cold" meant have Arthur (C. A.) send Republicans, men acting with Democrats. H. R., Mis. Doc. No. 42, Forty-fourth Congress, Second Session, p. 439.

Again, November 15th, he telegraphed to the same: "Florida needs eminent counsel and help more than Louisiana. Can you send Robinson as well as Jones? Doctors plenty here." He wanted ("Robinson") $3000, and ("Jones") $2000, making $5000. "Doctors plenty here"—Danger great here. H. R., Mis. Doc. No. 42, Forty-fourth Congress, Second Session, p. 439, and ibid. No. 31, Forty-fifth Congress, Third Session, p. 470.

The secretary of war telegraphed personally to Governor Stearns, informing him that "a sufficient number of troops had been ordered in Tallahassee to give you the aid desired."[1] This language was, of course, deliberately used. It is important, because it shows that the troops were sent to "aid," and not because there was need of "protection." At the same time Zach Chandler had telegraphed to Stearns[2] that W. E. Chandler was "on the way to aid." The reception of these telegrams of November 8th and 9th to Stearns, and those of the president to General Sheridan, of November 10th, were interpreted in Florida as they were meant to be, and the managers in Tallahassee sent despatches to every quarter of the state on the 10th, two days after the election, like this: "The national ticket depends on Florida. Save every vote to swell our majority." Three days later, on the arrival of W. E. Chandler, telegrams were sent to local Republican managers, telling them that the "state was close, and you must make effort to render every possible assistance," and that "funds from Washington"[3] would be on hand to meet every requirement. The replies[4] from subordinates in various localities in many instances demanded the assistance of federal troops, and Stearns issued his orders to General Ruger, who was directed by the secretary of war to obey.

The following statements are prefixed by way of preface to the official Report of the Electoral Commission:

ELECTORAL COUNT OF 1877.

The disputes as to the votes cast in some of the states by the respective sets of persons claiming to have been chosen electors at the popular elections held therein on the 7th day of November, A.D. 1876, were of such a nature as to lead to grave fears that difficulty might ensue if there were no further provision for the case than was contained in some of the sections of the act of Congress of March 1, 1792, and the act of March 6, 1804, embodied in the Revised Statutes from section 135 to 143, which sections contained all the legislation that had been provided for any such con-

[1] H. R., Mis. Doc. No. 42, Forty-fourth Congress, Second Session, p. 436.
[2] Ibid., p. 437. [3] Ibid., p. 436. [4] Ibid., p. 437.

tingency and that seemed to be entirely inadequate. When the second session of the Forty-fourth Congress convened, the subject immediately attracted attention in both houses. On the 14th of December, 1876, the House of Representatives passed a resolution for the appointment of a committee of seven, with power to act in conjunction with any similar committee appointed by the Senate, to prepare and report without delay a measure for the removal of differences of opinion as to the proper mode of counting the electoral votes for President and Vice-President of the United States, and as to the manner of determining questions which might arise as to the legality and validity of the returns of such votes made by the several states, to the end that the votes should be counted and the result declared "by a tribunal whose authority none can question, and whose decision all will accept as final."

On the 18th of December the Senate referred the message of the House of Representatives, communicating its resolution, to a select committee, to be composed of seven senators, with power "to prepare and report, without unnecessary delay, such a measure, either of a legislative or other character, as may in their judgment be best calculated to accomplish the lawful counting of the electoral votes, and best disposition of all questions connected therewith, and the due declaration of the result," and also with power "to confer and act with the committee of the House of Representatives."

The committees provided for by these resolutions were composed, on the part of the Senate, of George F. Edmunds, of Vermont; Oliver P. Morton, of Indiana; Frederick T. Frelinghuysen, of New Jersey; Roscoe Conkling, of New York; Allen G. Thurman, of Ohio; Thomas F. Bayard, of Delaware; and Matt W. Ransom, of North Carolina; and, on the part of the House of Representatives, of Henry B. Payne, of Ohio; Eppa Hunton, of Virginia; Abram S. Hewitt, of New York; William M. Springer, of Illinois; George W. McCrary, of Iowa; George F. Hoar, of Massachusetts; and George Willard, of Michigan.

On the 18th of January, 1877, these committees submitted a report to the respective houses, signed by all their members except Senator Morton, recommending the passage of a bill, which, after discussion in both houses, became a law on the 29th of January, in the precise words reported, as follows:

THE ACT CREATING THE ELECTORAL COMMISSION.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Senate and House of Representatives shall meet in the hall of the House of Representatives, at the hour of one o'clock post meridian, on the first Thursday in February, anno Domini eighteen hundred and seventy-seven, and the president of the Senate shall be their presiding officer. Two tellers shall be previously appointed on the part of the Senate, and two on the part of the House of Representatives, to whom shall be handed, as they are opened by the president of the Senate, all certificates, and papers purporting to be certificates, of the electoral votes, which certificates and papers shall be opened, presented, and acted upon in the alphabetical order of the states, beginning with the letter A; and said tellers, having then read the same in the presence and hearing of the two houses, shall make a list of the votes as they shall appear from the said certificates; and the votes having been ascertained and counted as in this act provided, the result of the same shall be delivered to the president of the Senate, who shall thereupon announce the state of the vote and the names of the persons, if any, elected, which announcement shall be deemed a sufficient declaration of the persons elected President and Vice-president of the United States, and, together with a list of the votes, be entered on the journals of the two houses. Upon such reading of any such certificate or paper where there shall be only one return from a state, the president of the Senate shall call for objections, if any. Every objection shall be made in writing, and shall state clearly and concisely, and without argument, the ground thereof, and shall be signed by at least one senator and one member of the House of Representatives before the same shall be received. When all objections so made to any vote or paper from a state shall have been received and read, the Senate shall thereupon withdraw, and such objections shall be submitted to the Senate for its decision; and the speaker of the House of Representatives shall, in like manner, submit such objections to the House of Representatives for its decision; and no electoral vote or votes from any state from which but one return has been received shall be rejected except by the affirmative vote of the two houses. When the two houses have voted, they shall immediately again meet, and the presiding officer shall then announce the decision of the question submitted.

SECTION 2. That if more than one return, or paper purporting to be a return, from a state shall have been received by the president of the Senate purporting to be the certificates of the electoral votes given at the last preceding election for president and vice-president in such state (unless they shall be duplicates of the same return), all such returns and papers shall be opened by him in the presence of the two houses when met as aforesaid, and read by the tellers, and all such returns and papers shall thereupon be submitted to the judgment and decision, as to which is the true and lawful electoral vote of such state, of a commission constituted as follows, namely: During the session of each house on the Tuesday next preceding the first Thursday in February, eighteen hundred and seventy-seven, each house shall, by *viva voce* vote, appoint five of its members, who, with the five associate justices of the Supreme Court of the United States, to be ascertained as hereinafter provided, shall constitute a commission for the decision of all questions upon or in respect of such double returns named in this section. On

the Tuesday next preceding the first Thursday in February, anno Domini eighteen hundred and seventy-seven, or as soon thereafter as may be, the associate justices of the Supreme Court of the United States now assigned to the first, third, eighth, and ninth circuits shall select, in such manner as a majority of them shall deem fit, another of the associate justices of said court, which five persons shall be members of said commission, and the person longest in commission of said five justices shall be the president of said commission. The members of said commission shall respectively take and subscribe the following oath: "I, ——— ———, do solemnly swear (or affirm, as the case may be) that I will impartially examine and consider all questions submitted to the commission of which I am a member, and a true judgment give thereon, agreeably to the Constitution and the laws: so help me God;" which oath shall be filed with the secretary of the Senate. When the commission shall have been thus organized, it shall not be in the power of either house to dissolve the same, or to withdraw any of its members; but if any such senator or member shall die or become physically unable to perform the duties required by this act, the fact of such death or physical inability shall be by said commission, before it shall proceed further, communicated to the Senate or the House of Representatives, as the case may be, which body shall immediately and without debate proceed by *viva voce* vote to fill the place so vacated, and the person so appointed shall take and subscribe the oath hereinbefore prescribed, and become a member of said commission; and, in like manner, if any of said justices of the Supreme Court shall die or become physically incapable of performing the duties required by this act, the other of said justices, members of said commission, shall immediately appoint another justice of said court a member of said commission, and, in such appointments, regard shall be had to the impartiality and freedom from bias sought by the original appointments to said commission, who shall thereupon immediately take and subscribe the oath hereinbefore prescribed, and become a member of said commission to fill the vacancy so occasioned. All the certificates and papers purporting to be certificates of the electoral votes of each state shall be opened, in the alphabetical order of the states, as provided in Section 1 of this act; and when there shall be more than one such certificate or paper, as the certificate and paper from such state shall be opened (excepting duplicates of the same return), they shall be read by the teller, and thereupon the president of the Senate shall call for objections, if any. Every objection shall be made in writing, and shall state clearly and concisely, and without argument, the ground thereof, and shall be signed by at least one Senator and one member of the House of Representatives before the same shall be received. When all such objections so made to any certificate, vote, or paper from a state shall have been received and read, all such certificates, votes, and papers so objected to, and all papers accompanying the same, together with such objections, shall be forthwith submitted to said commission, which shall proceed to consider the same, with the same powers, if any, now possessed for that purpose by the two houses acting separately or together, and, by a majority of votes, decide whether any and what votes from such state are the votes provided for by the Constitution of the United States, and how many and what persons were duly appointed electors in each state, and may therein take into view such petitions, depositions, and other papers, if any, as shall, by the Constitution and now existing law, be competent and pertinent in such consideration; which decision shall be made in writing, stating briefly the ground

thereof, and signed by the members of said commission agreeing therein; whereupon the two houses shall again meet, and such decision shall be read and entered in the journal of each house, and the counting of the votes shall proceed in conformity therewith, unless, upon objection made thereto in writing by at least five senators and five members of the House of Representatives, the two houses shall separately concur in ordering otherwise, in which case such concurrent order shall govern. No votes or papers from any other state shall be acted upon until the objections previously made to the votes or papers from any state shall have been finally disposed of.

SECTION 3. That while the two houses shall be in meeting, as provided in this act, no debate shall be allowed and no question shall be put by the presiding officer, except to either house on a motion to withdraw; and he shall have power to preserve order.

SECTION 4. That when the two houses separate to decide upon an objection that may have been made to the counting of any electoral vote or votes from any state, or upon objection to a report of said commission, or other question arising under this act, each senator and representative may speak to such objection or question ten minutes, and not oftener than once; but after such debate shall have lasted two hours, it shall be the duty of each house to put the main question without further debate.

SECTION 5. That at such joint meeting of the two houses seats shall be provided as follows: For the president of the Senate, the speaker's chair; for the speaker, immediately upon his left; for the senators, in the body of the hall upon the right of the presiding officer; for the representatives, in the body of the hall not provided for the senators; for the tellers, secretary of the Senate, and clerk of the House of Representatives, at the clerk's desk; for the other officers of the two houses, in front of the clerk's desk and upon each side of the speaker's platform. Such joint meeting shall not be dissolved until the count of electoral votes shall be completed and the result declared; and no recess shall be taken unless a question shall have arisen in regard to counting any such votes, or otherwise under this act, in which case it shall be competent for either house, acting separately, in the manner hereinbefore provided, to direct a recess of such house not beyond the next day, Sunday excepted, at the hour of ten o'clock in the forenoon. And while any question is being considered by such commission either house may proceed with its legislative or other business.

SECTION 6. That nothing in this act shall be held to impair or affect any right now existing under the Constitution and laws to question, by proceeding in the judicial courts of the United States, the right or title of the person who shall be declared elected or who shall claim to be President or Vice-President of the United States, if any such right exists.

SECTION 7. That said commission shall make its own rules, keep a record of its proceedings, and shall have power to employ such persons as may be necessary for the transaction of its business and the execution of its powers.

Approved, January 29, 1877.

It is apparent from this legislation that, without any warrant for it in the Constitution, Congress undertook to establish a spe-

cial tribunal, to whose judgment and decision should be referred all disputed questions arising on the certificates of electoral votes given at the last preceding election for president and vice-president in any state, unless they should be duplicate of the same return. A very singular device was resorted to in order to make the decisions of the commission practically final. Thus it was provided in the second section of the act, as follows: "When all such objections so made to any certificate, vote, or paper from a state shall have been received and read, all such certificates, votes, and papers so objected to, and all papers accompanying the same, together with such objections, shall be forthwith submitted to said commission, which shall proceed to consider the same, with the same powers, if any, now possessed for that purpose by the two houses acting separately or together, and by a majority of votes decide whether any and what votes from such state are the votes provided for by the Constitution of the United States, and how many and what persons were duly appointed electors in such state, and may therein take into view such petitions, depositions, and other papers, if any, as shall, by the Constitution and now existing law, be competent and pertinent in such consideration; which decision shall be made in writing, stating briefly the ground thereof, and signed by the members of said commission agreeing therein; whereupon the two houses shall again meet, and such decisions shall be read and entered in the journal of each house, and the counting of the votes shall proceed in conformity therewith, unless, upon objection made thereto in writing by at least five senators and five members of the House of Representatives, the two houses shall separately concur in ordering otherwise, in which case such concurrent order shall govern. No votes or papers from any other state shall be acted upon until the objections previously made to the votes or papers from any state shall have been finally disposed of."

Every decision of the commission, therefore, became final by a special and extraordinary provision of law made for the occasion and made without any warrant in the Constitution. Thus it was provided that each decision of the commission should be read and entered in the journal of each house, and that the counting of the votes should proceed in conformity therewith, unless, upon objection made thereto in writing, by at least five senators and

five members of the House of Representatives, the two houses should separately concur in ordering otherwise, in which case such concurrent order must govern.

When this process for counting the electoral votes is compared with that provided in the Constitution and in the acts of Congress of March 1, 1792, and March 26, 1804, it will be seen at once that the intervention of a special tribunal, which was first to count the electoral votes and to make decisions which should come before the two houses, in a manner provided in the act of January 29, 1877, was anomalous and unconstitutional.

It is one of the strangest occurrences in political history that the leading men of the Democratic party, who claimed that their candidate had been elected, should have consented to a process for determining the result of the election which could by no proper interpretation of the Constitution be considered as within its provisions. They were, it is true, influenced by a fear that a civil war might ensue unless a method of deciding the contest should be adopted that would command general acquiescence. It was a patriotic anxiety that led them to concur in the Electoral Commission. But if the House of Representatives, in which the Democratic party had a clear majority, had firmly insisted that the electoral votes should be "counted" by the two houses —giving to the term "counted" all the signification that belongs to it—whatever the result might have been, no public commotion would have followed. The people of the United States had always peacefully accepted the result of a presidential election when ascertained in the Constitutional mode, however great had been the disappointment of one of the political parties. In 1876–77 the composition of the two houses was such that the Senate would have inevitably declared that Mr. Hayes was elected, and the House would just as certainly have decreed that Mr. Tilden was elected. This is apparent from the fact that every test question which arose in the two houses was decided by a strict party vote. At the same time there were many questions which demanded the impartial consideration and decision of the members of the two houses. The great prize of the presidency was at stake; and whatever confidence individuals may have felt in their own fairness and impartiality, history is obliged to draw inferences which it is not pleasant to contemplate. It was a

foregone conclusion that if the two houses had proceeded to count the electoral votes as the Constitution required, there would have been no choice of a president and vice-president officially and constitutionally declared by them. But in the cases in which there were contested returns of the electoral votes in any state, a judicial proceeding by *quo warranto* could have been instituted, by which it could have been judicially determined which set of the rival claimants had the lawful right to cast the electoral votes of that state. There was ample time for this between the assembling of Congress in December, 1876, and the 4th of March, 1877, so that there would have been no vacancy or interregnum in the executive office. A judicial proceeding for this purpose, instituted in some inferior court of the United States and carried up for final determination by the Supreme Court of the United States, would have been far more likely to command the confidence of the whole country than the Electoral Commission composed as that body was. If there was no existing provision of law by which the Supreme Court of the United States could take appellate jurisdiction of such a proceeding by *quo warranto*, a short act of Congress could have been passed for the purpose. To detail five of the justices of that court to sit in a tribunal in which they would act in their personal and not in their judicial characters was an ill-judged and, as it proved, an unfortunate step. It placed five of the members of the highest judicial tribunal in the country in positions where they would be exposed to criticism of their acts, and the public would not discriminate between their personal and their official characters, but the court itself would suffer in the public estimation. This ought to have been foreseen and avoided; for it was plain beforehand that this would be the consequence of making five of the members of the court members of such a tribunal as the Electoral Commission, casting upon them duties and functions which they were to perform, not in their judicial, but in their personal character.

The personal composition of the Electoral Commission was as unfortunate as the principle on which it was organized. If any tribunal was to be instituted outside of the two houses of Congress it should have been composed of very different persons, and its sole function should have been to take testimony and to report

to the two houses the questions that required to be determined. For this purpose any three respectable jurists would have made as good a board as the fifteen gentlemen who were appointed to constitute the Electoral Commission. The following is the account of the organization given in the official report:

Under the provisions of the second section of this act each house of Congress, on Tuesday, January 30, proceeded by *viva voce* vote to designate five of its members to be members of the Electoral Commission therein provided for, and the following-named gentlemen were selected by their representative houses: Senators Edmunds, Frelinghuysen, Morton, Thurman, and Bayard; Representatives Payne, Hunton, Abbott, Hoar, and Garfield.

On the same day, the associate justices of the Supreme Court of the United States designated in the act met and selected Associate Justice Joseph P. Bradley to be a member of the commission, thus completing its constitution, which fact was communicated to both houses of Congress on the morning of the 31st of January.

WEDNESDAY, *January* 31, 1877.

The members of the commission appointed for the decision of certain questions relating to the counting of the electoral votes for the offices of President and Vice-President of the United States, under an act entitled, "An act to provide for and regulate the counting of votes for president and vice-president, and the decision of questions arising thereon, for the term commencing March 4th, A.D. 1877," approved January 29, 1877, met in the Supreme Court Room at the Capitol at 11 o'clock in the forenoon this 31st day of January, 1877.

Present: Mr. Justice Clifford, associate justice assigned to the first circuit; Mr. Justice Miller, associate justice assigned to the eighth circuit; Mr. Justice Field, associate justice assigned to the ninth circuit; Mr. Justice Strong, associate justice assigned to the third circuit; Mr. Justice Bradley; Senators Edmunds, Morton, Frelinghuysen, Thurman, and Bayard; Representatives Payne, Hunton, Abbott, Garfield, and Hoar.

The appointment on the commission of Associate Justice Bradley by the other four associate justices of the Supreme Court above named was presented and read as follows:

HON. JOSEPH P. BRADLEY, *Associate Justice of the Supreme Court of the United States:*

Pursuant to the provisions of the second section of the act of Congress entitled, "An act to provide for and regulate the counting of votes for president and vice-president, and the decision of questions arising thereon, for the term commencing March 4th, A.D. 1877," approved January 29, 1877, the undersigned associate justices of the Supreme Court of the United States, assigned to the first, third, eight, and ninth circuits, respectively, have this day selected you to be a member of the commission constituted by said act.

Respectfully,

NATHAN CLIFFORD.
SAM. F. MILLER.
STEPHEN J. FIELD.
W. STRONG.

WASHINGTON, *January* 30, 1877.

The law organizing the commission had designated as members of it four of the justices of the Supreme Court of the United States, and they were to select the fifth. The Republicans on the Congressional committee which reported the bill held out to the Democrats as an inducement to their acceptance of it the prospect of having Judge David Davis selected as the fifth judge. The four judges named in the act were Justices Clifford and Field, Democrats, and Miller and Strong, Republicans. If they had selected Judge Davis to be the fifth judge they would have selected a man who was entirely independent of party politics. He was a very able and learned constitutional lawyer, and there was no probability that he would be willing to serve on a political body organized outside of the Constitution. Soon after the Electoral Commission bill became a law enough independent Republicans in the Illinois legislature united with the Democratic members and elected Judge Davis to the United States Senate. This furnished him the excuse which he desired for declining the proffered seat upon the Electoral Commission. Mr. Justice Bradley, an able man, but a strong Republican partisan, was selected as the fifth judge.

The Florida case was the first to be referred to the Electoral Commission, the law providing that the certificates of the electoral votes should be canvassed in the alphabetical order of the states. There were two important questions involved in this case: First, the honesty, the rightfulness, and the legality of the action of the Returning Board in returning as duly chosen, and the governor in certifying, the appointment of the Republican electors for that state; and, second, as to whether Frederick C. Humphreys, one of the electors so returned and certified, was, under the Constitution, eligible, he being a Federal office-holder at the time, and disqualified by Article II., Section 1, paragraph 2, which says that no "person holding an office of trust or profit under the United States shall be appointed an elector." The commission avoided the first issue by deciding, eight to seven, "that it is not competent, under the Constitution and the law, as it existed at the date of the passage of said act, to go into evidence *aliunde* the papers opened by the president of the Senate in the presence of the two houses to prove that other persons than those regularly certified to by the governor of the state of Florida, in and accord-

ing to the determination and declaration of their appointment by the Board of State Canvassers of said state prior to the time required for the performance of their duties, had been appointed electors, or by counter-proof to show that they had not, and that all proceedings of the courts or acts of the legislature or of the executive of Florida subsequent to the casting of the votes of the electors on the prescribed day are inadmissible for any such purpose."

Now witness the self-stultification of the commission in its next solemn utterance:

"As to the objection made to the eligibility of Mr. Humphreys, the commission is of the opinion that, without reference to the question of the effect of the vote of an ineligible elector, the evidence does not show that he held the office of shipping commissioner on the day when the electors were appointed."

First, they decide that it is not competent for them "to go into evidence *aliunde* the papers opened by the president of the Senate in the presence of the two houses"—that is to say, the certificates of the electors; and, second, they admit that they did go into evidence *aliunde* the certificates to prove that Mr. Humphreys was not ineligible!

Again, notice that they leave undecided in the case of Humphreys "the question of the effect of the vote of an ineligible elector"—that is to say, at that time they had not made up their minds whether the exact, unqualified language of the Constitution of the United States, prohibiting the appointment of a "person holding an office of trust or profit under the United States," was a bar to counting an electoral vote or not. In the case of Humphreys they had admitted proof *aliunde* the certificate to show that he was fit, but it was probable that there might be some other cases where the electors might be proved to be ineligible, and, therefore, they reserved that judgment. It required every vote to which the Democrats, on the face of the papers, did not have an incontestable right to elect Hayes and Wheeler, and as they had undertaken the job of counting them in they did not mean to allow a constitutional prohibition to stand in the way of accomplishing their undertaking.

When the Louisiana case was reached the partisan majority of the commission had come to the conclusion that they could not

apply the same principles laid down in the Florida case. Accordingly, they held "that it is not competent to prove that any of said persons so appointed electors as aforesaid held an office of trust or profit under the United States at the time when they were appointed, or that they were ineligible under the laws of the state, or any other matter offered to be proved *aliunde* the said certificate and papers."

In this case they endeavored to be consistent, and were bold enough to decide that it did not matter whether an elector was disqualified by the Constitution of the United States or that of the state of Louisiana, his vote must be counted anyhow.

Let us examine briefly this decision as to eligibility of electors. The Constitution of the United States concedes to the states representatives in the electoral college equal to the number of their senators and representatives in Congress. But at the same time it absolutely prohibits the appointment by the state of senators and representatives or other persons holding offices of trust or profit under the United States. The object of this prohibition is apparent. It was to preserve "the purity and freedom" of the electoral college from any possible contamination from the presence of federal office-holders who might be influenced by their positions under the general government. Moreover, as the fact of the holding of offices of profit or trust under the United States must be notorious, there was no necessity of proving that persons held them. The Congress of the United States is as much bound to take notice of the fact of the appointment of persons to office in a case of this kind as it would be to take notice that George F. Edmunds was a senator of the United States or Joseph P. Bradley an associate justice of the Supreme Court of the United States. The people of the state might elect and the executive authority certify the election of a person who held an office of trust or profit under the United States ignorantly, but, nevertheless, that person so elected and certified, being disqualified, the state must inevitably forfeit that electoral vote. The proposition is plain and simple. The prohibition would not have been inserted in the Constitution if the framers thereof had not intended it to be absolute. They did not insert meaningless or superfluous words in that instrument, much less whole phrases.

Two of the electors returned by the Returning Board as chosen

were disqualified by the Constitution of the United States—A. B. Levissee and O. H. Brewster, the one being United States commissioner, and the other surveyor-general of the United States Land Office for the state of Louisiana. They resigned their office temporarily, absented themselves for a short time from the meeting of the electors, and were substituted for themselves by their colleagues, and then appeared, took part in the proceedings, and voted for Hayes and Wheeler. O. H. Brewster was immediately thereafter reappointed surveyor-general, and Levissee resumed the functions of United States commissioner. It is clear, therefore, that the disqualifications of these men could not be removed by their farce of resigning the federal offices they held. The question was raised before the commission that electors for president and vice-president, being appointed by the states, might be held to be state officers. If they were, then four more of the men returned by the returning boards as electors were disqualified under the constitution of Louisiana, which provides that "no person shall at the time hold more than one office." Kellogg was *de facto* governor of the state; Peter Josephs, J. Henri Burch, and Morris Marks were also officers of the state.

The Senate had a majority of Republican members, and the majority in the House was Democratic. It was, or was assumed to be, a foregone conclusion that the House would vote to seat Mr. Tilden, and that the Senate would vote to seat Mr. Hayes. But this afforded no good reason why the two houses should not discharge their constitutional duty of counting the electoral votes, each member of either body deciding all questions that might arise in the counting according to his conscientious convictions, and voting accordingly. Still less did it afford any good reason for constituting a tribunal that was so composed as to represent the two political parties, and devolving on that tribunal the duty and power of performing a function which the Constitution had rested in the two houses.

When the presidential election of 1876 occurred, the Southern States had been recognized as constituent members of the Union for a period of eight years. Their electoral votes were counted when General Grant was declared to have been elected for the term beginning March 4, 1869, and ending March 3, 1873, and

they were counted when he was declared to have been elected for the term commencing March 4, 1873, and ending March 3, 1877. But during those eight years the political condition of those states had admitted of great corruption in nearly all branches of their governments. This was especially the condition of things in Florida, Louisiana, and South Carolina. It was one of the disgraceful consequences of "reconstruction" that the worst elements of society became predominent in public affairs. It will naturally occur to the reader to ask why the three states of Florida, Louisiana, and South Carolina should have been selected as the field of operations by which returning boards were to be influenced in the discharge of their function of counting the popular votes. There were other states in which, according to the published returns on the day following the election, Democratic electors were reported to have been chosen. But Florida, Louisiana, and South Carolina had been longer under the control of the Republican party than any of the other states which had been subjected to the process of "reconstruction." "Carpet-bag government," as the denomination of the Republicans in the South was called, had done its worst, and its effects had lasted longest in the three states above mentioned. When General Grant was elected president for a second term it was very easy for the Republicans to secure the electoral votes of Florida and South Carolina. In consequence of what took place at that time in Louisiana there were two rival sets of electors claiming to have been chosen in that state. When the two houses met for the purpose of counting the electoral votes, they concurred in a resolution that none of the returns reported by the tellers as electoral votes of the state of Louisiana should be counted. If in 1876 it was true, in law and in fact, that Democratic electors had been chosen in Florida, Louisiana, and South Carolina, there were greater facilities for making the contrary result appear to be the true one than there were in other states. In consequence of what was done when the Returning Board in each of those states assembled to count the popular vote and to declare the result, contradictory electoral certificates were forwarded to Washington.

Whatever were the influences exerted by persons who came into the three states from without, the proceedings of the returning boards constitute a chapter which cannot be written without grief

and shame. Although the materials for writing it are ample, it is not necessary that it should be written here. It is only needful for me to show the condition of the electoral certificates of those states respectively when they reached the seat of government, and what the questions were which arose on them in each case. As we have stated, the chief questions involved in the Florida case were as to the correctness of the action of the returning board — of the governor's certificate of the appointment of Republican electors; also, whether Humphreys, one of those electors, was ineligible because of being a Federal office-holder at the time of his appointment, the Constitution forbidding the appointment of any one holding a federal office to be an elector.

From Florida there were three certificates given by different public officers of the state: "Certificate No. 1," signed by N. L. Stearns, governor, on the 6th day of December, 1876, declared that four persons had been chosen electors who were the candidates of the Republican party, and the votes of these four persons as electors were certified by themselves as having been cast for Rutherford B. Hayes, of Ohio, as president, and for William A. Wheeler, of New York, as vice-president. Certificate No. 2, issued on the 6th day of December, 1876, was signed by the attorney-general of the state. It declared that four persons who were the candidates of the Democratic party had been chosen presidential electors for the state of Florida, and these four persons certified that they had voted for Samuel J. Tilden, of the State of New York, as president, and for Thomas A. Hendricks, of Indiana, as vice-president. They also certified that they had applied at the proper time and place to the governor to deliver to them three lists of the names of the electors of the state according to law, and that he had refused. Certificate No. 3 was issued from the executive office on the 26th of January, 1877, and was signed by George F. Drew, who had then become governor, and was countersigned by W. D. Bloxham, secretary of state. The accompanying papers set forth that in a proceeding on the part of the state of Florida, by information in the nature of a *quo warranto*, wherein the said four Democratic electors were relators and the four Republican electors were respondents, the Circuit

Court of the state for the Second Judicial Circuit, after full consideration of the law and the proofs produced on behalf of the parties respectively, by its judgment determined that the relators were, at the election held on the 7th of November, 1876, as shown by the returns, in fact and law, elected such electors as against the respondents and all other persons. Wherefore, and also in pursuance of an act of the legislature entitled "An Act to declare and establish the appointment by the State of Florida of electors of President and Vice-President of the United States, approved January 26, 1877," Governor Drew certified the election of the four persons who gave their votes to Mr. Tilden and Mr. Hendricks. These papers were also accompanied by a certificate of the Board of State Canvassers, giving the whole number of votes cast for presidential electors in all the counties of the state, the result of which was that the Tilden and Hendricks electors had been chosen.

In the case of South Carolina there were questions whether any lawful appointment of presidential electors was made at the election on the 7th day of November, 1876. Thus one question was whether a free choice by the people of presidential electors was not prevented by detachments of troops of the army of the United States at or near polling places in various parts of the state, by whose presence and interference qualified voters of the state were deprived of the right of suffrage. Another question was whether qualified voters of the state were not deprived of the right of suffrage by the unlawful action and interference of deputy marshals of the United States, stationed at the several polling places, and acting under orders from the Department of Justice. There were also questions relating to the honesty and legality of the action of the Returning Board.

In the Louisiana case two of the electors returned by the Returning Board as chosen were disqualified under the Constitution of the United States; one of them being United States commissioner, and the other surveyor-general of the United States Land Office for the State of Louisiana. They resigned their offices temporarily, remained out of the meetings of the electors for a short time, were then substituted for themselves by their col-

leagues, appeared, took part in the proceedings, and voted for Hayes and Wheeler. They were immediately thereafter reappointed to their respective federal offices.[1]

Presidential electors are undoubtedly officers of the state. For this reason four more of the men returned by the Returning Board as electors were disqualified under the constitution of Louisiana, which provided that no person shall at the same time hold more than one office. There was also, in the Louisiana case, a question whether the state-election law creating the Returning Board was in conflict with the constitution of the state. So, also, the conduct of the Returning Board in counting the popular votes was in question, and there was much evidence tending to show fraud. The returning boards were left alone, excepting in unofficial and individual assertions that there was danger of some cheating or some violence on the part of the Democrats of those states. In all the three states the entire machinery for collecting and certifying the returns of the election was in the hands of the Republican party. Although the members of the returning boards were capable of being corrupted by Democratic influences, they were far more likely to be corrupted by the influence of men with whom they were in political sympathy, and from whom they could expect rewards.

I pass now to the first suggestion of the plan of sending prominent men from other states, who became known in the political language of the day as "visiting statesmen." However high might be the personal or political standing of the men who would be selected for the purpose of repairing to Florida,

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[1] During the count of the electoral votes in 1837 the question of the eligibility of electors was considered by a Senate committee composed of Henry Clay, Silas Wright, and Felix Grundy, who reported that "The committee are of opinion that the second section of the second article of the Constitution, which declares that 'no senator or representative or person holding an office of trust or profit under the United States shall be appointed an elector,' ought to be carried in its whole spirit into rigid execution. . . . This provision of the Constitution, it is believed, excludes and disqualifies deputy postmasters from the *appointment* of electors, and the disqualification relates to the *time of appointment;* and that a resignation of the office of deputy postmaster after his appointment as elector *would not entitle him to vote as elector under the Constitution.*—Gibson, A Political Crime, p. 43.

Louisiana, and South Carolina, and of watching the proceedings of the returning boards, it was a mistake to send citizens of other states. Mr. W. E. Chandler contemplated sending Republicans only. His professed object was to prevent the Democrats from "wresting" the electoral votes of the three states from his party, and for this purpose he did not wish to have Democrats become "visiting statesmen." Action for this purpose was, however, taken by the National Democratic Committee. The chairman of that committee issued an invitation to certain prominent Democrats twenty-four hours before President Grant expressed the hope that representative and fair men of both parties would go. In making himself a patron of the "visiting statesmen" plan, General Grant had the sagacity to perceive that it would be unseemly for him to invite Republicans alone. He lent the weight of his official and personal character to the plan, taking care, however, to suggest that both parties send representative men. Singularly enough, he contrived to make his suggestion reach the public in an official order which he issued to have troops sent into the three states. There were thus united troops of the United States and "visiting statesmen" to surround boards of state officers, in order to secure a fair count of the popular votes actually cast. The troops were to be present in order to protect the returning boards from any violence or intimidation. The "visiting statesmen" of the two parties were to watch the proceedings, and to see that they were fairly conducted. This was a kind of interference in the public action of certain states for which there was no warrant whatever. There was no ground for the assumption that the ballots would not be fairly counted if the registered voters were free from interference on the part of those who were not voters. On the day after the election it was reported and believed that Tilden electors had been chosen in New Jersey, New York, and North Carolina. If, on any pretext, or by any contrivance, representative men of the Democratic party had gotten up a charge that the Republicans in these states were about to "wrest" from them the electoral votes by fraudulent manipulation of the returning boards, and the president of the United States had been asked to send troops, and to invite "visiting statesmen," citizens of other states,

to go into New Jersey, New York, and North Carolina, to secure an honest count of the popular votes actually cast, public opinion everywhere would have revolted against such an interference. Presidential electors are officers of a state. The ascertainment of the persons in any state who had been chosen by its people to cast their votes for a president and a vice-president of the United States is a matter entirely in the hands of state authorities. Like all other state elections, these elections of presidential electors are regulated exclusively by the state laws. No branch of the federal government is authorized to interfere with these elections, or with the mode of ascertaining the results. No law of the United States had ever been passed which had authorized the federal executive to take measures to secure an honest count of the popular votes actually cast. That is exclusively the function of the state officers or boards appointed under state laws to discharge the duty. If there is danger of popular violence being exerted to overawe the state authorities, or to prevent the peaceable discharge of their functions, it is like any other case of "domestic violence." On application of the state legislature, or of the state executive when the legislature cannot be convened, the federal government can protect the state against domestic violence.[1] It is not for the president of the United States to act upon rumors put in circulation by irresponsible persons. He can only act upon an official application made to him by the state authorities. Mr. W. E. Chandler was thus the author of the "visiting statesmen" plan of operations. President Grant became its patron, and exerted his influence to carry it out. He added to it, however, something that Mr. Chandler did not contemplate. Mr. Chandler did not design to have any but Republicans go into the three states. What he was aiming at was to prevent the Democrats of those states from "wresting" the electoral votes of states away from the Republicans. For this purpose he wished to have representative and prominent men of his own party go into those states and operate with the returning boards, so as to secure the electoral votes of those states for Hayes and Wheeler. President Grant, although willing to support the "visiting states-

[1] The Constitution, Art. IV. § 4.

men" plan, was astute enough to see the stupidity of sending Republicans only, as had been suggested by W. E. Chandler; and he so expressed himself in his despatch to General Sherman, on November 10th, ordering troops to be sent. He said that "It is to be hoped that representative and fair men of *both* parties will go."

Such an interference from without was entirely improper and unlawful. The professed object of the visiting statesmen was to secure "an honest count," but the very proceeding itself was calculated to make the returning boards feel that an honest count meant the return of such electors as they might agree to return without any honest regard for the popular votes. The visiting statesmen, both Republican and Democratic, appeared before the respective returning boards and contested the returns of the popular votes. This was a matter with which no one outside of the respective states should ever have interfered. The result was, in each of the three states, that Republican electors were declared to have been chosen, and at the same time contradictory certificates of the electors chosen were forwarded to Washington.

I must now speak with reluctance on a painful part of this subject. Whether Mr. Hayes was directly or indirectly represented before either of the returning boards, it is certain that promises were made in his behalf by persons who were well understood to be acting by his authority. Some will be mentioned: McLin, secretary of state and ex-officio member of the Returning Board of Florida, testified before the Potter Committee as follows: "Looking back now to that time" (of the canvass), "I feel that there was a combination of influences that must have operated most powerfully in blinding my judgment and swaying my action." What the "combination of influences" were he in part disclosed: "I was shown numerous telegrams, addressed to Governor Stearns and others, from the trusted leaders of the Republican party in the North, insisting that the salvation of the country depended upon the vote of Florida being cast for Hayes. These telegrams also gave assurances of the forthcoming of money, and troops if necessary, in securing the victory for Mr. Hayes. Following these telegrams, trusted Northern Republicans, party leaders, and personal friends of Mr. Hayes, arrived in Florida as rapidly as the railroads could bring them. I was sur-

rounded by these men, who were ardent Republicans, and especially by friends of Governor Hayes. One gentleman particularly—Governor Noyes, of Ohio—was understood to represent him, and speak with the authority of a warm personal friend, commissioned with power to act in his behalf. These men referred to the general distraction of the country should Mr. Tilden be elected, the intense anxiety of the Republican party of the North, and their full sympathy with us. I cannot say how far my action may have been influenced by the intense excitement that prevailed around me, or how far my partisan zeal may have led me into error; neither can I say how far my course was influenced by the promises made by Governor Noyes that if Mr. Hayes became president I should be rewarded. Certainly their influences must have had a strong control over my judgment and action."

Q. "Now, sir, state to the committee, if you please, what promises these visiting statesmen from the North made to the Republican leaders and the Returning Board if the state should go for Mr. Hayes?"

A. "Well, General Wallace told me on several occasions that if Mr. Hayes should be elected that the members of the Returning Board should be taken care of, and no doubt about that; that Governor Noyes represented Mr. Hayes, and spoke for him and was in favor of it. Then, on one occasion, William E. Chandler came to me and stated that he didn't like to say it to me, but he would say it to me, and he spoke for General Wallace also, that if the state went and was canvassed for Mr. Hayes that the members of the Returning Board—at least, he referred to a majority of the board, Dr. Cowgill and myself—would be well taken care of, and there would be no doubt of it. He said he was authorized to say that."

McLin further testified that Dr. Cowgill told him that in March, 1877, he was in Washington and saw Hayes frequently; "that he was received very kindly by the president, and given free admission to the White House at all times; and that he had expressed himself as being under great obligations to him and me in the canvass, and that he felt not only under political obligations, but personal obligations that he would certainly pay at an early day."

Nearly thirty of those persons who were most active in securing the return of Republican Electors in Florida, Louisiana, and South Carolina by the returning boards were afterwards appointed to offices of trust and profit by the administration which was brought into power by means of their "returns."

William E. Chandler, who came to the rescue on the morning of Wednesday, November 8, 1876, and re-encouraged the demoralized National Committee, conceived the plan of counting Hayes in, organized the conspirators, and left the same day for Florida to execute a part of the hazardous undertaking, and did his work thoroughly well, but became disgusted with the fraudulent administration when it abandoned Packard in Louisiana and Chamberlain in South Carolina, and, not being promptly rewarded for his services, attacked Hayes, and proved that by deserting the Louisiana and South Carolina carpet-baggers he thereby acknowledged to the world that he had not been elected president.

Francis C. Barlow, the one "visiting statesman" who was troubled with a conscience, and endeavored to fulfil the duties to which he had been invited by the President of the United States, in accordance with sentiments expressed by the chief executive of the nation, was not rewarded with any office, but was bitterly assailed for his alleged betrayal of his party.

NOTE.—The preceding thirteen chapters are all of the proposed second volume available for publication. It will be observed that they do not include several important topics named in the prospectus quoted in the Preface. The editor does not regard it as within his present duty to attempt to supply the missing chapters; to do so would savor of presumption. The "Notes" in the Appendix will, however, contain some brief comments relating to the omitted topics, or some of them.—J. C. C.

Mr. Curtis proposed to write chapters under the following titles, but died without accomplishing that purpose: [1]

CHAPTER XIV.

IMPEACHMENT OF PRESIDENT JOHNSON.

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[1] See Notes, Appendix.

CHAPTER XV.

JUDICIAL CONSTRUCTION OF THIRTEENTH, FOURTEENTH, AND FIFTEENTH AMENDMENTS.

CHAPTER XVI.

LINCOLN'S PROCLAMATION OF EMANCIPATION NOT AUTHORIZED BY THE CONSTITUTION, UNLESS AS A WAR-MEASURE.

CHAPTER XVII.

THE SUSPENSION OF HABEAS CORPUS.

CHAPTER XVIII.

CONCLUSIONS.

APPENDIX.

SOME PROCEEDINGS IN THE CONTINENTAL CONGRESS.

TUESDAY, SEPTEMBER 27, 1774, A. M.

The Congress met according to adjournment, and resuming the consideration of the means most proper to be used for a restoration of *American* rights,

Resolved unanimously, That from and after the first day of *December* next, there be no importation into *British America* from *Great Britain* or *Ireland*, of any goods, wares, or merchandises whatsoever, or from any other place of any such goods, wares, or merchandises, as shall have been exported from *Great Britain* or *Ireland*, and that no such goods, wares, or merchandises, imported after the said first day of *December* next, be used or purchased.

Adjourned till to-morrow.

THURSDAY, OCTOBER 20, 1774.

The Association being copied, was read, and signed at the table, and is as follows:

We, his Majesty's most loyal subjects, the delegates of the several colonies of *New Hampshire, Massachusetts Bay, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania*, the three lower counties of *New Castle, Kent*, and *Sussex*, on *Delaware, Maryland, Virginia, North Carolina*, and *South Carolina*, deputed to represent them in a Continental Congress, held in the city of *Philadelphia*, on the fifth day of *September*, 1774, avowing our allegiance to his Majesty; our affection and regard for our fellow-subjects in *Great Britain* and elsewhere; affected with the deepest anxiety and most alarming apprehensions at those grievances and distresses with which his Majesty's *American* subjects are oppressed; and having taken under our most serious deliberation the state of the whole Continent, find that the present unhappy situation of our affairs is occasioned by a ruinous system of Colony Administration, adopted by the *British* Ministry about the year 1763, evidently calculated for enslaving these Colonies, and, with them, the *British* Empire. In prose-

cution of which system, various acts of Parliament have been passed for raising a Revenue in *America*, for depriving the *American* subjects, in many instances, of the constitutional trial by jury, exposing their lives to danger by directing a new and illegal trial beyond the seas for crimes alleged to have been committed in *America;* and in prosecution of the same system, several late, cruel, and oppressive acts have been passed respecting the Town of *Boston* and the *Massachusetts Bay*, and also an act for extending the Province of *Quebec*, so as to border on the western frontiers of these colonies, establishing an arbitrary government therein, and discouraging the settlement of *British* subjects in that wide extended country; thus, by the influence of civil principles and ancient prejudices, to dispose the inhabitants to act with hostility against the free Protestant colonies, whenever a wicked Ministry shall choose so to direct them.

To obtain redress of these grievances, which threaten destruction to the lives, liberty, and property of his Majesty's subjects in *North America*, we are of opinion that a Non-Importation, Non-Consumption, and Non-Exportation Agreement, faithfully adhered to, will prove the most speedy, effectual, and peaceable measure; and, therefore, we do, for ourselves, and the inhabitants of the several Colonies whom we represent, firmly agree and associate, under the sacred ties of virtue, honour, and love of our country, as follows:

1. That from and after the first day of *December* next, we will not import into *British America*, from *Great Britain* or *Ireland*, any goods, wares or merchandises whatsoever, or from any other place any such goods, wares or merchandises as shall have been exported from *Great Britain* or *Ireland;* nor will we, after that day, import any *East India* Tea from any part of the world; nor any molasses, syrups, paneles, coffee, or pimento, from the *British* Plantations, or from *Dominica;* nor wines from *Madeira*, or the *Western Islands;* nor foreign indigo.

2. That we will neither import nor purchase any Slave imported after the first day of *December* next; after which time we will wholly discontinue the Slave Trade, and will neither be concerned in it ourselves, nor will we hire our vessels, nor sell our commodities or manufactures to those who are concerned in it.

3. As a Non-Consumption Agreement, strictly adhered to, will be an effectual security for the observation of the non-importation, we, as above, solemnly agree, and associate, that from this day we will not purchase or use any Tea imported on account of the *East India* Company, or any on which a duty hath been or shall be paid; and from and after the first day of *March* next, we will not purchase or use any *East India* Tea whatsoever; nor will we, nor shall any person for or under us, purchase or use any of those goods, wares or merchandises we have agreed not to import, which we shall know, or have cause to suspect, were imported after the first day of *December*, except such as come under the rules and directions of the tenth article, hereafter mentioned.

4. The earnest desire we have not to injure our fellow-subjects in *Great Britain*, *Ireland*, or the *West Indies*, induces us to suspend a non-exportation until the tenth day of September, 1775; at which time, if the said acts and parts of acts of the *British* Parliament, hereinafter mentioned, are not repealed, we will not, directly or indirectly, export any merchandise or commodity whatsoever to *Great Britain*, *Ireland*, or the *West Indies*, except rice to *Europe*.

5. Such as are merchants, and use the *British* and *Irish* trade, will give orders

as soon as possible to their factors, agents, and correspondents, in *Great Britain* and *Ireland*, not to ship any goods to them, on any pretence whatsoever, as they cannot be received in *America;* and if any merchant residing in *Great Britain* or *Ireland* shall, directly or indirectly, ship any goods, wares or merchandises for *America*, in order to break the said Non-Importation Agreement, or in any manner contravene the same, on such unworthy conduct being well attested, it ought to be made public; and, on the same being so done, we will not from thenceforth have any commercial connection with such merchant.

6. That such as are owners of vessels will give positive orders to their captains, or masters, not to receive on board their vessels any goods prohibited by the said Non-Importation Agreement, on pain of immediate dismission from their service.

7. We will use our utmost endeavors to improve the breed of sheep, and increase their number to the greatest extent; and to that end, we will kill them as sparingly as may be, especially those of the most profitable kind; nor will we export any to the *West Indies* or elsewhere; and those of us who are or may become overstocked with, or can conveniently spare any sheep, will dispose of them to our neighbours, especially to the poorer sort, upon moderate terms.

8. That we will, in our several stations, encourage frugality, economy, and industry, and promote agriculture, arts, and the manufactures of this country, especially that of wool; and will discountenance and discourage every species of extravagance and dissipation, especially all horse-racing, and all kinds of gaming, cock-fighting, exhibitions of plays, shows, and other expensive diversions and entertainments; and on the death of any relation or friend, none of us, or any of our families, will go into any further mourning-dress than a black crape or ribbon on the arm or hat for gentlemen, and a black ribbon and necklace for ladies, and we will discontinue the giving of gloves and scarfs at funerals.

9. That such as are vendors of goods or merchandises will not take advantage of the scarcity of goods that may be occasioned by this Association, but will sell the same at the rates we have been respectively accustomed to do for twelve months last past. And if any vendor of goods or merchandises shall sell any such goods on higher terms, or shall, in any manner, or by any device whatsoever, violate or depart from this agreement, no person ought, nor will any of us deal with any such person, or his or her factor or agent, at any time thereafter, for any commodity whatever.

10. In case any merchant, trader, or other person, shall import any goods or merchandise, after the first day of *December*, and before the first day of *February* next, the same ought forthwith, at the election of the owner, to be either reshipped or delivered up to the committee of the county or town wherein they shall be imported, to be stored at the risk of the importer, until the Non-Importation Agreement shall cease, or be sold under the direction of the committee aforesaid; and in the last mentioned case, the owner or owners of such goods shall be reimbursed out of the sales the first cost and charges; the profit, if any, to be applied towards relieving and employing such poor inhabitants of the Town of *Boston* as are immediate sufferers by the *Boston* Port Bill; and a particular account of all goods so returned, stored, or sold, to be inserted in the public papers; and if any goods or merchandises shall be imported after the said first day of

February, the same ought forthwith to be sent back again, without breaking any of the packages thereof.

11. That a committee be chosen in every county, city, and town, by those who are qualified to vote for Representatives in the Legislature, whose business it shall be attentively to observe the conduct of all persons touching this Association; and when it shall be made to appear to the satisfaction of a majority of any such committee, that any person within the limits of their appointment has violated this Association, that such majority do forthwith cause the truth of the case to be published in the Gazette, to the end that all such foes to the rights of *British America* may be publicly known, and universally contemned as the enemies of *American* liberty; and therefore we respectively will break off all dealings with him or her.

12. That the committee of correspondence, in the respective Colonies, do frequently inspect the entries of their custom-houses, and inform each other, from time to time, of the true state thereof, and of every other material circumstance that may occur relative to this Association.

13. That all manufactures of this country be sold at reasonable prices, so that no undue advantage be taken of a future scarcity of goods.

14. And we do further agree and resolve that we will have no trade, commerce, dealings, or intercourse whatsoever with any colony or province in *North America*, which shall not accede to, or which shall hereafter violate this Association, but will hold them as unworthy of the rights of freemen, and as inimical to the liberties of this country.

And we do solemnly bind ourselves and our constituents, under the ties aforesaid, to adhere to this Association until such parts of the several Acts of Parliament passed since the close of the last war, as impose or continue duties on tea, wine, molasses, syrups, paneles, coffee, sugar, pimento, indigo, foreign paper, glass, and painters' colours, imported into *America*, and extend the powers of the Admiralty Courts beyond their ancient limits, deprive the *American* subjects of trial by jury, authorize the judge's certificate to indemnify the prosecutor from damages that he might otherwise be liable to from a trial by his peers, require oppressive security from a claimant of ships or goods seized, before he shall be allowed to defend his property, are repealed. And until that part of the Act of the 12th *George* III., ch. 24, entitled, "An Act for the better securing his Majesty's Dockyards, Magazines, Ships, Ammunition, and Stores," by which any person charged with committing any of the offences therein described, in *America*, may be tried in any shire or county within the realm, is repealed; and until the four acts, passed in the last session of Parliament, viz.: that for stopping the port and blocking up the harbour of *Boston;* that for altering the charter and government of the *Massachusetts Bay*, and that which is entitled "An Act for the better administration of justice," &c.; and that for extending the limits of *Quebec*, &c., are repealed. And we recommend it to the provincial conventions, and to the committees in the respective Colonies, to establish such farther regulations as they may think proper for carrying into execution this Association.

The foregoing Association, being determined upon by the Congress, was ordered to be subscribed by the several members thereof; and thereupon, we have hereunto set our respective names accordingly.

In Congress, *Philadelphia, October* 20, 1774. PEYTON RANDOLPH, *President.*

NEW HAMPSHIRE.

JOHN SULLIVAN, NATHANIEL FOLSOM.

MASSACHUSETTS BAY.

THOMAS CUSHING, JOHN ADAMS,
SAMUEL ADAMS, ROBERT TREAT PAINE.

RHODE ISLAND.

STEPHEN HOPKINS, SAMUEL WARD.

CONNECTICUT.

ELIPHALET DYER, SILAS DEANE.
ROGER SHERMAN,

NEW YORK.

ISAAC LOW, PHILIP LIVINGSTON,
JOHN ALSOP, WILLIAM FLOYD,
JOHN JAY, HENRY WISNER,
JAMES DUANE, SIMON BOERUM.

NEW JERSEY.

JAMES KINSEY, RICHARD SMITH,
WILLIAM LIVINGSTON, JOHN DEHART.
STEPHEN CRANE,

PENNSYLVANIA.

JOSEPH GALLOWAY, EDWARD BIDDLE,
JOHN DICKINSON, JOHN MORTON,
CHARLES HUMPHREYS, GEORGE ROSS.
THOMAS MIFFLIN,

THE LOWER COUNTIES, NEW CASTLE, &c.

CÆSAR RODNEY, GEORGE READ.
THOMAS MCKEAN.

MARYLAND.

MATTHEW TILGHMAN, WILLIAM PACA,
THOMAS JOHNSON, JUN., SAMUEL CHASE.

VIRGINIA.

RICHARD HENRY LEE, RICHARD BLAND,
GEORGE WASHINGTON, BENJAMIN HARRISON,
PATRICK HENRY, JUN., EDMUND PENDLETON.

NORTH CAROLINA.

WILLIAM HOOPER, RICHARD CASWELL.
JOSEPH HEWES,

SOUTH CAROLINA.

HENRY MIDDLETON, JOHN RUTLEDGE,
THOMAS LYNCH, EDWARD RUTLEDGE.
CHRISTOPHER GADSDEN,

IN CONGRESS, OCTOBER 26, 1774.

The Address to the King being engrossed and compared, was signed at the table by all the members:

To the King's Most Excellent Majesty:

MOST GRACIOUS SOVEREIGN:—We, your Majesty's faithful subjects of the Colonies of *New Hampshire, Massachusetts Bay, Rhode Island* and *Providence Plantations, Connecticut, New York, New Jersey, Pennsylvania,* the Counties of *New Castle, Kent,* and *Sussex* on *Delaware, Maryland, Virginia, North Carolina,* and *South Carolina,* in behalf of ourselves and the inhabitants of those Colonies who have deputed us to represent them in General Congress, by this our humble petition, beg leave to lay our grievances before the Throne.

A standing army has been kept in these Colonies ever since the conclusion of the late war, without the consent of our Assemblies; and this army, with a considerable naval armament, has been employed to enforce the collection of taxes.

The authority of the Commander-in-chief, and under him of the Brigadier-Generals, has, in time of peace, been rendered supreme in all the Civil Governments in America.

The Commander-in-Chief of all your Majesty's forces in *North America* has, in time of peace, been appointed Governor of a Colony.

The charges of usual offices have been greatly increased; and new, expensive, and oppressive offices have been multiplied.

The Judges of Admiralty and Vice-Admiralty Courts are empowered to receive their salaries and fees from the effects condemned by themselves.

The Officers of the Customs are empowered to break open and enter houses, without the authority of any civil magistrate, founded on legal information.

The Judges of Courts of Common Law have been made entirely dependent on one part of the Legislature for their salaries, as well as for the duration of their commissions.

Counsellors, holding their commissions during pleasure, exercise legislative authority.

Humble and reasonable petitions from the representatives of the people, have been fruitless.

The agents of the people have been discountenanced, and Governors have been instructed to prevent the payment of their salaries.

Assemblies have been repeatedly and injuriously dissolved.

Commerce has been burthened with many useless and oppressive restrictions.

By several Acts of Parliament, made in the fourth, fifth, sixth, seventh, and eighth years of your Majesty's reign, duties are imposed on us for the purpose of raising a revenue; and the powers of Admiralty and Vice-Admiralty Courts are extended beyond their ancient limits, whereby our property is taken from us without our consent; the trial by jury, in many civil cases, is abolished; enormous forfeitures are incurred for slight offences; vexatious informers are exempted from paying damages, to which they are justly liable, and oppressive security is required from owners before they are allowed to defend their right.

Both Houses of Parliament have resolved, that Colonists may be tried in *England* for offences alleged to have been committed in *America,* by virtue of a

statute passed in the thirty-fifth year of *Henry* the Eighth, and, in consequence thereof, attempts have been made to enforce that statute.

A statute was passed in the twelfth year of your Majesty's reign, directing that persons charged with committing any offence therein described, in any place out of the realm, may be indicted and tried for the same in any shire or county within the realm, whereby the inhabitants of these Colonies may, in sundry cases, by that statute made capital, be deprived of a trial by their peers of the vicinage.

In the last sessions of Parliament an Act was passed for blocking up the Harbor of *Boston;* another empowering the Governor of the *Massachusetts Bay* to send persons indicted for murder in that province to another Colony, or even to *Great Britain,* for trial, whereby such offenders may escape legal punishment; a third for altering the chartered Constitution of Government in that province; and a fourth for extending the limits of *Quebec,* abolishing the *English* and restoring the *French* laws, whereby great numbers of *British* freemen are subjected to the latter, and establishing an absolute Government and the Roman Catholic religion throughout those vast regions that border on the westerly and northerly boundaries of the free Protestant *English* settlements; and a fifth for the better providing suitable quarters for officers and soldiers in his Majesty's service in *North America.*

To a Sovereign, who glories in the name of *Briton,* the bare recital of these Acts must, we presume, justify the loyal subjects, who fly to the foot of his throne, and implore his clemency for protection against them.

From this destructive system of Colony Administration, adopted since the conclusion of the last war, have flowed those distresses, dangers, fears, and jealousies, that overwhelm your Majesty's dutiful Colonists with affliction; and we defy our most subtle and inveterate enemies to trace the unhappy differences between *Great Britain* and these Colonies from an earlier period, or from other causes than we have assigned. Had they proceeded on our part from a restless levity of temper, unjust impulses of ambition, or artful suggestions of seditious persons, we should merit the opprobrious terms frequently bestowed upon us by those we revere. But so far from promoting innovations, we have only opposed them, and can be charged with no offence, unless it be one to receive injuries and be sensible of them.

Had our Creator been pleased to give us existence in a land of slavery, the sense of our condition might have been mitigated by ignorance and habit. But, thanks be to his adorable goodness, we were born the heirs of freedom, and ever enjoyed our right under the auspices of your royal ancestors, whose family was seated on the *British* Throne to rescue and secure a pious and gallant nation from the Popery and despotism of a superstitious and inexorable tyrant. Your Majesty, we are confident, justly rejoices that your title to the Crown is thus founded on the title of your people to liberty; and, therefore, we doubt not but your royal wisdom must approve the sensibility that teaches your subjects anxiously to guard the blessing they received from Divine Providence, and thereby to prove the performance of that compact which elevated the illustrious House of *Brunswick* to the imperial dignity it now possesses.

The apprehension of being degraded into a state of servitude, from the pre-eminent rank of *English* freemen, while our minds retain the strongest love of lib-

erty, and clearly foresee the miseries preparing for us and our posterity, excites emotions in our breasts which, though we cannot describe, we should not wish to conceal. Feeling as men, and thinking as subjects, in the manner we do, silence would be disloyalty. By giving this faithful information, we do all in our power to promote the great objects of your royal cares, the tranquillity of your Government, and the welfare of your people.

Duty to your Majesty, and regard for the preservation of ourselves and our posterity, the primary obligations of nature and of society command us to entreat your royal attention; and, as your Majesty enjoys the signal distinction of reigning over freemen, we apprehend the language of freemen cannot be displeasing. Your royal indignation, we hope, will rather fall on those designing and dangerous men, who, daringly interposing themselves between your royal person and your faithful subjects, and for several years past incessantly employed to dissolve the bonds of society, by abusing your Majesty's authority, misrepresenting your *American* subjects, and prosecuting the most desperate and irritating projects of oppression, have at length compelled us, by the force of accumulated injuries, too severe to be any longer tolerable, to disturb your Majesty's repose by our complaints.

These sentiments are extorted from hearts that much more willingly would bleed in your Majesty's service. Yet, so greatly have we been misrepresented, that a necessity has been alleged of taking our property from us without our consent, "to defray the charge of the administration of justice, the support of civil government, and the defence, protection, and security of the Colonies." But we beg leave to assure your Majesty that such provision has been and will be made for defraying the two first articles, as has been and shall be judged by the Legislatures of the several Colonies just and suitable to their respective circumstances; and, for the defence, protection, and security of the Colonies, their militias, if properly regulated, as they earnestly desire may immediately be done, would be fully sufficient, at least in times of peace; and, in case of war, your faithful Colonists will be ready and willing, as they ever have been, when constitutionally required, to demonstrate their loyalty to your Majesty, by exerting their most strenuous efforts in granting supplies and raising forces.

Yielding to no *British* subjects in affectionate attachment to your Majesty's person, family, and Government, we too dearly prize the privilege of expressing that attachment by those proofs that are honorable to the Prince who receives them, and to the people who give them, ever to resign it to any body of men upon earth.

Had we been permitted to enjoy, in quiet, the inheritance left us by our forefathers, we should, at this time, have been peaceably, cheerfully, and usefully employed in recommending ourselves, by every testimony of devotion, to your Majesty, and of veneration to the State, from which we derive our origin. But though now exposed to unexpected and unnatural scenes of distress by a contention with that nation, in whose parental guidance, on all important affairs, we have hitherto, with filial reverence, constantly trusted, and therefore can derive no instruction in our present unhappy and perplexing circumstances from any former experience; yet, we doubt not, the purity of our intention and the integrity of our conduct, will justify us at that grand tribunal before which all mankind must submit to judgment.

We ask but for peace, liberty, and safety. We wish not a diminution of the prerogative, nor do we solicit the grant of any new right in our favor. Your royal authority over us, and our connection with *Great Britain*, we shall always carefully and zealously endeavor to support and maintain.

Filled with sentiments of duty to your Majesty, and of affection to our parent state, deeply impressed by our education, and strongly confirmed by our reason, and anxious to evince the sincerity of these dispositions, we present this petition only to obtain redress of grievances, and relief from fears and jealousies, occasioned by the system of statutes and regulations adopted since the close of the late war, for raising a revenue in America, extending the powers of Courts of Admiralty and Vice-Admiralty, trying persons in *Great Britain* for offences alleged to be committed in *America*, affecting the Province of *Massachusetts Bay*, and altering the Government and extending the limits of *Quebec;* by the abolition of which system the harmony between *Great Britain* and these Colonies, so necessary to the happiness of both, and so ardently desired by the latter, and the usual intercourses will be immediately restored. In the magnanimity and justice of your Majesty and Parliament we confide for a redress of our other grievances, trusting that, when the causes of our apprehensions are removed, our future conduct will prove us not unworthy of the regard we have been accustomed in our happier days to enjoy. For, appealing to that Being, who searches thoroughly the hearts of his creatures, we solemnly profess, that our Councils have been influenced by no other motive than a dread of impending destruction.

Permit us then, most gracious Sovereign, in the name of all your faithful people in *America*, with the utmost humility, to implore you, for the honor of Almighty *God*, whose pure religion our enemies are undermining; for your glory, which can be advanced only by rendering your subjects happy, and keeping them united; for the interests of your family depending on an adherence to the principles that unthroned it; for the safety and welfare of your kingdoms and dominions, threatened with almost unavoidable dangers and distresses, that your Majesty, as the loving father of your whole people, connected by the same bands of law, loyalty, faith, and blood, though dwelling in various countries, will not suffer the transcendent relation formed by these ties to be farther violated, in uncertain expectation of effects, that, if attained, never can compensate for the calamities through which they must be gained.

We, therefore, most earnestly beseech your Majesty, that your royal authority and interposition may be used for our relief, and that a gracious answer may be given to this petition.

That your Majesty may enjoy every felicity through a long and glorious reign, over loyal and happy subjects, and that your descendants may inherit your prosperity and dominions till time shall be no more, is, and always will be, our sincere and fervent prayer. HENRY MIDDLETON, *President.*

NEW HAMPSHIRE.

JOHN SULLIVAN, NATHANIEL FOLSOM.

MASSACHUSETTS BAY.

THOMAS CUSHING, JOHN ADAMS,
SAMUEL ADAMS, ROBERT TREAT PAINE.

RHODE ISLAND.

STEPHEN HOPKINS, SAMUEL WARD.

CONNECTICUT.

ELIPHALET DYER, SILAS DEANE.
ROGER SHERMAN,

NEW YORK.

PHILIP LIVINGSTON, JOHN JAY,
JOHN ALSOP, WILLIAM FLOYD,
ISAAC LOW, HENRY WISNER,
JAMES DUANE, SIMON BOERUM.

NEW JERSEY.

WILLIAM LIVINGSTON, STEPHEN CRANE,
JOHN DEHART, RICHARD SMITH.

PENNSYLVANIA.

EDWARD BIDDLE, THOMAS MIFFLIN,
JOSEPH GALLOWAY, GEORGE ROSS,
JOHN DICKINSON, CHARLES HUMPHREYS.
JOHN MORTON,

DELAWARE GOVERNMENT.

CÆSAR RODNEY, GEORGE READ.
THOMAS MCKEAN,

MARYLAND.

MATTHEW TILGHMAN, WILLIAM PACA,
THOMAS JOHNSON, JUN., SAMUEL CHASE.

VIRGINIA.

RICHARD HENRY LEE, EDMUND PENDLETON,
PATRICK HENRY, RICHARD BLAND,
GEORGE WASHINGTON, BENJAMIN HARRISON.

NORTH CAROLINA.

WILLIAM HOOPER, RICHARD CASWELL.
JOSEPH HEWES,

SOUTH CAROLINA.

THOMAS LYNCH, JOHN RUTLEDGE,
CHRISTOPHER GADSDEN, EDWARD RUTLEDGE.

FRIDAY, JUNE 23, 1775.

. . . . . .

Upon motion,

Resolved, That a committee of five be appointed to draw up a Declaration, to be published by General *Washington*, upon his arrival at the camp before *Boston*.

That the committee consist of the following members, viz.: Mr. *J. Rutledge*, Mr. *W. Livingston*, Mr. *Franklin*, Mr. *Jay*, and Mr *Johnson*.

SATURDAY, JUNE 24, 1775.

. . . . . .

The committee appointed to prepare a Declaration to be published by General *Washington*, upon his arrival at the camp before *Boston*, reported the same, which was read and debated, and referred for further consideration till *Monday* next.

MONDAY, JUNE 26, 1775.

. . . . . .

The Congress then resumed the consideration of the Declaration, and after some debate, the same was recommitted, and Mr. *Dickinson* and Mr. *Jefferson* were added to the committee.

THURSDAY, JULY 6, 1775.

The Congress met according to adjournment.

And resumed the consideration of the Address to the Inhabitants of *Great Britain*, which, after some debate, was recommitted.

The committee, to whom the Declaration was recommitted, brought in the same, which, being read, was taken into consideration, and being debated, by paragraphs, was approved, and is as follows:

A Declaration by the Representatives of the United Colonies of NORTH AMERICA, *now met in Congress at* PHILADELPHIA, *setting forth the causes and necessity of their taking up arms.*

If it was possible for men who exercise their reason to believe that the Divine Author of our existence intended a part of the human race to hold an absolute property in, and an unbounded power over others, marked out by his infinite goodness and wisdom, as the objects of a legal domination never rightfully resistible, however severe and oppressive, the inhabitants of these Colonies might at least require from the Parliament of *Great Britain* some evidence that this dreadful authority over them has been granted to that body. But a reverence for our great Creator, principles of humanity, and the dictates of common-sense, must convince all those who reflect upon the subject that Government was instituted to promote the welfare of mankind, and ought to be administered for the attainment of that end. The Legislature of *Great Britain*, however, stimulated by an inordinate passion for a power, not only unjustifiable, but which they know to be peculiarly reprobated by the very Constitution of that Kingdom, and desperate of success in any mode of contest where regard should be had to truth, law, or right, have at length, deserting those, attempted to effect their cruel and impolitic purpose of enslaving these Colonies by violence, and have thereby rendered it necessary for us to close with their last appeal from reason to arms.

Yet, however blinded that Assembly may be, by their intemperate rage for unlimited domination so to slight justice and the opinion of mankind, we esteem ourselves bound, by obligations of respect to the rest of the world, to make known the justice of our cause.

Our forefathers, inhabitants of the Island of *Great Britain*, left their native land to seek on these shores a residence for civil and religious freedom. At the expense of their blood, at the hazard of their fortunes, without the least charge to the country from which they removed, by unceasing labour, and an unconquerable spirit, they effected settlements in the distant and inhospitable wilds of *America*, then filled with numerous and warlike nations of barbarians. Societies or governments, vested with perfect legislatures, were formed under charters from the Crown, and a harmonious intercourse was established between the Colonies and the Kingdom from which they derived their origin. The mutual benefits of this union became in a short time so extraordinary as to excite astonishment. It is universally confessed that the amazing increase of the wealth, strength, and navigation of the realm arose from this source; and the Minister, who so wisely and successfully directed the measures of *Great Britain* in the late war, publicly declared that these Colonies enabled her to triumph over her enemies. Towards the conclusion of that war, it pleased our Sovereign to make a change in his councils. From that fatal moment the affairs of the *British* Empire began to fall into confusion, and gradually sliding from the summit of glorious prosperity to which they had been advanced by the virtues and abilities of one man, are at length distracted by the convulsions that now shake it to its deepest foundations. The new Ministry finding the brave foes of *Britain*, though frequently defeated, yet still contending, took up the unfortunate idea of granting them a hasty peace, and of then subduing her faithful friends.

These devoted Colonies were judged to be in such a state as to present victories without bloodshed, and all the easy emoluments of statutable plunder. The uninterrupted tenour of their peaceable and respectful behaviour, from the beginning of colonization; their dutiful, zealous, and useful services during the war, though so recently and amply acknowledged in the most honourable manner by his Majesty, by the late King, and by Parliament, could not save them from the meditated innovations. Parliament was influenced to adopt the pernicious project; and assuming a new power over them, have, in the course of eleven years, given such decisive specimens of the spirit and consequences attending this power as to leave no doubt concerning the effects of acquiescence under it. They have undertaken to give and grant our money without our consent, though we have ever exercised an exclusive right to dispose of our own property; statutes have been passed for extending the jurisdiction of Courts of Admiralty and Vice-Admiralty beyond their ancient limits; for depriving us of the accustomed and inestimable privilege of Trial by Jury, in cases affecting both life and property; for suspending the Legislature of one of the Colonies; for interdicting all commerce to the capital of another; and for altering fundamentally the form of Government established by Charter, and secured by Acts of its own Legislature, solemnly confirmed by the Crown; for exempting the "murderers" of Colonists from legal trial, and, in effect, from punishment; for erecting in a neighbouring province, acquired by the joint arms of *Great Britain* and

America, a despotism dangerous to our very existence; and for quartering soldiers upon the Colonists in time of profound peace. It has also been resolved in Parliament that Colonists charged with committing certain offences shall be transported to *England* to be tried.

But why should we enumerate our injuries in detail? By one statute it is declared that Parliament can "of right make laws to bind us in all cases whatsoever." What is to defend us against so enormous, so unlimited a power? Not a single man of those who assume it is chosen by us, or is subject to our control or influence; but, on the contrary, they are all of them exempt from the operation of such laws, and an *American* revenue, if not diverted from the ostensible purposes for which it is raised, would actually lighten their own burdens, in proportion as they increase ours. We saw the misery to which such despotism would reduce us. We, for ten years, incessantly and ineffectually besieged the Throne as supplicants; we reasoned, we remonstrated with Parliament, in the most mild and decent language.

Administration, sensible that we should regard these oppressive measures as freemen ought to do, sent over fleets and armies to enforce them. The indignation of the *Americans* was roused, it is true; but it was the indignation of a virtuous, loyal, and affectionate people. A Congress of Delegates from the United Colonies was assembled at *Philadelphia* on the fifth day of last *September*. We resolved again to offer an humble and dutiful petition to the King, and also addressed our fellow-subjects of *Great Britain*. We have pursued every temperate, every respectful measure; we have even proceeded to break off our commercial intercourse with our fellow-subjects as the last peaceable admonition that our attachment to no nation upon earth should supplant our attachment to liberty. This, we flattered ourselves, was the ultimate step of the controversy; but subsequent events have shown how vain was this hope of finding moderation in our enemies.

Several threatening expressions against the Colonies were inserted in His Majesty's Speech; our petition, though we were told it was a decent one, and that His Majesty had been pleased to receive it graciously, and to promise laying it before his Parliament, was huddled into both Houses among a bundle of *American* papers, and there neglected.

The Lords and Commons, in their address in the month of *February*, said that "a rebellion at that time actually existed within the Province of *Massachusetts Bay;* and that those concerned in it had been countenanced and encouraged by unlawful combinations and engagements entered into by His Majesty's subjects in several of the other Colonies; and, therefore, they besought His Majesty that he would take the most effectual measures to enforce due obedience to the laws and authority of the Supreme Legislature." Soon after, the commercial intercourse of whole Colonies with foreign countries and with each other was cut off by an Act of Parliament; by another, several of them were entirely prohibited from the fisheries in the seas near their coasts, on which they always depended for their sustenance; and large reinforcements of ships and troops were immediately sent over to General *Gage*.

Fruitless were all the entreaties, arguments, and eloquence of an illustrious band of the most distinguished Peers and Commoners, who nobly and strenuously

asserted the justice of our cause, to stay, or even to mitigate, the helpless fury with which these accumulated and unexampled outrages were hurried on. Equally fruitless was the interference of the city of *London*, of *Bristol*, and many other respectable towns, in our favour. Parliament adopted an insidious manœuvre, calculated to divide us, to establish a perpetual auction of taxations, where Colony should bid against Colony, all of them uninformed what ransom would redeem their lives; and thus to extort from us, at the point of the bayonet, the unknown sums that should be sufficient to gratify, if possible to gratify, Ministerial rapacity, with the miserable indulgence left to us of raising, in our own mode, the prescribed tribute. What terms more rigid and humiliating could have been dictated by remorseless victors to conquered enemies? In our circumstances, to accept them would be to deserve them.

Soon after intelligence of these proceedings arrived on this Continent, General *Gage*, who, in the course of the last year, had taken possession of the Town of *Boston*, in the Province of *Massachusetts Bay*, and still occupied it as a garrison, on the 19th day of *April* sent out from that place a large detachment of his army, who made an unprovoked assault on the inhabitants of the said Province, at the Town of *Lexington*, as appears by the affidavits of a great number of persons, some of whom were officers and soldiers of that detachment, murdered eight of the inhabitants, and wounded many others. From thence the troops proceeded in warlike array to the Town of *Concord*, where they set upon another party of the inhabitants of the same province, killing several and wounding more, until compelled to retreat by the country people suddenly assembled to repel this cruel aggression. Hostilities, thus commenced by the *British* troops, have been since prosecuted by them without regard to faith or reputation. The inhabitants of *Boston*, being confined within that town by the General, their Governor, and having, in order to procure their dismission, entered into a treaty with him, it was stipulated by the said inhabitants, having deposited their arms with their own magistrates, should have liberty to depart, taking with them their other effects. They accordingly delivered up their arms; but in open violation of honour, in defiance of the obligation of treaties, which even savage nations esteemed sacred, the Governor ordered the arms deposited as aforesaid, that they might be preserved for their owners, to be seized by a body of soldiers; detained the greatest part of the inhabitants in the town, and compelled the few who were permitted to retire to leave their most valuable effects behind.

By this perfidy wives are separated from their husbands, children from their parents, the aged and the sick from their relations and friends, who wish to attend and comfort them; and those who have been used to live in plenty, and even elegance, are reduced to deplorable distress.

The General, further emulating his Ministerial masters, by a proclamation bearing date on the 12th day of *June*, after venting the grossest falsehoods and calumnies against the good people of these Colonies, proceeds to "declare them all, either by name or description, to be rebels and traitors; to supersede the course of the common law, and instead thereof to publish and order the use and exercise of the law martial." His troops have butchered our countrymen; have wantonly burnt *Charlestown*, besides a considerable number of houses in other places; our ships and vessels are seized; the necessary supplies of provisions are

intercepted, and he is exerting his utmost power to spread destruction and devastation around him.

We have received certain intelligence that General *Carleton*, the Governor of *Canada*, is instigating the people of that province and the *Indians* to fall upon us; and we have but too much reason to apprehend that schemes have been formed to excite domestic enemies against us. In brief, a part of these Colonies now feel, and all of them are sure of feeling, as far as the vengeance of Administration can inflict them, the complicated calamities of fire, sword, and famine. We are reduced to the alternative of choosing an unconditional submission to the tyranny of irritated Ministers, or resistance by force. The latter is our choice. We have counted the cost of this contest, and find nothing so dreadful as voluntary slavery. Honour, justice, and humanity forbid us tamely to surrender that freedom which we received from our gallant ancestors, and which our innocent posterity have a right to receive from us. We cannot endure the infamy and guilt of resigning succeeding generations to that wretchedness which inevitably awaits them if we basely entail hereditary bondage upon them.

Our cause is just. Our union is perfect. Our internal resources are great, and, if necessary, foreign assistance is undoubtedly attainable. We gratefully acknowledge, as single instances of the Divine favour towards us, that His providence would not permit us to be called into this severe controversy until we were grown up to our present strength, had been previously exercised in warlike operations, and possessed of the means of defending ourselves. With hearts fortified with these animating reflections, we most solemnly, before *God* and the world, *declare*, that, exerting the utmost energy of those powers which our beneficent Creator hath graciously bestowed upon us, the arms we have been compelled by our enemies to assume, we will, in defiance of every hazard, with unabating firmness and perseverance, employ for the preservation of our liberties; being, with one mind, resolved to die freemen rather than live slaves.

Lest this Declaration should disquiet the minds of our friends and fellow-subjects in any part of the Empire, we assure them that we mean not to dissolve that union which has so long and so happily subsisted between us, and which we sincerely wish to see restored. Necessity has not yet driven us into that desperate measure, or induced us to excite any other nation to war against them. We have not raised armies with ambitious designs of separating from *Great Britain*, and establishing independent states. We fight not for glory or for conquest. We exhibit to mankind the remarkable spectacle of a people attacked by unprovoked enemies, without any imputation or even suspicion of offence. They boast of their privileges and civilization, and yet proffer no milder conditions than servitude or death.

In our own native land, in defence of the freedom that is our birthright, and which we ever enjoyed till the late violation of it; for the protection of our property, acquired solely by the honest industry of our forefathers and ourselves, against violence actually offered, we have taken up arms. We shall lay them down when hostilities shall cease on the part of the aggressors, and all danger of their being renewed shall be removed, and not before.

With an humble confidence in the mercies of the supreme and impartial Judge and Ruler of the Universe, we most devoutly implore his divine goodness to pro-

tect us happily through this great conflict, to dispose our adversaries to reconciliation, on reasonable terms, and thereby to relieve the Empire from the calamities of civil war.

DECLARATION OF INDEPENDENCE.

A Declaration by the Representatives of the United States of America in Congress Assembled.

[July 4, 1776.]

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

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness. That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed, That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute 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 shewn, that mankind are more disposed to suffer, while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed. But when a long train of abuses and usurpations, pursuing invariably the same Object evinces a design to reduce them under absolute Despotism, it is their right, it is their duty, to throw off such Government, and to provide new Guards for their future security. Such has been the patient sufferance of these Colonies; and such is now the necessity which constrains them to alter their former Systems of Government. The history of the present King of Great Britain is a history of repeated injuries and usurpations, all having in direct object the establishment of an absolute Tyranny over these States. To prove this, let Facts be submitted to a candid world.

He has refused his Assent to Laws, the most wholesome and necessary for the public good.

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

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

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

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

He has refused for a long time, after such dissolutions, to cause others to be elected; whereby the Legislative Powers, incapable of Annihilation, have returned to the People at large for their exercise; the State remaining in the meantime exposed to all the dangers of invasion from without, and convulsions within.

He has endeavored to prevent the Population of these States; for that purpose obstructing the Laws for Naturalization of Foreigners; refusing to pass others to encourage their migrations 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 harrass our People, and eat out their substance.

He has kept among us, in times of peace, Standing Armies without the Consent of our legislature.

He has affected to render the Military independent of and superior to the Civil Power.

He has combined with others to subject us to a jurisdiction foreign to our constitution, and unacknowledged by our laws; giving his Assent to their Acts of pretended Legislation:

For quartering large bodies of armed troops among us:

For protecting them, by a mock trial, from Punishment for any Murders which they should commit on the Inhabitants of these States:

For cutting off our Trade with all parts of the world:

For imposing Taxes on us without our Consent:

For depriving us in many cases, of the benefits of Trial by Jury:

For transporting us beyond Seas to be tried for pretended offenses:

For abolishing the free System of English Laws in a neighboring Province, establishing therein an Arbitrary government, and enlarging its Boundaries so as to render it at once an example and fit instrument for introducing the same absolute rule into these Colonies:

For taking away our Charters, abolishing our most valuable Laws, and altering fundamentally the 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 abdicated Government here, by declaring us out of his Protection and waging War against us.

He has plundered our seas, ravaged our Coasts, burnt our towns, and destroyed the lives of our People.

He is at this time transporting large Armies of foreign Mercenaries to compleat the works of death, desolation and tyranny, already begun with circum-

stances of Cruelty & perfidy scarcely paralleled in the most barbarous ages, and totally unworthy the Head of a civilized nation.

He has constrained our fellow-Citizens taken Captive on the high Seas to bear Arms against their Country, to become the executioners of their friends and Brethren, or to fall themselves by their Hands.

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

In every stage of these Oppressions We have Petitioned for Redress in the most humble terms: Our repeated Petitions have been answered only by repeated injury. A Prince, whose character is thus marked by every act which may define a Tyrant, is unfit to be the ruler of a free People.

Nor have We been wanting in 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 connections 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 Authority of the good People of these Colonies, solemnly PUBLISH and DECLARE, That these United Colonies are, and of Right ought to be FREE AND INDEPENDENT States; that they are Absolved from all Allegiance to the British Crown, and that all political connection between them and the State of Great Britain, is and ought to be totally dissolved; and that as FREE AND INDEPENDENT STATES, they have full Power to levy War, conclude Peace, contract Alliances, establish Commerce, and to do all other Acts and Things which INDEPENDENT STATES may of right do. And for the support of this Declaration, with a firm reliance on the Protection of Divine Providence, We mutually pledge to each other our Lives, our Fortunes and our sacred Honor.

The foregoing declaration was, by order of Congress, engrossed, and signed by the following members:

JOHN HANCOCK.

NEW HAMPSHIRE.

JOSIAH BARTLETT, WM. WHIPPLE, MATTHEW THORNTON.

MASSACHUSETTS BAY.

SAML. ADAMS, JOHN ADAMS, ROBT. TREAT PAINE, ELBRIDGE GERRY.

RHODE ISLAND, ETC.

STEP. HOPKINS, WILLIAM ELLERY.

CONNECTICUT.

ROGER SHERMAN, WM. WILLIAMS,
SAM'EL HUNTINGTON, OLIVER WOLCOTT.

NEW YORK.

WM. FLOYD, FRANS. LEWIS,
PHIL. LIVINGSTON, LEWIS MORRIS.

NEW JERSEY.

RICHD. STOCKTON, JOHN HART,
JNO. WITHERSPOON, ABRA. CLARK.
FRAS. HOPKINSON,

PENNSYLVANIA.

ROBT. MORRIS, JAS. SMITH,
BENJAMIN RUSH, GEO. TAYLOR,
BENJA. FRANKLIN, JAMES WILSON,
JOHN MORTON, GEO. ROSS.
GEO. CLYMER,

DELAWARE.

CESAR RODNEY, THO. M'KEAN.
GEO. READ,

MARYLAND.

SAMUEL CHASE, THOS. STONE,
WM. PACA, CHARLES CARROLL of Carrollton.

VIRGINIA.

GEORGE WYTHE, THOS. NELSON, jr.,
RICHARD HENRY LEE, FRANCIS LIGHTFOOT LEE,
TH JEFFERSON, CARTER BRAXTON.
BENJA. HARRISON,

NORTH CAROLINA.

WM. HOOPER, JOHN PENN.
JOSEPH HEWES,

SOUTH CAROLINA.

EDWARD RUTLEDGE, THOMAS LYNCH, junr.,
THOS. HEYWARD, junr., ARTHUR MIDDLETON.

GEORGIA.

BUTTON GWINNETT, GEO. WALTON.
LYMAN HALL,

Resolved, That copies of the Declaration be sent to the several assemblies, conventions, and committees or councils of safety, and to the several commanding officers of the Continental Troops: That it be PROCLAIMED in each of the UNITED STATES, and at the HEAD of the ARMY. (Journals of Congress, I. 396.)

ARTICLES OF CONFEDERATION.*

To all to whom these Presents shall come, we the undersigned Delegates of the States affixed to our Names, send Greeting.—

Whereas the Delegates of the United States of America in Congress assembled did on the 15th day of November in the year of our Lord 1777, and in the Second Year of the Independence of America agree to certain articles of Confederation and perpetual Union between the States of New Hampshire, Massachusetts-bay, Rhode Island and Providence Plantations, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, and Georgia, in the words following, viz.

"ARTICLES OF CONFEDERATION AND PERPETUAL UNION BETWEEN THE STATES OF NEW HAMPSHIRE, MASSACHUSETTS BAY, RHODE ISLAND AND PROVIDENCE PLANTATIONS, CONNECTICUT, NEW YORK, NEW JERSEY, PENNSYLVANIA, DELAWARE, MARYLAND, VIRGINIA, NORTH CAROLINA, SOUTH CAROLINA, AND GEORGIA.

ARTICLE I. The stile of this confederacy shall be "The United States of America."

ARTICLE II. Each State retains its sovereignty, freedom and independence, and every Power, Jurisdiction and right, which is not by this confederation expressly delegated to the united states in congress assembled.

ARTICLE III. The said states hereby severally enter into a firm league of friendship with each other, for their common defense, the security of their Liberties, and their mutual and general welfare, binding themselves to assist each other, against all force offered to, or attacks made upon them, or any of them, on account of religion, sovereignty, trade, or any other pretense whatever.

ARTICLE IV. The better to secure and perpetuate mutual friendship and intercourse among the people of the different states in this union, the free inhabitants of each of these states, paupers, vagabonds, and fugitives from Justice excepted, shall be entitled to all privileges and immunities of free citizens in the several states; and the people of each state shall have free ingress and regress to and from any other 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 any state, to any other state of which the Owner is an inhabitant; provided, also, that no imposition, duties or restriction shall be laid by any State on the property of the united states, or either of them.

If any person guilty of, or charged with treason, felony, or other high misde-

* This copy of the Articles of Confederation has been compared with the Rolls in the Department of State, and is punctuated and otherwise printed in exact conformity therewith.

meanor in any state, shall flee from Justice, and be found in any of the united states, he shall upon demand of the Governor or executive power, of the state from which he fled, be delivered up and removed to the state having jurisdiction of his offense.

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

ARTICLE V. For the more convenient management of the general interest of the united states, delegates shall be annually appointed in such manner as the legislature of each state shall direct, to meet in congress on the first Monday in November, in every year, with a power reserved to each state, to recal its delegates, or any of them, at any time within the year, and to send others in their stead, for the remainder of the Year.

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

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

In determining questions in the united states, in congress assembled, each state shall have one vote.

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

ARTICLE VI. No state without the Consent of the united states in congress assembled, shall send any embassy to, or receive any embassy from, or enter into any conference, agreement, alliance or treaty with any King prince or state; nor shall any person holding any office of profit or trust under the united states, or any of them, accept of any present, emolument, office or title of any kind whatever from any king, prince or foreign state; nor shall the united states in congress assembled, or any of them, grant any title of nobility.

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

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

No vessels of war shall be kept up in time of peace by any state, except such number only, as shall be deemed necessary by the united states in congress assembled, for the defense of such state, or its trade; nor shall any body of forces be kept up by any state, in time of peace, except such number only, as in the judgment of the united states, in congress assembled, shall be deemed requisite to garrison the forts necessary for the defense of such state; but every state shall always keep up a well regulated and disciplined militia, sufficiently

armed and accoutred, and shall provide and have constantly ready for use, in public stores, a due number of field-pieces and tents, and a proper quantity of arms, ammunition and camp equipage.

No state shall engage in any war without the consent of the united states in congress assembled, unless such state be actually invaded by enemies, or shall have received certain advice of a resolution being formed by some nation of Indians to invade such state, and the danger is so imminent as not to admit of a delay, till the united states in congress assembled can be consulted; nor shall any state grant commissions to any ships or vessels of war, nor letters of marque or reprisal, except it be after a declaration of war by the united states in congress assembled, and then only against the kingdom or state, and the subjects thereof, against which war has been so declared, and under such regulations as shall be established by the united states in congress assembled, unless such state be infested by pirates, in which case vessels of war may be fitted out for that occasion, and kept so long as the danger shall continue, or until the united states in congress assembled shall determine otherwise.

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

ARTICLE VIII. All charges of war, and all other expenses that shall be incurred for the common defense 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.

ARTICLE IX. 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 6th article — of sending and receiving embassadors — entering into treaties and alliances, provided that no treaty of commerce shall be made whereby the legislative power of the respective states shall be restrained from imposing such imposts and duties on foreigners, as their own people are subjected to, or from prohibiting the exportation or importation of any species of goods or commodities whatsoever — of establishing rules for deciding in all cases, what captures on land or water shall be legal, and in what manner prizes taken by land or naval forces in the service of the united states, shall be divided or appropriated — of granting letters of marque and reprisal in times of peace — appointing courts for the trial of piracies and felonies committed on the high seas and establishing courts for receiving and determining finally appeals in all cases of captures, provided that no member of congress shall be appointed a judge of any of the said courts.

The united states in congress assembled shall also be the last resort on

appeal in all disputes and 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 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 favor, affection or hope of reward:" provided also that no state shall be deprived of territory for the benefit of the united states.

All controversies concerning the private right of soil claimed under different grants of two or more states, whose jurisdictions as they may respect such lands, and the states which passed such grants are adjusted, the said grants or either of them being at the same time claimed to have 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.

The united states in congress assembled shall also have the sole and exclusive right and power of regulating the alloy and value of coin struck by their own authority, or by that of the respective states—fixing the standard of weights and measures throughout the united states—regulating the trade

and managing all affairs with the Indians, not members of any of the states, provided that the legislative right of any state within its own limits be not infringed or violated—establishing or regulating post offices from one state to another, throughout all the united states, and exacting such postage on the papers passing thro' the same as may be requisite to defray the expenses of the said office—appointing all officers of the land forces, in the service of the united states, excepting regimental officers—appointing all the officers of the naval forces, and commissioning all officers whatever in the service of the united states—making rules for the government and regulation of the said land and naval forces, and directing their operations.

The united states in congress assembled shall have authority to appoint a committee, to sit in the recess of congress, to be denominated "A Committee of the States," and to consist of one delegate from each state; and to appoint such other committees and civil officers as may be necessary for managing the general affairs of the united states under their direction — to appoint one of their number to preside, provided that no person be allowed to serve in the office of president more than one year in any term of three years; to ascertain the necessary sums of Money to be raised for the service of the united states, and to appropriate and apply the same for defraying the public expenses—to borrow money, or emit bills on the credit of the united states, transmitting every half year to the respective states an account of the sums of money so borrowed or emitted,—to build and equip a navy—to agree upon the number of land forces, and to make requisitions from each state for its quota, in proportion to the number of white inhabitants in such state; which requisitions shall be binding, and thereupon the legislature of each state shall appoint the regimental officers, raise the men and cloath, arm and equip them in a soldierlike manner, at the expense of the united states; and the officers and men so cloathed, 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, cloathed, 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, cloath, arm and equip as many of such extra number as they judge can be safely spared. And the officers and men so cloathed, armed and equipped, shall march to the place appointed, and within the time agreed on by the united states in congress assembled.

The united states in congress assembled shall never engage in a war, nor grant letters of marque and reprisal in time of peace, nor enter into any treaties or alliances, nor coin money, nor regulate the value thereof, nor ascertain the sums and expenses necessary for the defense and welfare of the united states, or any of them, nor emit bills, nor borrow money on the credit of the united states, nor appropriate money, nor agree upon the number of vessels of war, to be built or purchased, or the number of land or sea forces to be raised, nor appoint a commander-in-chief of the army or navy, unless nine states assent to the

same: nor shall a question on any other point, except for adjourning from day to day be determined, unless by the votes of a majority of the united states in congress assembled.

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

ARTICLE X. The committee of the states, or any nine of them, shall be authorized to execute, in the recess of congress, such of the powers of congress as the united states in congress assembled, by the consent of nine states, shall from time to time think expedient to vest them with; provided that no power be delegated to the said committee, for the exercise of which, by the articles of confederation, the voice of nine states in the congress of the united states assembled is requisite.

ARTICLE XI. Canada acceding to this confederation, and joining in the measures of the united states, shall be admitted into, and entitled to all the advantages of this union: but no other colony shall be admitted into the same, unless such admission be agreed to by nine states.

ARTICLE XII. All bills of credit emitted, moneys borrowed and debts contracted by, or under the authority of congress, before the assembling of the united states, in pursuance of the present confederation, shall be deemed and considered as a charge against the united states, for payment and satisfaction whereof the said united states, and the public faith are hereby solemnly pledged.

ARTICLE XIII. Every state shall abide by the determinations of the united states in congress assembled, on all questions which by this confederation are submitted to them. And the Articles of this confederation shall be inviolably observed by every state, and the union shall be perpetual; nor shall any alteration at any time hereafter be made in any of them; unless such alteration be agreed to in a congress of the united states, and be afterwards confirmed by the legislatures of every state.

And whereas it hath pleased the Great Governor of the World to incline the hearts of the legislatures we respectively represent in congress, to approve of, and to authorize us to ratify the said articles of confederation and perpetual union. Know Ye that we the undersigned delegates, by virtue of the power and authority to us given for that purpose, do by these presents, in the name and in behalf of our respective constituents, 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 determinations of the united states in congress assembled, on all questions; which by the said confederation are submitted to them. And that the articles thereof

shall be inviolably observed by the states we respectively represent, and that the union shall be perpetual.

In witness whereof we have hereunto set our hands in Congress. Done at Philadelphia in the state of Pennsylvania the 9th Day of July in the Year of our Lord, 1778, and in the 3d year of the Independence of America.

On the part and behalf of the State of New Hampshire.

JOSIAH BARTLETT, JOHN WENTWORTH, JUN. August 8, 1778.

On the part and behalf of the State of Massachusetts Bay.

JOHN HANCOCK, FRANCIS DANA,
SAMUEL ADAMS, JAMES LOVELL,
ELBRIDGE GERRY, SAMUEL HOLTEN.

On the part and in behalf of the State of Rhode Island and Providence Plantations.

WILLIAM ELLERY, JOHN COLLINS.
HENRY MARCHANT,

On the part and behalf of the State of Connecticut.

ROGER SHERMAN, TITUS HOSMER,
SAMUEL HUNTINGTON, ANDREW ADAM.
OLIVER WOLCOTT,

On the part and behalf of the State of New York.

JAS DUANE, WILLIAM DUER,
FRAS LEWIS, GOUVR MORRIS.

On the part and in behalf of the State of New Jersey.

JNO WITHERSPOON, NATHL SCUDDER, Nov. 26, 1778.

On the part and behalf of the State of Pennsylvania.

ROBT. MORRIS, WILLIAM CLINGAN,
DANIEL ROBERDEAU, JOSEPH REED, July 22nd, 1778.
JONA BAYARD SMITH,

On the part and behalf of the State of Delaware.

THO. M'KEAN, Feb. 12, 1779, NICHOLAS VAN DYKE.
JOHN DICKINSON, May 5, 1779,

On the part and behalf of the State of Maryland.

JOHN HANSON, March 1, 1781, DANIEL CARROLL, March 1, 1781.

On the part and behalf of the State of Virginia.

RICHARD HENRY LEE, JNO HARVIE,
JOHN BANISTER, FRANCIS LIGHTFOOT LEE.
THOMAS ADAMS,

On the part and behalf of the State of North Carolina.

JOHN PENN, July 21, 1778, JNO. WILLIAMS.
CORNS. HARNETT,

On the part and behalf of the State of South Carolina.

HENRY LAURENS, RICHARD HUTSON,
WILLIAM HENRY DRAYTON, THOS. HEYWARD, JUN.
JNO MATHEWS,

On the part and behalf of the State of Georgia.

JNO WALTON, July 24th, 1778, EDWD. LANGWORTHY.
EDWD TELFAIR,

ORDINANCE OF 1787.

AN ORDINANCE FOR THE GOVERNMENT OF THE TERRITORY OF THE UNITED STATES NORTHWEST OF THE RIVER OHIO.

[IN CONGRESS, JULY 13, 1787.]

Be it ordained by the United States in Congress assembled, That the said Territory, for the purposes of temporary government, be one district; subject, however, to be divided into two districts, as future circumstances may, in the opinion of Congress, make it expedient.

Be it ordained by the authority aforesaid, That the estates both of resident and non-resident proprietors in the said Territory, dying intestate, shall descend to and be distributed among their children and the descendants of a deceased child in equal parts; the descendants of a deceased child or grandchild to take the share of their deceased parent in equal parts among them; and where there shall be no children or descendants, then in equal parts to the next of kin, in equal degree; and among collaterals, the children of a deceased brother or sister of the intestate shall have in equal parts among them their deceased parents' share; and there shall in no case be a distinction between kindred of the whole and half blood; saving in all cases to the widow of the intestate her third part of the real estate for life, and one-third part of the personal estate; and this law relative to descents and dower shall remain in full force until altered by the legislature of the district. And until the governor and judges shall adopt laws as hereinafter mentioned, estates in the said Territory may be devised or bequeathed by wills in writing, signed and sealed by him or her in whom the estate may be, (being of full age,) and attested by three witnesses; and real estate may be conveyed by lease or release, or bargain and sale, signed, sealed, and delivered by the person, being of full age, in whom the estate may be, and attested by two witnesses, provided such wills be duly proved, and such conveyances be acknowledged, or the execution thereof duly proved, and be recorded within one year after proper magistrates, courts, and registers shall be appointed for that purpose; and personal

property may be transferred by delivery, saving, however, to the French and Canadian inhabitants, and other settlers of the Kaskaskies, Saint Vincent's, and the neighboring villages, who have hitherto professed themselves citizens of Virginia, their laws and customs now in force among them relative to the descent and conveyance of property.

Be it ordained by the authority aforesaid, That there shall be appointed from time to time, by Congress, a governor, whose commission shall continue in force for the term of three years, unless sooner revoked by Congress; he shall reside in the district, and have a freehold estate therein, in one thousand acres of land, while in the exercise of his office.

There shall be appointed from time to time, by Congress, a secretary, whose commission shall continue in force for four years, unless sooner revoked; he shall reside in the district, and have a freehold estate therein, in five hundred acres of land, while in the exercise of his office. It shall be his duty to keep and preserve the acts and laws passed by the Legislature, and the public records of the district, and the proceedings of the governor in his executive department, and transmit authentic copies of such acts and proceedings every six months to the secretary of Congress. There shall also be appointed a court, to consist of three judges, any two of whom to form a court, who shall have a common-law jurisdiction, and reside in the district, and have each therein a freehold estate in five hundred acres of land, while in the exercise of their offices; and their commissions shall continue in force during good behavior.

The governor and judges, or a majority of them, shall adopt and publish in the district such laws of the original States, criminal and civil, as may be necessary and best suited to the circumstances of the district, and report them to Congress from time to time, which laws shall be in force in the district until the organization of the General Assembly therein, unless disapproved of by Congress; but afterwards, the Legislature shall have authority to alter them as they shall think fit.

The governor, for the time being, shall be commander-in-chief of the militia, appoint and commission all officers in the same below the rank of general officers; all general officers shall be appointed and commissioned by Congress.

Previous to the organization of the General Assembly, the governor shall appoint such magistrates and other civil officers, in each county or township, as he shall find necessary for the preservation of the peace and good order in the same. After the General Assembly shall be organized, the powers and duties of magistrates and other civil officers shall be regulated and defined by the said Assembly; but all magistrates and other civil officers, not herein otherwise directed, shall, during the continuance of this temporary government, be appointed by the governor.

For the prevention of crimes and injuries, the laws to be adopted or made shall have force in all parts of the district, and for the execution of process, criminal and civil, the governor shall make proper divisions thereof; and he shall proceed from time to time, as circumstances may require, to lay out the parts of the district in which the Indian titles shall have been extinguished into counties and townships, subject, however, to such alterations as may thereafter be made by the Legislature.

So soon as there shall be five thousand free male inhabitants, of full age, in the district, upon giving proof thereof to the governor, they shall receive authority, with time and place, to elect representatives from their counties or townships, to represent them in the General Assembly; provided, that for every five hundred free male inhabitants, there shall be one representative, and so on progressively with the number of free male inhabitants shall the right of representation increase, until the number of representatives shall amount to twenty-five, after which the number and proportion of representatives shall be regulated by the legislature: provided, that no person be eligible or qualified to act as a representative unless he shall have been a citizen of one of the United States three years, and be a resident in the district, or unless he shall have resided in the district three years, and in either case shall likewise hold in his own right, in fee-simple, two hundred acres of land within the same: Provided also that a freehold in fifty acres of land in the district, having been a citizen of one of the States, and being resident in the district, or the like freehold and two years' residence in the district, shall be necessary to qualify a man as an elector of a representative.

The representatives thus elected shall serve for the term of two years, and, in case of the death of a representative, or removal from office, the governor shall issue a writ to the county or township for which he was a member to elect another in his stead, to serve for the residue of the term.

The General Assembly, or Legislature, shall consist of the governor, legislative council, and a house of representatives. The legislative council shall consist of five members, to continue in office five years, unless sooner removed by Congress, any three of whom to be a quorum, and the members of the council shall be nominated and appointed in the following manner, to wit: As soon as representatives shall be elected, the governor shall appoint a time and place for them to meet together, and, when met, they shall nominate ten persons, residents in the district, and each possessed of a freehold in five hundred acres of land, and return their names to Congress; five of whom Congress shall appoint and commission to serve as aforesaid; and whenever a vacancy shall happen in the council, by death or removal from office, the house of representatives shall nominate two persons, qualified as aforesaid, for each vacancy, and return their names to Congress; one of whom Congress shall appoint and commission for the residue of the term, and every five years, four months at least before the expiration of the time of service of the members of the council, the said house shall nominate ten persons, qualified as aforesaid, and return their names to Congress, five of whom Congress shall appoint and commission to serve as members of the council five years, unless sooner removed. And the governor, legislative council, and house of representatives, shall have authority to make laws, in all cases, for the good government of the district, not repugnant to the principles and articles in this ordinance established and declared. And all bills, having passed by a majority in the house, and by a majority in the council, shall be referred to the governor for his assent: but no bill or legislative act whatever, shall be of any force without his assent. The governor shall have power to convene, prorogue, and dissolve the General Assembly, when in his opinion it shall be expedient.

The governor, judges, legislative council, secretary, and such other officers as Congress shall appoint in the district, shall take an oath or affirmation of fidelity

and of office; the governor before the president of Congress; and all other officers before the governor. As soon as a Legislature shall be formed in the district, the council and house assembled, in one room, shall have authority, by joint ballot, to elect a delegate to Congress, who shall have a seat in Congress, with a right of debating, but not of voting during this temporary government.

And for extending the fundamental principles of civil and religious liberty, which form the basis whereon these republics, their laws, and constitutions are erected; to fix and establish those principles as the basis of all laws, constitutions, and governments, which forever hereafter shall be formed in the said Territory; to provide, also, for the establishment of States, and permanent government therein, and for their admission to a share in the federal councils on an equal footing with the original States, at as early periods as may be consistent with the general interest:

It is hereby ordained and declared, by the authority aforesaid, That the following articles shall be considered as articles of compact, between the original States and the people and States in the said territory, and forever remain unalterable, unless by common consent, to wit:

ART. 1. No person, demeaning himself in a peaceable and orderly manner, shall ever be molested on account of his mode of worship or religious sentiments, in the said Territory.

ART. 2. The inhabitants of the said Territory shall always be entitled to the benefits of the writ of habeas corpus, and of the trial by jury; of a proportionate representation of the people in the Legislature, and of judicial proceedings according to the course of the common law. All persons shall be bailable, unless for capital offenses, where the proof shall be evident, or the presumption great. All fines shall be moderate, and no cruel or unusual punishments shall be inflicted. No man shall be deprived of his liberty or property, but by the judgment of his peers, or the law of the land, and should the public exigencies make it necessary, for the common preservation, to take any person's property, or to demand his particular services, full compensation shall be made for the same. And, in the just preservation of rights and property, it is understood and declared, that no law ought ever to be made, or have force in the said territory, that shall, in any manner whatever, interfere with, or affect private contracts or engagements, bona fide, and without fraud, previously formed.

ART. 3. Religion, morality, and knowledge, being necessary to good government, and the happiness of mankind, schools and the means of education shall forever be encouraged. The utmost good faith shall always be observed toward the Indians; their lands and property shall never be taken from them without their consent; and in their property, rights, and liberty, they never shall be invaded or disturbed, unless in just and lawful wars authorized by Congress; but laws founded in justice and humanity shall, from time to time, be made, for preventing wrongs being done to them, and for preserving peace and friendship with them.

ART. 4. The said territory, and the States which may be formed therein, shall forever remain a part of this confederacy of the United States of America, subject to the Articles of Confederation, and to such alterations therein as shall be constitutionally made; and to all the acts and ordinances of the United States, in

Congress assembled, conformable thereto. The inhabitants and settlers in the said territory shall be subject to pay a part of the federal debts, contracted or to be contracted, and a proportional part of the expenses of government, to be apportioned on them by Congress, according to the same common rule and measure by which apportionments thereof shall be made on the other States; and the taxes for paying their proportion shall be laid and levied by the authority and direction of legislatures of the district or districts, or new States, as in the original States, within the time agreed upon by the United States, in Congress assembled. The legislatures of those districts, or new States, shall never interfere with the primary disposal of the soil by the United States, in Congress assembled, nor with any regulations Congress may find necessary, for securing the title in such soil, to the bona fide purchasers. No tax shall be imposed on lands, the property of the United States; and, in no case shall non-resident proprietors be taxed higher than residents. The navigable waters leading into the Mississippi and St. Lawrence, and the carrying places between the same, shall be common highways, and forever free, as well to the inhabitants of the said territory as to the citizens of the United States, and those of any other States that may be admitted into the Confederacy, without any tax, impost or duty therefor.

Sands *v.* Manistee River Imp. Co., 123 U. S., 288.

ART. 5. There shall be formed in the said territory not less than three, nor more than five States; and the boundaries of the States, as soon as Virginia shall alter her act of cession, and consent to the same, shall become fixed and established as follows, to wit: the western State in the said territory, shall be bounded by the Mississippi, the Ohio, and Wabash rivers; a direct line drawn from the Wabash and Post Vincents, due north, to the territorial line between the United States and Canada; and by the said territorial line to the Lake of the Woods and Mississippi. The middle States shall be bounded by the said direct line, the Wabash, from Post Vincents to the Ohio, by the Ohio, by a direct line drawn due north from the mouth of the Great Miami to the said territorial line, and by the said territorial line. The eastern State shall be bounded by the last mentioned direct line, the Ohio, Pennsylvania, and the said territorial line; provided, however, and it is further understood and declared, that the boundaries of these three States shall be subject so far to be altered, that, if Congress shall hereafter find it expedient, they shall have authority to form one or two States in that part of the said territory which lies north of an east and west line drawn through the southerly bend or extreme of Lake Michigan. And whenever any of the said States shall have sixty thousand free inhabitants therein, such State shall be admitted, by its delegates, into the Congress of the United States, on an equal footing with the original States, in all respects whatever; and shall be at liberty to form a permanent constitution and State government; provided the constitution and government, so to be formed, shall be republican, and in conformity to the principles contained in these articles; and, so far as can be consistent with the general interest of the Confederacy, such admission shall be allowed at an earlier period, and when there may be a less number of free inhabitants in the State than sixty thousand.

ART. 6. There shall be neither slavery nor involuntary servitude in the said territory, otherwise than in the punishment of crimes, whereof the party shall

have been duly convicted; provided, always, that any person escaping into the same, from whom labor or service is lawfully claimed in any one of the original States, such fugitive may be lawfully reclaimed, and conveyed to the person claiming his or her labor or service as aforesaid.

Be it ordained by the authority aforesaid, That the resolutions of the 23d of April, 1784, relative to the subject of this ordinance, be, and the same are hereby, repealed, and declared null and void.

Done by the United States, in Congress assembled, the 13th day of July, in the year of our Lord 1787, and of their sovereignty and Independence the 12th.

CHARLES THOMSON,
Sec'y.

CONSTITUTION

OF

THE UNITED STATES OF AMERICA.

WE the People of the United States, in order to form a more perfect Union, establish Justice, insure domestic Tranquility, 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.

Chisholm *v.* Georgia, 2 Dall., 419; McCulloch *v.* State of Maryland et al., 4 Wh., 316; Brown et als. *v.* Maryland, 12 Wh., 419; Barron *v.* The Mayor and City Council of Baltimore, 7 Pet., 243; Lane County *v.* Oregon, 7 Wall., 71; Texas *v.* White et al., 7 Wall., 700.

ARTICLE. I.

SECTION. 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.

Hayburn's case (notes), 2 Dall., 409.

SECTION. 2. [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

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* The clause included in brackets is amended by the 14th amendment, 2d section, p. 495.

Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three fifths of all other Persons.] The actual Enumeration shall be made within three Years after the first Meeting of the Congress of the United States, and within every subsequent Term of ten Years, in such Manner as they shall by Law direct. The Number of Representatives shall not exceed one for every thirty Thousand, but each State shall have at Least one Representative; and until such enumeration shall be made, the State of New Hampshire shall be entitled to chuse 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.

Veazie Bank *v.* Fenno, 8 Wall., 533; Scholey *v.* Rew, 23 Wall., 331.

[4]When vacancies happen in the Representation from any State, the Executive Authority thereof shall issue Writs of Election to fill such Vacancies.

[5]The House of Representatives shall chuse their Speaker and other Officers; and shall have the sole Power of Impeachment.

SECTION. 3. [1]The Senate of the United States shall be composed of two Senators from each State, chosen by the Legislature thereof, for six Years; and each Senator shall have one Vote.

[2]Immediately after they shall be assembled in Consequence of the first Election, they shall be divided as equally as may be into three Classes. The Seats of the Senators of the first Class shall be vacated at the Expiration of the second Year, of the second Class at the Expiration of the fourth Year, and of the third Class at the Expiration of the sixth Year, so that one third may be chosen every second Year; and if Vacancies happen by Resignation, or otherwise, during the Recess of the Legislature of any State, the Executive thereof may make temporary Appointments until the next Meeting of the Legislature, which shall then fill such Vacancies.

[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.

[5]The Senate shall chuse 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 Cases 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. 4. [1]The Times, Places and Manner of holding Elections for Senators

and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the places of chusing Senators.

Ex parte Siebold, 100 U. S., 371; Ex parte Yarborough, 110 U. S., 651.

[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. 5. [1]Each House shall be the Judge of the Elections, Returns and Qualifications of its own Members, and a Majority of each shall constitute a Quorum to do business; but a smaller Number may adjourn from day to day, and may be authorized to compel the Attendance of absent Members, in such Manner, and under such Penalties as each House may provide.

[2]Each House may determine the Rules of its Proceedings, punish its Members for disorderly Behaviour, and, with the Concurrence of two thirds, expel a Member.

Anderson *v.* Dunn, 6 Wh., 204; Kilbourn *v.* Thompson, 103 U. S., 168.

[3]Each House shall keep a Journal of its Proceedings, and from time to time publish the same, excepting such Parts as may in their Judgment require Secrecy; and the Yeas and Nays of the Members of either House on any question shall, at the Desire of one fifth of those Present, be entered on the Journal.

[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 6. [1]The Senators and Representatives shall receive a Compensation for their Services, to be ascertained by Law, and paid out of the Treasury of the United States. They shall in all Cases, except Treason, Felony, and Breach of the Peace, be privileged from Arrest during their Attendance at the Session of their respective Houses, and in going to and returning from the same; and for any Speech or Debate in either House, they shall not be questioned in any other Place.

Coxe *v.* McClenachan, 3 Dall., 478.

[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 encreased 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. 7. [1]All Bills for raising Revenue shall originate in the House of Representatives; but the Senate may propose or concur with Amendments as on other Bills.

[2]Every Bill which shall have passed the House of Representatives and the Senate, shall, before it become a Law, be presented to the President of the United States; If he approve he shall sign it, but if not he shall return it, with his Objections to that House in which it shall have originated, who shall enter the Objections at large on their Journal, and proceed to reconsider it. If after such Reconsideration two thirds of that House shall agree to pass the Bill, it shall be sent, together with the Objections, to the other House, by which it shall likewise be

reconsidered, and if approved by two thirds of that House, it shall become a Law. But in all such Cases the Votes of both Houses shall be determined by Yeas and Nays, and the Names of the Persons voting for and against the Bill shall be entered on the Journal of each House respectively. If any Bill shall not be returned by the President within ten Days (Sundays excepted) after it shall have been presented to him, the Same shall be a Law, in like Manner as if he had signed it, unless the Congress by their Adjournment prevent its Return, in which Case it shall not be a Law.

[3]Every Order, Resolution, or Vote to which the Concurrence of the Senate and House of Representatives may be necessary (except on a question of Adjournment) shall be presented to the President of the United States; and before the same shall take Effect, shall be approved by him, or being disapproved by him, shall be repassed by two thirds of the Senate and House of Representatives, according to the Rules and Limitations prescribed in the Case of a Bill.

SECTION. 8. The Congress shall have Power [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;

Hylton *v.* United States, 3 Dall., 171; McCulloch *v.* State of Maryland, 4 Wh., 316; Loughborough *v.* Blake, 5 Wh., 317; Osborn *v.* Bank of the United States, 9 Wh., 738; Weston et al. *v.* City Council of Charleston, 2 Pet., 449; Dobbins *v.* The Commissioners of Erie County, 16 Pet., 435; License Cases, 5 How., 504; Cooley *v.* Board of Wardens of Port of Philadelphia et al., 12 How., 299; McGuire *v.* The Commonwealth, 3 Wall., 387; Van Allen *v.* The Assessors, 3 Wall., 573; Bradley *v.* The People, 4 Wall., 459.

License Tax Cases, 5 Wall., 462; Pervear *v.* The Commonwealth, 5 Wall., 475; Woodruff *v.* Parham, 8 Wall., 123; Hinson *v.* Lott, 8 Wall., 148; Veazie Bank *v.* Fenno, 8 Wall., 533; The Collector *v.* Day, 11 Wall., 113; United States *v.* Singer, 15 Wall., 111; State Tax on Foreign-held Bonds, 15 Wall., 300; United States *v.* Railroad Company, 17 Wall., 322; Railroad Company *v.* Peniston, 18 Wall., 5; Scholey *v.* Rew, 23 Wall., 331; Springer *v.* United States, 102 U. S., 586; Legal Tender Case, 110 U. S., 421; California *v.* Central Pacific Railroad Co., 127 U. S., 1; Ratterman *v.* Western Union Telegraph Co., 127 U. S., 411; Leloup *v.* Port of Mobile, 127 U. S., 640.

[2]To borrow Money on the credit of the United States;

McCulloch *v.* The State of Maryland, 4 Wh., 316; Weston et al. *v.* The City Council of Charleston, 2 Pet., 449; Bank of Commerce *v.* New York City, 2 Black, 620; Bank Tax Cases, 2 Wall., 200; The Banks *v.* The Mayor, 7 Wall., 16; Bank *v.* Supervisors, 7 Wall., 26; Hepburn *v.* Griswold, 8 Wall., 603; National Bank *v.* Commonwealth, 9 Wall., 353; Parker *v.* Davis, 12 Wall., 457; Legal Tender Case, 110 U. S., 421.

[3]To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes;

Gibbons *v.* Ogden, 9 Wh., 1; Brown et als. *v.* State of Maryland, 12 Wh., 419; Wilson et al. *v.* Black Bird Creek Marsh Company, 2 Pet., 245; Worcester *v.* The State of Georgia, 6 Pet., 515; City of New York *v.* Miln, 11 Pet., 102; United States *v.* Coombs, 12 Pet., 72; Holmes *v.* Jennison et al., 14 Pet., 540; License Cases, 5 How., 504; Passenger Cases, 7 How., 283; Nathan *v.* Louisiana, 8 How., 73; Mager *v.* Grima et al., 8 How., 490; United States *v.* Marigold, 9 How., 560; Cowley *v.* Board of Wardens of Port of Philadelphia, 12 How., 299; The Propeller Genesee Chief et al. *v.* Fitzhugh et al., 12 How., 443; State of Pennsylvania *v.* The Wheeling Bridge Co., 13 How., 518; Veazie et al. *v.* Moore, 14 How., 568; Smith *v.* State of Maryland, 18 How., 71; State of Pennsylvania

v. The Wheeling and Belmont Bridge Co. et al., 18 How., 421; Sinnitt *v.* Davenport, 22 How., 227; Foster et al *v.* Davenport et al., 22 How., 244; Conway et al *v.* Taylor's Ex., 1 Black, 603; United States *v.* Holliday, 3 Wall., 407; Gilman *v.* Philadelphia, 3 Wall., 713; The Passaic Bridges, 3 Wall., 782; Steam-ship Company *v.* Port Wardens, 6 Wall., 31; Crandall *v.* State of Nevada, 6 Wall, 35; White's Bank *v.* Smith, 7 Wall., 646; Waring *v.* The Mayor, 8 Wall., 110; Paul *v.* Virginia, 8 Wall., 168; Thomson *v.* Pacific Railroad, 9 Wall., 579; Downham et al. *v.* Alexandria Council, 10 Wall., 173; The Clinton Bridge, 10 Wall, 454; The Daniel Ball, 10 Wall., 557; Liverpool Insurance Company *v.* Massachusetts, 10 Wall., 566; The Montello, 11 Wall., 411; Ex parte McNiel, 13 Wall., 236; State Freight Tax, 15 Wall., 232; State Tax on Railway Gross Receipts, 15 Wall., 284; Osborn *v.* Mobile, 16 Wall., 479; Railroad Company v. Fuller, 17 Wall., 560; Bartemeyer *v.* Iowa, 18 Wall., 129; The Delaware Railroad Tax, 18 Wall., 206; Peete *v.* Morgan, 19 Wall., 581; Railroad Company *v.* Richmond, 19 Wall., 584; Railroad Company *v.* Maryland, 21 Wall., 456; The Lottawanna, 21 Wall., 558; Henderson et al. *v.* The Mayor of the City of New York, 92 U. S., 259; Chy Lung *v.* Freeman et al., 92 U. S., 275; South Carolina *v.* Georgia et al., 93 U. S., 4; Sherlock et al. *v.* Alling, adm., 93 U. S., 99; United States *v.* Forty-three Gallons of Whiskey, etc., 93 U. S, 188; Foster *v.* Master and Wardens of the Port of New Orleans, 94 U. S., 246; Railroad Co. *v.* Husen, 95 U. S., 465; Pensacola Tel. Co. *v.* W. U. Tel. Co., 96 U. S., 1; Beer Co. *v.* Massachusetts, 97 U. S., 25; Cook *v.* Pennsylvania, 97 U. S., 566; Packet Co. *v.* St. Louis, 100 U. S., 423; Wilson *v.* McNamee, 102 U. S., 572; Moran *v.* New Orleans, 112 U. S., 69; Head Money Cases, 112 U. S., 580; Cooper Mfg. Co. *v.* Ferguson, 113 U. S., 727; Gloucester Ferry Co. *v.* Pennsylvania, 114 U. S., 196; Brown *v.* Houston, 114 U. S., 622; Walling *v.* Michigan, 116 U. S., 446; Pickard *v.* Pullman Southern Car Co., 117 U. S., 34; Tennessee *v.* Pullman Southern Car Co., 117 U. S., 51; Spraigue *v.* Thompson, 118 U. S., 90; Morgan *v.* Louisiana, 118 U. S., 455; Wabash, St. Louis and Pacific Ry. *v.* Illinois, 118 U. S., 557; Huse *v.* Glover, 119 U. S., 543; Robbins *v.* Shelby Co. Taxing Dist., 120 U. S., 489; Corson *v.* Maryland, 120 U. S., 502; Barron *v.* Burnside, 121 U. S., 186; Fargo *v.* Michigan, 121 U. S., 230; Ouachita Packet Co. *v.* Aiken, 121 U. S., 444; Phila. and Southern S.S. Co. *v.* Penna., 122 U. S., 326; W. U. Tel. Co. *v.* Pendleton, 122 U. S., 347; Sands *v.* Manistee River Imp. Co., 123 U. S., 288; Smith *v.* Alabama, 124 U. S., 465; Willamette Iron Bridge Co. *v.* Hatch, 125 U. S., 1; Pembina Mine Co. *v.* Penna., 125 U. S., 181; Bowman *v.* Chicago Northwestern Ry. Co., 125 U. S., 465; Western Union Tel. Co. *v.* Mass., 125 U. S., 530; California *v.* Central Pacific R. R. Co., 127 U. S., 1; Leloup *v.* Port of Mobile, 127 U. S., 640; Kidd *v.* Pearson, 128 U. S., 1; Asher *v.* Texas, 128 U. S., 129; Stoutenberg *v.* Henniek, 129 U. S., 141.

[4]To establish an uniform Rule of Naturalization,[1] and uniform Laws on the subject of Bankruptcies throughout the United States;[2]

[2]Sturges *v.* Crowninshield, 4 Wh., 122; [2]McMillan *v.* McNeil, 4 Wh., 209; [2]Farmers and Mechanics' Bank, Pennsylvania, *v.* Smith, 6 Wh., 131; [2]Ogden *v.* Saunders, 12 Wh., 213; [2]Boyle *v.* Zacharie and Turner, 6 Pet., 348; [1]Gassies *v.* Ballon, 6 Pet., 761; [2]Beers et al. *v.* Haughton, 9 Pet, 329; [2]Suydam et al. *v.* Broadnax, 14 Pet., 67; [2]Cook *v.* Moffat et al., 5 How., 295; [1]Dred Scott *v.* Sanford, 19 How., 393.

[5]To coin Money, regulate the Value thereof, and of foreign Coin, and fix the Standard of Weights and Measures;

Briscoe *v.* The Bank of the Commonwealth of Kentucky, 11 Pet., 257; Fox *v.* The State of Ohio, 5 How., 410; United States *v.* Marigold, 9 How., 560.

[6]To provide for the Punishment of counterfeiting the Securities and current Coin of the United States;

Fox *v.* The State of Ohio, 5 How., 410; United States *v.* Marigold, 9 How., 560.

[7]To establish Post Offices and post Roads;

State of Pennsylvania *v.* The Wheeling and Belmont Bridge Company, 18 How., 421.

[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;

Grant et al. *v.* Raymond, 6 Pet., 218; Wheaton et als. *v.* Peters et als., 8 Pet., 591.

[9]To constitute Tribunals inferior to the supreme Court;

[10]To define and punish Piracies and Felonies committed on the high Seas, and Offences against the Law of Nations;

United States *v.* Palmer, 3 Wh., 610; United States *v.* Wiltberger, 5 Wh., 76; United States *v.* Smith, 5 Wh., 153; United States *v.* Pirates, 5 Wh., 184; United States *v.* Arizona, 120 U. S., 479.

[11]To declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water;

Brown *v.* United States, 8 Cr., 110; American Insurance Company et al. *v.* Canter (356 bales cotton), 1 Pet., 511; Mrs. Alexander's Cotton, 2 Wall., 404; Miller *v.* United States, 11 Wall., 268; Tyler *v.* Defrees, 11 Wall., 331; Stewart *v.* Kahn, 11 Wall., 493; Hamilton *v.* Dillin, 21 Wall., 73; Lamar, ex., *v.* Browne et al., 92 U. S., 187.

[12]To raise and support Armies, but no Appropriation of Money to that Use shall be for a longer Term than two Years;

Crandall *v.* State of Nevada, 6 Wall., 32.

[13]To provide and maintain a Navy;

United States *v.* Bevans, 3 Wh., 336; Dynes *v.* Hoover, 20 How., 65.

[14]To make Rules for the Government and Regulation of the land and naval Forces;

[15]To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions;

Houston *v.* Moore, 5 Wh., 1; Martin *v.* Mott, 12 Wh., 19; Luther *v.* Borden, 7 How., 1; Crandall *v.* State of Nevada, 6 Wall., 35; Texas *v.* White. 7 Wall., 700.

[16]To provide for organizing, arming, and disciplining, the Militia, and for governing such Part of them as may be employed in the Service of the United States, reserving to the States respectively, the Appointment of the Officers, and the Authority of training the Militia according to the discipline prescribed by Congress;

Houston *v.* Moore, 5 Wh., 1; Martin *v.* Mott, 12 Wh., 19; Luther *v.* Borden, 7 How., 1.

[17]To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the same shall be, for the Erection of Forts, Magazines, Arsenals, Dock-Yards, and other needful Buildings;—And

Hepburn et al. *v.* Ellzey, 2 Cr., 444; Loughborough *v.* Blake, 5 Wh., 317; Cohens *v.* Virginia, 6 Wh., 264; American Insurance Company *v.* Canter (356 bales cotton), 1 Pet., 511; Kendall, Postmaster-General, *v.* The United States, 12 Pet., 524; United States *v.* Dewitt, 9 Wall., 41; Dunphy *v.* Kleinsmith, et al., 11 Wall., 610; Willard *v.* Presbury, 14 Wall., 676; Phillips *v.* Payne, 92 U. S., 130;

United States *v.* Fox, 94 U. S., 315; National Bank *v.* Yankton County, 101 U. S., 129; Ft. Leavenworth R. Rd. Co. *v.* Howe, 114 U. S., 525.

[18]To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

McCulloch *v.* The State of Maryland, 4 Wh., 316; Wayman *v.* Southard, 10 Wh., 1; Bank of United States *v.* Halstead, 10 Wh., 51; Hepburn *v.* Griswold, 8 Wall., 603; National Bank *v.* Commonwealth, 9 Wall., 353; Thomson *v.* Pacific Railroad, 9 Wall., 579; Parker *v.* Davis, 12 Wall., 457; Railroad Company *v.* Johnson, 15 Wall., 195; Railroad Company *v.* Peniston, 18 Wall., 5; Legal Tender Case, 110 U. S., 421; In re Coy, 127 U. S., 731; Stoutenburgh *v.* Hennick, 129 U. S., 141; Chinese Ex. Case, 130 U. S., 581.

SECTION. 9. [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 may be imposed on such Importation, not exceeding ten dollars for each Person.

Dred Scott *v.* Sanford, 19 How., 393.

[2]The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it.

United States *v.* Hamilton, 3 Dall., 17; Hepburn et al. *v.* Ellzey, 2 Cr., 445; Ex parte Bollman and Swartwout, 4 Cr., 75; Ex parte Kearney, 7 Wh., 38; Ex parte Tobias Watkins, 3 Pet., 192; Ex parte Milburn, 9 Pet., 704; Holmes *v.* Jennison et al., 14 Pet., 540; Ex parte Dorr, 3 How., 103; Luther *v.* Borden, 7 How., 1; Ableman *v.* Booth and United States *v.* Booth, 21 How., 506; Ex parte Vallindigham, 1 Wall., 243; Ex parte Mulligan, 4 Wall., 2; Ex parte McCardle, 7 Wall., 506; Ex parte Yerger, 8 Wall., 85; Turble's case, 13 Wall., 397; Ex parte Lange, 18 Wall., 16; Ex parte Parks, 93 U. S., 18; Ex parte Karstendick, 93 U. S., 396; Ex parte Virginia, 100 U. S., 339.

[3]No Bill of Attainder or ex post facto Law shall be passed.

Fletcher *v.* Peck, 6 Cr., 87; Ogden *v.* Saunders, 12 Wh., 213; Watson et al *v.* Mercer, 8 Pet., 88; Carpenter et al. *v.* Commonwealth of Pennsylvania, 17 How., 456; Locke *v.* New Orleans, 4 Wall., 172; Cummings *v.* The State of Missouri, 4 Wall., 277; Ex parte Garland, 4 Wall., 333; Drehman *v.* Stifle, 8 Wall., 595; Klinger *v.* State of Missouri, 13 Wall., 257; Pierce *v.* Carskadon, 16 Wall., 234.

[4]No Capitation, or other direct, Tax shall be laid, unless in Proportion to the Census of Enumeration herein before directed to be taken.

License Tax Cases, 5 Wall., 462; Springer *v.* United States, 102 U. S., 586.

[5]No Tax or Duty shall be laid on Articles exported from any State.

Cooley *v.* Board or Wardens of Port of Philadelphia, 12 How., 299; Page *v.* Burgess, collector, 92 U. S., 372; Turpin *v.* Burgess, 117 U. S., 504.

[6]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.

Cooley *v.* Board of Wardens of Port of Philadelphia et al., 12 How., 299; State of Pennsylvania *v.* Wheeling and Belmont Bridge Company et al., 18 How., 421; Munn *v.* Illinois, 94 U. S., 113; Packet Co. *v.* St. Louis, 100 U. S., 413; Packet Co. *v.* Catlettsburg, 105 U. S., 559; Morgan S. S. Co. *v.* La. Board of Health, 118 U. S., 455.

[7]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.

[8]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. 10. [1]No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit;[1] make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law,[2] or Law impairing the Obligation of Contracts,[3] or grant any Title of Nobility.

[2]Calder and Wife *v.* Bull and Wife, 3 Dall., 386; [3]Fletcher *v.* Peck, 6 Cr., 87; [3]State of New Jersey *v.* Wilson, 7 Cr., 164; [3]Sturgis *v.* Crowninshield, 4 Wh., 122; [3]McMillan *v.* McNeil, 4 Wh., 209; [3]Dartmouth College *v.* Woodward, 4 Wh., 518; [3]Owings *v.* Speed, 5 Wh., 420; [3]Farmers and Mechanics' Bank *v.* Smith, 6 Wh., 131; [3]Green et al. *v.* Biddle, 8 Wh., 1; [3]Ogden *v.* Saunders, 12 Wh., 213; [3]Mason *v.* Haile, 12 Wh., 370; [3]Satterlee *v.* Matthewson, 2 Pet., 380; [3]Hart *v.* Lamphire, 3 Pet., 280; [1]Craig et al. *v.* State of Missouri, 4 Pet., 410; [2]Providence Bank *v.* Billings and Pitman, 4 Pet., 514; [1]Byrne *v.* State of Missouri, 8 Pet., 40; [2]Watson *v.* Mercer, 8 Pet., 88; [3]Mumma *v.* Potomac Company, 8 Pet., 281; [3]Beers *v.* Haughton, 9 Pet., 329; [1]Briscoe et al. *v.* The Bank of the Commonwealth of Kentucky, 11 Pet., 257; [3]The Proprietors of Charles River Bridge *v.* The Proprietors of Warren Bridge, 11 Pet., 420; [3]Armstrong *v.* The Treasurer of Athens Company, 16 Pet., 281; [3]Bronson *v.* Kinzie et al., 1 How., 311; [3]McCracken *v.* Hayward, 2 How., 608; [3]Gordon *v.* Appeal Tax Court, 3 How., 133; [3]State of Maryland *v.* Baltimore and Ohio R. R. Co., 3 How., 534; [3]Neil, Moore, & Co., *v.* State of Ohio, 3 How., 720; [3]Cook *v.* Moffatt, 5 How., 295; [3]Planters' Bank *v.* Sharp et al., 6 How., 301; [3]West River Bridge Company *v.* Dix et al., 6 How., 507; [3]Crawford et al. *v.* Branch Bank of Mobile, 7 How., 279; [3]Woodruff *v.* Trapnall, 10 How., 190; [3]Paup et al. *v.* Drew, 10 How., 218; [2], [3]Baltimore and Susquehanna R. R. Co. *v.* Nesbitt et al., 10 How., 395; [3]Butler et al. *v.* Pennsylvania, 10 How., 402; [1]Darrington et al. *v.* The Bank of Alabama, 13 How., 12; [3]Richmond, &c., R. R. Co. *v.* The Louise R. R. Co., 13 How., 71; [3]Trustees for Vincennes University *v.* State of Indiana, 14 How., 268; [3]Curran *v.* State of Arkansas et al., 15 How., 304; [3]State Bank of Ohio *v.* Knoop, 16 How., 369; [2]Carpenter et al. *v.* Commonwealth of Pennsylvania, 17 How., 456; [3]Dodge *v.* Woolsey, 18 How., 331; [3]Beers *v.* State of Arkansas, 20 How., 527; [3]Aspinwall et al. *v.* Commissioners of County of Daviess, 22 How., 364; [3]Rector of Christ Church, Philadelphia, *v.* County of Philadelphia, 24 How., 300; [3]Howard *v.* Bugbee, 24 How., 461; [3]Jefferson Branch Bank *v.* Skelley, 1 Black, 436; [3]Franklin Branch Bank *v.* State of Ohio, 1 Black, 474; [3]Trustees of the Wabash and Erie Canal Company *v.* Beers, 2 Black, 448; [3]Gilman *v.* City of Sheboygan, 2 Black, 510; [3]Bridge Proprietors *v.* Hoboken Company, 1 Wall., 116; [3]Hawthorne *v.* Calef, 2 Wall., 10; [3]The Binghamton Bridge, 3 Wall., 51; [3]The Turnpike Company *v.* The State, 3 Wall., 210; [2]Locke *v.* City of New Orleans, 4 Wall., 172; [3]Railroad Company *v.* Rock, 4 Wall., 177; [3]Cummings *v.* State of Missouri, 4 Wall., 277; [2]Ex parte Garland, 4 Wall., 333; [3]Von Hoffman *v.* City of Quincy, 4 Wall., 535; [3]Mulligan *v.* Corbin, 7 Wall., 487; [3]Furman *v.* Nichol, 8 Wall., 44; [3]Home of the Friendless *v.* Rouse, 8 Wall., 430; [3]The Washington University *v.* Rouse, 8 Wall., 439; [3]Butz *v.* City of Muscatine, 8 Wall., 575; [3]Drehman *v.* Stifle, 8 Wall., 595; [3]Hepburn *v.* Griswold, 8 Wall., 603; [2]Gut *v.* The State, 9 Wall., 35; [3]Railroad Company *v.* McClure, 10 Wall., 511; [3]Parker *v.* Davis, 12 Wall., 457; [3]Curtis *v.* Whiting, 13 Wall., 68; [3]Pennsylvania College Cases, 13 Wall., 190; [3]Wilmington R. R. *v.* Reid, sheriff, 13 Wall., 264; [3]Salt Company *v.* East Saginaw, 13 Wall., 373; [3]White *v.* Hart, 13 Wall., 646; [3]Osborn *v.* Nicholson et al., 13 Wall., 654; [3]Railroad Company *v.* Johnson, 15 Wall., 195; [3]Case of the State Tax on Foreign-held Bonds, 15 Wall., 300; [3]Tomlinson *v.*

Jessup, 15 Wall., 454; [2]Tomlinson *v.* Branch, 15 Wall., 460; [3]Miller *v.* The State, 15 Wall., 478; [4]Holyoke Company *v.* Lyman, 15 Wall., 500; [5]Gunn *v.* Barry, 15 Wall., 610; [6]Humphrey *v.* Pegues, 16 Wall., 244; [7]Walker *v.* Whitehead, 16 Wall., 314; [8]Sohn *v.* Waterson, 17 Wall., 596; [9]Barings *v.* Dabney, 19 Wall., 1; [10]Head *v.* The University, 19 Wall., 526; [11]Pacific R. R. Co. *v.* Maguire, 20 Wall., 36; [12]Garrison *v.* The City of New York, 21 Wall., 196; [13]Ochiltree *v.* The Railroad Company, 21 Wall., 249; [14]Wilmington, &c., Railroad *v.* King, ex., 91 U. S., 3; [15]County of Moultrie *v.* Rockingham Ten Cent Savings Bank, 92 U. S., 631; [16]Home Insurance Company *v.* City Council of Augusta, 93 U. S., 116; [17]West Wisconsin R. R. Co. *v.* Supervisors, 93 U. S., 595; Murray *v.* Charleston, 96 U. S., 432; Edwards *v.* Kearzey, 96 U. S., 595; Keith *v.* Clark, 97 U. S., 454; Railroad Co. *v.* Georgia, 98 U. S., 359; Railroad Co. *v.* Tennessee, 101 U. S., 337; Wright *v.* Nagle, 101 U. S., 791; Stone *v.* Mississippi, 101 U. S., 814; Railroad Co. *v.* Alabama, 101 U. S., 832; Louisiana *v.* New Orleans, 101 U. S., 203; Hall *v.* Wisconsin, 103 U. S., 5; Pennyman's Case, 103 U. S., 714; Guaranty Co. *v.* Board of Liquidation, 105 U. S., 622; Greenwood *v.* Freight Co., 105 U. S., 13; Kring *v.* Missouri, 107 U. S., 221; Louisiana *v.* New Orleans, 109 U. S., 285; Gilfillan *v.* Union Canal Co., 109 U. S., 401; Nelson *v.* St. Martin's Parish, 111 U. S., 716; Virginia Coupon Cases, 114 U. S., 270; Amy *v.* Shelby Co., 114 U. S., 387; Effinger *v.* Kenney, 115 U. S., 566; N. Orleans Gas Co. *v.* La. Light Co., 115 U. S., 650; N. Orleans Water Works *v.* Rivers, 115 U. S., 674; Louisville Gas Co. *v.* Citizens' Gas Co., 115 U. S., 683; Fisk *v.* Jefferson Police Jury, 116 U. S., 131; Stone *v.* Farmers' Loan and Trust Co., 116 U. S., 307; Stone *v.* Ill. Central R. R. Co., 116 U. S., 347; Royall *v.* Virginia, 116 U. S., 572; St. Tammany Water Works *v.* N. Orleans Water Works, 120 U. S., 64; Church *v.* Kelsey, 121 U. S., 282; Lehigh Water Co. *v.* Easton, 121 U. S., 388; Seibert *v.* Lewis, 122 U. S., 284; N. Orleans Water Works *v.* La. Sugar Ref. Co., 125 U. S., 18; Maynard *v.* Hill, 125 U. S., 140; Jaehne *v.* N. Y., 128 U. S., 189; Denny *v.* Bennett, 128 U. S., 489; Chinese Ex. Case, 130 U. S., 588; Williamson *v.* N. J., 130 U. S., 189; Hunt *v.* Hunt, 131 U. S., clxv.; Freeland *v.* Williams, 131 U. S., 405.

[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 it's 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 Controul of the Congress.

McCulloch *v.* State of Maryland, 4 Wh., 316; Gibbons *v.* Ogden, 9 Wh., 1; Brown *v.* The State of Maryland, 12 Wh., 419; Mager *v.* Grima et al., 8 How., 490; Cooley *v.* Board of Wardens of Port of Philadelphia et al., 12 How., 299; Almy *v.* State of California, 24 How., 169; License Tax Cases, 5 Wall., 462; Crandall *v.* State of Nevada, 6 Wall., 35; Waring *v.* The Mayor, 8 Wall., 110; Woodruff *v.* Perham, 8 Wall., 123; Hinson *v.* Lott, 8 Wall., 148; State Tonnage Tax Cases, 12 Wall., 204; State Tax on Railway Gross Receipts, 15 Wall., 284; Inman Steamship Company *v.* Tinker, 94 U. S., 238; Cook *v.* Pennsylvania, 97 U. S., 566; Packet Co. *v.* Keokuk, 95 U. S., 80; People *v.* Compagnie Général Transatlantique, 107 U. S., 59; Brown *v.* Houston, 114 U. S., 622.

[3]No State shall, without the Consent of Congress, lay any Duty of Tonnage, keep Troops, or Ships of War in time of Peace, enter into any Agreement or Compact with another State, or with a foreign Power, or engage in War, unless actually invaded, or in such imminent Danger as will not admit of Delay.

Green *v.* Biddle, 8 Wh., 1; Poole et al. *v.* The Lessee of Fleeger et al., 11 Pet., 185; Cooley *v.* Board of Wardens of Port of Philadelphia et al., 12 How., 299; Peete *v.* Morgan, 19 Wall., 581; Cannon *v.* New Orleans, 20 Wall., 577; Inman Steamship Company *v.* Tinker, 94 U. S., 238; Packet Co. *v.* St. Louis, 100 U. S., 423; Packet Co. *v.* Keokuk, 95 U. S., 80; Vicksburg *v.* Tobin, 100 U. S., 430; Packet Co. *v.* Catlettsburg, 105 U. S., 559; Morgan Steamship Company *v.* Louisiana Board of Health, 118 U. S., 455; Ouachita Packet Co. *v.* Aiken, 121 U. S., 444; Huse *v.* Glover, 119 U. S., 543.

ARTICLE II.

SECTION. 1. [1]The executive Power shall be vested in a President of the United States of America. He shall hold his Office during the Term of four Years, and, together with the Vice President, chosen for the same Term, be elected, as follows:

[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 an Office of Trust or Profit under the United States, shall be appointed an Elector.

Chisholm, ex., *v.* Georgia, 2 Dall., 419; Leitensdorfer et al. *v.* Webb, 20 How., 176; Ex parte Siebold, 100 U. S., 271.

["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 Majority, and have an equal Number of Votes, then the House of Representatives shall immediately chuse 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 chuse the President. But in chusing the President, the Votes shall be taken by States, the Representation from each State having one Vote; A quorum for this Purpose shall consist of a Member or Members from two thirds of the States, and a Majority of all the States shall be necessary to a Choice. In every Case, after the Choice of the President, the Person having the greatest Number of Votes of the Electors shall be the Vice President. But if there should remain two or more who have equal Votes, the Senate shall chuse from them by Ballot the Vice President."]

This clause has been superseded by the twelfth amendment, p. 493.

[3]The Congress may determine the Time of chusing the Electors, and the Day on which they shall give their Votes; which Day shall be the same throughout the United States.

[4]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.

English *v.* The Trustees of the Sailors' Snug Harbor, 3 Pet., 99.

[5]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.

[6]The President shall, at stated Times, receive for his Services, a Compensation, which shall neither be encreased 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.

[1]Before he enter on the Execution of his Office, he shall take the following Oath or Affirmation :—

"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."

SECTION. 2. [1]The President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into 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 Pardons for Offences against the United States, except in Cases of Impeachment.

United States *v.* Wilson, 7 Pet., 150; Ex parte William Wells, 18 How., 307; Ex parte Garland, 4 Wall., 333; Armstrong's Foundry, 6 Wall., 766; The Grape Shot, 9 Wall., 129; United States *v.* Padelford, 9 Wall., 542; United States *v.* Klein, 13 Wall., 128; Armstrong *v.* The United States, 13 Wall., 152; Pargoud *v.* The United States, 13 Wall., 156; Hamilton *v.* Dillin, 21 Wall., 73; Mechanics and Traders' Bank *v.* Union Bank, 22 Wall., 276; Lamar, ex., *v.* Browne et al., 92 U. S., 187; Wallach et al. *v.* Van Riswick, 92 U. S., 202.

[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.

Ware *v.* Hylton et al., 3 Dall., 199; Marbury *v.* Madison, 1 Cr., 137; United States *v.* Kirkpatrick, 9 Wh., 720; American Insurance Company *v.* Canter (356 bales cotton), 1 Pet., 511; Foster and Elam *v.* Neilson, 2 Pet., 253; Cherokee Nation *v.* State of Georgia, 5 Pet., 1; Patterson *v.* Gwinn et al., 5 Pet., 233; Worcester *v.* State of Georgia, 6 Pet., 515; City of New Orleans *v.* De Armas et al., 9 Pet., 224; Holden *v.* Joy, 17 Wall., 211.

[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.

The United States *v.* Kirkpatrick et al., 9 Wh., 720.

SECTION. 3. 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.

Marbury *v.* Madison, 1 Cr., 137; Kendall, Postmaster-General, *v.* The United

States, 12 Pet., 524; Luther *v.* Borden, 7 How., 1; The State of Mississippi *v.* Johnson, President, 4 Wall., 475; Stewart *v.* Kahn, 11 Wall., 493.

SECTION. 4. The President, Vice President and all civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors.

ARTICLE. III.

SECTION. 1. The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behavior, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.

Chisholm, ex., *v.* Georgia, 2 Dall., 419; Stuart *v.* Laird, 1 Cr., 299; United States *v.* Peters, 5 Cr., 115; Cohens *v.* Virginia, 6 Cr., 264; Martin *v.* Hunter's Lessee, 1 Wh., 304; Osborn *v.* United States Bank, 9 Wh., 738; Benner et al. *v.* Porter, 9 How., 235; The United States *v.* Ritchie, 17 How., 525; Murray's Lessee et al. *v.* Hoboken Land and Improvement Company, 18 How., 272; Ex parte Vallandigham, 1 Wall., 243; Ames *v.* Kansas, 111 U. S., 449.

SECTION. 2. [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.

Hayburn's Case (note), 2 Dall., 410; Chisholm, ex., *v.* Georgia, 2 Dall., 419; Glass et al. *v.* Sloop Betsey, 3 Dall., 6; United States *v.* La Vengeance, 3 Dall., 297; Hollingsworth et al *v.* Virginia, 3 Dall., 378; Mossman, ex., *v.* Higginson, 4 Dall., 12; Marbury *v.* Madison, 1 Cr., 137; Hepburn et al. *v.* Ellzey, 2 Cr., 444; United States *v.* Moore, 3 Cr., 159; Strawbridge et al. *v.* Curtiss et al., 3 Cr., 267; Ex parte Bollman and Swartwout, 4 Cr., 75; Rose *v.* Himely, 4 Cr., 241; Chappedelaine et al. *v.* Dechenaux, 4 Cr., 305; Hope Insurance Company *v.* Boardman et al., 5 Cr., 57; Bank of United States *v.* Devaux et al., 5 Cr., 61; Hodgson et al. *v.* Bowerbank et als., 5 Cr., 303; Owings *v.* Norwood's Lessee, 5 Cr., 344; Durousseau *v.* The United States, 6 Cr., 307; United States *v.* Hudson and Goodwin, 7 Cr., 32; Martin *v.* Hunter, 1 Wh., 304; Colson et al. *v.* Lewis, 2 Wh., 377; United States *v.* Bevans, 3 Wh., 336; Cohens *v.* Virginia, 6 Wh., 264; Ex parte Kearney, 7 Wh., 38; Matthews *v.* Zane, 7 Wh., 164; Osborn *v.* United States Bank, 9 Wh., 738; United States *v.* Ortega, 11 Wh., 467; American Insurance Company *v.* Canter (356 bales cotton), 1 Pet., 511; Jackson *v.* Twentyman, 2 Pet., 136; Cherokee Nation *v.* State of Georgia, 5 Pet., 1; State of New Jersey *v.* State of New York, 5 Pet., 283; Davis *v.* Packard et al., 6 Pet., 41; United States *v.* Arredondo et al., 6 Pet, 691; Davis *v.* Packard et al., 7 Pet., 276; Breedlove et al. *v.* Nickolet et al., 7 Pet., 413; Browne *v.* Keene, 8 Pet., 112; Davis *v.* Packard et al., 8 Pet., 312; City of New Orleans *v.* De Armas et al., 9 Pet., 224; The State of Rhode Island *v.* The Commonwealth of Massachusetts, 12 Pet., 657; The Bank of Augusta *v.* Earle, 13 Pet., 519; The Commercial and Railroad Bank of Vicksburg *v.* Slocomb et al., 14 Pet., 60; Suydam et al. *v.* Broadnax, 14 Pet., 67; Prigg *v.* The Commonwealth of Pennsylvania, 16 Pet., 530; Louisville, Cincinnati and Charleston Railway Company *v.* Letson, 2 How., 497; Cary et als. *v.* Curtis, 3 How., 236; Warring *v.* Clark, 5 How., 441;

Luther *v.* Borden, 7 How., 1; Sheldon et al. *v.* Sill, 8 How., 441; The Propeller Genesee Chief *v.* Fitzhugh et al., 12 How., 443; Fretz et al. *v.* Ball et al., 12 How., 466; Neves et al. *v.* Scott et al., 13 How., 268; State of Pennsylvania *v.* The Wheeling, &c., Bridge Company et al., 13 How., 518; Marshall *v.* The Baltimore and Ohio R. R. Co., 16 How., 314; The United States *v.* Guthrie, 17 How., 284; Smith *v.* State of Maryland, 18 How., 71; Jones et al. *v.* League, 18 How., 76; Murray's Lessee et al. *v.* Hoboken Land and Improvement Company, 18 How., 272; Hyde et al. *v.* Stone, 20 How., 170; Irvine *v.* Marshall et al., 20 How., 558; Fenn *v.* Holmes, 21 How., 481; Meerewood et al. *v.* Erequist, 23 How., 491; Commonwealth of Kentucky *v.* Dennison, Governor, 24 How., 66; Ohio and Mississippi Railroad Company *v.* Wheeler, 1 Black, 286; The Steamer Saint Lawrence, 1 Black, 522; The Propeller Commerce, 1 Black, 574; Ex parte Vallandigham, 1 Wall., 243; Ex parte Milligan, 4 Wall., 1; The Moses Taylor, 4 Wall., 411; State of Mississippi *v.* Johnson, President, 4 Wall., 475; The Hine *v.* Trevor, 4 Wall., 555; City of Philadelphia *v.* The Collector, 5 Wall., 720; State of Georgia *v.* Stanton, 6 Wall., 50; Payne *v.* Hook, 7 Wall., 425; The Alicia, 7 Wall., 571; Ex parte Yerger, 8 Wall., 85; Insurance Company *v.* Dunham, 11 Wall., 1; Virginia *v.* West Virginia, 11 Wall., 39; Coal Company *v.* Blatchford, 11 Wall., 172; Railway Company *v.* Whitton's Adm., 13 Wall., 270; Tarble's Case, 13 Wall., 397; Blyew et al. *v.* The United States, 13 Wall., 581; Davis *v.* Gray, 16 Wall., 203; Case of the Sewing Machine Companies, 18 Wall., 353; Insurance Company *v.* Morse, 20 Wall., 445; Vannevar *v.* Bryant, 21 Wall., 41; The Lottawanna, 21 Wall., 558; Gaines *v.* Fuentes et al., 92 U. S., 10; Miller *v.* Dows, 94 U. S., 444; Doyle *v.* Continental Insurance Company, 94 U. S., 535; Tennessee *v.* Davis, 100 U. S., 257; Baldwin *v.* Franks, 120 U. S., 678; Barron *v.* Burnside, 121 U. S., 186; St. Louis, Iron Mountain and Southern Railway *v.* Vickers, 122 U. S., 360; Chinese Ex. Case, 130 U. S., 581; Brooks *v.* Missouri, 124 U. S., 394; New Orleans Water Works *v.* Louisiana Sugar Refining Co., 125 U. S., 18; Spencer *v.* Merchant, 125 U. S., 345; Dale Tile Mfg. Co. *v.* Hyatt, 125 U. S., 46; Felix *v.* Scharnweber, 125 U. S., 54; Hannibal and St. Joseph R. R. *v.* Missouri River Packet Co., 125 U. S., 260; Kreiger *v.* Shelby R. R. Co., 125 U. S., 39; Craig *v.* Leitensdorfer, 127 U. S., 764; John *v.* Craig, 127 U. S., 213; Wisconsin *v.* Pelican Ins. Co., 127 U. S., 265; U. S. *v.* Beebe, 127 U. S., 338; Chinese Ex. Case, 130 U. S., 581.

[2]In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be 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.

Chisholm, ex., *v.* Georgia, 2 Dall., 419; Wiscart et al. *v.* Dauchy, 3 Dall., 321; Marbury *v.* Madison, 1 Cr., 137; Durousseau et al. *v.* United States, 6 Cr., 307; Martin *v.* Hunter's Lessee, 1 Wh., 304; Cohens *v.* Virginia, 6 Wh., 234; Ex parte Kearney, 7 Wh., 38; Wayman *v.* Southard, 10 Wh., 1; Bank of the United States *v.* Halstead, 10 Wh., 51; United States *v.* Ortega, 11 Wh., 467; The Cherokee Nation *v.* The State of Georgia, 5 Pet., 1; Ex parte Crane et als., 5 Pet., 189; The State of New Jersey *v.* The State of New York, 5 Pet., 283; Ex parte Sibbald *v.* United States, 12 Pet., 488; The State of Rhode Island *v.* The State of Massachusetts, 12 Pet., 657; State of Pennsylvania *v.* The Wheeling, &c., Bridge Company, 13 How., 518; In re Kaine, 14 How., 103; Ableman *v.* Booth and United States *v.* Booth, 21 How., 506; Freeborn *v.* Smith, 2 Wall., 160; Ex parte McCardle, 6 Wall., 318; Ex parte McCardle, 7 Wall., 506; Ex parte Yerger, 8 Wall., 85; The Lucy, 8 Wall., 307; The Justices *v.* Murray, 9 Wall., 274; Pennsylvania *v.* Quicksilver Company, 10 Wall., 553; Murdock *v.* City of Memphis, 20 Wall., 590; Börs *v.* Preston, 111 U. S., 252; Ames *v.* Kansas, 111 U. S., 449.

[3]The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed.

Ex parte Milligan, 4 Wall., 2.

SECTION. 3. [1]Treason against the United States, shall consist only in levying War against them, or in adhering to their Enemies, giving them Aid and Comfort. No Person shall be convicted of Treason unless on the Testimony of two Witnesses to the same overt Act, or on Confession in open Court.

United States *v.* The Insurgents, 2 Dall., 335; United States *v.* Mitchell, 2 Dall., 348; Ex parte Bollman and Swartwout, 4 Cr., 75; United States *v.* Aaron Burr, 4 Cr., 469.

[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.

Bigelow *v.* Forest, 9 Wall., 339; Day *v.* Micou, 18 Wall., 156; Ex parte Lange, 18 Wall., 163; Wallach et al. *v.* Van Riswick, 92 U. S., 202.

ARTICLE. IV.

SECTION. 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 Effect thereof.

Mills *v.* Duryee, 7 Cr., 481; Hampton *v.* McConnel, 3 Wh., 234; Mayhew *v.* Thatcher, 6 Wh., 129; Darby's Lessee *v.* Mayer, 10 Wh., 465; The United States *v.* Amedy, 11 Wh., 392; Caldwell et al. *v.* Carrington's Heirs, 9 Pet., 86; M'Elmoyle *v.* Cohen, 13 Pet., 312; The Bank of Augusta *v.* Earle, 13 Pet., 519; Bank of the State of Alabama *v.* Dalton, 9 How., 522; D'Arcy *v.* Ketchum, 11 How., 165; Christmas *v.* Russell, 5 Wall., 290; Green *v.* Van Buskirk, 7 Wall., 139; Paul *v.* Virginia, 8 Wall., 168; Board of Public Works *v.* Columbia College, 17 Wall., 521; Thompson *v.* Whitman, 18 Wall., 457; Bonaparte *v.* Tax Court, 104 U. S., 592; Hanley *v.* Donoghue, 116 U. S., 1; Renaud *v.* Abbott, 116 U. S., 277; Chic. and Alton R. R. *v.* Wiggins Ferry Co., 119 U. S., 615.

SECTION. 2. [1]The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.

Bank of United States *v.* Devereux, 5 Cr., 61; Gassies *v.* Ballou, 6 Pet., 761; The State of Rhode Island *v.* The Commonwealth of Massachusetts, 12 Pet., 657; The Bank of Augusta *v.* Earle, 13 Pet., 519; Moore *v.* The People of the State of Illinois, 14 How., 13; Conner et al. *v.* Elliot et al., 18 How., 591; Dred Scott *v.* Sanford, 19 How., 393; Crandall *v.* State of Nevada, 6 Wall., 35; Woodruff *v.* Parham, 8 Wall., 123; Paul *v.* Virginia, 8 Wall., 168; Downham *v.* Alexandria Council, 10 Wall., 173; Liverpool Insurance Company *v.* Massachusetts, 10 Wall., 566; Ward *v.* Maryland, 12 Wall., 418; Slaughterhouse Cases, 16 Wall., 36; Bradwell *v.* The State, 16 Wall., 130; Chemung Bank *v.* Lowery, 93 U. S., 72; McCready *v.* Virginia, 94 U. S., 391; Brown *v.* Houston, 114 U. S., 622; Pembina Mining Co. *v.* Penna., 125 U. S., 181; Kimmish *v.* Ball, 129 U. S., 217.

[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.

Holmes *v.* Jennison et al., 14 Pet., 540; Commonwealth of Kentucky *v.* Dennison, Governor, 24 How., 66; Taylor *v.* Tainter, 16 Wall., 366.

[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.

Prigg *v.* The Commonwealth of Pennsylvania, 16 Pet., 539; Jones *v.* Van Zandt, 5 How., 215; Strader et al. *v.* Graham, 10 How., 82; Moore *v.* The People of the State of Illinois, 14 How., 13; Dred Scott *v.* Sanford, 19 How., 393; Ableman *v.* Booth and United States *v.* Booth, 21 How., 506; Callan *v.* Wilson, 127 U. S., 540; Nashville, Chattanooga, &c., Rwy. *v.* Alabama, 128 U. S., 96.

SECTION. 3. [1]New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the Jurisdiction of any other State; nor any State be formed by the Junction of two or more States, or Parts of States, without the Consent of the Legislatures of the States concerned as well as of the Congress.

American Insurance Company et al. *v.* Canter (356 bales cotton), 1 Pet., 511; Pollard's Lessee *v.* Hagan, 3 How., 212; Cross et al. *v.* Harrison, 16 How., 164.

[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.

McCulloch *v.* State of Maryland, 4 Wh., 316; American Insurance Company *v.* Canter, 1 Pet., 511; United States *v.* Gratiot et al., 14 Pet., 526; United States *v.* Rogers, 4 How., 567; Cross et al. *v.* Harrison, 16 How., 164; Muckey et al. *v.* Coxe, 18 How., 100; Gibson *v.* Choutean, 13 Wall., 92; Clinton *v.* Engelbert, 13 Wall., 434; Beall *v.* New Mexico, 16 Wall., 535.

SECTION. 4. The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic Violence.

Luther *v.* Borden, 7 How., 1; Texas *v.* White, 7 Wall., 700.

ARTICLE. V.

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.

Hollingsworth et al. *v.* Virginia, 3 Dallas, 378.

ARTICLE. VI.

[1]All Debts contracted and Engagements entered into, before the Adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the Confederation.

[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.

Hayburn's Case, 2 Dall., 409; Ware *v.* Hylton, 3 Dall., 199; Calder and Wife *v.* Bull and Wife, 3 Dall., 386; Marbury *v.* Madison, 1 Cr., 137; Chirac *v.* Chirac, 2 Wh., 259; McCulloch *v.* The State of Maryland, 4 Wh., 316; Society *v.* New Haven, 8 Wh., 464; Gibbons *v.* Ogden, 9 Wh., 1; Foster and Elam *v.* Neilson, 2 Pet., 253; Buckner *v.* Finley, 2 Pet., 586; Worcester *v.* State of Georgia, 6 Pet., 515; Kennett et al. *v.* Chambers, 14 How., 38; Lodge *v.* Woolsey, 18 How., 331; State of New York *v.* Dibble, 21 How., 366; Ableman *v.* Booth and United States *v.* Booth, 21 How., 506; Sinnot *v.* Davenport, 22 How., 227; Foster *v.* Davenport, 22 How., 244; Haver *v.* Yaker, 9 Wall., 32; Whitney *v.* Robertson, 124 U. S., 190.

[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.

Ex parte Garland, 4 Wall., 333.

ARTICLE. VII.

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,

G° WASHINGTON—
Presidt and Deputy from Virginia

NEW HAMPSHIRE.

JOHN LANGDON, NICHOLAS GILMAN.

MASSACHUSETTS.

NATHANIEL GORHAM, RUFUS KING.

CONNECTICUT.

WM. SAML. JOHNSON, ROGER SHERMAN.

NEW YORK.

ALEXANDER HAMILTON.

NEW JERSEY.

WIL: LIVINGSTON, DAVID BREARLEY,
WM. PATERSON, JONA. DAYTON.

PENNSYLVANIA.

B. FRANKLIN, THOMAS MIFFLIN,
ROBT. MORRIS, GEO: CLYMER,
THOS. FITZ SIMONS, JARED INGERSOLL,
JAMES WILSON, GOUV: MORRIS.

DELAWARE.

GEO: READ, GUNNING BEDFORD, jun.
JOHN DICKINSON, RICHARD BASSETT.
JACO: BROOM.

MARYLAND.

JAMES M'HENRY, DAN: OF ST. THOS. JENIFER,
DANL. CARROLL.

VIRGINIA.

JOHN BLAIR, JAMES MADISON, JR.

NORTH CAROLINA.

WM. BLOUNT, RICH'D DOBBS SPAIGHT.
HU. WILLIAMSON.

SOUTH CAROLINA.

J. RUTLEDGE, CHARLES COTESWORTH PINCKNEY,
CHARLES PINCKNEY, PIERCE BUTLER.

GEORGIA.

WILLIAM FEW, ABR. BALDWIN.

Attest: WILLIAM JACKSON, *Secretary.*

ARTICLES

IN ADDITION TO, AND AMENDMENT OF,

THE CONSTITUTION OF THE UNITED STATES OF AMERICA,

PROPOSED BY CONGRESS, AND RATIFIED BY THE LEGISLATURES OF THE SEVERAL STATES, PURSUANT TO THE FIFTH ARTICLE OF THE ORIGINAL CONSTITUTION.

(ARTICLE 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

* The first ten amendments to the Constitution of the United States were proposed to the legislatures of the several States by the First Congress, on the 25th of September, 1789. They were ratified by the following States, and the notifications of ratification by

press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Terret et al. *v.* Taylor et al., 9 Cr., 43; Vidal et al. *v.* Girard et al., 2 How., 127; Ex parte Garland, 4 Wall., 333; United States *v.* Cruikshank et al., 92 U. S., 542; Reynolds *v.* United States, 98 U. S., 145.

(ARTICLE 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.

Presser *v.* Illinois, 116 U. S., 252.

(ARTICLE III.)

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.

(ARTICLE IV.)

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.

Smith *v.* State of Maryland, 18 How., 71; Murray's Lessee et al. *v.* Hoboken Land and Improvement Company, 18 How., 272; Ex parte Milligan, 4 Wall., 2; Boyd *v.* United States, 116 U. S., 616.

(ARTICLE V.)

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any Criminal Case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

United States *v.* Perez, 9 Wh., 579; Barron *v.* The City of Baltimore, 7 Pet., 243; Fox *v.* Ohio, 5 How., 410; West River Bridge Company *v.* Dix et al., 6 How., 507; Mitchell *v.* Harmony, 13 How., 115; Moore, ex., *v.* The People of the State of Illinois, 14 How., 13; Murray's Lessee et al. *v.* Hoboken Land and Improvement Company, 18 How., 272; Dynes *v.* Hoover, 20 How., 65; Withers *v.* Buckley et al., 20 How., 84; Gilman *v.* The City of Sheboygan, 2 Black, 510; Ex parte Milligan, 4 Wall., 2; Twitchell *v.* The Commonwealth, 7 Wall., 321; Hepburn *v.* Griswold, 8 Wall., 603; Miller *v.* United States, 11 Wall., 268; Legal

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the governors thereof were successively communicated by the President to Congress: New Jersey, November 20, 1789; Maryland, December 19, 1789; North Carolina, December 22, 1789; South Carolina, January 19, 1790; New Hampshire, January 25, 1790; Delaware, January 28, 1790; Pennsylvania, March 10, 1790; New York, March 27, 1790; Rhode Island, June 15, 1790; Vermont, November 3, 1791; and Virginia, December 15, 1791. There is no evidence on the journals of Congress that the legislatures of Connecticut, Georgia, and Massachusetts ratified them.

Tender Cases, 12 Wall., 457; Pumpelly *v.* Green Bay Company, 13 Wall., 166; Osborn *v.* Nicholson, 13 Wall., 654; Ex parte Lange, 18 Wall., 163; Kohl et al. *v.* United States, 91 U. S., 367; Cole *v.* La Grange, 113 U. S., 1; Ex parte Wilson, 114 U. S., 417; Brown *v.* Grant, 116 U. S., 207; Boyd *v.* United States, 116 U. S., 616; Makin *v.* United States, 117 U. S., 348; Ex parte Bain, 121 U. S., 1; Parkinson *v.* United States, 121 U. S., 281; Spies *v.* Illinois, 123 U. S., 131; Sands *v.* Manistee River Improvement Company, 123 U. S., 288; Mugler *v.* Kansas, 123 U. S., 623; Great Falls Manufacturing Company *v.* The Attorney-General, 124 U. S., 581; United States *v.* DeWalt, 128 U. S., 393; Huling *v.* Kaw Valley Railway and Improvement Company, 130 U. S., 559; Freeland *v.* Williams, 131 U. S., 405.

(ARTICLE VI.)

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

United States *v.* Cooledge, 1 Wh., 415; Ex parte Kearney, 7 Wh., 38; United States *v.* Mills, 7 Pet., 142; Barron *v.* City of Baltimore, 7 Pet., 243; Fox *v.* Ohio, 5 How., 410; Withers *v.* Buckley et al., 20 How., 84; Ex parte Milligan, 4 Wall., 2; Twitchell *v.* The Commonwealth, 7 Wall., 321; Miller *v.* The United States, 11 Wall., 268; United States *v.* Cook, 17 Wall., 168; United States *v.* Cruikshank et al., 92 U. S., 542; Spies *v.* Illinois, 123 U. S., 131.

(ARTICLE VII.)

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

United States *v.* La Vengeance, 3 Dall., 297; Bank of Columbia *v.* Oakley, 4 Wh., 235; Parsons *v.* Bedford et al., 3 Pet., 433; Lessee of Livingston *v.* Moore et al., 7 Pet., 469; Webster *v.* Reid, 11 How., 437; State of Pennsylvania *v.* The Wheeling, &c., Bridge Company et al., 13 How., 518; The Justices *v.* Murray, 9 Wall., 274; Edwards *v.* Elliott et al., 21 Wall., 532; Pearson *v.* Yewdall, 95 U. S., 294; McElrath *v.* United States, 102 U. S., 426; Callan *v.* Wilson, 127 U. S., 540; Ark. Valley Land and Cattle Co. *v.* Mann, 130 U. S., 69.

(ARTICLE VIII.)

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

Pervear *v.* Commonwealth, 5 Wall., 475.

(ARTICLE IX.)

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

Lessee of Livingston *v.* Moore et al., 7 Pet., 469.

(ARTICLE X.)

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

Chisholm, ex., *v.* State of Georgia, 2 Dall., 419; Hollingsworth et al. *v.* The State of Virginia, 3 Dall., 378; Martin *v.* Hunter's Lessee, 1 Wh., 304; McCulloch *v.*

State of Maryland, 4 Wh., 316; Anderson *v.* Dunn, 6 Wh., 204; Cohen *v.* Virginia, 6 Wh., 264; Osborn *v.* United States Bank, 9 Wh., 738; Buehler *v.* Finley, 2 Pet., 586; Ableman *v.* Booth, 21 How., 506; The Collector *v.* Day, 11 Wall., 113; Claflin *v.* Houseman, assignee, 93 U. S., 130; Inman Steamship Company *v.* Tinker, 94 U. S., 238; Church *v.* Kelsey, 121 U. S., 282; Ouachita Packet Co. *v.* Aiken, 121 U. S., 444; W. U. Tel. Co. *v.* Pendleton, 122 U. S., 347; Bowman *v.* Chicago and Northwestern Rwy. Co., 125 U. S., 465; Mahon *v.* Justice, 127 U. S., 700.

ARTICLE XI.

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.

State of Georgia *v.* Brailsford et al., 2 Dall., 402; Chisholm, ex., *v.* State of Georgia, 2 Dall., 419; Hollingsworth et al. *v.* Virginia, 3 Dall., 378; Cohen *v.* Virginia, 6 Wh., 264; Osborn *v.* United States Bank, 9 Wh., 738; United States *v.* The Planters' Bank, 9 Wh., 904; The Governor of Georgia *v.* Juan Madrazo, 1 Pet., 110; Cherokee Nation *v.* State of Georgia, 5 Pet., 1; Briscoe *v.* The Bank of the Commonwealth of Kentucky, 11 Pet., 257; Curran *v.* State of Arkansas et al., 15 How., 304; New Hampshire *v.* Louisiana, 108 U. S., 76; Virginia Coupon Cases, 114 U. S., 270; Hagood *v.* Southern, 117 U. S., 52; In re Ayres, 123 U. S., 443.

The eleventh amendment to the Constitution of the United States was proposed to the legislatures of the several States by the Third Congress, on the 5th September, 1794; and was declared in a message from the President to Congress, dated the 8th of January, 1798, to have been ratified by the legislatures of three-fourths of the States.

ARTICLE XII.

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

The twelfth amendment to the Constitution of the United States was proposed to the legislatures of the several States by the Eighth Congress, on the 12th of December, 1803, in lieu of the original third paragraph of the first section of the second article; and was declared in a proclamation of the Secretary of State, dated the 25th of September, 1804, to have been ratified by the legislatures of three-fourths of the States.

ARTICLE XIII.

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

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

Dred Scott *v.* Sanford, 19 How., 393; White *v.* Hart, 13 Wall., 646; Osborn *v.* Nicholson, 13 Wall., 654; Slaughterhouse Cases, 16 Wall., 36; Ex parte Virginia, 100 U. S., 339; Civil Rights Case, 109 U. S., 3.

The thirteenth amendment to the Constitution of the United States was proposed to the legislatures of the several States by the Thirty-eighth Congress, on the 1st of February, 1865, and was declared, in a proclamation of the Secretary of State, dated the 18th of December, 1865, to have been ratified by the legislatures of twenty-seven of the thirty-six States, viz.: Illinois, Rhode Island, Michigan, Maryland, New York, West Virginia, Maine, Kansas, Massachusetts, Pennsylvania, Virginia, Ohio, Missouri, Nevada, Indiana, Louisiana, Minnesota, Wisconsin, Vermont, Tennessee, Arkansas, Connecticut, New Hampshire, South Carolina, Alabama, North Carolina, and Georgia.

ARTICLE XIV.

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

Strauder *v.* West Virginia, 100 U. S., 303; Virginia *v.* Rivers, 100 U. S., 313; Ex parte Virginia, 100 U. S., 339; Missouri *v.* Lewis, 101 U. S., 22; Civil Rights Cases, 109 U. S., 3; Louisiana *v.* New Orleans, 109 U. S., 285; Hurtado *v.* California, 110 U. S., 516; Hagar *v.* Reclamation Dist., 111 U. S., 701; Elk *v.* Wilkins, 112 U. S., 94; Head *v.* Amoskeag Mfg. Co., 113 U. S., 9; Barbier *v.* Connolly, 113 U. S., 27; Provident Institution *v.* Jersey City, 113 U. S., 506; Soon Hing *v.* Crowley, 113 U. S., 703; Wurts *v.* Hoagland, 114 U. S., 606; Ky. R. Rd. Tax Cases, 115 U. S., 321; Campbell *v.* Holt, 115 U. S., 620; Presser *v.* Illinois, 116 U. S., 252; Stone *v.* Farmers' Loan and Trust Co., 116 U. S., 307; Arrowsmith *v.* Harmoning, 118 U. S., 194; Yick Wo *v.* Hopkins, 118 U. S., 356; Santa Clara Co. *v.* S. Pacific R. Rd., 118 U. S., 394; Phila. Fire Assn. *v.* N. Y., 119 U. S., 110; Schmidt *v.* Cobb, 119 U. S., 286; Baldwin *v.* Frank, 119 U. S., 678; Hayes *v.* Missouri, 120 U. S., 68; Church *v.* Kelsey, 121 U. S., 282; Pembina Mining Co. *v.* Penna., 125 U. S., 181; Spencer *v.* Merchant, 125 U. S., 345; Dow *v.* Beidelman, 125 U. S., 680; Bank of Redemption *v.* Boston, 125 U. S., 60; Ro Bards *v.* Lamb, 127 U. S., 58; Mo. Pac. Rwy. Co. *v.* Mackey, 127 U. S., 205; Minne-

apolis and St. Louis Rwy. *v.* Herrick, 127 U. S., 210; Powell *v.* Penna., 127 U. S., 678; Kidd *v.* Pearson, 128 U. S., 1; Nashville, Chattanooga, &c., Rwy. *v.* Alabama, 128 U. S., 96; Walston *v.* Navin, 128 U. S., 578; Minneapolis and St. Louis Rwy. *v.* Beckwith, 129 U. S., 26; Dent *v.* West Va., 129 U. S., 114; Huling *v.* Kaw Valley Rwy. and Improvement Co., 130 U. S., 559; Freeland *v.* Williams, 131 U. S., 405.

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

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

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

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

Crandall *v.* the State of Nevada, 6 Wall., 35; Paul *v.* Virginia, 8 Wall., 168; Ward *v.* Maryland, 12 Wall., 418; Slaughterhouse Cases, 16 Wall., 36; Bradwell *v.* The State, 16 Wall., 130; Bartemeyer *v.* Iowa, 18 Wall., 129; Minor *v.* Happersett, 21 Wall., 162; Walker *v.* Sauvinet, 92 U. S., 90; Kennard *v.* Louisiana, ex rel. Morgan, 92 U. S., 480; United States *v.* Cruikshank, 92 U. S., 542; Munn *v.* Illinois, 94 U. S., 113.

The fourteenth amendment to the Constitution of the United States was proposed to the legislatures of the several States by the Thirty-ninth Congress, on the 16th of June, 1866. On the 21st of July, 1868, Congress adopted and transmitted to the Department of State a concurrent resolution declaring that "the legislatures of the States of Connecticut, Tennessee, New Jersey, Oregon, Vermont, New York, Ohio, Illinois, West Virginia, Kansas, Maine, Nevada, Missouri, Indiana, Minnesota, New Hampshire, Massachusetts, Nebraska, Iowa, Arkansas, Florida, North Carolina, Alabama, South Carolina, and Louisiana, being three-fourths and more of the several States of the Union, have ratified the fourteenth article of amendment to the Constitution of the United States, duly proposed by two-thirds of each House of the Thirty-ninth Congress: Therefore *Resolved*, That

said fourteenth article is hereby declared to be a part of the Constitution of the United States, and it shall be duly promulgated as such by the Secretary of State." The Secretary of State accordingly issued a proclamation, dated the 28th of July, 1868, declaring that the proposed fourteenth amendment had been ratified, in the manner hereafter mentioned, by the legislatures of thirty of the thirty-six States, viz.: Connecticut, June 30, 1866; New Hampshire, July 7, 1866; Tennessee, July 19, 1866; New Jersey, September 11, 1866 (and the legislature of the same State passed a resolution in April, 1868, to withdraw its consent to it); Oregon, September 19, 1866; Vermont, November 9, 1866; Georgia rejected it November 13, 1866, and ratified it July 21, 1868; North Carolina rejected it December 4, 1866, and ratified it July 4, 1868; South Carolina rejected it December 20, 1866, and ratified it July 9, 1868; New York ratified it January 10, 1867; Ohio ratified it January 11, 1867 (and the legislature of the same State passed a resolution in January, 1868, to withdraw its consent to it); Illinois ratified it January 15, 1867; West Virginia, January 16, 1867; Kansas, January 18, 1867; Maine, January 19, 1867; Nevada, January 22, 1867; Missouri, January 26, 1867; Indiana, January 20, 1867; Minnesota, February 1, 1867; Rhode Island, February 7, 1867; Wisconsin, February 13, 1867; Pennsylvania, February 13, 1867; Michigan, February 15, 1867; Massachusetts, March 20, 1867; Nebraska, June 15, 1867; Iowa, April 3, 1868; Arkansas, April 6, 1868; Florida, June 9, 1868; Louisiana, July 9, 1868; and Alabama, July 13, 1868. Georgia again ratified the amendment February 2, 1870. Texas rejected it November 1, 1866, and ratified it February 18, 1870. Virginia rejected it January 19, 1867, and ratified it October 8, 1869. The amendment was rejected by Kentucky January 10, 1867; by Delaware February 8, 1867; by Maryland March 23, 1867; and was not afterward ratified by either State.

ARTICLE XV.

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

SECTION 2. The Congress shall have power to enforce this article by appropriate legislation.

United States *v.* Reese et al., 92 U. S., 214; United States *v.* Cruikshank et al., 92 U. S., 542; Ex parte Yarborough, 110 U. S., 651.

The fifteenth amendment to the Constitution of the United States was proposed to the legislatures of the several States by the Fortieth Congress on the 27th of February, 1869, and was declared, in a proclamation of the Secretary of State, dated March 30, 1870, to have been ratified by the legislatures of twenty-nine of the thirty-seven States. The dates of these ratifications (arranged in the order of their reception at the Department of State) were: from North Carolina, March 5, 1869; West Virginia, March 3, 1869; Massachusetts, March 9–12, 1869; Wisconsin, March 9, 1869; Maine, March 12, 1869; Louisiana, March 5, 1869; Michigan, March 8, 1869; South Carolina, March 16, 1869; Pennsylvania, March 26, 1869; Arkansas, March 30, 1869; Connecticut, May 19, 1869; Florida, June 15, 1869; Illinois, March 5, 1869; Indiana, May 13–14, 1869; New York, March 17–April 14, 1869 (and the legislature of the same State passed a resolution January 5, 1870, to withdraw its consent to it); New Hampshire, July 7, 1869; Nevada, March 1, 1869; Vermont, October 21, 1869; Virginia, October 8, 1869; Missouri, January 10, 1870; Mississippi, January 15–17, 1870; Ohio, January 27, 1870; Iowa, February 3, 1870; Kansas, January 18–19, 1870; Minnesota, February 19, 1870; Rhode Island, January 18, 1870; Nebraska, February 17, 1870; Texas, February 18, 1870. The State of Georgia also ratified the amendment February 2, 1870.

RATIFICATIONS OF THE CONSTITUTION.

The Constitution was adopted by a Convention of the States September 17, 1787, and was subsequently ratified by the several States, in the following order, viz.: Delaware, December 7, 1787; Pennsylvania, December 12, 1787; New Jersey, December 18, 1787; Georgia, January 2, 1788; Connecticut, January 9, 1788; Massachusetts, February 6, 1788; Maryland, April 28, 1788; South Carolina, May 23, 1788; New Hampshire, June 21, 1788; Virginia, June 26, 1788; New York, July 26, 1788; North Carolina, November 21, 1789; Rhode Island, May 29, 1790. The State of Vermont, by convention, ratified the Constitution on the 10th of January, 1791, and was, by an act of Congress of the 18th of February, 1791, "received and admitted into this Union as a new and entire member of the United States of America."

RATIFICATIONS

OF THE

AMENDMENTS TO THE CONSTITUTION.

The first ten of the preceding articles of amendment (with two others which were not ratified by the requisite number of States) were submitted to the several State Legislatures by a resolution of Congress which passed on the 25th of September, 1789, at the first session of the First Congress, and were ratified by the Legislatures of the following States: New Jersey, November 20, 1789; Maryland, December 19, 1789; North Carolina, December 22, 1789; South Carolina, January 19, 1790; New Hampshire, January 25, 1790; Delaware, January 28, 1790; Pennsylvania, March 10, 1790; New York, March 27, 1790; Rhode Island, June 15, 1790; Vermont, November 3, 1791; Virginia, December 15, 1791.

The acts of the Legislatures of the States ratifying these amendments were transmitted by the governors to the President, and by him communicated to Congress. The Legislatures of Massachusetts, Connecticut, and Georgia, do not appear by the record to have ratified them.

The eleventh article was submitted to the Legislatures of the several States by a resolution of Congress passed on the 5th of March, 1794, at the first session of the Third Congress; and on the 8th of January, 1798, at the second session of the Fifth Congress, it was declared by the President, in a message to the two Houses of Congress, to have been adopted by the Legislatures of three-fourths of the States, there being at that time sixteen States in the Union.

The twelfth article was submitted to the Legislatures of the several States, there being then seventeen States, by a resolution of Congress passed on the 12th of December, 1803, at the first session of the Eighth Congress; and was ratified by

the Legislatures of three-fourths of the States, in 1804, according to a proclamation of the Secretary of State dated the 25th of September, 1804.

The thirteenth article was submitted to the Legislatures of the several States, there being then thirty-six States, by a resolution of Congress passed on the 1st of February, 1865, at the second session of the Thirty-eighth Congress, and was ratified, according to a proclamation of the Secretary of State dated December 18, 1865, by the Legislatures of the following States: Illinois, February 1, 1865; Rhode Island, February 2, 1865; Michigan, February 2, 1865; Maryland, February 3, 1865; New York, February 3, 1865; West Virginia, February 3, 1865; Maine, February 7, 1865; Kansas, February 7, 1865; Massachusetts, February 8, 1865; Pennsylvania, February 8, 1865; Virginia, February 9, 1865; Ohio, February 10, 1865; Missouri, February 10, 1865; Indiana, February 16, 1865; Nevada, February 16, 1865; Louisiana, February 17, 1865; Minnesota, February 23, 1865; Wisconsin, March 1, 1865; Vermont, March 9, 1865; Tennessee, April 7, 1865; Arkansas, April 20, 1865; Connecticut, May 5, 1865; New Hampshire, July 1, 1865; South Carolina, November 13, 1865; Alabama, December 2, 1865; North Carolina, December 4, 1865; Georgia, December 9, 1865.

The following States not enumerated in the proclamation of the Secretary of State also ratified this amendment: Oregon, December 11, 1865; California, December 20, 1865; Florida, December 28, 1865; New Jersey, January 23, 1866; Iowa, January 24, 1866; Texas, February 18, 1870.

The fourteenth article was submitted to the Legislatures of the several States, there being then thirty-seven States, by a resolution of Congress passed on the 16th of June, 1866, at the first session of the Thirty-ninth Congress; and was ratified, according to a proclamation of the Secretary of State dated July 28, 1868, by the Legislatures of the following States: Connecticut, June 30, 1866; New Hampshire, July 7, 1866; Tennessee, July 19, 1866; New Jersey, September 11, 1866;[1] Oregon, September 19, 1866;[2] Vermont, November 9, 1866; New York, January 10, 1867; Ohio, January 11, 1867;[3] Illinois, January 15, 1867; West Virginia, January 16, 1867; Kansas, January 18, 1867; Maine, January 19, 1867; Nevada, January 22, 1867; Missouri, January 26, 1867; Indiana, January 29, 1867; Minnesota, February 1, 1867; Rhode Island, February 7, 1867; Wisconsin, February 13, 1867; Pennsylvania, February 13, 1867; Michigan, February 15, 1867; Massachusetts, March 20, 1867; Nebraska, June 15, 1867; Iowa, April 3, 1868; Arkansas, April 6, 1868; Florida, June 9, 1868; North Carolina, July 4, 1868;[4] Louisiana, July 9, 1868; South Carolina, July 9, 1868;[4] Alabama, July 13, 1868; Georgia, July 21, 1868.[4] The State of Virginia ratified this amendment on the 8th of October, 1869,[4] subsequent to the date of the proclamation of the Secretary of State. The States of Delaware, Maryland, Kentucky, and Texas rejected the amendment.

The fifteenth article was submitted to the Legislatures of the several States, there being then thirty-seven States, by a resolution of Congress passed on the

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[1] New Jersey withdrew her consent to the ratification in April, 1868.

[2] Oregon withdrew her consent to the ratification October 15, 1868.

[3] Ohio withdrew her consent to the ratification in January, 1868.

[4] North Carolina, South Carolina, Georgia, and Virginia had previously rejected the amendment.

27th of February, 1869, at the first session of the Forty-first Congress; and was ratified, according to a proclamation of the Secretary of State dated March 30, 1870, by the Legislatures of the following States: Nevada, March 1, 1869; West Virginia, March 3, 1869; North Carolina, March 5, 1869; Louisiana, March 5, 1869; Illinois, March 5, 1869; Michigan, March 8, 1869; Wisconsin, March 9, 1869; Massachusetts, March 12, 1869; Maine, March 12, 1869; South Carolina, March 16, 1869; Pennsylvania, March 26, 1869; Arkansas, March 30, 1869; New York, April 14, 1869;[1] Indiana, May 14, 1869; Connecticut, May 19, 1869; Florida, June 15, 1869; New Hampshire, July 7, 1869; Virginia, October 8, 1869; Vermont, October 21, 1869; Alabama, November 24, 1869; Missouri, January 10, 1870; Mississippi, January 17, 1870; Rhode Island, January 18, 1870; Kansas, January 19, 1870; Ohio, January 27, 1870;[2] Georgia, February 2, 1870; Iowa, February 3, 1870; Nebraska, February 17, 1870; Texas, February 19, 1870; Minnesota, February 19, 1870. The State of New Jersey ratified this amendment on the 21st of February, 1871,[3] subsequent to the date of the proclamation of the Secretary of State. The States of California, Delaware, Kentucky, Maryland, Oregon, and Tennessee rejected this amendment.[4]

ARGUMENT OF GEORGE TICKNOR CURTIS, Esq.

In the

Case of Dred Scott, Plaintiff in Error, *vs.* John F. A. Sanford.

Delivered in the Supreme Court of the United States, December 18, 1856.

[Dred Scott, the plaintiff in error, instituted an action of trespass in the Circuit Court of the United States for the District of Missouri, describing himself as a citizen of the state of Missouri, against John F. A. Sanford, described as a citizen of the state of New York, for imprisoning himself (Dred), his wife Harriet, and his two children, Eliza and Lizzy, as slaves, the action being what is commonly called a suit for freedom. The defendant filed a plea to the jurisdiction of the court, alleging that the plaintiff is not a "citizen" of Missouri, because he is a negro of African descent, his ancestors being of pure African blood, brought into this country and sold as slaves. The plaintiff demurred to this plea, and the Circuit Court sustained his demurrer, thereby deciding him to be a "citizen," and ordered the defendant to plead over. The defendant then pleaded over, justifying the alleged trespass on the ground that the persons named in the writ were his slaves; and, after issue joined upon these pleas, the parties agreed upon the following statement of facts:

In 1834 Dred Scott was a negro slave belonging to Dr. Emerson, a surgeon in the army of the United States. In that year Dr. Emerson took the plaintiff from

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[1] New York withdrew her consent to the ratification January 5, 1870.

[2] Ohio had previously rejected the amendment May 4, 1869.

[3] New Jersey had previously rejected the amendment.

[4] See Analytical Index, p. 609.

the state of Missouri to the military post at Rock Island, in the state of Illinois, and held him there as a slave until 1836. Dr. Emerson then removed the plaintiff to the military post at Fort Snelling, in the territory of the United States north of 36° 30′, and north of the state of Missouri, where he held the plaintiff as a slave until 1838.

In 1835 Harriet, who was the negro slave of Major Taliaferro, an officer of the army, was taken by her master to Fort Snelling, where she was held as a slave until 1836, when she was sold to Dr. Emerson, who held her as a slave at Fort Snelling until 1838. In 1836 the plaintiff and Harriet with the consent of Dr. Emerson, intermarried at Fort Snelling. Eliza and Lizzy are children of that marriage. Eliza was born on board a steamboat on the river Mississippi, north of the north line of the state of Missouri; Lizzy was born in the state of Missouri, at Jefferson Barracks, a military post. In 1838 Dr. Emerson removed the plaintiff and his wife and children to the state of Missouri, where they have ever since resided. Before the commencement of this suit Dr. Emerson sold the plaintiff and his wife and children to the defendant, Sanford, who has ever since claimed to hold them as slaves.

Upon these facts the jury, under the instruction of the court, returned a verdict for the defendant. The plaintiff then sued out a writ of error to the Supreme Court of the United States. The cause was argued at the December term, 1855, and was then ordered by the court to be reargued at the present term upon the following questions:

1. Whether, after the plaintiff had demurred to the defendant's first plea to the jurisdiction of the court below, and the court had given judgment on that demurrer in favor of the plaintiff, and had ordered the defendant to answer over, and the defendant had submitted to that judgment and pleaded over to the merits, the appellate court can take notice of the facts admitted on the record by the demurrer, which were pleaded in bar of the jurisdiction of the court below, so as to decide whether that court had jurisdiction to hear and determine the cause?

2. Whether or not, assuming that the appellate court is bound to take notice of the facts appearing upon the record, the plaintiff is a citizen of the state of Missouri within the meaning of the eleventh section of the Judiciary Act of 1789?

The latter question involved, among others, the inquiry whether the condition of the plaintiff was changed from slavery to freedom by residence in the territory subject to the operation of the restriction contained in the Act of Congress of 1820, commonly called the Missouri Compromise Act. This drew into the case the constitutionality of that act.

Mr. Curtis was retained in the cause, after it was opened by Mr. Blair for the plaintiff in error, for the purpose of assisting in the argument of this question on behalf of the plaintiff in error, and the following argument was made by him in reply, after the counsel for the defendant in error had closed, and after Mr. Blair had also replied:]

May it please your Honors,—In rising to speak to the single question on which I am to address the court in this cause, I may naturally give utterance to the reflection that with the political relations of this subject of the power of Congress over the territories we here have nothing to do. Whether the power to legislate

on the domestic and social relations of life in a territory, if it exists, ought to be exercised; whether it ought to be conferred in its plenitude on the people of the territory or held in the hands of Congress; whether it ought to be used for one purpose or thrown into abeyance for another; whether it ought to be employed for or against the supposed interests or wishes of one class of states as distinguished from another class, are matters that will never aid anybody in determining whether the power is to be found in the Constitution. This question, with whatever aspects it may go elsewhere, with whatever influences or elements it may be elsewhere surrounded, comes into this pure atmosphere of juridical truth to be debated and decided as a proposition of constitutional law, bearing upon the rights of parties to a judicial controversy. Treating it in no other light, approaching it for no purpose beyond the little aid I may give to the court in the decision of the cause, I profess myself able to consider it as a purely juridical question; for, may it please the court, I am free to say that if I held the legislative authority of this government, or any fraction of it, and had satisfied myself, as I am satisfied, of the existence of this power, I would exercise it or refrain from exercising it precisely according to what I believed to be the exigencies of the particular case; and I would prohibit the relation of master and slave, or permit or sanction it, according to the nature of the soil and climate, the character of the present or the probable character of the future settlers, and according to what I might believe to be for the interests of the particular territory. Acting upon this principle, I should hope to do something, though that hope might be vain and illusive, to eradicate from the public mind those feelings which in one part of the country lead to a claim of the power in order that it may be exercised always in one way, and in another part of the country lead to a denial of the power in order that its exercise in any way be prevented.

But I hold no part of the legislative power of this government, and, by the blessing of Heaven, shall always be free from that responsibility; and I feel no other interest in this question than that which every jurist should feel in the true construction of the fundamental law of his country. As a jurist, I believe that Congress has full power to prohibit the introduction of slavery into the territories of the United States; as a citizen, I can conceive of cases in which it would be unjust to a portion of the Union to exercise that power, and in which I never would exercise it.

And now, in coming to the question on which I am to address the court, I desire to state to the counsel for the defendant in error (Hon. Reverdy Johnson and Hon. H. S. Geyer) that they will hear no references from me to the Constitution "generally." They have called upon us to point out the provision in the Constitution which gives this power, and not to assert it, and then to support the assertion by citing the Constitution *passim*. Their call shall be answered. I give them notice that my argument will be confined to the third section of the fourth article, and if I do not succeed in satisfying even them that there resides in that section a legislative power over the territories adequate and competent to all the purposes for which Congress has ever undertaken to use it, they shall have my free permission to turn their batteries against those who are in the habit of asserting the power and referring in support of it to the Constitution "generally." I do not propose even to debate the question whether a power to legislate on personal rights can

be derived, as an independent power, from the right to acquire territory by purchase or conquest. Whatever may be the value of the suggestion which fell from the great chief-justice of a former day (C. J. Marshall), in the case of the American Insurance Company *vs.* Canter, in 1 Peters (and no suggestion ever fell from him that was without value), it is certain that he and the court over which he presided placed the source of the power of territorial government, for the decision of that case, in the third section of the fourth article of the Constitution. I may desire hereafter, if the time shall permit, to consider what is the probable explanation of the language of the chief-justice in that case, and to state what I understand to be the relations between the right of acquiring territory and the power of governing it. At present what I wish to say is, that as to the source of the power to govern a territory, or to organize it into what we call a territorial community, or to legislate upon any of the relations of its inhabitants, whether to this government or *inter sese*, my argument will be confined to the third section of the fourth article.

I wish, in the next place, to say, may it please your Honors, what indeed is obvious to every one—that this is eminently a historical question. But I shall press that consideration somewhat further than it is generally carried on this subject, and much further than it has been carried by the counsel for the defendant in error; for I believe it to be true of this, as it is of almost all questions of power arising under the Constitution, that when you have once ascertained the historical facts out of which the particular provision arose, and have placed those facts in their true historical relations, you have gone far towards deciding the whole controversy. So true is it that every power and function of this government had its origin in some previously existing facts of the national history, or in some then existing state of things, that it is impossible to approach one of these questions as one of mere theory, or to solve it by the aid of any merely speculative reasoning. Hence it is eminently necessary on all occasions to ascertain the history of the subject supposed to be involved in a controverted power of Congress, and, above all, to approach it with the single purpose of drawing that deduction which the constitutional history of the country clearly warrants.

The first proposition that I shall maintain, then, is the following:

I. That the last clause of the third section of article four is by no means an independent provision, standing by itself, and to be construed by itself, as both the learned counsel have treated it, but that it was placed there with a purpose; that it is intimately connected with the first clause of the same section, and that it embraces a provision historically necessary to the exercise of the power clearly and unequivocally granted in the first clause. The whole section is as follows:

"SECTION 3. New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the Jurisdiction of any other State; nor any State be formed by the Junction of two or more States, or Parts of States, without the Consent of the Legislatures of the States concerned as well as of the Congress.

"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."

Now, if there is anything certain with respect to the Constitution, it is that these two subjects are not placed there by an accidental coincidence. They are not there in the mere accident of juxtaposition. They were placed there with a purpose, which it is my duty now to shew. Not to stand here and relate notorious facts, but in the briefest possible order in which I can place them, I desire to refer to those great historical events which surround the origin of these provisions.

We know, then, that the vast domains included within the indefinite and unsettled boundaries of some of the larger states formed the chief and almost the only subject of contention between the states of this Union after the Declaration of Independence and during the Revolutionary War. We know that no sooner was the Union cemented by the magnificent cession made by Virginia—"mother of great men," she has been called; doer of great deeds, she might be called—no sooner had Virginia ceded to the United States the country northwest of the Ohio, than the question arose how that country was to be formed into states and those states admitted into the Union. This question was of necessity precipitated upon the Union by the deed of cession itself; for that deed—and I beg our learned opponents to note the fact—contained an express condition that the country ceded should be formed into distinct republican states, and that those states should be admitted into the Union; so that the United States, from the moment when they received that deed, stood as trustees to execute these great purposes. Moreover, it will be found that, in order to enable the United States fully and completely to effect the purposes of the grant, Virginia ceded all her "right, title, and claim, as well of soil as of jurisdiction, which the said Commonwealth hath to the territory or tract of country within the lines of the Virginia charter, situate, lying, and being to the northwest of the river Ohio, to and for the uses and purposes and on the conditions of the said recited act." The recited act was the act of Assembly passed by Virginia authorizing the conveyance, and declaring the trusts and conditions on which it was to be made. (Journals of the Old Congress, IX. 67-69; XI. 139, 140.) The deed was executed on the 1st day of March, 1784. Mr. Jefferson immediately undertook a measure (in Congress) to provide for the formation of states in the territory, and for their future admission into the Union. But the power of Congress to admit a new state, so originating and so formed, was nowhere to be found in the articles of confederation. Mr. Jefferson's resolves contained a prohibition against slavery in the territory that was to operate after the year 1800; but this clause was stricken out. The resolves, however, were passed, providing for the formation and admission of states. But Mr. Jefferson has himself informed us that there were great differences of opinion in Congress as to the power to admit a new state formed in the territory, and that, although his measure was adopted, the delegations of most of the states reserved themselves on the question of power to admit a state and on the rule of voting.

We leave the year 1784 with these facts, and come down to the year 1787. In the interval, encouraged by Mr. Jefferson's measure, a great emigration had begun to take place across the Ohio, chiefly from the Northern and Eastern states.

The direction of this emigration after it entered the territory, its wants, and the surface and shape of the country, rendered Mr. Jefferson's measure inadequate to the purposes it embraced, and the ordinance of 1787 was prepared and brought into Congress to take its place. It has been correctly said, on the other side, that the ordinance embraced two distinct classes of provisions. One branch of it contained legislation for the establishment of states and their admission into the Union; the other contained legislation on the rights and capacities of persons, not only upon this subject of slavery, but upon many other subjects. Of course the power of Congress to legislate on any of these interests was no greater in 1787 than it was in 1784.

We have arrived, then, at the summer of 1787 with these facts—the exercise of a plenary power of legislation by Congress over the territory, and a complete want of such power of any express character, or resting on any express provision. Now, I place very little value upon the mere fact that the ordinance, as passed by the Congress of 1787, contained a prohibition against slavery. In my humble judgment this fact, in the argument that is to prove the power of Congress under the Constitution, is not worth the ink that it takes to write it down; for, whether the fact is used to establish a supposed policy of the founders of this government, or as a proof of their views and feelings and purposes with regard to this institution, it is undeniable that the Congress which passed that ordinance had no express, reliable, or ascertainable authority to legislate on any of the subjects embraced in it. No; the corner-stone of the whole argument is the want of power in that Congress; and he who wanders away from this into the region of private correspondence and individual declarations of feeling or opinion about slavery, and its destinies and duration, seems to me to desert the foundation of his case, and to do all he can to weaken his position. I believe the truth to have been, in point of fact, that the states in Congress, in 1787, legislated as they did respecting slavery in the Northwestern Territory because they saw that the region was likely to be occupied chiefly by those who were unaccustomed to the use of slaves, who would not wish for or require them, and would not desire their presence among them; and, seeing this, the delegations of all the states in Congress were willing that the predominating wishes and interests of the great body of the probable settlers might be consulted and secured. And I am the more confirmed in this view by the fact that when other territories came to be organized south of the Ohio, after the adoption of the Constitution, Congress, seeing that they must naturally be occupied by those who from custom and interest would desire this species of labor, undoubtedly sanctioned and authorized the institution. (See the acts organizing the territories of Tennessee, Mississippi, and Orleans, referred to *infra*.)

But we must take along with us constantly in the investigation of this subject that the power of the Congress of 1787, as undertaken to be exercised in the ordinance, was strenuously denied. Mr. Madison emphatically denied it in the thirty-eighth number of The Federalist quoted by my friend on the other side (Mr. Johnson). Indeed, it is impossible to examine the Articles of Confederation, and not to see that the Congress had no authority to admit a new state formed out of territory not belonging to the United States at the time those articles were framed.

Quitting the city of New York, where that Congress sat, and coming to the city of Philadelphia, where the convention was at the same time engaged in framing the Constitution, the next historical fact is that it was known to the convention that the Congress had passed the ordinance. Most persons have contented themselves, in investigating this subject, with saying that this knowledge must be presumed. May it please your Honors, it does not rest upon a presumption. A copy of the ordinance, which was passed July 13th, was communicated by R. H. Lee to General Washington, the president of the convention, by letter dated July 15th. (Correspondence of the American Revolution, IV. 174; Writings of Washington, IX. 261.) The ordinance was published also in a Philadelphia newspaper on the 25th of July, probably by General Washington's direction.

Here, then, are the facts that the Congress had passed this ordinance, that they had no proper constitutional authority to pass it, and both these things were known to the convention. At that very moment the convention was engaged in framing provisions to supply this defect of constitutional power. To their proceedings on this subject I now invite the attention of the court.

Among the resolutions brought into the convention on the third day of its session (May 29) by Edmund Randolph, and which contained nearly all the germs of the Constitution, your Honors will find the tenth in these words:

"10. *Resolved*, That provision ought to be made for the admission of states lawfully arising within the limits of the United States, whether from a voluntary junction of government and territory, or otherwise, with the consent of a number of voices in the National Legislature less than the whole."

This resolution, in every form in which a proposition can be subjected to the action of a deliberative body, passed the convention; and finally, on the 27th of July, is found among the resolutions sent to the Committee of Detail for the preparation of a draft of the Constitution, where it takes its place as the seventeenth resolution, in identically the same words. The convention, therefore, had arrived at this solemn decision, that the new government was to have power to admit into the Union two classes of states: one, those which should "arise" out of a voluntary junction of the government and territory of parts of the existing states; the other, those which should arise "otherwise." Now, what was the actual state of affairs in reference to which this language was used? On the north, Vermont, in the somewhat rebellious attitude of an overgrown boy, was in the actual exercise of an independent jurisdiction adversely to the state of New York. On the southwest, Kentucky, of whose matured sovereignty we are reminded by the benignant presence of my venerable friend, her senator (Mr. Crittenden), was then just ready, in her stalwart youth, to be separated from her parent, Virginia. Tennessee was almost beginning to ask permission to exchange the tutelage of her mother, North Carolina, for the guardianship of the United States. In the northwest the emigration of which I have spoken had already begun to lay the foundations of that infant society which has since expanded into five princely and powerful states. To meet this condition of things power was wanted for the new government of a double character. In the first place, power was wanted to "admit" all of these anticipated and new states, whether arising out of the old states or arising within the territory. But as to the new states that might be

formed out of a part or parts of the old states no power was needed to form them or to determine when they had "lawfully arisen;" for that was the affair of the old states, to which as settlements they then belonged. But within the reputed or asserted boundaries of those old states, and beyond and around the actual settlements, there were unoccupied lands, claimed, on the one hand, by the United States under the treaty of peace, and on the other by the states themselves as successors of the crown of England under the Revolution. Power was needed, therefore, to deal with, assert, and dispose of the interest which the United States then had or might afterwards acquire from the states in these lands.

With respect to the new states that were to "arise" in the territory northwest of the Ohio, besides the powers I have now described, there was needed a further and a distinct power—namely, the power to execute the purposes embraced in the cession of Virginia. It is true that the United States, before that cession, had claimed title to that country as well as Virginia; but having invited and received a cession of the Virginia claim, under an express and solemn undertaking with Virginia to form the country into distinct republican states, and to admit those states into the Union, the United States must be taken to have waived their own original title, and to have held the country subject to the conditions and trusts declared in the deed of Virginia, or at least to have subjected their own independent title to the provisions and conditions of that deed. This view of the subject is confirmed by the fact that when, in 1786, it became expedient to vary the number and form of the new states contemplated by the original plan embraced in the cession and in the resolves of Congress, it was deemed necessary to obtain the consent of Virginia, which was given. (Journals of Congress, XI. 139, 140, July 9, 1786.) Power was wanted, therefore—legislative power—to superintend the formation of states in the territory; to lay the foundations of society; to protect its growth; to give it law, order, security; to lead it on from the first crude condition of a dozen log-cabins to that grand system of human association and self-sustaining authority that constitutes a state; and when all was done, and the whole of the vast region should be filled as it is now filled, to be able, with grateful and patriotic hearts, to turn to generous and magnanimous Virginia, and say to her, "Behold what you have enabled us to do."

These were the objects to be accomplished, and the framers of the Constitution addressed themselves to their work. Their Committee of Detail, in the first draft of the Constitution which they reported, made no provision on this subject, except to declare that "new states lawfully constituted or established within the limits of the United States may be admitted, by the legislature, into this government" by a vote of two thirds of each House; that "if a new state shall arise within the limits of any of the present states the consent of the legislatures of such states shall be also necessary to its admission;" that "if the admission be consented to the new states shall be admitted on the same terms with the original states, but the legislature may make conditions with the new states concerning the public debt which shall be then subsisting." (First Draft of the Constitution, Art. XVII. Elliot's Debates, V. 381.) These provisions embraced neither a power to dispose of the public lands, nor that legislative power which I have described as necessary to the formation of new states in the territory. Mr. Madison, with the instant sagacity that always characterized him, saw the omission and

proceeded to supply the defect. He moved two propositions as additional powers of Congress:

"To dispose of the unappropriated lands of the United States;

"To institute temporary governments for new states arising therein."

These propositions were referred to the Committee of Detail; but before they had reported upon them the seventeenth article of their draft of the Constitution was reached and taken up for consideration. Thereupon various objects, which different classes of the states desired to accomplish, were at once developed. On the one side were those who sought for restrictions to prevent the dismemberment of any of the old states without their consent. This provision was made. Then came the subject of the vacant lands lying within the asserted boundaries of some of the old states, and claimed by the United States under the treaty of peace; and the question was, in what attitude the Constitution was to leave the claims of the United States and the claims of the individual states? At this precise point Gouverneur Morris—surveying the whole field, aiming to comprehend the political jurisdiction needed for the territory northwest of the Ohio, the power to dispose of the lands of the United States wherever situated, and at the same time to leave the titles to unoccupied lands claimed both by the United States and by individual states without prejudice from anything in the Constitution—rose and presented the very clause that now constitutes the last branch of the third section of the fourth article, in these words:

"The legislature 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 contained shall be so construed as to prejudice any claims, either of the United States or of any particular state." (Elliot, V. 492–497.)

The proposition was at once adopted with almost universal consent. It satisfied everybody, and accomplished all that had been suggested, and which ought to have been accomplished. It was one of those fortunate achievements of the pen by which a man of great experience and legislative tact, sitting as if in the centre of men's minds, and combining their thoughts and purposes into a single sentence, engraves the needed provision upon the record by a single stroke, and leaves it to do its office through all coming time.

Having now established, as I respectfully submit I have, the connection between the two clauses of the third section, I proceed to state the second proposition that I am to maintain in this argument:

II. That the power to "make all needful rules and regulations respecting the territory" is a power to legislate—plenary; embracing all the subjects of legislation of which any full legislative power can take cognizance, subject only to the restrictions which qualify all the legislative powers of Congress, wherever exercised, with respect to certain great public and private rights.

I admit and claim that the power of territorial legislation is subject to these restrictions, which I shall presently enumerate; and I do so because my learned friend (Mr. Johnson) expended a vast force of denunciation upon the idea that citizens of the United States, by quitting a state and going into a territory, may pass out of the pale of the Constitution and within the pale of an enormous, unlimited, and irresponsible power, and so subject themselves to an "inequality."

Now, that a citizen of a state, when he emigrates into a territory, lays down the character of a citizen of the state from which he removes, so far as the rights and privileges secured to him by the Constitution as a citizen of a state are concerned, I believe to be entirely true. For example, he cannot sue a citizen of another state in the courts of the United States, by reason of his citizenship, after he has become an inhabitant of a territory. But let us see whether it be true that he subjects himself to an arbitrary and unlimited power of legislation and government. In the Constitution, as originally adopted, there are certain very important limitations imposed upon all the legislative powers of Congress, wherever they may be exercised, and in the amendments there are many more. The provisions of the Constitution respecting the habeas corpus, bills of attainder, and *ex post facto* laws, titles of nobility, the definition, evidence, and punishment of treason, and religious tests for office, are positive restrictions which Congress can violate nowhere. I hold the same to be true with respect to trial by jury for crime. With respect to the rights secured by the amendments, it is clear that Congress can 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 for a redress of grievances; that no soldier can in time of peace be quartered in any house without the consent of the owner, nor in time of war but in a manner prescribed by law; that unreasonable searches and seizures are prohibited, and that warrants must issue upon probable cause, supported by oath, etc.; that for capital or otherwise infamous crimes there must be a presentment by a grand-jury; that no man can be compelled to be a witness against himself, nor be deprived of life, liberty, or property without due process of law; and that private property cannot be taken for public use without just compensation; that in suits at common law, exceeding twenty dollars in value, there must be a trial by jury; that excessive bail cannot be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted. All these are restrictions upon all the legislative powers of Congress, and it would be idle to contend that they apply only to those powers when exercised in the states. I do not say that they would be applicable to a district of country conquered from an enemy, while it remained in our military occupation, or to a place purchased for a military or naval station without the limits of the Union. I am treating now of "the territory" contemplated and intended in the third section of the fourth article, in respect to which I have shown that the framers of the Constitution intended to provide a legislative power; and I say that if there is any legislative power whatever provided in the authority to "make all needful rules and regulations," it is, like all the other legislative powers, subject to these restrictions, which declare that certain things shall not be done, and that certain other things shall be done.

But to return to the power itself. I submit to your Honors that, considering the object for which it was to be created, and the relations between the United States and Virginia under the deed of cession, it was, *a priori*, to have been expected that the convention would create such a power as I have described. What was the object for which the power was to be given? To prepare, in a new and unoccupied country, "states" for admission into this Union. What is a state? Is it an aggregation of men living without law? No; it is a political

society founded in social order; and for that order it must be trained. Before the particular form of the body politic, called in our system a "state," is formed, there must be an interval. That interval must be occupied with the restraints and protections of law. In other words, there must be government; which is only saying that there must be legislative power. Where shall that legislative power reside? By the law of nature it is in the individuals settling on the soil of the territory. But the framers of the Constitution were not legislating to enact the law of nature, or to carry it out; but to provide a positive code of political law that should vest somewhere this legislative power necessary to the wants of a new society. They said, therefore, this power of legislation shall not reside where the law of nature would leave it, but in the Congress of the United States. They shall have power to make all the needful rules and regulations required to accomplish the work that is to be done: first, because there is to be an interval during which there must be authority somewhere; secondly, because there is cast upon the United States, by the cession of Virginia, the trust of superintending the formation of that region into states; and, thirdly, because to admit the law of nature to operate would be to surrender the whole control, municipal government, corporation, private rights, political relations, everything out of the hands of the United States, who are the trustees under the cession, into the hands of those who are not the trustees. I say, therefore, there were reasons, *à priori*, for this provision; and this brings me to the phraseology of the clause.

We have had much criticism by both of the learned counsel for the defendant in error upon the meaning of the word "territory" in this clause of the Constitution. It is insisted that it means land, and nothing else. If this be so, the consequence seems to follow, as in one part of their arguments they have contended, that the power or powers granted in the section extend to nothing but the disposal of the soil. How the learned counsel in that case get the right to establish municipal government or a "municipal corporation," which they distinctly admit in their brief, they have not informed us. But I think that the history of the formation of this clause opens to us the source of municipal and political government, as well as of the power to dispose of the soil. The primary and general sense in which the framers of the Constitution used the term "the territory" was that in which it was used in the deed of cession, and in which it had always been used since the cession. They meant by it the region of country ceded by Virginia to the United States, and they spoke of it as "the territory." The United States had no other territory; they did not then expect to have any other, except such as might be ceded to them by other states under similar circumstances, and for similar purposes. Now, that the framers of the Constitution intended to use this term in the clause before us (using it but once) in a sense which admits of its application to the soil is manifest from the context. The rule, *reddendi singula singulis*, refers the term "territory" to the power to "dispose of," and gives it the signification of land. In that construction the subject qualifies the power and the power qualifies the subject. The same rule refers the term "territory" to the power to "make all needful rules and regulations respecting" it, and gives it the signification of the country or region belonging to the United States. These terms embrace a legislative power just as complete, just as efficacious, as if the words "exclusive legislation" had been employed. But if you

say that they are a mere repetition, in another form, of the power to "dispose of" the soil, you make them merely tautological; whereas there are no tautologies to be found in the Constitution of the United States. It would be a violence of construction unwarranted by anything else in the instrument to suppose that words of an altogether wider scope and signification were employed as a bare repetition of the idea of disposing of the soil.

In this connection I wish to notice an objection taken by the learned counsel (Mr. Geyer) who opened the cause for the defendant in error. He put to us the inquiry, with great significance, how it happens, if these words "to make all needful rules and regulations" were intended to give a legislative power—how it happens that the framers of the Constitution did not employ the terms "exclusive legislation," which they used to establish the authority of Congress over the District of Columbia and over places that might be ceded for forts, arsenals, and dock-yards? I think I can tell him. The framers of the Constitution knew very well that if a seat of government were to be obtained for the United States, which they did not mean peremptorily to direct, it must be obtained here, somewhere in the centre of the Union, by a future cession from a state or states that had always had jurisdiction over the tract that might be ceded. It was necessary, therefore, to employ a term which should, by its immediate operation upon the cession, exclude the possibility of any exercise of state authority after the cession, and fix the authority of Congress as the sole authority by which the ceded tract was to be governed. The same was true of the places that might thereafter be ceded for forts and dock-yards. But with respect to the territory northwest of the Ohio there was no such necessity for excluding the possibility of state jurisdiction. The jurisdiction of Virginia, or all her claim and possibility of jurisdiction, had passed to the United States years before the Constitution was framed. There was no necessity, therefore, to give effect and operation to the idea that the jurisdiction of the United States was to be exclusive of any State jurisdiction. But it was necessary, in order to vest in Congress a full legislative power to exercise the jurisdiction of the United States, to use words which would describe such a power; and this was done by the terms "to make all needful rules and regulations."

But our learned opponents think that they find in the term "or other property," which follows immediately after the word "territory," conclusive proof that the latter term meant nothing but land. The simple answer to this is, that it was just as proper to follow the word "territory" with the expression "other property," if "territory" mean the region of country whose soil and jurisdiction had been quitclaimed by Virginia to the United States, as it would have been upon the supposition that "territory" included nothing but the soil; for whether this term includes more or includes less, everything that it did include was the property of the United States. It is obvious, however, from the history of the clause, that the words "or other property belonging to the United States" were used to extend the powers of disposal and regulation to those other claims which the United States had within the asserted boundaries of other states, or might thereafter have under the cessions of other states besides Virginia.

Having, then, arrived at two results—first, that the clause embraces two separate but connected powers; second, that one of them, which I call the legislative

power, was intended to effect a great purpose of national policy in the preparation of new states for admission into the Union—I proceed to inquire whether that purpose can be answered by treating the power as anything less than what is described by the words in which it is granted.

And here it is immaterial which branch of the argument the other side may elect to take. They must admit that the words mean something. Take, first, the establishment of governments within the territory. Congress makes a law having reference to the organization of a territorial government. Somebody refuses to obey it, under the allegation that Congress have exceeded their powers by going beyond the object of the clause; he is prosecuted, and brings his case here by writ of error. Your Honors look into the Constitution, and find that Congress has power to make "all needful rules and regulations respecting the territory," and you tell him that the particular law of which he complains was made respecting the territory in question. But, says the plaintiff in error, this law was not within the power, because it was not "needful" in the exercise of the power to erect a government. Is that a judicial question? Is it a question which your Honors can decide? What means has the judicial department for determining it? And yet if the doctrine contended for on the other side be correct, your Honors must determine it, either with or without means; for if the power granted in this section be anything less than a full legislative power—if it is confined to certain specific objects—the question whether the subject of a particular law is within those objects can only be determined by determining whether the particular legislation is "needful."

This illustration shows that the moment you reduce the words below their natural import and say that they are not applicable to this or that particular subject, you bring into this court as a judicial question one that is not only in its nature a political question, but one that is made political by the very terms of the grant; for if the terms of the grant are made to embrace only a few specific objects—less than all the objects of legislative power—then the question whether the particular subject of a law is "needful" for the purposes of the granted power will be identical with the question whether the subject of the law is within the scope of the granted power. But, on the other hand, if the words are held to include all subjects of legislation within the territory, the question whether a particular law is needful cannot become confounded with the question whether its subject is within the granted power.

Let me illustrate my meaning by supposing another case. The gentlemen on the other side claim that the power is limited to the disposal of the land. Very well. Congress pass a law that no land in a particular territory shall be sold to anybody but a white man. A colored man makes an entry, pays his money, and by some oversight gets his patent. The title descends, gets into dispute, and the case is brought here. Those who claim under the colored man allege that the law was not within the power of Congress, because it was not "needful" to the exercise of the power of selling land; and your Honors must determine whether it was "needful" in order to determine whether it was within the particular and special power alleged to be the only subject of the grant. But let us suppose that Congress has a general legislative power over all subjects within the territory, and the same case comes here. Your Honors' answer to it will be, "Congress

have full authority to legislate about everything in a territory that can be the subject of legislation anywhere; and the question of the needfulness of their legislation does not determine the extent of their power. If you are aggrieved, there are chambers above and a mansion at the other end of the avenue to which you must go for relief."

Now, may it please your Honors, is not this reasoning justly applicable to the matter of slavery in a territory, which nobody will deny to be a subject of legislative regulation, wherever legislative power exists? Let me press the considerations which I have urged, not upon the feelings, but upon the judgment of the bench. Are your Honors to sit here between the contending parties of the Republic, or its extremest factions, the pro-slavery and the anti-slavery, and, as their successive projects take the form of legislation for territories, are you to determine what is "needful" for the welfare of the country? Is this bar—sacred to the high debates of jurisprudence and renowned for them throughout the world—to be turned into an arena for political combatants to discuss questions of social theory, the value, the dignity, the blessing of this or that form of labor, the equality or inequality of races, the claims of sections upon the territories? And when the wrangle is ended, terminated by your Honors' rule, or worn out by its own ferocity, you are to retire, and, by such principles and upon such considerations as you may, you are to determine what is "needful" for the public good! The idea is somewhat startling; and yet to this it must come unless Congress is admitted to be the absolute, supreme, and final judge of what the Constitution has committed to its political discretion. I think, Mr. Chief-justice, when what I have described shall occur, that, speaking for your brethren and yourself, you would be entitled to say, "We sit to administer the judicial power. Go to those who can determine such a question, and who are entitled to speak the voice of the people. Our voice is the interpretation of the law; and from that interpretation the Constitution has withdrawn the question of what is a true policy."

But it remains for me, before I leave this part of the subject, to attend to one of the positions taken by the learned counsel (Mr. Geyer) who opened on the other side. "Creating a municipal corporation," he said, "is a different affair from legislating on the rights of individuals." One of them he admits, the other he denies to be within the power of Congress. Now, in a certain very obvious sense, there may be a great difference between creating a municipal corporation and legislating on the rights of individuals. But the question here is, whether that difference shows that either of them is not within the granted power? Let us examine that question. What constitutes the difference with respect to the power? Both are within the territory; both are subjects of ordinary legislation; both are equally restrained or unrestrained by the restrictions of the Constitution, according as you hold that those restrictions do or do not extend to the territories. So far they are alike. Are they not equally alike in reference to the standard by which the Constitution places every law respecting a territory within the judgment of Congress as to its necessity? The corporation is clearly to be referred to that standard. Whether it shall be made at all; how it shall be made; how and when it shall be changed—all this rests in the judgment of Congress as to its necessity. Is it any otherwise with regard to the rights of individuals, except so far as they may be fixed by the Constitution itself? What con-

stitutes the distinction? If both corporation and personal rights are within the territory, if both are subjects on which legislative power can act, if both are unrestrained by any special provision of the Constitution forbidding legislation respecting them, then both are equally to be referred to the standard of what is "needful," and that standard is fixed by the terms of the grant in the judgment of Congress, and nowhere else.

The last proposition which I am to request the Court to examine is—

III. That the objections which have been here urged to the existence of this power all resolve themselves into abuses of it, which in no degree touch the question or define the limits of the power itself. One of the principal objections to which we have listened is, that if it is a general legislative power it becomes perpetual. Both the learned counsel have insisted on this in different forms. My friend (Mr. Johnson) who closed the case upon the other side declared with great emphasis that the power is "not exhausted with the termination of the territorial existence;" and he cited in proof of this the eighth section of the Act of 1820, commonly called the Missouri Compromise, by which Congress undertook to prohibit slavery north of a certain line "forever." The other counsel (Mr. Geyer) spoke of the power as a power of "dictating the state constitution," and one that would "make white men slaves."

I marvel that two such experienced, able, and distinguished advocates and jurists did not see two or three very obvious answers to this. In the first place, they might have remembered that the very terms of the grant limit the power to the territorial existence. And did they not know that even during the territorial existence there is no potency in the word "forever" that can irrevocably fasten any line of policy upon any territory? The legislation of the last few years shows plainly enough that there is no magic in that word to prevent its being expunged from the statute-book at any time; as, indeed, it must be, in any legislation, a term of the merest surplusage. I marvel, also, that the learned counsel did not see that by no exertion of the power in a territory, however long continued, can any character be impressed upon the state constitution which the people of the state, after they have become such, cannot change in an instant. The learned counsel (Mr. Geyer) referred us to the attempt that was made in Congress, when Missouri first sought admission into the Union, to dictate to her concerning a feature of her constitution. If he referred to the effort made in 1818–19 to compel Missouri to form a constitution prohibiting slavery, I say it in his presence, with all the pain that can belong to one generation when speaking of the acts of another, that the attempt was wrong. Congress has no right, when a state asks admission into the Union, to dictate the provisions of its republican constitution; and had I a vote to give on such an occasion, I know of nothing that would induce me to exclude a new state whose people, without improper interference and without fraud, appeared to have voluntarily and deliberately chosen to have slaves among them. But the learned counsel should have placed that act of wrong where it belongs, not as an exercise of the power of making rules and regulations for a territory, but as an exercise of the power to admit a state. Of that power it was an abuse. It was neither an abuse nor a use of the power of territorial regulation, and its occurrence in history is no more to be cited as proof that the power of Congress over the territories is not a full legisla-

tive power while the territorial condition continues than it would have been if it had occurred in the exercise of the power to regulate commerce, or of any other power with which Congress is invested.

As a further proof of the perpetual character of this power, both of the learned counsel have suggested that its exercise, in a certain way, upon certain subjects, may leave upon the structure of society in a territory consequences that may last forever, and that this is contrary to the spirit of American liberty. I beg to know if it has not been true of all legislative power since the world began that it has left upon us some consequences of the manner in which it has been exercised? Have not all the dynasties that have passed over that branch of the race of Adam to which we belong left upon us the impress of their legislation? All that has been done by government, all the former structure of civilization, all past habits of thought and feeling, all that has been made and unmade as law, all that has been permitted and all that has been prohibited, has contributed directly or indirectly to mould the present form and spirit of society. Are we, therefore, any the less free? What is that political freedom which we value above the rubies and the riches of earth? Is it that we have inherited nothing from the past? Is it the test of freedom to be able to say that the legislative power of a former day has left no traces upon the framework of society? No; the test of freedom is this: that when we have reached the full stature of a state, and have put on the authority of independent self-government, we are at liberty to wipe out all that has come down to us, and to reconstruct society according to the pleasure of our own sovereign minds. As it has been with us, so will it be with the people of every territory that this government may organize. You may legislate as you please, you may construct their social system as you choose, the day will come, when they take their place among the sovereign states of this Union, that they will be absolutely free to undo all your legislation, and to adopt any condition or form of society that is consistent with a republican form of government.

I now beg the attention of the court for a few brief moments while I endeavor to state what I understand to be the legislative construction which the Constitution received at the hands of its framers and their contemporaries in respect to this power. I shall not detain the court long upon the re-enactment or confirmation of the ordinance of 1787 by the first Congress that sat under the Constitution. There it stands upon the statute-book, and no man can say that it was not an exercise of legislative power over personal rights and relations in a territory. But that was an exercise of power to prohibit the relation of servitude. I turn from it, therefore, to an exercise of the power to confirm, to sanction, and to perpetuate that relation. On the 2d of April, 1790, Congress accepted a cession of the claim of North Carolina to a certain district of western territory which has since become the state of Tennessee. One of the conditions of the deed of cession was "that no REGULATION made or to be made by Congress shall tend to emancipate slaves." (Statutes at Large, I. 106.)

I pause for a moment upon this remarkable language. The state of North Carolina, assuming that Congress has power to regulate slavery in a territory, and using the very word which the Constitution employs as synonymous with law, thinks proper to lay that power under a restriction with respect to the territory of Tennessee. Congress, by an act passed May 26, 1790 (Statutes at Large, I.

123), organized a government for the territory upon the conditions of the deed of cession. The learned counsel opposed to us will call this a compact. It is no matter whether it was a compact or something else; it proceeded upon the assumed principle that, without a restriction, Congress would have power to regulate the emancipation of slaves. This occurred in the presidency of Washington, Mr. John Adams being vice-president, Mr. Jefferson secretary of state, Mr. Hamilton secretary of the treasury, and many of the framers of the Constitution being in Congress.

The next action of Congress to which I wish to refer is that relating to the territory of Mississippi, organized by statute of April 7, 1798. The seventh section of that act prohibited the importation of slaves into the territory from any place out of the limits of the United States, leaving, by clear implication, a right to introduce them from places within the United States. The third section of the act made this implication perfectly conclusive; for it excluded the operation of the freedom clause in the ordinance of 1787, by an exception which prevented its application to Mississippi. When the bill was pending in the House of Representatives, Mr. Thatcher, of Massachusetts, moved to strike out this exception, upon the ground that the government of the United States, having itself originated in and been founded on the rights of man, could not consistently establish a subordinate government in which slavery was to be both tolerated and sanctioned by law. A very instructive debate ensued upon this motion, but it received only twelve votes; and the act was passed containing a clear and unequivocal sanction of slavery by law. (Annals of Congress, Fifth Congress, II. 1306–1312.)

Afterwards, in 1804 (March 26), comes the act to organize the territory of Orleans. This act contained a prohibition against the introduction of all slaves, "except by citizens of the United States removing into the territory for actual settlement, and being at the time of such removal *bona fide* owners of such slave or slaves; and every slave imported or brought into the territory contrary to the provisions of this act shall thereupon be entitled to and receive his or her freedom." I know not how there could be a more direct and explicit assertion by Congress, both of a power to emancipate within a territory, and a power to sanction within a territory, than was here asserted. The whole subject is regulated in both ways—by prohibition and by permission.

Here I think that legislative constructions of the Constitution should cease to be resorted to; for at this point of time we leave the actual presence of its framers and their contemporary generation.

It only remains for me to submit to the consideration of the court the view which I entertain of the right of acquiring territory, and of the power of governing it when acquired, in order to see whether the territorial clause, as it is sometimes called, is or is not applicable to possessions acquired by conquest or treaty with a foreign power, and, if so, when its application can be said to commence.

It is not probable, so far as I have ever been able to ascertain, that the framers of the Constitution, or the people of the United States at the time of its adoption, expressly contemplated the acquisition of any territory in addition to that ceded by Virginia northwest of the Ohio, excepting such as might be ceded by some of the other states under similar circumstances and for the same purposes.

Although the right to navigate the Mississippi through its outlet to the sea was, for a long time before the Constitution and immediately at that time, a subject of national consideration and of actual negotiation with Spain, it does not appear, so far as I know, that the people of the United States then contemplated the acquisition of the country lying at the mouth of the river, or that they looked to the acquisition of any other foreign territory. The framers of the Constitution, therefore, shaped the territorial clause (Art. IV. § 3) with reference to the special object of the formation and admission of new states to be formed out of the territory already within the limits of the United States, and already ceded by one of the states of the Union; but at the same time they made it a general provision by extending it to "other property belonging to the United States;" for these words, as I conceive, considering their context and the objects at which the framers of the instrument were aiming, must be construed to mean other territorial property besides that intended to be described as "the territory," which meant the particular region northwest of the Ohio.

But, on the other hand, we are to remember that this government possesses the great national and international powers of making war and of making treaties. It is the settled doctrine of this court that these powers involve the power of acquiring territory, either by conquest or by treaty; and upon this ground of right acquisitions have been made by treaty which have been incorporated into the Union. To determine the extent and kind of authority which this government may exercise over a conquered country we must look to the law of nations. Having the power of making a conquest, this government has all the powers over the conquered country that are possessed by any nation when it has made a conquest. It may be governed according to the pleasure of the conqueror, which pleasure is limited, if at all, only by the usages of civilized nations in like cases. With respect to a country acquired by treaty, if the treaty contains any stipulations concerning the treatment of the inhabitants, the power of the nation receiving the cession is limited by those stipulations. If the treaty is silent, the power is the same as in the case of a conquest, and its nature and limits are to be determined by the law of nations. The power to acquire, in both forms, is derived to the government of the United States from the Constitution. The right to govern after the acquisition is made is derived from and regulated by the law of nations, and it is what Chief-justice Marshall described as "the inevitable consequence of the right to acquire." (1 Peters, 543.)

From these positions it seems necessarily to follow that when the United States make an acquisition by conquest or by treaty (if the treaty contains no stipulations that limit their power), they may hold and govern the country acquired in any manner, and for any length of time in any manner, that they may see fit, so long as they choose to keep it in the position of a dependency external to the Union. They may give it a military government or a civil government, or no government other than the arbitrary will of a proconsul; and this power continues indefinitely until Congress shall determine that the country shall be incorporated into the Union. When that time arrives — and its arrival is in the uncontrollable judgment of Congress, in the absence of treaty stipulations—I submit that a change takes place with respect to the source of the power to govern and regulate.

The American Union is a peculiar incorporation of states and the people of states into a general government. Into this Union no community of people, however previously existing, can be admitted save in a peculiar form, known in our polity as a "state." It must have prepared a republican form of government, adapted to the Constitution of the United States. When, therefore, Congress has decided that the people of such a country shall have the privilege of erecting or forming themselves into a "state," the power to govern them under the war or treaty power ceases, for this manifest reason: that the continued exercise of a power which is arbitrary and despotic in its nature is inconsistent with the condition of society necessary to the successful formation of the institutions which are to constitute what we call a "state." But before the "state" is formed there must be an interval, and during that interval the authority of the United States must, in some form and from some source of power, continue to be exercised. The form and the source of power here applicable are to be found in the territorial clause.

If I have rightly stated the history and construction of that clause, it was framed for the purpose of providing a legislative power, by which Congress can govern a territory while it is in the process of being formed into a state, preparatory to its admission into the Union. There is, undoubtedly, a hiatus in the text of the Constitution, inasmuch as there are no express words which in terms establish a connection between the two clauses of the section. But the history of both the clauses conclusively establishes this connection, and shows the purpose of the last one. The nature of the authority which is provided in this territorial clause is clearly distinguishable from the authority that results as an "inevitable consequence" from the acquisition by conquest or by treaty. It is a legislative authority; it must be exercised in the forms of law, by rule, by regulation. The legislation, moreover, must be such as, in the judgment of Congress, is "needful;" that is to say, the authority which is to be exercised is not to be arbitrary, not to be capricious, and not to be exerted by the will of the executive under the war power or the treaty power; but it is to be exercised through the judgment of Congress as the legislative department, and by such provisions of law as that department shall determine to be "needful." Concerning the fitness of such a power, and the propriety of applying it to the condition of things existing after it has been decided that a community external to the Union shall be formed into a "state," there cannot be two opinions.

I have submitted these views for the purpose of asking the court to consider whether they do not reconcile the language used by Chief-justice Marshall in the case of the American Insurance Company *vs.* Canter, and whether they do not show that the alleged uncertainty in his mind concerning the source of the power of territorial government had in truth no real existence. But I am trespassing upon time that belongs to other suitors, and detaining the court. I connected myself with this cause solely from an impulse of duty, or what seemed to me a duty, in the peculiar position in which the counsel for the plaintiff in error (Mr. Blair) stated himself in his opening to have been placed, by circumstances which had made it impracticable for him to obtain assistance in the argument of his case. Having discharged that duty in a necessarily imperfect manner, I now commit the cause to the court.

AN UNPUBLISHED NOTE BY MR. CURTIS

CONCERNING CERTAIN CRITICISMS OF HIS VIEWS.

In a recent work by a distinguished citizen of Virginia my views of the character of the Federal Constitution and the nature of sovereignty have been sharply criticised in the following passage:

"It became immediately apparent [after the late civil war began] how impossible it was to conduct such a war within the pale of the Constitution. That instrument never contemplated a war of states upon states, a section upon a section. Why, the idea is a monstrous one that Virginia [represented in the Federal Convention] would ever have acquiesced in a power vested in other people to crush their own state. And how idle it is to talk, as Mr. George Ticknor Curtis does, of the power vested in the government to enforce its own laws as distinguished from coercion anticipating the action of the states. He admits that the founders carefully excluded from the powers delegated to the government the power of coercing a state, and yet contends for no limit to the employment of force upon individuals." (The Life and Times of the Tylers, by John G. Tyler. In Two Volumes. Richmond, Virginia, 1885. Volume II. p. 656. The writer of this book is a son of the late President John Tyler, and is at the head of William and Mary College in Virginia.)

At the risk of seeming again to do something "idle," I take this occasion to restate the grounds on which I have heretofore maintained the distinction between coercing a state to remain in the Union and compelling citizens to obey the laws of the United States. This subject continues to be important, not because there is even a remote probability that the doctrine of secession, with its resulting consequences, as they were claimed in 1860–61, will ever be again acted upon, but because it will always be necessary for the people of the United States to have a true understanding of that period of our history, and of the authority of the Federal Government to put down all obstructions to the enforcement of the laws of the United States upon individuals. Mr. Tyler maintains, as others before him have maintained, that this could not be done within the pale of the Constitution, and that there is no solid distinction between coercing a state and coercing its individual inhabitants. But the rights and the just autonomies of the states, as bodies politic, cannot be defended unless the distinction between coercing a state and coercing its individual inhabitants be secured. It does not seem to have occurred to the advocates of the right of secession that their doctrines involved the very serious consequence that if, under the Constitution of the United States, a state could absolve its inhabitants from all obligations to obey the laws of the United States by adopting an Ordinance of Secession from the Union, and if the Federal Government has no power to counteract that result by applying force to individuals, the Union is dissolved, and therefore the state in question can derive no benefit from that provision of the Constitution which de-

clares 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 Executive (when the Legislature cannot be convened) against domestic Violence." (Art. IV. § 4.) Moreover, in the case supposed, and on the doctrine supposed, how are the prohibitions which the Constitution has laid upon the legislative power of Congress and those which it has laid upon the states to be enforced, if a state can, under the Constitution, leave the Union at its own pleasure? It is no answer to this inquiry to say that the state, after it has left the Union, can guarantee to itself a republican form of government, or can lay such restrictions upon its legislative power as it may think proper. The Constitution of the United States certainly was not made and adopted in any expectation that the Union under it would ever be dissolved by such a process as secession. It was framed and adopted in the expectation and with the intention to give to the people of every state the benefit of a power external to themselves, to afford them protection against internal disorders and external violence. The people of every state—the people, that is to say, of the United States—are deeply interested in the preservation of this power; it is important to every individual inhabitant of every state; and it constitutes one of the strongest reasons for the adoption of the Constitution, "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."

Having referred to the Preamble of the Constitution, I may here remark that it has never been my habit to interpret it in the loose way in which it has often been interpreted. I admit in the fullest manner that "We the People of the United States" does not mean the whole people of the Union regarded *en masse*, or as a consolidated nation, but that it means the people of each separate state. I deny that the Preamble is any source of power. It is a mere declaration of the objects to be accomplished by establishing the Constitution, and the only sources of power are to be found in the *grants* which the Constitution makes of specific legislative, executive, and judicial powers. Protection of the general welfare is like every object to be secured by the adoption of the Constitution, and it can be accomplished only in the modes which the text of the Constitution authorizes.

I gather from other parts of Mr. Tyler's work that he rests his view of the nature of the Constitution, as every one must, partly upon the proceedings which took place when it was framed and adopted. In regard to these proceedings, so far as his own state of Virginia is concerned, he has brought forward a fact on the significance of which I am obliged to differ with him. This is, that the state of Virginia expressly reserved the right of annulling her act ratifying the Federal Constitution, and resuming the powers granted under it "whenever the same should be perverted to her injury or oppression." (Tyler, II. 569.) Mr. Tyler also refers to a law drawn by his grandfather, which was passed by the Legislature of Virginia in 1786, before the assembling of the Federal Convention, as proof of the tenacity with which the people of the state adhered to their own sovereignty and independence. He asks how it is possible to believe that the state in acceding to the new Constitution [of the United States] thought of sur-

rendering that which was deemed so precious two years before. The Virginia law of 1786, however, was passed to prevent the machinations of persons who wished to sever a part of the state from the whole. It may be, therefore, dismissed from consideration here as having no bearing on the question as to what did Virginia assent when she ratified the Constitution of the United States.

To return now to the reservation which Virginia made in her act of ratification, two things are to be observed: 1. That taking the words of the reservation as they stand, they import nothing more than a purpose on the part of Virginia to exercise whatever right of rescinding the powers granted under the Constitution "whenever they should be perverted to her injury or oppression" that she could exercise under that Constitution and as a member of the Union formed by it. No one denied that any state could make a revolution to resist intolerable oppression. This is a right inherent in every people, whatever may be the form or nature of the government; and whether expressly reserved or left to implication, it is sanctioned by all but the advocates of the divine right of kings. So, too, under the Constitution of the United States, every state had and now has a right to concert measures with the other states for amending its provisions, whenever its powers have been transcended or abused. This latter right is doubtless the one to which the Virginia reservation meant to refer. 2. The people of Virginia knew that every other state in the Union which ratified the Federal Constitution did so unconditionally and without any reservation whatever. Virginia had no more or greater right to secede from the Union on her own assumption that the Federal Government perverted its powers to her injury and oppression than any other state had. They had all granted these powers of political government, and each had a right to the preservation of the government constituted by the grant.

Lest, however, the controversy may degenerate into a dispute about the meaning of a word, it may be well to define here what I mean by "sovereignty" and what Mr. Tyler appears to mean. He says: "Sovereignty is the *will* of the sovereign people, and government which is a mere servant or trustee can never be sovereign, for it wields delegated powers only. The people might have a *hundred* governments, each a specific power, without surrendering an atom of sovereignty. Sovereignty being the will of the people, is spiritual and indivisible. It may grant powers for the common good, but the invocation of those powers is of the essence of free will. Accordingly, all that talk of the Jackson-Webster-Madison school of sovereignty, part delegated to the Federal Government and part to the State Government, is the merest clap-trap ever devised." He adds in a note, "The error lies in confusing *powers*, which are capable of division, with sovereignty, which is not." *

"Sovereignty," as I use the term, and as it is used by other American publicists, means simply the right to govern. Undoubtedly, sovereignty is the will of the sovereign people; and in our American sense all government is derived from that will. But when it is said that government can never be sovereign, there is

* Tyler, I. 285. I do not turn aside to comment on the language in which Mr. Tyler speaks of the doctrine of a political school which numbers among its members not only such men as Jackson, Webster, and Madison, but many of the most distinguished statesmen and publicists of the Constitutional era and of subsequent times.

a begging of the question, for it may be the will of the people that a particular government shall exercise the powers of sovereignty, or, in other words, shall hold and exercise the power of governing. I have elsewhere said that the framers of the Constitution of the United States made a great discovery in the science of government, which was that political powers, or the powers of government, may be distributed by the sovereign people among different governments, part of them being assigned to one class of public servants or trustees, and the residue being retained by the sovereign people, and bestowed, according to their pleasure, on another class of public servants and trustees. It is therefore just as correct to speak of the sovereignty of the Federal Government as it is to speak of the sovereignty of the states; for in either case what is meant is the right to govern on certain subjects and relations. This idea of sovereignty is entirely different from the European idea. Vattel, who is quoted by Mr. Tyler, was entirely right, in the European sense, in saying "that every sovereignty, properly so called, is, in its own nature, one and indivisible." It is so in the European sense, but not in the American. In Great Britain, for example, the sovereignty is held by the king and the two houses of Parliament, and the people have no power, save by a revolution, to do anything but what the king, lords, and commons in Parliament assembled prescribe and ordain. The chief executive ruler, who is called *the sovereign*, is so designated because he or she *is* the chief executive ruler, and not because he or she has any sovereign powers separate from the conjoint action of the reigning monarch and the two houses of Parliament. In some of the other European countries the sovereignty is held by the monarch alone; in others, in recent times especially, the sovereignty is held and exercised by the conjoint action of the executive head and other bodies; but in none of them is there the same sovereignty of the people that there is in the American system. For this reason, among others, it is rare to find a European writer of a former period or of later times who has a correct understanding of our system of government. I once had an amusing but very instructive proof of this. Fifty years ago, being in England, I was told by a very eminent English judge (no less a person than the late Lord Campbell, then Chief-justice of the Queen's Bench, afterwards Lord Chancellor) that he could not understand the distinction between the jurisdiction of our federal and our state courts. When I explained to him that it is founded on the fact that the Federal Government has the exclusive right to govern on certain subjects and relations, and that as to other subjects and relations the separate states have the exclusive right to govern, he replied that I had given him information which he never had before. At the same time, he owned that this was contrary to all English ideas, inasmuch as their system does not admit of such a partition of the powers of sovereignty.

Mr. Tyler, however, contends that our American system does not admit of it either. I shall therefore proceed to show: First, that at the time of the formation and adoption of the Constitution of the United States, both its friends and its opponents, and the people of every state, understood that it had made this partition; second, that the whole framework and text of the Constitution, taken in connection with the Amendments of 1789, prove that this partition was made, and that there is a line of division between the federal and the reserved powers of the states, and that in both cases the powers thus expressly held and

exercised are powers of sovereignty; third, that all branches of the Federal Government since the Constitution went into operation have recognized this partition of sovereign powers, and have administered the Federal Government accordingly, although there have been individuals and bodies of men who did not concur in this view.

First, then, in regard to the fact that both the friends and opponents of the new Constitution recognized that it had made this partition of sovereign powers —it will not be denied that the former class recognized the partition, and maintained both its necessity and practicability—it is only necessary to refer to The Federalist, which was written and published to explain to the people of the several states that this partition was made by the Constitution with a conviction of its necessity and practicability. But lest it may be said that Hamilton, Madison, and Jay are the founders of an objectionable school, let us turn to the other class —the men who were opposed to the adoption of the Constitution after it had been framed. Of these it will be allowed that Patrick Henry was the ablest, the most zealous, and the most far-sighted. Mr. Henry certainly understood that if the people of Virginia should ratify the proposed Constitution they would surrender a portion of their sovereignty to a power external to themselves. He could not have been ignorant of the fact that the people of Virginia were jealous of their independent right of self-government, and to that jealousy he addressed all his powers of persuasion, logic, eloquence, sarcasm, and his unequalled faculty for reading the popular apprehensions and fears. In the Virginia State Convention, held in June, 1788, to act on the proposed Constitution, which had already been ratified by eight states, Mr. Henry was the leader of the opposition to its being accepted, and never was such a contest carried on more vigorously than that which he maintained for twenty-three days. In one of his most profound speeches he said:

"Here is a revolution as radical as that which separated us from Great Britain. It is radical in this transition: our rights and privileges are endangered, and the *sovereignty of the states* will be relinquished; and cannot we plainly see that this is already the case? The rights of conscience, trial by jury, liberty of the press—all pretensions to human rights and liberties are rendered insecure if not lost by this change so loudly talked of by some, so inconsiderately by others. . . . A number of characters of the greatest eminence in this country object to this government for its *consolidation*. This is not imaginary. It is a formidable reality. If consolidation proves as mischievous to this country as it has been to other countries, what will the poor inhabitants of this country do? This government will operate like an ambuscade. *It will destroy the state* governments and swallow the liberties of the people without giving previous notice. If gentlemen are willing to run the hazard let them run it, but I shall exculpate myself by my opposition and monitory warnings within these walls."* †

Mr. Henry was no enemy to the Constitution. "I am persuaded," he said, in reply to Randolph, "that separate autonomies will ruin us. . . . The dissolution

* Patrick Henry, by Moses Coit Tyler, 288 et seq.

† For further light on views of Patrick Henry, see the recent elaborate Life and Works of Patrick Henry, by William Wirt Henry. Three vols., 8vo.—J. C. C.

of the Union is most abhorrent to my mind. The first thing I have at heart is American liberty; the second thing is American Union. . . . I mean not to invoke the spirit, nor utter the language of *secession*." What he meant by "secession" is clear enough. He meant to deprecate such a course of action by Virginia in regard to the proposed Constitution as would separate her from her sister states. He therefore exerted all his influence to have a new Federal Convention called to revise and annul the proposed Constitution, or, failing that, to have Virginia ask for amendments to be submitted by Congress to the state legislatures, so as to secure the rights of states and of individuals against the perils with which he believed that they were threatened. But throughout all his efforts and all his speeches it is perfectly plain that he thoroughly understood how the Constitution, as it was then before the people of Virginia, had made a partition of the powers of sovereignty which would endanger the sovereignty of the states if something was not done by a bill of rights to secure the states and individuals against such a hazard. If we place ourselves in his position, thoroughly appreciating the fact that the Constitution had made this partition of sovereign powers, and that if the people of Virginia ratified it they would surrender a portion of their sovereignty, we can understand the motives of his opposition. Otherwise it was an unreasonable and factious opposition. Of this no one at the present day can accuse Patrick Henry, although he was accused of it by his opponents.

It was the same with the other principal opponents of the Constitution—such men as Burke and Rawlins Lawrence, of South Carolina; Timothy Bloodworth, of North Carolina; Samuel Chase and Luther Martin, of Maryland; George Clinton, of New York; Samuel Adams, John Hancock, and Elbridge Gerry, of Massachusetts; and Joshua Atherton, of New Hampshire. All of these understood, as Henry did, that the Constitution had a partition of the powers of sovereignty.

G. T. C.

THE GREAT COMPROMISES ON SLAVERY.

Our constitutional history, in respect to slavery, has revolved upon several great compromises and some attempts to compromise. The most notable are here inserted: The provisions of the Constitution of 1787; The Missouri Compromise of 1820; The Compromise Measures of 1850; The Repeal of the Missouri Compromise, or the Kansas-Nebraska Act of 1854; and The Crittenden Resolutions of 1860–61.

The principle of no compromise with slavery was not assured by any constitutional provision until the Thirteenth Amendment took affect in 1865.

J. C. C.

I. The Constitution of 1787.

Article I., Section 2, paragraph third:

Representatives and direct taxes shall be appointed 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.*

Article I., Section 9, paragraph one.

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

. . . . . .

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

Article IV., Section 1, paragraph third:

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

II. The Missouri Compromise of 1820.

The principal act establishing what is popularly known as the "Missouri Compromise" is contained in Chapter XXII., Section 8, of the act of March 6, 1820:

Section 8. *And be it further enacted*, That in all that territory ceded by France to the United States, which lies north of thirty-six degrees and thirty minutes north latitude, not included within the limits of the state contemplated by this act, slavery and involuntary servitude, otherwise than in the punishment of crimes, whereof the parties shall have been duly convicted, shall be and is hereby forever prohibited: *Provided always*, That any person escaping into the same, from whom labor or service is lawfully claimed, in any state or territory of the United States, such fugitive may be lawfully reclaimed and conveyed to the person claiming his labor or service as aforesaid.

The other acts which were passed as a part of this compromise are sufficiently referred to in the text.

III. The Compromise Measures of 1850.

The term "The Compromise Measures" was popularly given to certain acts of the Thirty-first Congress, Chapter XLIX., 1850, entitled, "An Act proposing to the State of Texas the Establishment of her Northern and Western Boundaries, the Relinquishment by the said State of all Territory claimed by her exterior to said Boundaries, and of all her claims upon the United States, and to establish a Territorial Government for New Mexico."

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* Amended by XIV Amendment, 2d section.

† Amendment XIII., passed after the Civil War, expressly forbade "slavery or involuntary servitude," except as a punishment for crime, within the jurisdiction of the United States.

Section 2 of this act provides "That, when admitted as a state, the said territory [New Mexico], or any portion of the same, shall be received into the Union with or without slavery, as their constitution may prescribe at the time of their admission."

Also, to Chapter L.: "An Act for the Admission of the State of California into the Union."

Also, to Chapter LI.: "An Act to establish a Territorial Government for Utah."

Nothing said about slavery in these chapters relating to California and Utah.

Also, to the Fugitive-slave Law, Chapter LX.

Also, to Chapter LXIII.: "An Act to suppress the Slave-trade in the District of Columbia."

IV. Repeal of Missouri Compromise, or Kansas-Nebraska Act, of 1854.

The act of May 30, 1854, commonly spoken of ás the "Repeal of the Missouri Compromise," or as "The Kansas-Nebraska Act."

"Chapter LIX. An Act to Organize the Territories of Nebraska and Kansas."

Section 14 provides "That the Constitution and all laws of the United States, which are not locally inapplicable, shall have the same force and effect within the said territory of Nebraska as elsewhere in the United States, except the eighth section of the act preparatory to the admission of Missouri into the Union, approved March 6, 1820, which, being inconsistent with the principle of non-intervention by Congress with slavery in the states and territories, as recognized by the legislation of 1850, commonly called the Compromise Measures, is hereby declared inoperative and void; it being the true intent and meaning of this act not to legislate slavery into any territory or state, nor to exclude it therefrom, but to leave the people thereof perfectly free to form and regulate their domestic institutions in their own way, subject only to the Constitution of the United States: *Provided*, That nothing herein shall be construed to revive or put in force any law or regulation which may have existed prior to the act of March 6, 1820, either protecting, establishing, prohibiting, or abolishing slavery.

Section 32 applies the same provisions to the territory of Kansas.

V. The Crittenden Resolutions of 1860.

[In United States Senate, December 18, 1860.]

A joint resolution (§ 50) proposing certain amendments to the Constitution of the United States.

Whereas, Serious and alarming dissensions have arisen between the Northern and Southern States concerning the rights and security of the rights of the slaveholding states, and especially the rights in the common territory of the United States; and

Whereas, It is eminently desirable and proper that these dissensions, which now threaten the very existence of this Union, should be permanently quieted and settled by constitutional provisions which shall do equal justice to all sections, and thereby restore to the people that peace and good-will which ought to prevail between all citizens of the United States; therefore,

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two thirds of both houses concurring), That the following articles be and are hereby proposed and submitted as Amendments to the Constitution of the United States, which shall be valid to all intents and purposes as part of said Constitution, when ratified by conventions of three fourths of the several states:

ARTICLE 1. In all the territory of the United States now held, or hereafter acquired, situate north of latitude 36° 30′, slavery or involuntary servitude, except as a punishment for crime, is prohibited while such territory shall remain under territorial government. In all the territory south of said line of latitude slavery of the African race is hereby recognized as existing and shall not be interfered with by Congress, but shall be protected as property by all the departments of the territorial government during its continuance. And when any territory north or south of said line, within such boundaries as Congress may prescribe, shall contain the population requisite for a member of Congress according to the then federal ratio of representation of the people of the United States, it shall, if its form of government be republican, be admitted into the Union on an equal footing with the original states, with or without slavery, as the constitution of such new state may provide.

ARTICLE 2. Congress shall have no power to abolish slavery in places under its exclusive jurisdiction, and situate within the limits of states that permit the holding of slaves.

ARTICLE 3. Congress shall have no power to abolish slavery within the District of Columbia so long as it exists in the adjoining states of Virginia and Maryland, or either, nor without the consent of the inhabitants, nor without just compensation first made to such owners of slaves as do not consent to such abolishment. Nor shall Congress at any time prohibit officers of the Federal Government, or members of Congress, whose duties require them to be in said district, from bringing with them their slaves, and holding them as such during the time their duties may require them to remain there, and afterwards taking them from the district.

ARTICLE 4. Congress shall have no power to prohibit or hinder the transportation of slaves from one state to another, or to a territory in which slaves are by law permitted to be held, whether that transportation be by land, navigable rivers, or by the sea.

ARTICLE 5. That in addition to the provisions of the third paragraph of the second section of the fourth article of the Constitution of the United States, Congress shall have power to provide by law, and it shall be its duty so to provide, that the United States shall pay to the owner who shall apply for it the full value of his fugitive slave in all cases when the marshal or other officer whose duty it was to arrest said fugitive was prevented from so doing by violence or intimidation, or when, after arrest, said fugitive was rescued by force, and the owner thereby prevented and obstructed in the pursuit of his remedy for the recovery of his fugitive slave under the said clause of the Constitution, and the laws made in pursuance thereof. And in all such cases, when the United States shall pay for such fugitive, they shall have the right, in their own name, to sue the county in which said violence, intimidation, or rescue was committed, and to recover

from it, with interest and damages, the amount paid by them for said fugitive slave. And the said county, after it has paid said amount to the United States, may, for its indemnity, sue and recover from the wrong-doers or rescuers by whom the owner was prevented from the recovery of his fugitive slave, in like manner as the owner himself might have sued and recovered.

ARTICLE 6. No future amendment of the Constitution shall affect the five preceding articles; nor the third paragraph of the second section of the fourth article of said Constitution; and no amendment shall be made to the Constitution which shall authorize or give to Congress any power to abolish or interfere with slavery in any of the states by whose laws it is, or may be, allowed or permitted.

And *Whereas*, also, besides those causes of dissension embraced in the foregoing amendments proposed to the Constitution of the United States, there are others which come within the jurisdiction of Congress, and may be remedied by its legislative power; and

Whereas, It is the desire of Congress, as far as its power will extend, to remove all just cause for the popular discontent and agitation which now disturb the peace of the country and threaten the stability of its institutions; therefore,

1. *Resolved by the Senate and House of Representatives of the United States of America in Congress assembled*, That the laws now in force for the recovery of fugitive slaves are in strict pursuance of the plain and mandatory provisions of the Constitution, and have been sanctioned as valid and constitutional by the judgment of the Supreme Court of the United States; that the slave-holding states are entitled to the faithful observance and execution of those laws, and that they ought not to be repealed or so modified or changed as to impair their efficiency; and that laws ought to be made for the punishment of those who attempt, by rescue of the slave or other illegal means, to hinder or defeat the due execution of said laws.

2. That all state laws which conflict with the fugitive-slave acts of Congress, or any other constitutional acts of Congress, or which, in their operation, impede, hinder, or delay the free course and due execution of any of said acts, are null and void by the plain provisions of the Constitution of the United States; yet those state laws, void as they are, have given color to practices, and led to consequences, which have obstructed the due administration and execution of acts of Congress, and especially the acts for the delivery of fugitive slaves, and have thereby contributed much to the discord and commotion now prevailing. Congress, therefore, in the present perilous juncture, does not deem it improper respectfully and earnestly to recommend the repeal of those laws to the several states which have enacted them, or such legislative corrections or explanations of them as may prevent their being used or perverted to such mischievous purposes.

3. That the act of September 18, 1850, commonly called the Fugitive-slave Law, ought to be so amended as to make the fee of the commissioner, mentioned in the eighth section of the act, equal in amount in the cases decided by him, whether his decision be in favor of or against the claimant. And to avoid misconstruction, the last clause of the fifth section of said act, which authorizes the person holding a warrant for the arrest or detention of a fugitive slave to summon to his aid the *posse comitatus*, and which declares it to be the duty of all good citizens

to assist him in its execution, ought to be so amended as to expressly limit the authority and duty to cases in which there shall be resistance, or danger of resistance, or rescue.

4. That the laws for the suppression of the African slave-trade, and especially those prohibiting the importation of slaves in the United States, ought to be made effectual, and ought to be thoroughly executed; and all further enactments necessary to those ends ought to be promptly made. (Congressional Globe, Part I., Second Session, Thirty-sixth Congress, p. 114, Dec. 18, 1860.)

Reluctantly feeling that Congress would not pass the resolutions proposing the above-quoted amendments, on January 3, 1861, Mr. Crittenden offered as a substitute the following joint resolution:

Whereas, The Union is in danger, and, owing to the unhappy divisions existing in Congress, it would be difficult, if not impossible, for that body to concur in both its branches by the requisite majority, so as to enable it either to adopt such measures of legislation, or to recommend to the states such amendments to the Constitution, as are deemed necessary and proper to avert that danger; and

Whereas, In so great an emergency, the opinion and judgment of the people ought to be heard, and would be the best and surest guide to their representatives; therefore,

Resolved, That provision ought to be made by law, without delay, for taking the sense of the people and submitting to their vote the following resolutions (above quoted as "V") as the basis for the final and permanent settlement of those disputes that now disturb the peace of the country and threaten the existence of the Union.

J. C. C.

LETTER FROM HON. JOHN JAY.

RICHFIELD SPRINGS, New York, *September* 19, 1891.

The Honorable George Ticknor Curtis:

DEAR MR. CURTIS,—I reply with pleasure to your request that I will direct your attention to the newly disclosed historic facts bearing upon the question how far the policy of the French court, pending the peace negotiations of 1782 and 1783, was friendly or unfriendly to the claims preferred by our commissioners in the final negotiations, and which by the treaty were recognized by Great Britain.

It is a point on which historians have widely differed from the time of the publication of Mr. Sparks's note in 1830 in the eighth volume of the Diplomatic Correspondence of the American Revolution, pages 208–212, stating that he had "read in the French archives of foreign affairs the entire correspondence of the Count de Vergennes during the whole war with the French Minister in this country, developing the policy and designs of the French court in regard to the war, and the objects to be obtained by the peace," and after examining these and other papers with care and accuracy, he "was prepared to express his belief most fully that

Mr. Jay was mistaken, both in regard to the aims of the French court and the plans pursued by them to gain the supposed ends."

The views of Jay on this point, as expressed to Livingston, November 17, 1782, in the letter which Mr. Sparks regards as contradicted by De Vergennes's papers shown to him in the French foreign office, are on pages 211–213 of the Address Before the New York Historical Society, November 27, 1883. Some brief extracts are also given in the notes on page 212 from Letters of Vergennes to Montmorin and De Luzerne, from the official instructions to Gérard, and from the Life of Sholbourne, by his grandson, Lord Edmond Fitzmauriee, confirmatory of Jay's views, as expressed in the Letter to Livingston, the correctness of which Mr. Sparks had questioned.

There are also contained in Appendix C to the Address, pages 144 to 160, more elaborate and significant extracts (translated) from confidential correspondence and papers in the French archives, which were published in 1876 by the Count Adolphe de Circourt, in the third volume, entitled, Documents Originaux inédits of his work Histoire de l'Action Commune de La France et de L'Amerique pour L'Indépendence des Etats Unis, etc. (Paris: F. Vieweg, 1876.)

Among these documents, two of the most interesting in their development of the French and Spanish policy, as regards the future of the new republic, are the memoirs, extracts from which are given on pages 152–155 of the Historic Address, and the importance of which is certified by Mr. Bancroft in a note on page 91, as undoubtedly prepared in the French Department of Foreign Affairs.

The Life of Lord Shelbourne, by Fitzmaurice, in three volumes, also published in 1876, contains a "map of North America, showing the boundaries of the United States, Canada, and the Spanish possessions, according to the proposals of the Court of France." This map is reproduced opposite page 120 of the Address Beore the Historical Society, and a note to that page shows that the French proposals shut us out from the Mississippi and the Gulf, including nearly the whole of the states of Alabama, Mississippi, the greater part of Kentucky and Tennessee, and the whole of what was known as the "Northwestern Territory" north of the Ohio, embracing the states of Ohio, Michigan, Illinois, Wisconsin, and part of Minnesota, together with the navigation of the Mississippi.

Lord Edmond Fitzmauriee, in his Life of Shelbourne, says that Rayneval, in his interview with Lord Shelbourne and Grantham, in England, "played into the hands of the English Ministers by expressing a strong opinion against the American claims to the Newfoundland fishery and to the valleys of the Mississippi and the Ohio." (Shelbourne's Life, III. 263; quoted in Historic Address, p. 44.)

In accord with this contention by Mr. De Rayneval is the statement by Lord St. Helens—the Mr. Fitzherbert of the negotiations—that "M. de Vergennes never failed to insist on the expedieney of a concert of measures between France and England for the purpose of excluding the American states from these fisheries, lest they should become a nursery for seamen." (Historical Address, p. 208.)

The private instructions of the Count de Vergennes, while disclosing the policy of the French and Spanish courts for restricting the limits, the resources, and the power of the new republic, discuss, with his accustomed ability, the reasons and methods for securing their policy, and in a letter to Luzerne (October 14, 1782) regarding Canada the count reminds that minister that their way of

thinking "must be an impenetrable secret to the Americans," adding, "it would be in their eyes a crime for which they would never forgive us. It behooves to leave them to their illusions, to do everything we can to make them fancy that we share them."

Possibly a feeling akin to this dictated the reserve of the French officials, to whom Mr. Sparks was indebted for the expurgated copies of the Vergennes correspondence with which he was favored. A note appended by him on pages 72 and 73 of Volume LXXVIII., in Harvard College Library, selected and transcribed in 1829, for which I am indebted to Mr. Justin Winsor, says, "The part of the leaves which are missing were cut out by the person appointed by the Minister of Foreign Affairs to examine my papers before they were taken from the archives."

The caution of the foreign office went still further in regard to the papers then given, and another note by Mr. Sparks alluded to a letter in French, signed by him, to the Count d'Hauterrive, which he describes as "a pledge on my part that I will not make any use of the papers that will compromise the keeper of the archives or any person connected with the department. Paris, December 15, 1828."

It seems due to Mr. Sparks to refer to these notes as seeming to throw some light on the discrepancy between the papers in their entirety or mutilated, of which he was permitted to take copies, and the authentic and unmutilated correspondence published by Mr. De Circourt.

Trusting that these hasty memoranda in reply to your request will enable you, with little inconvenience, to examine the question to which you have alluded in your very interesting papers (HARPER'S MAGAZINE, April, 1883, p. 675) on the "Treaty of Peace and Independence," I have the honor to be, dear sir,

Faithfully yours, JOHN JAY.

THE FIRST TARIFF ACT.

AN ACT FOR LAYING A DUTY ON GOODS, WARES, AND MERCHANDISES IMPORTED INTO THE UNITED STATES.

Whereas, It is necessary for the support of the government, for the discharge of the debts of the United States, and the encouragement and protection of manufactures that duties be laid on goods, wares, and merchandises imported.

SECTION 1. *Be it enacted, etc.*, That from and after the first day of August next ensuing the several duties hereinafter mentioned shall be laid on the following goods, wares, and merchandises imported into the United States from any foreign port or place, that is to say:

On all distilled spirits of Jamaica proof, imported from any kingdom or country whatsoever, per gallon, ten cents;

On all other distilled spirits, per gallon, eight cents;

On molasses, per gallon, two and a half cents;

On Madeira wine, per gallon, eighteen cents;

On all other wines, per gallon, ten cents;

On every gallon of beer, ale, or porter, in casks, five cents;

On all cider, beer, ale, or porter, in bottles, per dozen, twenty cents;

On malt, per bushel, ten cents;

On brown sugars, per pound, one cent;

On loaf sugars, per pound, three cents;

On all other sugars, per pound, one and a half cents;

On coffee, per pound, two and a half cents;

On cocoa, per pound, one cent;

On all candles of tallow, per pound, two cents;

On all candles of wax or spermaceti, per pound, six cents;

On cheese, per pound, four cents;

On soap, per pound, two cents;

On boots, per pair, fifty cents;

On all shoes, slippers, or galoches, made of leather, per pair, seven cents;

On all shoes or slippers made of silk or stuff, per pair, ten cents;

On cables, of every one hundred and twelve pounds, seventy-five cents;

On tarred cordage, of every one hundred and twelve pounds, seventy-five cents

On untarred cordage and yarn, for every one hundred and twelve pounds, ninety cents;

On twine or packthread, for every one hundred and twelve pounds, two hundred cents;

On all steel unwrought, for every one hundred and twelve pounds, fifty-six cents

On all nails and spikes, per pound, one cent;

On salt, per bushel, six cents;

On manufactured tobacco, per pound, six cents;

On snuff, per pound, ten cents;

On indigo, per pound, sixteen cents;

On wool and cotton cards, per dozen, fifty cents;

On coal, per bushel, two cents;

On pickled fish, per barrel, seventy-five cents;

On dried fish, per quintal, fifty cents;

On all teas imported from China or India in ships built in the United States and belonging to a citizen or citizens thereof, or in ships or vessels built in foreign countries and on the sixteenth day of May last wholly the property of a citizen or citizens of the United States, and so continuing until the time of importation, as follows:

On bohea tea, per pound, six cents;

On all souchong, or other black teas, per pound, ten cents;

On all hyson teas, per pound, twenty cents;

On all other green teas, per pound, twelve cents;

On all teas imported from Europe in ships or vessels built in the United States, and belonging wholly to a citizen or citizens thereof, or in ships or vessels built in foreign countries, and on the sixteenth day of May last wholly the property of a citizen or citizens of the United States, and so continuing until the time of importation, as follows:

On bohea tea, per pound, eight cents;

On all souchong, and other black teas, per pound, thirteen cents;

On all hyson teas, per pound, twenty-six cents;

On all other green teas, per pound, sixteen cents;

On all teas imported in any other manner than as above mentioned, as follows:

On bohea tea, per pound, fifteen cents;

On all souchong, or other black teas, per pound, twenty-two cents;

On all hyson teas, per pound, forty-five cents;

On all other green teas, per pound, twenty-seven cents;

On all goods, wares, and merchandises other than teas imported from China or India in ships not built in the United States, and not wholly the property of a citizen or citizens thereof, nor in vessels built in foreign countries and on the sixteenth day of May last wholly the property of a citizen or citizens of the United States, and so continuing until the time of importation, twelve and a half per centum ad valorem.

On all looking-glasses, window and other glasses (except black quart bottle),

On all china, stone, and earthen ware,

On gunpowder,

On all paints ground in oil,

On shoe and knee buckles,

On gold and silver lace, and

On gold and silver leaf, ten per centum ad valorem;

On all blank-books,

On all writing, painting, or wrapping paper, paper-hangings, and pasteboard,

On all cabinet wares,

On all buttons,

On all saddles,

On all gloves of leather,

On all hats of beaver, fur, wool, or mixture of either,

On all millinery ready-made,

On all castings of iron, and upon slit and rolled iron,

On all leather tanned or tawed, and all manufactures of leather, except such as shall be otherwise rated,

On canes, walking-sticks, and whips,

On clothing ready-made,

On all brushes,

On gold, silver, and plated ware, and on jewelry and paste work,

On anchors, and on all wrought tin and pewter ware, seven and a half per centum ad valorem;

On playing-cards, per pack, ten cents;

On every coach, chariot, or other four-wheeled carriage, and on every chaise, solo, or other two-wheeled carriage, or parts thereof, fifteen per centum ad valorem.

On all other goods, wares, and merchandises, five per centum on the value thereof at the time and place of importation, except as follows: Saltpetre, tin in pigs, tin-plates, lead, old pewter, brass, iron, and brass wire, copper in plates, wool, cotton, dyeing woods and dyeing drugs, rawhides, beaver, and all other furs and deerskins.

SECTION 2. *And be it further enacted*, That from and after the first day of December, which shall be in the year one thousand seven hundred and ninety, there shall

be laid a duty on every one hundred and twelve pounds' weight of hemp, imported as aforesaid, of sixty cents; and on cotton, per pound, three cents.

SECTION 3. *And be it further enacted*, That all the duties paid, or secured to be paid, upon any of the goods, wares, and merchandises, as aforesaid, except on distilled spirits other than brandy and geneva, shall be returned or discharged upon such of the said goods, wares, or merchandises as shall, within twelve months after payment made, or security given, be exported to any country without the limits of the United States, as settled by the late treaty of peace; except one per centum on the amount of the said duties, in consideration of the expense which shall have accrued by the entry and safe-keeping thereof.

SECTION 4. *And be it further enacted*, That there shall be allowed and paid on every quintal of dried, and on every barrel of pickled, fish of the fisheries of the United States, and on every barrel of salted provision of the United States, exported to any country without the limits thereof, in lieu of a drawback of the duties imposed on the importation of the salt employed and expended therein, viz.:

On every quintal of dried fish, five cents;

On every barrel of pickled fish, five cents;

On every barrel of salted provision, five cents;

SECTION 5. *And be it further enacted*, That a discount of ten per cent. on all the duties imposed by this act shall be allowed on such goods, wares, and merchandises as shall be imported in vessels built in the United States and which shall be wholly the property of a citizen or citizens thereof, or in vessels built in foreign countries and on the sixteenth day of May last wholly the property of a citizen or citizens of the United States, and so continuing until the time of importation.

SECTION 6. *And be it further enacted*, That this act shall continue and be in force until the first day of June, which shall be in the year of our Lord one thousand seven hundred and ninety-six, and from thence until the end of the next succeeding session of Congress which shall be held thereafter, and no longer.

Approved July 4, 1789.

THE TRUSTEES OF DARTMOUTH COLLEGE *VS.* WOODWARD.

(4 WHEATON, 518–715, 1819.)

Error to the Supreme Court of New Hampshire. Opinion by Marshall, J. C.

Statement of Facts.—This is an action of trover, brought by the trustees of Dartmouth College against William H. Woodward, in the State Court of New Hampshire, for the book of records, corporate seal, and other corporate property, to which the plaintiffs allege themselves to be entitled. A special verdict, after setting out the rights of the parties, finds for the defendant, if certain acts of the legislature of New Hampshire, passed on the 27th of June and on the 18th of December, 1816, be valid and binding on the trustees without their assent, and not repugnant to the Constitution of the United States; otherwise it finds for the

plaintiffs. The Superior Court of Judicature of New Hampshire rendered a judgment upon this verdict for the defendant, which judgment has been brought before the court by writ of error. The single question now to be considered is, Do the acts to which the verdict refers violate the Constitution of the United States?

This court can be insensible neither to the magnitude nor delicacy of this question. The validity of a legislative act is to be examined, and the opinion of the highest law tribunal of a state is to be revised; an opinion which carries with it intrinsic evidence of the diligence, of the ability and the integrity with which it was formed. On more than one occasion this court has expressed the cautious circumspection with which it approaches the consideration of such questions, and has declared that in no doubtful case would it pronounce a legislative act to be contrary to the Constitution. But the American people have said, in the Constitution of the United States, that "no state shall pass any bill of attainder, *ex post facto* law, or law impairing the obligation of contracts." In the same instrument they have also said "that the judicial power shall extend to all cases in law and equity arising under the Constitution." On the judges of this court, then, is imposed the high and solemn duty of protecting from every legislative violation those contracts which the Constitution of our country has placed beyond legislative control; and however irksome the task may be, this is a duty from which we dare not shrink.

The title of the plaintiffs originates in a charter, dated the 13th day of December, in the year 1769, incorporating twelve persons therein mentioned, by the name of "The Trustees of Dartmouth College," granting to them and their successors the usual corporate privileges and powers, and authorizing the trustees who are to govern the college to fill up all vacancies which may be created in their own body.

The defendant claims under three acts of the legislature of New Hampshire, the most material of which was passed on the 27th of June, 1816, and is entitled "An act to amend the charter and enlarge and improve the corporation of Dartmouth College." Among other alterations in the charter, this act increases the number of trustees to twenty-one, gives the appointment of the additional members to the executive of the state, and creates a board of overseers, with power to inspect and control the most important acts of the trustees. This board consists of twenty-five persons. The president of the Senate, the speaker of the House of Representatives of New Hampshire, and the governor and lieutenant-governor of Vermont, for the time being, are to be members *ex officio*. The board is to be completed by the governor and council of New Hampshire, who are also empowered to fill all vacancies which may occur. The acts of the 18th and 27th of December are supplemental to that of the 27th of June, and are principally intended to carry that act into effect. The majority of the trustees of the college have refused to accept this amended charter and have brought this suit for the corporate property, which is in possession of a person holding by virtue of the acts which have been stated.

It can require no argument to prove that the circumstances of this case constitute a contract. An application is made to the crown for a charter to incorporate a religious and literary institution. In the application it is stated that large contributions have been made for the object, which will be conferred on the corporation as soon as it shall be created. The charter is granted, and on its faith

the property is conveyed. Surely in this transaction every ingredient of a complete and legitimate contract is to be found. The points for consideration are: 1. Is this contract protected by the Constitution of the United States? 2. Is it impaired by the acts under which the defendant holds?

1. On the first point it has been argued that the word "contract," in its broadest sense, would comprehend the political relations between the government and its citizens, would extend to offices held within a state for state purposes, and to many of those laws concerning civil institutions which must change with circumstances and be modified by ordinary legislation, which deeply concern the public, and which, to preserve good government, the public judgment must control. That even marriage is a contract, and its obligations are affected by laws respecting divorces. That the clause in the Constitution, if construed in its greatest latitude, would prohibit these laws; taken in its broad, unlimited sense, the clause would be an unprofitable and vexatious interference with the internal concerns of a state, would unnecessarily and unwisely embarrass its legislation, and render immutable those civil institutions which are established for purposes of internal government, and which, to subserve those purposes, ought to vary with varying circumstances. That as the framers of the Constitution could never have intended to insert in that instrument a provision so unnecessary, so mischievous, and so repugnant to its general spirit, the term "contract" must be understood in a more limited sense. That it must be understood as intended to guard against a power of at least doubtful utility, the abuse of which has been extensively felt; and to restrain the legislature in future from violating the right to property. That anterior to the formation of the Constitution a course of legislation had prevailed in many, if not all, of the states which weakened the confidence of man in man, and embarrassed all transactions between individuals by dispensing with a faithful performance of engagements. To correct this mischief, by restraining the power which produced it, the state legislatures were forbidden "to pass any law impairing the obligation of contracts"—that is, of contracts respecting property, under which some individual could claim a right to something beneficial to himself; and that since the clause in the Constitution must, in construction, receive some limitation, it may be confined, and ought to be confined, to cases of this description, to cases within the mischief it was intended to remedy.

The general correctness of these observations cannot be controverted. That the framers of the Constitution did not intend to restrain the states in the regulation of their civil institutions, adopted for internal government, and that the instrument they have given us is not to be so construed, may be admitted. The provision of the Constitution never has been understood to embrace other contracts than those which respect property, or some object of value, and confer rights which may be asserted in a court of justice. It never has been understood to restrict the general right of the legislature to legislate on the subject of divorces. Those acts enable some tribunal, not to impair a marriage contract, but to liberate one of the parties because it has been broken by the other. When any state legislature shall pass an act annulling all marriage contracts, or allowing either party to annul it without the consent of the other, it will be time enough to inquire whether such an act be constitutional.

The parties in this case differ less on general principles, less on the true con-

struction of the Constitution in the abstract, than on the application of those principles in this case, and on the true construction of the charter of 1769. This is the point on which the cause essentially depends. If the act of incorporation be a grant of political power, if it create a civil institution to be employed in the administration of the government, or if the funds of the college be public property, or if the state of New Hampshire, as a government, be alone interested in its transactions, the subject is one in which the legislature of the state may act according to its own judgment, unrestrained by any limitations of its power imposed by the Constitution of the United States.

But if this be a private eleemosynary institution, endowed with a capacity to take property for objects unconnected with government whose funds are bestowed by individuals on the faith of the charter, if the donors have stipulated for the future disposition and management of those funds in the manner prescribed by themselves, there may be no difficulty in the case, although neither the persons who have made these stipulations nor those for whose benefit they are made should be parties to the cause. Those who are no longer interested in the property may yet retain such an interest in the preservation of their own arrangements as to have a right to insist that those arrangements shall be held sacred. Or, if they have themselves disappeared, it becomes a subject of serious and anxious inquiry whether those whom they have legally empowered to represent them forever may not assert all the rights which they possessed while in being; whether, if they be without personal representatives who may feel injured by a violation of the compact, the trustees be not so completely their representatives, in the eye of the law, as to stand in their place, not only as respects the government of the college, but also as respects the maintenance of the college charter.

It becomes, then, the duty of the court most seriously to examine this charter, and to ascertain its true character. From the instrument itself it appears that about the year 1754 the Rev. Eleazer Wheelock established, at his own expense, and on his own estate, a charity school for the instruction of Indians in the Christian religion. The success of this institution inspired him with the design of soliciting contributions in England for carrying on and extending his undertaking. In this pious work he employed the Rev. Nathaniel Whitaker, who, by virtue of a power of attorney from Dr. Wheelock, appointed the Earl of Dartmouth and others trustees of the money which had been and should be contributed; which appointment Dr. Wheelock confirmed by a deed of trust authorizing the trustees to fix on a site for the college. They determined to establish the school on the Connecticut River, in the western part of New Hampshire, that situation being supposed favorable for carrying on the original design among the Indians, and also for promoting learning among the English, and the proprietors in the neighborhood having made large offers of land on the condition that the college should there be placed. Dr. Wheelock then applied to the crown for an act of incorporation, and represented the expediency of appointing those whom he had, by his last will, named as trustees in America, to be members of the proposed corporation. "In consideration of the premises, . . . for the education and instruction of the youth of the Indian tribes," etc., "and also of English youth, and any others," the charter was granted, and the trustees of Dartmouth College were by that name created a body corporate, with power, for the use of the said

college, to acquire real and personal property, and to pay the president, tutors, and other officers of the college such salaries as they shall allow.

The charter proceeds to appoint Eleazer Wheelock, "the founder of said college," president thereof, with power, by his last will, to appoint a successor, who is to continue in office until disapproved by the trustees. In case of vacancy the trustees may appoint a president, and in case of the ceasing of a president, the senior professor or tutor, being one of the trustees, shall exercise the office until an appointment shall be made. The trustees have power to appoint and displace professors, tutors, and other officers, and to supply any vacancies which may be created in their own body by death, resignation, removal, or disability; and also to make orders, ordinances, and laws for the government of the college, the same not being repugnant to the laws of Great Britain or of New Hampshire, and not excluding any person on account of his speculative sentiments in religion, or his being of a religious profession different from that of the trustees. This charter was accepted, and the property, both real and personal, which had been contributed for the benefit of the college, was conveyed to, and vested in, the corporate body.

From this brief review of the most essential parts of the charter it is apparent that the funds of the college consisted entirely of private donations. It is perhaps not very important who were the donors. The probability is that the Earl of Dartmouth and the other trustees in England were, in fact, the largest contributors. Yet the legal conclusion from the facts recited in the charter would probably be that Dr. Wheelock was the founder of the college. The origin of the institution was, undoubtedly, the Indian charity school established by Dr. Wheelock at his own expense. It was at his instance and to enlarge his school that contributions were solicited in England. The person soliciting these contributions was his agent; and the trustees who received the money were appointed by, and acted under, his authority. It is not too much to say that the funds were obtained by him in trust, to be applied by him to the purposes of his enlarged school. The charter of incorporation was granted at his instance. The persons named by him in his last will as the trustees of his charity school composed a part of the corporation, and he is declared to be the founder of the college, and its president for life. Were the inquiry material, we should feel some hesitation in saying that Dr. Wheelock was not, in law, to be considered as the founder (1 Bl. Com., 481) of this institution, and as possessing all the rights appertaining to that character. But be this as it may, Dartmouth College is really endowed by private individuals, who have bestowed their funds for the propagation of the Christian religion among the Indians, and for the promotion of piety and learning generally. From these funds the salaries of the tutors are drawn, and these salaries lessen the expense of education to the students.

It is then an eleemosynary (1 Bl. Com., 471), and, as far as respects its funds, a private corporation. Do its objects stamp on it a different character? Are the trustees and professors public officers, invested with any portion of political power, partaking in any degree in the administration of civil government, and performing duties which flow from the sovereign authority?

That education is an object of national concern, and a proper subject of legislation, all admit. That there may be an institution founded by government, and

placed entirely under its immediate control, the officers of which would be public officers, amenable exclusively to government, none will deny. But is Dartmouth College such an institution? Is education altogether in the hands of government? Does every teacher of youth become a public officer, and do donations for the purpose of education necessarily become public property, so far that the will of the legislature, not the will of the donor, becomes the law of the donation? These questions are of serious moment to society, and deserve to be well considered.

Dr. Wheelock as keeper of his charity school, instructing the Indians in the art of reading and in our holy religion, sustaining them at his own expense and on the voluntary contribution of the charitable, could scarcely be considered as a public officer, exercising any portion of those duties which belong to government; nor could the legislature have supposed that his private funds or those given by others were subject to legislative management because they were applied to the purpose of education. When, afterwards, his school was enlarged, and the liberal contributions made in England and America enabled him to extend his cares to the education of the youth of his own country, no change was wrought in his own character or in the nature of his duty. Had he employed assistant tutors with the funds contributed by others, or had the trustees in England established a school with Dr. Wheelock at its head, and paid salaries to him and his assistants, they would still have been private tutors; and the fact that they were employed in the education of youth could not have converted them into public officers, concerned in the administration of public duty, or have given the legislature a right to interfere in the management of the fund. The trustees in whose care that fund was placed by the contributors would have been permitted to execute their trust, uncontrolled by the legislative authority. Whence, then, can be derived the idea that Dartmouth College has become a public institution and its trustees public officers, exercising powers conferred by the public for public objects? Not from the source whence its funds were drawn, for its foundation is purely private and eleemosynary. Not from the application of those funds, for money may be given for education, and the persons receiving it, by being employed in the education of youth, become members of civil government. Is it from the act of incorporation? Let this subject be considered.

A corporation is an artificial being—invisible, intangible, and existing only in contemplation of law. Being the mere creature of law, it possesses only those properties which the character of its creation confer upon it, neither expressly or as accidental to its very existence. These are such as are supposed best calculated to affect the object for which it was created. Among the most important are immortality, and, if the expression may be allowed, individuality—properties which a perpetual succession of many persons are considered as the same and may act as a single individual. They enable the corporation to manage its own affairs, and to hold property without the perplexing intricacies, the hazardous and endless necessity of perpetual conveyances, for the purpose of transmitting it from hand to hand. It is chiefly for the purpose of clothing bodies of men, in succession, with these qualities and capacities that corporations were invented and are in use. By these means a perpetual succession of individuals are capable of acting for the promotion of a particular object like one immortal

being. But this being does not share in the civil government of the country unless that be the purpose for which it was created. Its immortality no more confers on it political power or a political character than immortality would confer such power or character on a natural person. It is not more a state instrument than a natural person exercising the same power would be. If, then, a natural person employed by individuals in the education of youth, or for the government of a seminary in which youth is educated, would not become a public officer, or be considered as a member of the civil government, how is it that this artificial being, created by law for the purpose of being employed by the same individuals for the same purposes, should become a part of the civil government of a country? Is it because its existence, its capacities, its powers are given by law? Because the government has given it the power to take and to hold property in a particular form and for particular purposes, has the government a consequent right to change that form or to vary the purposes to which the property is to be applied? This principle has never been asserted or recognized, and is supported by no authority. Can it derive aid from reason?

The objects for which a corporation is created are universally such as the government wishes to promote. They are deemed beneficial to the country, and this benefit constitutes the consideration, and in most cases the sole consideration, of the grant. In most eleemosynary institutions the object would be difficult, perhaps unattainable, without the aid of a charter of incorporation. Charitable or public-spirited individuals, desirous of making permanent appropriations for charitable or other useful purposes, find it impossible to effect their design securely and certainly without an incorporating act. They apply to the government, state their beneficent object, and offer to advance the money necessary for its accomplishment, provided the government will confer on the instrument which is to execute their designs the capacity to execute them. The proportion is considered and approved. The benefit to the public is considered as an ample compensation for the faculty it confers, and the corporation is created. If the advantages to the public constitute a full compensation for the faculty it gives, there can be no reason for exacting a further compensation by claiming a right to exercise over this artificial being a power which changes its nature, and touches the fund for the security and application of which it was created. There can be no reason for implying in a charter given for a valuable consideration a power which is not only not expressed, but is in direct contradiction to its expressed stipulations.

From the fact, then, that a charter of incorporation has been granted, nothing can be inferred which changes the character of the institution or transfers to the government any new power over it. The character of civil institutions does not grow out of their incorporation, but out of the manner in which they are formed and the objects for which they are created. The right to change them is not founded on their being incorporated, but on their being the instruments of government created for its purposes. The same institutions created for the same objects, though not incorporated, would be public institutions, and, of course, controllable by the legislature. The incorporating act neither gives nor prevents this control. Neither, in reason, can the incorporating act change the character of a private eleemosynary institution.

We are next led to the inquiry, For whose benefit the property given to Dartmouth College was secured? The counsel for the defendant have insisted that the beneficial interest is in the people of New Hampshire. The charter, after reciting the preliminary measures which have been taken and the application for an act of incorporation, proceeds thus: "Know ye, therefore, that we, considering the premises, and being willing to encourage the laudable and charitable design of spreading Christian knowledge among the savages of our American wilderness, and, also, that the best means of education be established in our province of New Hampshire for the benefit of said province, do, of our special grace," etc. Do these expressions bestow on New Hampshire any exclusive right to the property of the college—any exclusive interest in the labor of the professors? Or do they merely indicate a willingness that New Hampshire should enjoy these advantages which result to all from the establishment of a seminary of learning in the neighborhood? On this point we think it impossible to entertain a serious doubt. The words themselves, unexplained by the context, indicate that the "benefit intended for the province" is that which is derived from "establishing the best means of education therein"—that is, from establishing in the province Dartmouth College, as constituted by the charter. But if these words, considered alone, could admit of doubt, that doubt is completely removed by an inspection of the entire instrument.

The particular interests of New Hampshire never entered into the mind of the donors, never constituted a motive for their donation. The propagation of the Christian religion among the savages, and the dissemination of useful knowledge among the youths of the country, were the avowed and the sole objects of their contributions. In these New Hampshire would participate; but nothing particular or exclusive was intended for her. Even the site of the college was selected, not for the sake of New Hampshire, but because it was "most subservient to the great ends in view," and because liberal donations of land were offered by the proprietors, on condition that the institution should be there established. The real advantages from the location of the college are, perhaps, not less considerable to those on the west than to those on the east side of the Connecticut River. The clause which constitutes the incorporation and expresses the subjects for which it was made declares those objects to be the instruction of the Indians, "and also of English youth and any others." So that the objects of contributors and the incorporating act were the same: the promotion of Christianity and of education generally, not the interests of New Hampshire particularly.

From this review of the charter it appears that Dartmouth College is an eleemosynary institution, incorporated for the purpose of perpetuating the application of the bounty of the donors to the specified object of that bounty; that its trustees or governors were originally named by the founder, and invested with the power of perpetuating themselves; that they are not public officers, nor is it a civil institution participating in the administration of government, but a charity school or a seminary of education, incorporated for the preservation of its property, and the perpetual application of that property to the objects of its creation.

Yet a question remains to be considered of more real difficulty, on which more doubt has been entertained than all that have been discussed. The founders

of the college—at least, those whose contributions were in money—have parted with the property bestowed upon it, and their representatives have no interest in that property. The donors of land are equally without interest as long as the corporation shall exist. Could they be found they are unaffected by any alteration in its constitution, and probably regardless of its form or even of its existence. The students are fluctuating, and no individual among our youth has vested interest in the institution which can be asserted in a court of justice. Neither the founders of the college, nor the youth for whose benefit it was founded, complain of the alteration made in its character, or think themselves injured by it. The trustees alone complain, and the trustees have no beneficial interest to be protected. Can this be such a contract as the Constitution intended to withdraw from the power of state legislation? Contracts, the parties to which have a vested beneficial interest, and those only, it has been said, are the objects about which the Constitution is solicitous, and to which its protection is extended.

The court has bestowed on this argument the most deliberate consideration, and the result will be stated. Dr. Wheelock, acting for himself, and for those who, at his solicitation, have made contributions to his school, applied for this charter as the instrument which should enable him and them to perpetuate their beneficent intention. It was granted. An artificial, immortal being was created by the crown, capable of receiving and distributing forever, according to the will of the donors, the donations which should be made to it on this being; the contributions which have been collected were immediately bestowed. These gifts were made, not indeed to make a profit for the donors or their posterity, but for something in their opinion of inestimable value—for something which they deem a full equivalent for the money with which it was purchased. The consideration for which they stipulated is the perpetual application of the fund to its object in the mode prescribed by themselves. Their descendants may take no interest in the preservation of this consideration. But in this respect their descendants are not their representatives. They are represented by the corporation. The corporation is the assignee of their rights, stands in their place, and distributes their bounty as they would themselves have distributed had they been immortal. So with respect to the students who are to derive learning from this source. The corporation is a trustee for them also. The potential rights which, taken distributively, are imperceptible, amount collectively to a most important interest. These are, in the aggregate, to be exercised, asserted, and protected by the corporation. They were as completely out of the control of the donors at the instant of their being vested in the corporation, and as incapable of being asserted by the students, as at present.

According to the theory of the British constitution their Parliament is omnipotent. To annul corporate rights might give a shock to public opinion which that government has chosen to avoid, but its power is not questioned. Had Parliament, immediately after the emanation of this charter and the execution of those conveyances which followed it, annulled the instrument so that the living donors would have witnessed the disappointment of their hopes, the perfidy of the transaction would have been universally acknowledged. Yet then, as now, the donors would have had no interest in the property; then, as now,

those who might be students would have had no rights to be violated; then, as now, it might be said that the trustees, in whom the rights of all were combined, possessed no private, individual, beneficial interest in the property confided to their protection. Yet the contract would at that time have been deemed sacred by all. What has since occurred to strip it of its inviolability? Circumstances have not changed it. In reason, in justice, and in law it is now what it was in 1769.

This is plainly a contract to which the donors, the trustees, and the crown (to whose rights and obligations New Hampshire succeeds) were the original parties. It is a contract made on a valuable consideration. It is a contract for the security and disposition of property. It is a contract on the faith of which real and personal estate has been conveyed to the corporation. It is, then, a contract within the letter of the Constitution, and within its spirit also, unless the fact that the property is invested by the donors in the trustees, for the promotion of religion and education, for the benefit of persons who are perpetually changing, though the objects remain the same, shall create a particular exception, taking this case out of the prohibition contained in the Constitution.

It is more than probable that the preservation of rights of this description was not particularly in the view of the framers of the Constitution when the clause under consideration was introduced into that instrument. It is probable that interferences of more frequent recurrence, to which the temptation was stronger, and of which the mischief was more extensive, constituted the great motive for imposing this restriction on the state legislatures. But although a particular and a rare case may not, in itself, be of sufficient magnitude to induce a rule, yet it must be governed by the rule when established, unless some plain and strong reason excluding it can be given. It is not enough to say that this particular case was not in the mind of the convention when the article was framed, nor of the American people when it was adopted. It is necessary to go further, and to say that had this particular case been suggested the language would have been so varied as to exclude it, or it would have been made a special exception. The case being within the words of the rule must be within its operation likewise, unless there be something in the literal construction so obviously absurd or mischievous or repugnant to the general spirit of the instrument as to justify those who expound the Constitution in making it an exception.

On what safe and intelligible ground can this exception stand? There is no exception in the Constitution, no sentiment delivered by its contemporaneous expounders, which would justify us in making it. In the absence of all authority of this kind, is there, in the nature and reason of the case itself, that which would sustain a construction of the Constitution not warranted by its words? Are contracts of this description of a character to excite so little interest that we must exclude them from the provisions of the Constitution as being unworthy of the attention of those who framed the instrument? Or does public policy so imperiously demand their remaining exposed to legislative alteration as to compel us—or, rather, permit us—to say that these words which were introduced to give stability to contracts, and which, in their plain import, comprehend this contract, must yet be so construed as to exclude it?

Almost all eleemosynary corporations, those which are created for the promotion of religion, of charity, or of education, are of the same character. The law

of this case is the law of all. In every literary or charitable institution, unless the objects of the bounty be themselves incorporated, the whole legal interest is in trustees, and can be asserted only by them. The donors or claimants of the bounty, if they can appear in court at all, can appear only to complain of the trustees. In all other situations they are identified with and personated by the trustees, and their rights are to be defended and maintained by them. Religion, charity, and education are, in the law of England, legatees or donees capable of receiving bequests or donations in this form. They appear in court, and claim or defend by the corporation. Are they of so little estimation in the United States that contracts for their benefit must be excluded from the protection of words which, in their natural import, include them? Or do such contracts so necessarily require new modelling by the authority of the legislature that the ordinary rules of construction must be disregarded in order to leave them exposed to legislative alteration? All feel that these objects are not deemed unimportant in the United States. The interest which this case has excited proves that they are not. The framers of the Constitution did not deem them unworthy of its care and protection. They have, though in a different mode, manifested their respect for science by reserving to the government of the Union 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." They have, so far, withdrawn science and the useful arts from the action of the state governments. Why, then, should they be supposed regardless of contracts made for the advancement of literature as to intend to exclude them from provisions made for the security of ordinary contracts between man and man? No reason for making this supposition is perceived.

If the insignificance of the object does not require that we should exclude contracts respecting it from the protection of the Constitution, neither, as we conceive, is the policy of leaving them subject to legislative alteration so apparent as to require a forced construction of that instrument in order to effect it. These eleemosynary institutions do not fill the place which would otherwise be occupied by government, but that which would otherwise remain vacant. They are complete acquisitions to literature. They are donations to education—donations which any government must be disposed rather to encourage than to discountenance. It requires no very critical examination of the human mind to enable us to determine that one great inducement to these gifts is the conviction felt by the giver that the disposition he makes of them is immutable. It is probable that no man ever was, and that no man ever will be, the founder of a college believing at the time that an act of incorporation constitutes no security for the institution; believing that it is immediately to be deemed a public institution, whose funds are to be governed and applied, not by the will of the donor, but by the will of the legislature. All such gifts are made in the pleasing, perhaps delusive, hope that the charity will flow forever in the channel which the givers have marked out for it. If every man finds in his own bosom strong evidence of the universality of this sentiment, there can be but little reason to imagine that the framers of our Constitution were strangers to it, and that, feeling the necessity and policy of giving permanence and security to contracts, of withdrawing them from the influence of legislative bodies, fluctuating

policy and repeated interferences producing the most perplexing and injurious embarrassments, they still deemed it necessary to leave these contracts subject to those interferences. The motives for such an exception must be very powerful to justify the construction which makes it.

The motives suggested at the bar grow out of the original appointment of the trustees, which is supposed to have been in a spirit hostile to the genius of our government, and the presumption that, if allowed to continue themselves, they now are, and must remain forever, what they originally were. Hence is inferred the necessity of applying to this corporation, and to other similar corporations, the correcting and improving hand of the legislature. It has been urged repeatedly, and certainly with a degree of earnestness which attracted attention, that the trustees, deriving their power from a regal source, must necessarily partake of the spirit of their origin; and that their first principles, unimproved by that resplendent light which has been shed around them, must continue to govern the college and to guide the students.

Before we inquire into the influence which this argument ought to have on the constitutional question, it may not be amiss to examine the facts on which it rests. The first trustees were undoubtedly named in the charter by the crown; but at whose suggestion were they named? By whom were they selected? The charter informs us. Dr. Wheelock had represented "that, for many weighty reasons, it would be expedient that the gentlemen whom he had already nominated, in his last will, to be trustees in America, should be of the corporation now proposed." When, afterwards, the trustees are named in the charter, can it be doubted that the persons mentioned by Dr. Wheelock in his will were appointed? Some were probably added by the crown, with the approbation of Dr. Wheelock. Among these is the doctor himself. If any others were appointed at the instance of the crown, they are the governor, three members of the council, and the speaker of the House of Representatives of the colony of New Hampshire. The stations filled by these persons ought to rescue them from any other imputation than too great a dependence on the crown. If, in the Revolution that followed, they acted under the influence of this sentiment, they must have ceased to be trustees; if they took part with their countrymen, the imputation which suspicion might excite would no longer attach to them. The original trustees, then, or most of them, were named by Dr. Wheelock, and those who were added to his nomination, most probably with his approbation, were among the most eminent and respectable individuals in New Hampshire.

The only evidence which we possess of the character of Dr. Wheelock is furnished by this charter. The judicious means employed for the accomplishment of his object, and the success which attended his endeavors, would lead to the opinion that he united a sound understanding to that humanity and benevolence which suggested his undertaking. It surely cannot be assumed that his trustees were selected without judgment. With as little probability can it be assumed that, while the light of science and of liberal principles pervades the whole community, these originally benighted trustees remain in utter darkness, incapable of participating in the general improvement; that, while the human race is rapidly advancing, they are stationary. Reasoning *à priori*, we should believe that learned and intelligent men, selected by its patrons for the government of a lit-

erary institution, would select learned and intelligent men for their successors; men as well fitted for the government of a college as those who might be chosen by other means. Should this reasoning ever prove erroneous in a particular case, public opinion, as has been stated at the bar, would correct the institution. The mere possibility of the contrary would not justify a construction of the Constitution which should exclude these contracts from the protection of a provision whose terms comprehend them.

The opinion of the court, after mature deliberation, is that this is a contract, the obligation of which cannot be impaired without violating the Constitution of the United States. This opinion appears to us to be equally supported by reason and by the former decisions of this court.

2. We next proceed to the inquiry whether its obligation has been impaired by those acts of the legislature of New Hampshire to which the special verdict refers. From the review of this charter which has been taken it appears that the whole power of governing the college, of appointing and removing tutors, of fixing their salaries, of directing the course of study to be pursued by the students, and of filling up vacancies created in their own body, was vested in the trustees. On the part of the crown it was expressly stipulated that the corporation thus instituted should continue forever, and that the number of trustees should forever consist of twelve, and no more. By this contract the crown was bound, and could have made no violent alteration in its essential terms without impairing its obligations.

By the Revolution the duties as well as the powers of government devolved on the people of New Hampshire. It is admitted that among the latter was comprehended the transcendent power of Parliament as well as that of the executive department. It is too clear to require the support of argument that all contracts and rights respecting property remained unchanged by the Revolution. The obligations, then, which were created by the charter of Dartmouth College were the same in the new that they had been in the old government. The power of the government was also the same. A repeal of this charter at any time prior to the adoption of the present Constitution of the United States would have been an extraordinary and unprecedented act of power, but one which could have been contested by the restrictions upon the legislature to be found in the Constitution of the state. But the Constitution of the United States has imposed this additional limitation: that the legislature of a state shall pass no act "impairing the obligation of contracts."

It has been already stated that the act "to amend the charter and enlarge and improve the corporation of Dartmouth College" increases the number of trustees to twenty-one, gives the appointment of the additional members to the executive of the state, and creates a board of overseers, to consist of twenty-five persons, of whom twenty-one are also appointed by the executive of New Hampshire, who have power to inspect and control the most important acts of the trustees. On the effect of this law two opinions cannot be entertained. Between acting directly and acting through the agency of trustees and overseers no essential difference is perceived. The whole power of governing the college is transferred from trustees, appointed according to the will of the founder, expressed in the charter, to the executive of New Hampshire. The management

and application of the funds of this eleemosynary institution, which are placed by the donors in the hands of trustees named in the charter and empowered to perpetuate themselves, are placed by this act under the control of the government of the state. The will of the state is substituted for the will of the donors in every essential operation of the college. This is not an immaterial change. The founders of the college contracted not merely for the perpetual application of the funds which they gave to the objects for which those funds were given; they contracted, also, to secure that application by the constitution of the corporation. They contracted for a system which should, as far as human foresight can provide, retain forever the government of the literary institution they had formed in the hands of persons approved by themselves. This system is totally changed. The charter of 1769 exists no longer. It is reorganized; and reorganized in such a manner as to convert a literary institution moulded according to the will of its founders, and placed under the control of private literary men, into a machine entirely subservient to the will of government. This may be for the advantage of this college in particular, and may be for the advantage of literature in general; but it is not according to the will of the donors, and is subversive of that contract, on the faith of which their property was given.

In the view which has been taken of this interesting case the court has confined itself to the rights possessed by the trustees, as the assignees and representatives of the donors and founders, for the benefit of religion and literature. Yet it is not clear that the trustees ought to be considered as destitute of such beneficial interest in themselves as the law may respect. In addition to their being the legal owners of the property, and to their having a freehold right in the powers confided to them, the charter itself countenances the idea that trustees may also be tutors with salaries. The first president was one of the original trustees, and the charter provides that, in case of vacancy in that office, "the senior professor or tutor, being one of the trustees, shall exercise the office of president until the trustees shall make choice of and appoint a president." According to the tenor of the charter, then, the trustees might, without impropriety, appoint a president and other professors from their own body. This is a power not entirely unconnected with an interest. Even if the proposition of the counsel for the defendant were sustained; if it were admitted that those contracts only are protected by the Constitution, a beneficial interest in which is vested in the party who appears in court to assert that interest, yet it is by no means clear that the trustees of Dartmouth College have no beneficial interest in themselves.

But the court has deemed it unnecessary to investigate this particular point, being of opinion, on general principles, that in these private eleemosynary institutions the body corporate, as possessing the whole legal and equitable interest, and completely representing the donors, for the purpose of executing the trust, has rights which are protected by the Constitution.

It results from this opinion that the acts of the legislature of New Hampshire, which are stated in the special verdict found in this cause, are repugnant to the Constitution of the United States, and that the judgment on this special verdict ought to have been for the plaintiffs. The judgment of the state court must, therefore, be reversed.

AN ORATION BY GEORGE TICKNOR CURTIS.

DELIVERED ON THE FOURTH OF JULY, 1862, BEFORE THE MUNICIPAL AUTHORITIES OF THE CITY OF BOSTON.

Mr. Mayor and Gentlemen of the City Council:—Had I felt at liberty to consult my own inclination alone, I should have asked you to excuse me from taking part in the proceedings of this day. At a much earlier period of life I enjoyed the distinction of being placed on the long roll of those who have successively spoken to the people of Boston, at the bidding of their municipal authorities, on this our national anniversary. At this particular juncture I could well have desired to be spared from the performance of any such public duty. I had prepared myself to bear what is now upon us in silence and obscurity, doing the infinitely little that I may to alienate personal suffering, sustaining the hopes of those who are nearest to me, and endeavoring to cherish in my own breast a living faith in the strength and perpetuity of our republican forms of government.

But private wishes are nothing—private tastes are nothing—in the presence of great public trials and dangers. We cannot, if we would, escape the responsibilities which such trials and dangers entail upon us. If we fly to the uttermost parts of the earth the thought of our country is with us there. If we put on the robes of the stoic, or wrap ourselves in the philosophy of the fatalist, the heart beneath will beat for the land of our birth in spite of the outward man. There is no place, there is no hope, there is no happiness in a state of indifference to the welfare and honor of our country. The most sordid of men, whose sole delight consists in laying, day by day, one more piece of gold on his already swollen heaps, has no more assured rest from anxiety for his country, in times of real peril, than he whose whole being quivers beneath the blows which public disasters or disgraces inflict upon a refined and sensitive nature. To love our country; to labor for its prosperity and repose; to contend, in civil life, for the measures which we believe essential to its good; to yearn for that long, deep, tranquil flow of public affairs which we fondly hope is to reach and bear safely on its bosom those in whom we are to have an earthly hereafter—these are the nobler passions and the higher aims which distinguish the civilized from the savage man. Even if I did not feel such emotions deeply, how could I bring here at such a time as this the doubts and misgivings of one fearful for himself? The thickly crowding memories of the far-off dead, who have fallen in the bitter contests of this civil war, admonish me of the insignificance of such fears. Who shall bring a thought of the exertions, the sacrifices, or the responsibilities of public discourse into the presence of the calamities of his country?

I am here for a far other purpose. I come to plead for the Constitution of our country. I am here to show you, from my own earnest convictions, how dangerous it may be to forego all care for the connection between the

political past and the political future. I am here to state to you, as I have read them on the page of history, the fundamental conditions on which alone, as I believe, the people of these states can be a nation and preserve their liberties. I am here to endeavor to rescue the idea of union from heresies as destructive as the disorganizing and justly reprobated heresies of secession. I wish to do what I can to define to rational and intelligent minds the real nature and limits of the national supremacy, and to vindicate it from the corroding influences of doctrines which are leading us away from the political faith and prospects of a free people.

Do you say that there is no need of such a discussion? Reflect for a moment, I pray you, on what has already crept into the common uses of our political speech. We hear men talk about the "old" Constitution, as if that admirable frame of government, which is not yet older than some who still live under its sway, and which has bestowed on this nation a vigor unexampled in history, were already in its decrepitude, or as if it had become suspended from its functions by general consent, to await at respectful distance the advent of some new theory as yet unknown. We hear men talk of the "old" Union, as if there were a choice about the terms on which the Union can subsist, or as if those terms were not to be taken as having been fixed on the day on which Washington and his compatriots signed the Constitution of the United States. You will not say that this tendency—this apparent willingness to break away from the past and its obligations, and to throw ourselves upon a careless tempting of the future—does not demand your sober consideration. I beg you also to call before you another symptom of these unsettled times. With an extravagance partly habitual to us, and partly springing from the intense exertions of the year which has just passed, we have encountered the doctrines of secession and disunion with many theories about the national unity and the federal authority which are not founded in history or in law. Are you not conscious that there has been poured forth from hundreds of American pulpits, platforms, and presses, and on floors of Congress, a species of what is called argument, in defence of the national supremacy, which ill befits the nature of our republican institutions? When I hear one of these courtier-like preachers or writers for our American sovereigns resting the authority of our government on a doctrine that might have gained him promotion at the hands of James or Charles Stuart, I cannot help wishing that he had lived in an age when such teachings, if not actually believed to be sound, were at all events exceedingly useful to the teachers. My friends, I cannot bear the thought of vindicating the supremacy of our national government by anything but the just title on which it was founded, and I will not desert the solid ground of our republican constitutional liberty for any purpose on earth while there is a hope of maintaining it.

I know of no just foundation for the title of government in this country but consent—that consent which resides in compact, contract, stipulation, concession—the *do et concedo* of public grants. Give me a solemn cession of political sovereign powers, evidenced by a public transaction and a public charter, and you have given me a civil contract, to which I can apply the rules of public law and the obligations of justice between man and man; on which I can separate the legitimate powers of the government from the rights of the people; on which I can,

with perfect propriety, assert the authority of law in the halls of criminal jurisprudence, or, if need be, at the mouth of the cannon. But when you speak of any other right of one collection of people or states to govern another collection of people or states; when you go beyond a public charter to create a national unity, and a duty of loyalty and submission independent of that charter; when you undertake to found government on something not embraced by a grant—I understand you to employ a language and ideas that ought never to be uttered by an American tongue, and which, if carried out in practice, will put an end to the principles on which your liberties are founded.

For these and many other reasons—most appropriate for our consideration this day—let us recur to certain indisputable facts in our history. I shall make no apology for insisting on the precedents of our national history. No nation can safely lay aside the teachings, the obligations, or the facts of its previous existence. You cannot make a *tabula rasa* of your political condition, and write upon it a purely original system, with no traditions, no law, no compacts, no limitations, derived from the generations who have gone before you, without ruinously failing to improve. Revolutionary France tried such a proceeding, and property, life, religion, morals, public order, and public tranquillity went down into a confusion no better than barbarism, out of which society could be raised again only by the strong hand of a despot. We are of a race which ought to have learned by the experience of a thousand years that reforms, improvements, progress, must be conducted with a fixed reference to those antecedent facts which have already formed the chief condition of the national existence. Let us attend to some of the well-known truths in our history.

1. The Declaration of Independence was not accepted by the people of the colonies, and their delegates in Congress were not authorized to enter into a union without a reservation to the people of each colony of its distinct separate right of internal self-government. To represent the abstract sentiments of the Declaration as inconsistent with any law or institution existing in any one of the colonies is to contradict the record and history of its adoption. What, for example, do you make of the following resolution of the people of Maryland in convention, adopted on the 28th day of June, 1776, and laid before the Continental Congress three days before the Declaration of Independence was signed: "That the deputies of said Colony or any three or more of them be authorized and empowered to concur with the other United Colonies, or a majority of them, in declaring the United Colonies free and Independent States; in forming such further compact and confederation between them; in making foreign alliances, and in adopting such other measures as shall be adjudged necessary for securing the liberties of America; and that said Colony will hold itself bound by the resolutions of the majority of the United Colonies in the premises; *provided*, the sole and exclusive right of regulating the internal government and police of that Colony be reserved to the people thereof."

This announciation of the sense and purpose in which the people of Maryland accepted the Declaration is just as much a part of the record as the Declaration itself, and it clearly controls for them the meaning and application of every political axiom or principle which the Declaration contains. It was intended to signify to the country and to the world that the people of Maryland consented to

separate themselves from the sovereignty of Great Britain, *on the condition* that the right to maintain within their own limits just such a system of society and government as they might see fit to maintain should belong to them, *notwithstanding* anything said in the Declaration to which they were asked to give their assent.

Several of the other colonies made a similar express reservation; and all of them, and all the people of America, understood that every colony accepted the Declaration, in fact, in the same sense. No man in the whole country, from the 4th of July, 1776, to the adoption of the Articles of Confederation, ever supposed that the Revolutionary Congress acquired any legal right to interfere with the domestic concerns of any one of the colonies which then became states, or any moral authority to lay down rules for determining what laws, institutions, or customs, or what condition of its inhabitants, should be adopted or continued by the states in their internal government. From that day to this it has ever been a received doctrine of American law that the Revolutionary Congress exercised, with the assent of the whole people, certain powers which were needful for the common defence, but that these powers in no way touched or involved the sovereign right of each state to regulate its own internal condition.

2. When the Articles of Confederation were finally ratified, 1781, there was placed in the very front of the instrument the solemn declaration that "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;" and the powers given to the United States in Congress related exclusively to those affairs in which the state had a common concern, and were framed with a view to the common defence against a foreign enemy, in order to secure, by joint exertions, the independence and sovereignty of each of the states.

3. When the Constitution of the United States was finally established in 1788 the people of each state, acting through authorized agents, executed by a resolution or other public act a cession of certain sovereign powers, described in the Constitution, to the government which that Constitution provided to receive and exercise them. These powers being once absolutely granted by public instruments, duly executed in behalf of the people of each state, were thenceforth incapable of being resumed; for I hold that there is nothing in the nature of political powers which renders them, when absolutely ceded, any more capable of being resumed at pleasure by the grantors than a right of property is when once conveyed by an absolute deed. In both cases those who receive the grant hold under a contract; and if that contract, as is the case with the Constitution, provides for a common arbiter to determine its meaning and operation, there is no resulting right in the parties, from the instrument itself, to determine any question that arises under it.

At the same time it is never to be forgotten that the powers and rights of separate internal government which were not ceded by the people of the states, or which they did not by adopting the Constitution agree to restrain, remained in the people of each state in full sovereignty. It might have been enough for their safety to have rested upon this as a familiarly understood and well-defined principle of public law implied in every such grant. But the people did not see

fit to trust to implication alone. They insisted upon annexing to the Constitution an amendment which declares that "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."

We thus see that from the first dawn of our national existence, through every form which it has yet assumed, a dual character has constantly attended our political condition. A nation has existed because there has all along existed a central authority having the right to prescribe the rule of action for the whole people on certain subjects, occasions, and relations. In this sense and in no other, to this extent but no further, we have been since 1776, and are now a nation. At the beginning the limits of this central authority, in respect to which we are a nation, were defined by general popular understanding; but more recently they were fixed in written terms and public charters, first by the Articles of Confederation, and ultimately, with a more enlarged scope and a more efficient machinery, by the Constitution. The latter instrument made this central authority a government proper, but with limited and defined powers, which are supreme within their own appropriate sphere. In like manner, from the beginning, there has existed another political body—distinct, sovereign within its own sphere, and independent as to all the powers and objects of government not ceded or restrained under the Federal Constitution. This body is the state—a political corporation of which each inhabitant is a subject, as he is at the same time a subject of that other political corporation known as the United States.

All this is familiar to you. But I state it here because I wish to remind you that the careful preservation of this separate political body, the state—this sovereign right of self-government as far as it has been retained by the people of each state—has ever been a cardinal rule of action with the American people, and with all their wisest statesmen, Northern and Southern, of every school of politics. There have been great differences of opinion and great controversies respecting the dividing line which separates, or ought to be held to separate, the national from the state powers. But no American statesman has ever lived at any former period who would have dared to confess a purpose to crush the state sovereignties out of existence, and no man can now confess such a wish without arousing a popular jealousy which will not slumber even in a time of civil war and national commotion.

What is the true secret of this undying popular jealousy on the subject of state rights? What is it that even now—when we are sending our best blood to be poured out in defence of the true principle of the national supremacy—causes all men who are not mad with some revolutionary project to shrink from measures that appear to threaten the integrity of state authority, and to pray that at least that bitter and dreaded cup may pass from us? It is the original, inborn, and indestructible belief that the preservation of the state sovereignty within its just and legitimate sphere is essential to the preservation of republican liberty. Beyond a doubt it was this belief which led the people from the first to object, as they sometimes did unreasonably object, to the augmentation of the national powers. Perhaps they could not always explain—perhaps they did not always fully understand—all the grounds of this conviction. It has been, as it were, an

instinct; and for one I hope that instinct is as active and vigilant this day as I am sure it was eighty years ago.

For I am persuaded that local self-government, to as great an extent as is consistent with national safety, is indispensable to the long-continued existence of republican government on a large scale. A republic in a great nation demands those separate institutions which imply in different portions of the nation some rights and powers with which no other portion of the nation can interfere. You may give the mere name of a republic to a great many modes of national existence; but unless there are local privileges, immunities, and rights that are not subject to the control of the national will the government, although resting on a purely democratic basis, will be a despotism towards all the minorities. A great nation, too, that attempts republican government without such local institutions and rights must soon lose even the republican form. Twice within the memory of some who are yet living have the people of France tried the experiment of calling themselves a republic; and France, be it remembered, has been ever since her great revolution essentially a democratic country. But her republics have never been anything but high democracies, acting with overwhelming force sometimes through a head called a Directory, sometimes through a first consul, sometimes through a president, but ending speedily in an emperor and a despotism. It is impracticable for a great and powerful democratic nation, whose power is not broken and checked by local institutions of self-government, to avoid conferring on its head and representative a large part of the whole of its own unlimited force. If that head is not clothed with such power there will be anarchy. Louis Napoleon, by the present theory of French law, is the representative of the whole authority of the French nation—so constituted by universal suffrage; and if his power did not in fact correspond to this theory, order could not be preserved in France. The most sceptical person may be convinced of this who will read the Constitution of the French empire, remembering that it is the work of the emperor himself.

Turning now to our own country, let us suppose that the states of this Union, from the Atlantic to the Pacific, were obliterated to-day, and that the people of this whole country were a consolidated democracy, "one and indivisible." No laws would then be made, no justice administered, no order maintained, no institutions upheld, save in the name and by the authority of the nation. What sort of a republic, think you, would that be? If it started with the name and semblance, how long would it preserve the substance of republican institutions? In order to act at all in the discharge of the vast duties devolving upon it, the government of such a republic, extending over a country so enormous, must more and more be made the depositary of the irrestible force of the nation; and the theory that the will of the government expresses in all cases the will of the ruling majority must soon confer upon it that omnipotent power beneath which minorities and individuals have no rights.

This is no mere speculation. Every reflecting man in this country knows that he has some civil rights which he does not hold at the will and pleasure of a majority of the people of the United States. He knows that he holds these rights by a tenure which cannot lawfully be touched by all the residue of the nation. This is republican liberty as I understand and value it, and without

this principle in some form of active and secure operation I do not believe that any valuable republican liberty is possible in any great democratic country on the face of this earth. Certainly it is not possible for us.

It seems to one who looks back upon our history, and who keeps before him the settled conditions of our liberty, almost impossible to believe that in consequence of a direct collision between the rightful supremacy of the nation and a wrongful assertion of state sovereignty we are exposed to all the evils of civil war, and to the danger of destroying the true principles of our system in the effort to maintain them. That this danger is real and practical will be conceded now by every man who will contemplate the projects that spring up on all sides, looking to the acquisition of powers which have never belonged to the Federal Union by any theory under which it has yet existed. The main resemblance between these projects is that none of them will fit the known basis of the Constitution; and that as means, therefore, of curing the disorders of our country, or of making men obedient to the Constitution, their tendency is merely mischievous. At the same time they are none of them founded on any theory of a new Union, or of a new form of national existence, which their authors can explain to us or to themselves. One man, for instance, wishes the government to assume the power of emancipating all the slaves of the South by some decree, civil or military. But he cannot possibly explain what the government of the Union is to be when it has done this. Another man wants a sweeping confiscation of all the property of all the people of the revolted states, guilty and innocent alike. But he does not tell you what kind of a sovereign the United States is to be after such a seizure shall have been consummated. A third, in addition to these things, and as if in imitation of the Austrian method of dealing with rebellious Hungary, wishes to declare a sweeping forfeiture of all political rights, an utter extinguishment of the corporate state existence, and a reduction of the people of the revolted states to a condition of military or some other vassalage. But he not only does not show how the Constitution enables the Federal Government to obliterate a state, but he does not even suggest what the Union is to be when this is done, or even whence the requisite physical force is to be derived. Multitudes of politicians tell us that slavery is the root of all the national disasters, and that we must "strike at the root." But none of them tell us how we are to pass through these disasters to a safer condition, or what the condition is to be when we shall have "struck at the root." Now it seems to me, endeavoring as I do to repress all merely vain and useless regrets for what is passed, and to find some safe principle of action for the present and the future, that there is one thought on which the people of the United States should steadily fix their attention. We have seen that our National Union has had three distinct stages. The first was the Union formed by sending delegates to the Revolutionary Congress, and by a general submission to the measures adopted by that body for the common defence. The second was the closer league of the Confederation, the powers of which were defined by a written charter. The third was the institution of a government proper, with sovereign but enumerated powers, under the Constitution. Now I infer from what I see of some of the currents of public and private opinion that many persons entertain a vague expectation that the military operations now necessarily carried on by the Federal Government will re-

sult in the creation of new civil relations, a new Union, and a new Constitution of some kind, they know not what. He would be a very bold and a very rash man who should undertake to predict what new Constitution can follow a civil war in a great country like this. But looking back to the commencement of our national existence we see that there never has been a change in the form of the Union; there never has been a new acquisition of political power by the central government which has been gained by force. Such additions of foreign territory as we have obtained by arms or treaty have merely increased the area of the Union, but they have not augmented the political powers of the government in the smallest degree. The inhabitants of these regions have come into the Union subject to the same powers to which we who were original parties to the formation of the Constitution have always been subject, and to no others. The national authority has never gained any slightest increase of its political powers by force of arms. In every stage in which its powers have been augmented the increase has been gained by the free, voluntary consent of the people of each state without coercion of any kind.

This consideration certainly affords no reason why the government of the United States should not vindicate its just authority under the Constitution over the whole of its territory by military power. The right of the government of this Union to exercise the powers embraced in the Constitution rests, I repeat, upon a voluntary cession of those powers by the people of each state; and no impartial publicist in the world will deny that the right to put down all military or other resistance to the exercise of these powers rests upon a just and perfect title. This title is founded on a public grant.

But when you come to the idea of acquiring other and further powers by the exercise of force you come to a very different question. You then have to consider whether a people whose civil policy is founded on the title given by consent—who have never known or admitted any other rule of action than that exercised in the maxim that "governments derive their just powers from the consent of the governed"—can proceed to found any new political powers on a military conquest over a rebellion without changing the whole character of their institutions. For my own part, with the best reflection I have been able to give to this momentous subject, I have never been able to see how a majority of the American people can proceed to acquire by military subjugation, or by military means or maxims, any *new* authority over the people or institutions of any state or class of states without falling back upon the same kind of title as that by which William of Normandy and his descendants acquired and held the throne of England. That title was founded on the sword.

Perhaps there are some who will say, If this is to be the issue, let it come. I can have no argument with those who are prepared to accept, or who wish for, this issue. All that I know or expect in this world of what may be called civil happiness is staked on the preservation of our republican constitutional freedom. If others are prepared to yield it; if others are willing to barter it for the doubly hazardous experiment of obtaining control over the destiny of a race not now subject to our sway or dependent on our responsibility; if others are ready to change the foundation of our Union from free public charters to new authorities obtained by military subjugation, I cannot follow them. I shall bear that

result, if it comes, with such resignation as may be given to me. But you will pardon me, fellow-citizens, if with my humble efforts I yet endeavor to sustain those, be they many or few, who faithfully seek to carry us to the end of these great perils with the whole great system of our civil liberties unimpaired. You will still, I trust, give every honest man the freedom to struggle to the last for that inestimable principle on which the very authority of your government to demand the obedience of all its citizens was founded by those who created it.

The object for which we are urged by some to put at imminent hazard the foundation principle of our federal system is the emancipation of the slaves of the South. No one can be less disposed than myself to undervalue the capacity of my countrymen to do a great many things, and to do them successfully. One would suppose, however, that a proposition to effect a sweeping change in the condition of four millions of the laboring peasantry of a great region of country, and to do it in almost total ignorance of the methods in which that particular race can be safely dealt with so as to produce any good, would be a proposition upon which even our self-confidence would be likely to pause. One would suppose that such an idea might suggest an inquiry into the limits of human responsibility. It is not allowed among sound moralists that there is any rule which authorizes a statesman to undo an original wrong at the imminent hazard of doing another wrong as great or greater, and there is no rule of moral obligation for a statesman that is not applicable to the conduct of a people.

Setting aside, then, for a moment all idea of constitutional restraint, let me put it to each one of you to ask himself how many persons there are in all the North on whose judgment you would rely for a reasonably safe determination as to what ought to be done with slavery, having a single view to the welfare of that race. Of course I do not speak of disposing of a few hundred individuals, but of general measures or movements affecting four millions of your fellow-creatures. It has been my fortune in the course of life to know a few truly great statesmen in this our Northern latitude, and to know many other persons for whose general opinions on what concerns the welfare of the human race I should have profound respect. But I have never seen the man, born, educated, and living away from contact with slavery as it exists in the South, whom I could regard as competent to determine what radical changes ought to be made in the condition of a race of whom all that we yet know evinces their present incapacity to become self-sustaining and self-dependent. In such a case it appears to me a very plain moral proposition that our Maker has not cast upon us the responsibility of becoming His agents in the premises. But it further appears to me that in this case He has surrounded my moral responsibility with other limitations which I cannot transcend. If the order of civil society in which I am placed imposes on me an obligation to refrain from acting on the affairs of others; if I cannot break that obligation without destroying the principle of a beneficent government and overturning the foundations of property; if I cannot use the means which I am tempted to employ without danger of unspeakable wrong; or if the utter inefficacy of those means is apparent to me and to all men, what is my duty to Him who sets the moral bounds of all my actions? It is to use those means, and those only, against which He has raised no such gigantic and

insuperable moral obstacles. That no valuable military allies can be found among the negroes of the South; that no deception of government custody or charge of them can become more than a change of masters; and that nothing but weakness to the national cause results from projects that look to the acquisition of national power over their condition, are truths on which the public mind appears to be rapidly approaching a settled conviction.

I add one word more upon the topic, and I do it for the purpose of saying in the presence of this community that any project for arming the blacks against their masters deserves the indignant rebuke of every Christian in the land. When the descendants of those whom Chatham protected against ministerial employment of the Indian scalping-knife so forget the civilization of the age and their own manhood as to sanction a greater atrocity, we may hang our heads in shame before the nations of the earth.

But there is another aspect of this matter which it would be entirely wrong to overlook. The great army which has rallied with such extraordinary vigor and alacrity to the defence of the Union and the preservation of the Constitution—which has endured so much, and has exhibited such heroic qualities—is not a standing army of hired mercenaries. It is an army of volunteers, of citizen soldiers, who have left their homes and entered the service of their country for a special purpose which they distinctly understood. Permit me to say that you are bound to remember this; or, rather, let me cast aside the language of exhortation, and assert in your name that you do remember it with pride and exultation. The purpose for which these men were asked to enter the public service was the protection of the existing Union and the existing Constitution from attempts to overthrow or change them by organized violence, and that purpose is the most important element in their relation to the government. No other army in the world ever entered the service of any power with an understanding so distinct, so peculiar, so circumscribed in respect to the objects for which it was to be used, so directly addressed to the moral sense and intelligent judgment of intelligent men. I cannot doubt that I speak the sentiments of nine men out of every ten in this community when I say that to change that purpose, and to use that army for any other end than the defence of the Constitution as it is, and the restoration of the Union of our forefathers, would be a violation of the public faith.

It is now proposed to enlarge that army by a further call for volunteers. Let them come forth, making no conditions with the government, for the government made its own conditions, and has made them in accordance with the letter and the spirit of the Constitution. The purposes and objects of the war, as declared at the beginning, can never be changed unless the people shall be so untrue to themselves as to compel a change; and when they do that they will be themselves responsible for the defeat of their own hopes.

There is yet another topic on which, as it seems to me, we ought carefully and soberly to reflect. I mean the history of opinion concerning the nature of the Union, and the causes which from time to time have produced disorganizing doctrines respecting it. But let me ask you here not to misunderstand me. I seek no occasion to fasten upon peculiar persons one or another measure of responsibility for what has occurred, and, therefore, in pursuance of a rule which I

have imposed on myself in the preparation of this discourse, the name or designation of no man in the North or the South will pass my lips this day.

Whoever is well acquainted with the political history of this country since the adoption of the Federal Constitution must know that there have been developed at various times certain strange opinions concerning the nature of the Federal Union, the foundation of its authority, and the character of the obligations that we owe to it. In general the people of the United States have been content to rest upon that theory respecting their government which has always prevailed in its official administration in whatever hands that administration has been lodged, this theory being that the central government holds certain direct and sovereign but special powers over the whole people, ceded to it by the voluntary grant of the people of each state. But a sense of injury in certain localities, springing from wrong supposed to have been committed by the ruling majority, or by those who at the time exercised the power of the majority, has not infrequently led men here, as elsewhere, to indulge in speculations and acts quite inconsistent with the only basis on which the government can be said to have any real authority whatever. To enumerate all these occasions, or to recite the intemperate conduct that has attended them in periods of great excitement, is unnecessary. But there is one of them which may serve as an ample illustration of all that I desire to say on this special topic.

It is commonly said—and with much logical truth—that the doctrines of nullification lead, by natural steps, to the doctrines of secession; and the late Mr. Calhoun, who is justly considered as the patron, if not the author, of the former, is also popularly regarded as the father of the latter. But it is important for us, in more respects than one, to know that Mr. Calhoun did not contemplate a dissolution of the Union. He adopted a doctrine respecting it which does indeed lead, when consistently followed out, to what is called the constitutional right of secession; but he did not see this connection or intend the consequence. There is reason to believe that if his confidential correspondence during the times of nullification shall ever see the light it will be found that he was a sincere lover of the Union, and was wholly unconscious that he was sowing, in the minds of those who were to come after him, seeds that were to bear a fatal fruit. It was in his power at one time to have arrested the career of the nullifiers in South Carolina, for to them his word was law; and if he had so done he would probably have been placed by his numerous, powerful, and attached friends out of that state in nomination at least for the highest office in the country.

But what was it that led that subtle, acute, and generally logical intellect to embrace a theory respecting the Constitution which was entirely at variance with the facts that attended its establishment? The process was very simple with a mind of a highly metaphysical and abstract turn. Mr. Calhoun had persuaded himself, contrary to an earlier opinion, that a protective tariff was an unconstitutional exercise of power by the general government, oppressive to South Carolina; and he cast about for a remedy. He saw no relief against this fancied wrong likely to come from a majority of Congress and the people of the Union; and reasoning from the premises that the Constitution is a compact between sovereign *states*, an infraction of which the parties can redress for themselves when all other remedy fails, he reached the astonishing conclusion

that the operation of an act of Congress may be arrested in any state by a state ordinance when that state deems such act an unconstitutional exercise of power. But he always maintained that this was a remedy within the Union, and not an act of revolution, or violence, or secession.

This memorable example of the mode in which opinion respecting the nature of our Union is affected is full of instruction at the present time. But let no one misunderstand or misrepresent the lesson that I draw from it; and that no one may have an excuse for so doing, let me be as frank and explicit as my temporary relation to this audience demands. I do not say that the course and result of the late presidential election furnishes the least justification or excuse for what the South has done. I have never believed that any circumstances of a constitutional election could of themselves afford a justification to any state or any number of states in withdrawing from the Union. Neither do I say or believe that any condition of opinion respecting a right to withdraw can afford the slightest apology for that conduct on the part of individuals in or out of the government, in respect to which there must always remain in every sound mind a great residuum of moral condemnation. Neither do I doubt at all the existence of a long-cherished purpose on the part of some Southern political men to seize the first pretext for breaking up the Union of these states.

But, my fellow-citizens, it does appear to me — and there is practical importance in the inquiry, in reference to a further restoration of the Union — that we ought soberly to consider whether any mere conspiracy of politicians could have found a *willing people* if causes had not long been in operation which have promoted the growth of doctrines and feelings about the nature and benefits of the Union fatal to its present dominion over their minds and hearts.

What has been going on here in the North during the last twenty or twenty-five years? We have had a faction, or sect, or party — call it what you will — constantly increasing, constantly becoming more and more an element in our politics, which has made, not covert and secret, but open and undisguised war upon the Constitution, its authority, its law, and the ministers of its law, because its founders, for wise and necessary purposes, threw the shield of its protection over the institutions of the South. If there is a disorganizing doctrine, or one diametrically hostile to the supremacy of the Constitution, which that faction has not held, inculcated, and endeavored to introduce into public action, I know not where in the whole armory of disunion to look for it. They never cared whether the Constitution was a compact between independent *states* or an instrument of sovereign government resting on the voluntary grant and stipulation of the people of each state. Destroy it! they said — destroy it! for, be it one thing or another, it contains that on which the heavens cry out, and against which man ought to rebel. And so they went on doing their utmost to undermine all respect for its obligations, and to render of no kind of importance the foundations on which its authority rests. The more that public men in the North, from weakness, or ambition, or for the sake of party success, assimilated their opinions to the opinions of this faction, the more it becomes certain that the true ascendency and supremacy of the Consti-

tution could never be regained without some enormous exertion of popular energy following some newly enlightened condition of the popular understanding. When the country was brought to the sharp and sudden necessity of vindicating the nature and authority of the Union, there was throughout the North a general popular ignorance of its real character, and a wide-spread infidelity to some of its important obligations.

What has been going on in the South during the same period? On this point there is much to be learned by those who seek the truth. If you will investigate the facts you will find that thirty years ago no such opinion as a right of secession had any general acceptance in the South. No general support was given in the South to the conduct of South Carolina in the matter of nullification. Very few Southern statesmen or politicians of eminence not belonging to that state followed Mr. Calhoun and Mr. Hayne; and when the great debate on the nature of the Constitution was closed the general mind of the South was satisfied with the result.

How is it now? The simple truth is that this great heresy of secession—understood by Southern politicians as a right resulting from the nature of the Union—is a growth of the last twenty-five years; and it has become the prevalent political faith with the most active of the educated men of the South who have come into public life during this period. It is my belief, founded on what I have had occasion to know, that the great body of Southern opinion respecting the Constitution, its nature, its obligations, and its historical basis, has undergone a complete revolution since the year 1835. What Mr. Calhoun never contemplated as a remedy against supposed unconstitutional legislation has become familiar to men's minds as a remedy against that which was striking deeper than legislation; which might never take the form of Congressional action, but was constantly taking every form of popular agitation; which might never become the tangible and responsible doctrine of administration, but was yet all the more formidable and irritating, because it lay couched in an irresponsible popular sentiment, fomented by appeals which were designed to deprive constitutional ties and obligations of their binding moral force.

Are we told that these things do not stand in any relation of cause and effect? Are we so simple, so uninstructed in what influences the great movements of the human mind, that we cannot see how intellect and passion and interest may be affected by what passes before our eyes? Must I wait until the whole fabric of free constitutional government is pulled down over my head and I am buried beneath its ruins before I cry out in its defence? Must I postpone all judgment respecting the causes of its disintegration until it has gone down in the ashes of civil war, and history has written the epitaph over the noblest commonwealth that the world has seen? I fear that there is a too prevalent disposition to surrender ourselves as passive instruments into the hands of fate—too much of abandonment to the current of mere events—too great a practical denial of our own capacity to save our country by a manly assertion of the moral laws on which its preservation depends. Can it be that we are losing our faith in that Ruler who has made the safety of nations to depend on something more than physical and material strength, who has given us moral power over our own condition, and has surrounded us with countless moral weapons for its defence?

It is marvellous through what a course of instruction, through what discipline of suffering and calamity, the people of this country have had to pass in order fully to comprehend the truth that the nature of their government depends upon sound deduction from a series of historical facts; and that it must, therefore, be defended by consistent popular action. It is now somewhat more than thirty years since Daniel Webster, combining in himself more capacities for such a task than had ever been given to any other American statesmen, demonstrated that our national government can have no secure operation whatever unless the obviously true and simple deduction from the facts of its origin is accepted as the basis of its authority. You know what he taught. You know what he proved—if ever mortal intellect proved a moral proposition—that in the exercise of its constitutional powers the national government is supreme, because every inhabitant of every state has covenanted with every inhabitant of every other state that it shall be so; that even when the national legislature is supposed to have overstepped its constitutional limits, no state interposition, no state legislation, can afford lawful remedy or relief; and that all adverse state action, whether called by the name of Nullification or by any other name, is unlawful resistance. We are glad enough now to rest upon his great name; we march proudly under his imposing banner to encounter the hosts of "constitutional secession." But how was it with us even before he was laid in that unpretending tomb, which rises in the scene that he loved so well, and overlooks the sounding sea, by the music of whose billows he went to his earthly rest? Did we follow in his footsteps? Did we requite his unequalled civil services? Did we cherish the great doctrine that he taught us as the palladium of a government which must perish if that doctrine loses its pre-eminence in the national mind? How long or how well did we preserve the recollection of his teachings when our local interests and feelings were arrayed against the action of the federal powers? I will not open that record. I would to Heaven that it were blotted out forever. But I cannot stand here this day and be guilty of anything so unfaithful to my country as to admit that, under a government whose authority can live only when sustained by popular reverence for its sanctions and popular belief in its foundations, opinion in the South has not been affected by what has transpired in the North.

I have endeavored to state, with fairness and precision, the principle on which the American Union was founded, and to show that its preservation depends upon keeping the national and state sovereignty each within the proper limits of its appropriate sphere. I am aware that the opinion has been formed to a great extent in foreign countries and in the South, and by some among us, that this principle is no longer practicable; that the Union of free and slave states in the same nation has become an exploded experiment, and that our interests are so incompatible that a reconstruction, on the old basis at least, ought not to be attempted. We should probably all concede that this view of the subject is correct if we believed that the incompatibility is necessary, inherent, and inevitable. But there is not enough to justify the breaking up of such a Union if the supposed incompatibility is but the result of causes which we can reach, or if it arises from an unfaithful compliance with the terms of our association. We can make such an association no longer practicable if we choose to do so. We

can prevent it from becoming impracticable if we are so resolved. If the free states as one section and the slave states as another will not respect their mutual obligations, then there is an end of the usefulness of all effort. If we of the North will not religiously and honestly respect the constitutional right of every state to maintain just such domestic institutions as it pleases to have, and protect that right from every species of direct and indirect interference, then there is an absolute incompatibility. If they of the South will not as honestly and religiously maintain the right of the Federal Union to regulate those subjects and interests which are committed to it by the Constitution, then there is, in like manner, an incompatibility of precisely the same nature. If the parties, in reference to the common domains, will admit of no compromise or concession, but each insist on applying to them its own policy as a national policy, then the incompatibility is as complete from that cause as it is from the others. The difficulty is not in the principle of the association, for nothing can be clearer than that principle; and when it has been honorably adhered to, no government in the world has worked more successfully. But the difficulty has arisen from disturbing causes that have dislocated the machine; and what we have now to ascertain is whether the people on both sides will treat those causes as temporary and remove them, or will accept them as inevitable and incurable, and thus make the separation final and conclusive.

In the gloomy conception of the old Grecian tragedy no room was left by the poets for the moral energies of man, there was no force in human struggles, no defence in human innocence or virtue. Higher than Jupiter, higher than the heavens, in infinite distances, in infinite indifference to the fortunes of men or gods, sat the mysterious and eternal power of Destiny. Before time was its decrees were made; and when the universe began that lawful chancery was closed. No sweet interceding saints could enter there, translated from the earth to plead for mankind. No angels of love and mercy came from human abodes to bring tidings of their state. No mediator, once a sufferer in the flesh, stood there to atone for human sin. The wail of a nation in its agony, or the cry that went up from a breaking human heart, might pierce into the endless realms of space, might call on the elements for sympathy, but no answer and no relief could come. He who was preordained to suffer, through whatever agency, suffered and sank with no consolation but the thought that all the duties, celestial and infernal, were alike subject to the same power.

Are we too driven by the same relentless force that annihilates our own free wills and dethrones Him who is Supreme? Are we cast helpless and drifting, like leaves that fall upon the rushing stream? Must we give way to blank despair? No, no, no! There are duties to be done—to be done by us; for whatever may be the result of the military struggle now pending, whatever may be the effect of victories that have been or shall be won, whatever are to be our future relations with the people of the South, the time is coming when we and they, face to face, and in the eye of an all-seeing God, must determine how we will live side by side as the children of one eternal Parent. For that approaching day, and for the sake of the restoration of that which arms alone cannot conquer, let me implore you to make some fit and adequate preparation of instruments and agents and means and influence. Trust in the humanizing effects of a new and

better Intercourse. Trust to the laws of Nature, which have poured through this vast continent the mighty streams that bind us in the indissoluble ties of Commerce. Trust to that Charity, the follower and handmaid of Commerce, which clothes the naked and feeds the hungry and forgives the erring. Trust in that force of kindred Blood which leaps to reconciliation when the storms of passion are sunk to rest. Trust in that divine law of Love which has more power over the human soul than all the terrors of the dungeon or the gibbet. Trust in that influence over your own hearts and the hearts of others of that Religion which was sent as the messenger of Peace, Good Will to Men. Trust in the wise, beneficent, impartial, and mutual spirit of your Father, who gave tranquillity, prosperity, and happiness to the whole land. Trust in God, and you may yet see your national emblem, not as the emblem of victory, but as the sign of reunited American people, floating in the breath of a merciful Heaven, and more radiant with the glory of its restored constellation than with all the triumphs it has won, or ever can win, over a foreign foe.

THE PROVISIONAL AND FINAL

CONSTITUTIONS OF THE CONFEDERATE STATES.

Constitution for the Provisional Government of the Confederate States of America.

We, the Deputies of the Sovereign and Independent States of South Carolina, Georgia, Florida, Alabama, Mississippi, and Louisiana, invoking the favor of Almighty God, do hereby, in behalf of these States, ordain and establish this Constitution for the Provisional Government of the same: to continue one year from the inauguration of the President, or until a permanent Constitution or Confederation between the said States shall be put in operation, whichsoever shall first occur.

ARTICLE I.

Section 1.—All legislative powers herein delegated shall be vested in this Congress now assembled until otherwise ordained.

Section 2.—When vacancies happen in the representation from any State, the same shall be filled in such manner as the proper authorities of the State shall direct.

Section 3.—1. The Congress shall be the judge of the elections, returns and qualifications of its members; any number of Deputies from a majority of the States, being present, shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members; upon all questions before the Congress, each State

shall be entitled to one vote, and shall be represented by any one or more of its Deputies who may be present.

2. The Congress may determine the rule of its proceedings, punish its members for disorderly behavior, and with the concurrence of two-thirds, expel a member.

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

SECTION 4.—The members of Congress shall receive a compensation for their services, to be ascertained by law, and paid out of the treasury of the Confederacy. They shall in all cases, except treason, felony and breach of the peace, be privileged from arrest during their attendance at the session of the Congress, and in going to and returning from the same; and for any speech or debate, they shall not be questioned in any other place.

SECTION 5.—1. Every bill which shall have passed the Congress, shall, before it becomes a law, be presented to the President of the Confederacy; if he approve, he shall sign it; but if not, he shall return it with his objections to the Congress, who shall enter the objections at large on their journal, and proceed to reconsider it. If, after such reconsideration, two-thirds of the Congress shall agree to pass the bill, it shall become a law. But in all such cases, the vote 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. If any bill shall not be returned by the President within ten days (Sunday 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.—The President may veto any appropriation or appropriations and approve any other appropriation or appropriations in the same bill.

2. Every order, resolution or vote, intended to have the force and effect of a law, shall be presented to the President, 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 Congress, according to the rules and limitations prescribed in the case of a bill.

3. Until the inauguration of the President, all bills, orders, resolutions and votes adopted by the Congress shall be of full force without approval by him.

SECTION 6.—1. The Congress shall have power to lay and collect taxes, duties, imposts and excises, for the revenue necessary to pay the debts and carry on the Government of the Confederacy; and all duties, imposts and excises shall be uniform throughout the States of the Confederacy.

2. To borrow money on the credit of the Confederacy:

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 Confederacy;

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 Confederacy:

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:

9. To constitute tribunals inferior to the Supreme Court:

10. To define and punish piracies and felonies committed on the high seas, and offences against the law of nations:

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

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

13. To provide and maintain a navy:

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

15. To provide for calling forth the militia to execute the laws of the Confederacy, suppress insurrections, and repel invasion:

16. To provide for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the Confederacy, reserving to the States respectively the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress:

17. To make all laws that shall be necessary and proper for carrying into execution the foregoing powers and all other powers expressly delegated by this Constitution to this Provisional Government:

18. The Congress shall have power to admit other States:

19. This Congress shall also exercise Executive powers, until the President is inaugurated.

SECTION 7.—1. The importation of African negroes from any foreign country other than the slave-holding States of the United States, is hereby forbidden; and Congress are required to pass such laws as shall effectually prevent the same.

2. The Congress shall also have power to prohibit the introduction of slaves from any State not a member of this Confederacy.

3. 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.

4. No Bill of Attainder, or ex post facto law shall be passed.

5. 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. Congress shall appropriate no money from the treasury, unless it be asked and estimated for by the President or some one of the Heads of Departments, except for the purpose of paying its own expenses and contingencies.

8. No title of nobility shall be granted by the Confederacy; and no person holding any office of profit or trust under it, 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.

9. 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 such grievances as the delegated powers of this Government may warrant it to consider and redress.

10. 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.

11. No soldiers 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.

12. 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.

13. No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case, to be a witness against himself; nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

14. 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 witness against him; to have compulsory process for obtaining witnesses in his favor; and to have the assistance of counsel for his defence.

15. 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 Confederacy, than according to the rules of the common law.

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

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

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

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

SECTION 8.—1. No State shall enter into any treaty, alliance, or Confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make anything but gold and silver coin a tender in payment of debts; pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts; or grant any title of nobility.

2. No State shall, without the consent of the Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws; and the net produce of all duties and imposts, laid by any State on imports or exports, shall be for the use of the treasury of the Confederacy, and all such laws shall be subject to the revision and control of the Congress. No State shall, without the consent of Congress, lay any duty of tonnage, 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.

SECTION 1.—1. The Executive power shall be vested in a President of the Confederate States of America. He, together with the Vice President, shall hold his office for one year, or until this Provisional Government shall be superseded by a Permanent Government, whichsoever shall first occur.

2. The President and Vice President shall be elected by ballot by the States represented in this Congress, each State casting one vote and a majority of the whole being requisite to elect.

3. No person except a natural born citizen, or a citizen of one of the States of this Confederacy 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 the age of thirty-five years and been fourteen years a resident of one of the States of this Confederacy.

4. 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, (which inability shall be determined by a vote of two-thirds of the Congress,) 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.

5. The President shall at stated times receive for his services, during the period of the Provisional Government, a compensation at the rate of twenty-five thousand dollars per annum; and he shall not receive during that period any other emolument from this Confederacy, or any of the States thereof.

6. Before he enters on the exection of his office, he shall take the following oath or affirmation:

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

SECTION 2.—1. The President shall be Commander-in-Chief of the Army and Navy of the Confederacy, and of the Militia of the several States, when called into

the actual service of the Confederacy; he may require the opinion, in writing, of the principle [principal] officer in each of the Executive Departments, upon any subject relating to the duties of their respective offices; and he shall have power to grant reprieves and pardons for offences against the Confederacy, except in cases of impeachment.

2. He shall have power, by and with the advice and consent of the Congress, to make treaties; provided two-thirds of the Congress concur; and he shall nominate, and by and with the advice and consent of the Congress shall appoint ambassadors, other public ministers and consuls, Judges of the Court, and all other officers of the Confederacy 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 Congress, by granting commissions which shall expire at the end of their next session.

SECTION 3.—1. He shall from time to time, give to the Congress information of the state of the Confederacy and recommend to their consideration such measures as he shall judge necessary and expedient; he may, on extraordinary occasions, convene the Congress at such times as he shall think proper; he shall receive ambassadors and other public ministers; he shall take care that the laws he [be] faithfully executed; and shall commission all the officers of the Confederacy.

2. The President, Vice President, and all civil officers of the Confederacy shall be removed from office on conviction by the Congress of treason, bribery, or other high crimes and misdemeanors: a vote of two-thirds shall be necessary for such conviction.

ARTICLE III.

SECTION 1.—1. The Judicial power of the Confederacy shall be vested in one Supreme Court, and in such inferior Courts as are herein directed, or as the Congress may from time to time ordain and establish.

2. Each State shall constitute a District in which there shall be a Court called a District Court, which, until otherwise provided by the Congress, shall have the jurisdiction vested by the laws of the United States, as far as applicable, in both the District and Circuit Courts of the United States, for that State; the Judge whereof shall be appointed by the President, by and with the advice and consent of the Congress, and shall, until otherwise provided by the Congress, exercise the power and authority vested by the laws of the United States in the Judges of the District and Circuit Courts of the United States, for that State, and shall appoint the times and places at which the Courts shall be held. Appeals may be taken directly from the District Courts to the Supreme Court, under similar regulations to those which are provided in cases of appeal to the Supreme Court of the United States, or under such regulations as may be provided by the Congress. The commissions of all the Judges shall expire with this Provisional Government.

3. The Supreme Court shall be constituted of all the District Judges, a major-

ity of whom shall be a quorum, and shall sit at such times and places as the Congress shall appoint.

4. The Congress shall have power to make laws for the transfer of any causes which were pending in the Courts of the United States, to the Courts of the Confederacy, and for the execution of the orders, decrees, and judgments heretofore rendered by the said Courts of the United States; and also all laws which may be requisite to protect the parties to all such suits, orders, judgments, or decrees, their heirs, personal representatives, or assignees.

SECTION 2.—1. The Judicial power shall extend to all cases of law and equity, arising under this Constitution, the laws of the United States and of this Confederacy, and treaties made, or which shall be made, under its authority; to all cases affecting ambassadors, other public ministers and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the Confederacy shall be a party; controversies between two or more States; between citizens of different States; between citizens of the same State claiming lands under grants of different States.

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

SECTION 3.—1. Treason against this Confederacy shall consist only in levying war against it, or in adhering to its enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.

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 attained.

ARTICLE IV.

SECTION 1.—1. Full faith and credit shall be given in each State to the public acts, records, and judicial proceedings of every other State. And the Congress may, by general laws, prescribe the manner in which such acts, records, and proceedings shall be proved and the effect of such proof.

SECTION 2.—1. The citizens of each State shall be entitled to all 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. A slave in one State, escaping to another, shall be delivered up on claim of the party to whom said slave may belong by the Executive authority of the State in which such slave shall be found, and in case of any abduction or forcible

rescue, full compensation, including the value of the slave and all costs and expenses, shall be made to the party, by the State in which such abduction or rescue shall take place.

SECTION 3.—1. The Confederacy 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.

1. The Congress, by a vote of two-thirds, may, at any time, alter or amend this Constitution.

ARTICLE VI.

1. This Constitution, and the laws of the Confederacy which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the Confederacy, shall be the supreme law of the land; and the Judges in every State shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.

2. The Government hereby instituted shall take immediate steps for the settlement of all matters between the States forming it, and their other late Confederates of the United States in relation to the public property and public debt at the time of their withdrawal from them; these States hereby declaring it to be their wish and earnest desire to adjust everything pertaining to the common property, common liability and common obligations of that Union upon the principles of right, justice, equity, and good faith.

3. Until otherwise provided by the Congress, in the City of Montgomery, in the State of Alabama, shall be the Seat of Government.

4. The members of the Congress and all Executive and Judicial officers of the Confederacy shall be bound by oath or affirmation to support this Constitution; but no religious test shall be required as a qualification to any office or public trust under this Confederacy.

CONSTITUTION OF THE CONFEDERATE STATES OF AMERICA.

We, the People of the Confederate States, each State acting in its Sovereign and Independent character, in order to form a Permanent Federal Government, establish justice, insure domestic tranquillity, and secure the blessings of liberty to ourselves and our posterity—invoking the favor and guidance of Almighty God—do ordain and establish this Constitution for the Confederate States of America.

ARTICLE I.

SECTION 1.—All legislative power herein delegated shall be vested in a Congress of the Confederate States, which shall consist of a Senate and House of Representatives.

SECTION 2.—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 be citizens of the Confederate States, and have the qualifications requisite for electors of the most numerous branch of the State Legislat-

ure; but no person of foreign birth, not a citizen of the Confederate States, shall be allowed to vote for any officer, civil or political, State or Federal.

2. No person shall be a Representative who shall not have attained the age of twenty-five years, and be a citizen of the Confederate 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 Confederacy, 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 slaves. The actual enumeration shall be made within three years after the first meeting of the Congress of the Confederate States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of Representatives shall not exceed one for every fifty thousand, but each State shall have at least one Representative; and until such enumeration shall be made, the State of South Carolina shall be entitled to choose six—the State of Georgia ten—the State of Alabama nine—the State of Florida two—the State of Mississippi seven—the State of Louisiana six, and the State of Texas six.

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

5. The House of Representatives shall choose their Speaker and other officers; and shall have the sole power of impeachment; except that any Judicial or other Federal officer, resident and acting solely within the limits of any State, may be impeached by a vote of two-thirds of both branches of the Legislature thereof.

SECTION 3.—1. The Senate of the Confederate States shall be composed of two Senators from each State, chosen for six years by the Legislature thereof, at the regular session next immediately preceding the commencement of the term of service; and each Senator shall have one vote.

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

3. No person shall be a Senator who shall not have attained the age of thirty years, and be a citizen of the Confederate States; and who shall not, when elected, be an inhabitant of the State for which he shall be chosen.

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

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 Confederate 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 Presi-

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

SECTION 4.—1. The times, place and manner of holding elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof, subject to the provisions of this Constitution; but the Congress may, at any time, by law, make or alter such regulations, except as to the times and places 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 5.—1. Each House shall be the judge of the elections, returns and qualifications of its own members, and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner and under such penalties as each House may provide.

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

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

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

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 Confederate 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 Confederate States shall be a member of either House during his continuance in office. But Congress may, by law, grant to the principal officer in each of the Executive Departments a seat upon the floor of either House, with the privilege of discussing any measures appertaining to his Department.

SECTION 7.—1. All bills for raising the 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 both Houses, shall, before it becomes a law, be presented to the President of the Confederate States; if he approve, he shall sign it; but if not, he shall return it, with his objections, to that House in which it shall have originated, who shall enter the objections at large on their Journal, and proceed to reconsider it. If, after such reconsideration, two-thirds of that House shall agree to pass the bill, it shall be sent, together with the objections, to the other House, by which it shall likewise be reconsidered, and if approved by two-thirds of that House, it shall become a law. But in all such cases, the votes of both Houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill shall be entered on the Journal of each House respectively. If any bill shall not be returned by the President within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the Congress, by their adjournment, prevent its return; in which case it shall not be a law. The President may approve any appropriation and disapprove any other appropriation in the same bill. In such cases he shall, in signing the bill, designate the appropriations disapproved; and shall return a copy of such appropriations, with his objections, to the House in which the bill shall have originated; and the same proceedings shall then be had as in case of other bills disapproved by the President.

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

SECTION 8.—The Congress shall have power—

1. To lay and collect taxes, duties, imposts, and excises, for revenue necessary to pay the debts, provide for the common defence, and carry on the Government of the Confederate States; but no bounties shall be granted from the treasury; nor shall any duties or taxes on importations from foreign nations be laid to promote or foster any branch of industry; and all duties, imposts, and excises shall be uniform throughout the Confederate States:

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

3. To regulate commerce with foreign nations, and among the several States, and with the Indian tribes; but neither this, nor any other clause contained in the Constitution, shall ever be construed to delegate the power to Congress to appropriate money for any internal improvement intended to facilitate commerce; except for the purpose of furnishing lights, beacons, and buoys, and other aid to navigation upon the coasts, and the improvement of harbors and the removing of obstructions in river navigation, in all which cases, such duties shall be laid on the navigation facilitated thereby, as may be necessary to pay the costs and expenses thereof:

4. To establish uniform laws of Naturalization, and uniform laws on the subject of Bankruptcies, throughout the Confederate States; but no law of Congress shall discharge any debt contracted before the passage of the same:

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 Confederate States:

7. To establish post-offices and post routes; but the expenses of the Post-office Department, after the first day of March in the year of our Lord eighteen hundred and sixty-three, shall be paid out of its own revenues:

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:

9. To constitute Tribunals inferior to the Supreme Court:

10. To define and punish piracies and felonies committed on the high seas, and offences against the law of nations:

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

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

13. To provide and maintain a navy:

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

15. To provide for calling forth the Militia to execute the laws of the Confederate States, suppress Insurrections, and repel Invasions:

16. To provide for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the Confederate 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:

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

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

SECTION 9.—1. The importation of negroes of the African race, from any foreign country other than the slave-holding States or Territories of the United States of America, is hereby forbidden; and Congress is required to pass such laws as shall effectually prevent the same.

2. Congress shall also have power to prohibit the introduction of slaves from any State not a member of, or Territory not belonging to, this Confederacy.

3. 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.

4. No Bill of Attainder, *ex post facto* law, or law denying or impairing the right of property in negro slaves shall be passed.

5. No Capitation or other direct tax shall be laid, unless in proportion to the census or enumeration hereinbefore directed to be taken.

6. No tax or duty shall be laid on articles exported from any State, except by a vote of two-thirds of both Houses.

7. No preference shall be given by any regulation of commerce or revenue to the ports of one State over those of another.

8. 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.

9. Congress shall appropriate no money from the treasury except by a vote of two-thirds of both Houses, taken by Yeas and Nays, unless it be asked and estimated for by some one of the Heads of Departments, and submitted to Congress by the President; or for the purpose of paying its own expenses and contingencies; or for the payment of claims against the Confederate States, the justice of which shall have been judicially declared by a tribunal for the investigation of claims against the Government, which it is hereby made the duty of Congress to establish.

10. All bills appropriating money shall specify in Federal currency the exact amount of each appropriation and the purposes for which it is made; and Congress shall grant no extra compensation to any public contractor, officer, agent or servant, after such contract shall have been made or such service rendered.

11. No title of nobility shall be granted by the Confederate 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.

12. 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 petition the Government for a redress of grievances.

13. 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.

14. 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.

15. 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 probably cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

16. No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor be compelled, in any criminal case, to be a witness against himself; nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

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

18. 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 so tried by a Jury shall be otherwise re-examined in any Court of the Confederacy, than according to the rules of the common law.

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

20. Every law, or resolution having the force of law, shall relate to but one subject, and that shall be expressed in the title.

SECTION 10.—1. No State shall enter into any treaty, alliance, or Confederation; grant letters of marque and reprisal; coin money; make anything but gold and silver coin a tender in payment of debts; pass any bill of attainder, or *ex post facto* 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 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 Confederate States, and all such laws shall be subject to the revision and control of Congress.

3. No State shall, without the consent of Congress, lay any duty on tonnage, except on sea-going vessels, for the improvement of its rivers and harbors navigated by the said vessels; but such duties shall not conflict with any treaties of the Confederate States with foreign nations; and any surplus revenue thus derived, shall, after making such improvement, be paid into the common treasury. Nor shall any State 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. But when any river divides or flows through two or more States, they may enter into compacts with each other to improve the navigation thereof.

ARTICLE II.

SECTION 1.—1. The Executive power shall be vested in a President of the Confederate States of America. He and the Vice President shall hold their offices for the term of six years; but the President shall not be re-eligible. The President and Vice President shall 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 an office of trust or profit under the Confederate States, shall be appointed an elector.

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

4. The person having the greatest number of votes as Vice President, shall be 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.

5. But no person Constitutionally ineligible to the office of President shall be eligible to that of Vice President of the Confederate States.

6. 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 Confederate States.

7. No person except a natural born citizen of the Confederate States, or a citizen thereof at the time of the adoption of this Constitution, or a citizen thereof, born in the United States prior to the 20th of December, 1860, shall be eligible to the office of President; neither shall any person be eligible to that office who shall not have attained the age of thirty-five years, and been fourteen years a resident within the limits of the Confederate States, as they may exist at the time of his election.

8. 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.

9. 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 Confederate States, or any of them.

10. Before he enters on the execution of his office, he shall take the following oath or affirmation:

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

SECTION 2.—1. The President shall be Commander-in-chief of the Army and Navy of the Confederate States, and of the Militia of the several States, when called into the actual service of the Confederate States; he may require the opinion, in writing, of the principal officer in each of the Executive Departments, upon any subject relating to the duties of their respective offices; and he shall have power to grant reprieves and pardons for offences against the Confederacy, 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 Confederate 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 principal officer in each of the Executive Departments, and all persons connected with the diplomatic service, may be removed from office at the pleasure of the President. All other civil officers of the Executive Departments may be removed at any time by the President, or other appointing power, when their services are unnecessary, or for dishonesty, incapacity, inefficiency, misconduct or neglect of duty; and when so removed, the removal shall be reported to the Senate, together with the reasons therefor.

4. The President shall have power to fill all vacancies that may happen during the recess of the Senate, by granting commissions which shall expire at the end of their next session; but no person rejected by the Senate shall be re-appointed to the same office during their ensuing recess.

SECTION 3.—1. The President shall, from time to time, give to the Congress information of the state of the Confederacy, 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 Confederate States.

SECTION 4.—1. The President, Vice President, and all Civil Officers of the Confederate States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors.

ARTICLE III.

SECTION 1.—1. The Judicial power of the Confederate States shall be vested in one Supreme Court, and in such Inferior Courts as the Congress may, from time to time, ordain and establish. The Judges, both of the Supreme and Inferior Courts, shall hold their offices during good behavior, and shall, at stated times, receive for their services a compensation which shall not be diminished during their continuance in office.

SECTION 2.—1. The Judicial power shall extend to all cases arising under this Constitution, the laws of the Confederate 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 maratime [maritime] jurisdiction; to controversies to which the Confederate States shall be a party; to controversies between two or more States; between a State and citizen of another State, where the State is plaintiff; between citizens claiming lands under grants of different States; and between a State or the citizens thereof, and foreign States, citizens or subjects; but no State shall be sued by a citizen or subject of any foreign State.

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

SECTION 3.—1. Treason against the Confederate States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.

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.

SECTION 1.—1. Full faith and credit shall be given in each State to the public acts, records, and judicial proceedings of every other State. And the Congress may, by general laws, prescribe the manner in which such acts, records, and proceedings shall be proved, and the effect thereof.

SECTION 2.—1. The citizens of each State shall be entitled to all the privileges and immunities of citizens in the several States, and shall have the right of transit and sojourn in any State of this Confederacy, with their slaves and other property; and the right of property in said slaves shall not be thereby impaired.

2. A person charged in any State with treason, felony, or other crime against the laws of such State, 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 slave or other person held to service or labor in any State or Territory of the Confederate States, under the laws thereof, escaping or lawfully carried into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor; but shall be delivered up on claim of the party to whom such slave belongs, or to whom such service or labor may be due.

SECTION 3.—1. Other States may be admitted into this Confederacy by a vote of two-thirds of the whole House of Representatives and two-thirds of the Senate, the Senate voting by States; but no new State shall be formed or erected within the Jurisdiction of any other State; nor any State be formed by the junction of two or more States, or parts of States, without the consent of the Legislatures of the States concerned, as well as of the Congress.

2. The Congress shall have power to dispose of and make all needful rules and regulations concerning the property of the Confederate States, including the lands thereof.

3. The Confederate States may acquire new territory; and Congress shall have power to legislate and provide Governments for the inhabitants of all territory belonging to the Confederate States, lying without the limits of the several States; and may permit them, at such times, and in such manner as it may by law provide, to form States to be admitted into the Confederacy. In all such territory, the Institution of Negro slavery, as it now exists in the Confederate States, shall be recognized and protected by Congress and by the Territorial Government: and the inhabitants of the several Confederate States and Territories shall have the right to take to such Territory any slaves lawfully held by them in any of the States or Territories of the Confederate States.

4. The Confederate States shall guaranty to every State that now is, or hereafter may become, a member of this Confederacy, 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 is not in session,) against domestic violence.

ARTICLE V.

SECTION 1.—1. Upon the demand of any three States, legally assembled in their several Conventions, the Congress shall summon a Convention of all the States, to take into consideration such amendments to the Constitution as the said States shall concur in suggesting at the time when the said demand is made; and should any of the proposed amendments to the Constitution be agreed on by the said Convention—voting by States—and the same be ratified by the Legislatures of two-thirds of the several States, or by Conventions in two-thirds thereof—as the one or the other mode of ratification may be proposed by the general Convention—they shall thenceforward form a part of this Constitution. But no State shall, without its consent, be deprived of its equal Representation in the Senate.

ARTICLE VI.

1. The Government established by this Constitution is the successor of the Provisional Government of the Confederate States of America, and all the laws passed by the latter shall continue in force until the same shall be repealed or

modified; and all the officers appointed by the same shall remain in office until their successors are appointed and qualified, or the offices abolished.

2. All debts contracted and engagements entered into before the adoption of this Constitution shall be as valid against the Confederate States under this Constitution as under the Provisional Government.

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

4. The Senators and Representatives before mentioned, and the members of the several State Legislatures, and all Executive and Judicial officers, both of the Confederate 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 Confederate States.

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

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

ARTICLE VII.

1. The Ratification of the Conventions of five States shall be sufficient for the Establishment of this Constitution between the States so ratifying the same.

2. When five States shall have ratified this Constitution, in the manner before specified, the Congress under the Provisional Constitution shall prescribe the time for holding the election of President and Vice President, and for the meeting of the Electoral College, and for counting the votes, and inaugurating the President. They shall also prescribe the time for holding the first election of members of Congress under this Constitution, and the time for assembling the same. Until the assembling of such Congress, the Congress under the Provisional Constitution shall continue to exercise the Legislative powers granted them; not extending beyond the time limited by the Constitution of the Provisional Government.

ANTI-SLAVERY TRACTS.*

NO. 1.—THE UNITED STATES CONSTITUTION.

I. *The Constitution is a pro-slavery instrument, according to the necessary meaning of its terms.*

Admitting, as we do, that the words of any written instrument constitute the only legal evidence of its meaning, we ask, What is the meaning of the following clauses in the Constitution of the United States?

Art 1, sec. 2: "Representatives and direct taxes shall be apportioned among

* These Tracts printed *circa* 1833.

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." This section distinguishes between free persons and slaves, because to the whole number of *free* persons are to be added three fifths of *all other* persons; that is, persons not free, or slaves. By excluding from the class of free persons those bound to service for life, without—as in case of Indians not taxed—assigning a reason for such exclusion, it declares them to be slaves, within the meaning of the Constitution. This article, therefore, recognizes slavery as explicitly as if the word *slave* itself had been used, and gives to the free persons in a slave State, solely because they are slaveholders, a larger representation, and consequently greater political power, than the same number of free persons in a free State. A Bounty On Slaveholding!

Art. 1, sec. 9: "The migration or importation of such persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the year one thousand eight hundred and eight; but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person." A person who migrates does so of his own accord; he cannot be said to be migrated by any other person. He is wholly a free agent. But a person who is imported does not import himself; he is imported by some other person. He is passive. The importer is the free agent; the person imported is not a free agent. The Virginia slave laws of 1748 and 1753 proceed on this distinction when they say "*all persons *imported* shall be slaves.*" Whenever we hear an importation spoken of, we instantly infer an *owner*, and *property* imported. This distinction between the force of the words migration and importation is, then, real. That the Constitution also makes a distinction is evident, because only persons imported can be taxed. And that it adopts the distinction we have just pointed out is also evident, because this alone can afford us a sufficient reason why persons imported may be taxed, and persons who migrate cannot be. By this clause, therefore, Congress was prevented, during twenty years, from prohibiting the foreign slave trade with any State that pleased to allow it. But by Art. 1, sec. 8, Congress had the general power "to regulate commerce with foreign nations." Consequently, *the slave trade was excepted from the operation of the general power, with a view to place the slave trade, during twenty years, solely under the control of the slave States.* It could not be wholly stopped, so long as one State wished to continue it. It is a clear compromise in favor of slavery. True, the compromise was a temporary one; but it will be noticed, that Congress, even after 1808, was not obliged to prohibit the trade. Even now we are discussing the expediency of reopening the accursed traffic! whilst, in point of fact, until 1819 the laws of Congress authorized the States to sell into slavery, for their own benefit, negroes imported contrary to the laws of the United States! (Act Congr. 1807, c. 77, § 4, 6; 1818, c. 86, § 5 and 7; 10 Wheat. Rep. 321, 322.) So unmixed should be our satisfaction at the oft-repeated boast, that ours was the first nation to prohibit the African slave trade!

Art. 4, sec. 2: "No person held to service or labor in one State, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up,

on claim of the party to whom such service or labor may be due." No one can be illegally "bound" to service, and one who is legally bound is legally "held" to that service. The expressions a person "bound" to service and a person "legally held" to service are, therefore, equivalent. This section evidently embraces, not only persons held to service for a term of years, but also those held to service for life, and therefore includes not only free persons, but those who are declared to be slaves within the meaning of the Constitution. (Art. 1, sec. 2.) That the expression used in this section legally includes slaves is also evident on other grounds. The ordinance of 1787 calls a slave a person "from whom labor or service is lawfully claimed." (Art. 6.) It is a criminal offence in all the States, except Maryland, Virginia, and Texas, to entice a slave to leave his master's "service." In Maryland, and Virginia, and other States, the owner has a civil action for damages against the person who thus entices away his slave. And the laws of all the States recognize the master's right to enforce the labor of the slave. If, however, it is a crime to entice a slave to leave his master's "service," and if such act subject a man to an action for damages by the owner, it is evident that the master must have a legal right to the "service" of his slave; for it is the infringement of this right which makes the crime and gives ground to claim damages. The slave is, therefore, a person legally held to service or labor. And as if to remove all doubt, the very expression is applied to slaves in the laws of all the States except Tennessee, Georgia, Alabama, and Texas. By this section, therefore, it is provided that no person held as a slave in one State under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from his slavery, but shall be delivered up on claim of his owner. The laws of one State, whether they support slavery or any other institution, have no power in another State. Consequently, if a slave escape into a free State, he becomes free. This is the general rule of law. In virtue of it, thousands of slaves are now free on the soil of Canada. In virtue of it, a fugitive slave from South Carolina would be free in this State, were it not for this section in the Constitution. But this section declares that he shall not thereby become free, but shall be delivered up. Again: *the Constitution makes an exception from a general rule of law in favor of slavery.* It gives to slaveholders and slave laws a power which the general rule of law does not give. It enables a South Carolina slaveholder to drag from the soil of Massachusetts a person whom the general rule of law pronounces free, solely because South Carolina laws declare the contrary. It Makes The whole Union a Vast Hunting Ground For Slaves!

Art. 1, sec. 8: "Congress shall have power * * * to provide for calling forth the militia * * * to *suppress insurrections.*" Art. 4, sec. 4: "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.*" *All* insurrections and *all* cases of domestic violence are here provided for. To constitute an insurrection there must be a rising against those laws which are recognized as such by the Constitution; and, to make out a case of domestic violence, the violence must be exerted against that right or power which is recognized by the Constitution as lawful. But by Art. 1, sec. 2, and Art. 4, sec. 2, the Constitution admits that some persons may be legally slaves. Consequent-

ly, if these persons rise in rebellion, or commit acts of violence contrary to the laws which hold them in slavery, their rising Constitutes an insurrection; such acts are acts of violence within the meaning of the Constitution, and consequently must be suppressed by the national power. The self-styled owners are not the only slaveholders. All persons who voluntarily assist or pledge themselves to assist in holding persons in slavery are slaveholders. *In sober truth, then, we are a nation of slaveholders!* for we have bound our whole national strength to the slave owners, to aid them, if necessary, in holding their slaves in subjection!

II. The Framers of the Constitution intended to make a Pro-Slavery Instrument.

On the 17th of September, 1787, the Philadelphia Convention adopted the plan of the present Constitution. The draft thus made was submitted to the people, assembled in State Conventions, "for their assent and ratification." President Madison has preserved a record of the debates in the Philadelphia Convention; and we have also published accounts of the debates in several of the State Conventions.

We draw our evidence mainly from these sources.

Apportionment of Representatives. (Const., Art. 1, sec. 2.)

Rufus King, of Massachusetts, one of the framers, said of the expression "three fifths of all other persons," "These persons are the slaves." Alexander Hamilton, of New York, another of the framers, referring to this clause "which allows a representation for three fifths of the negroes," said, "*Without this indulgence no union could possibly have been formed.*" Luther Martin, also a delegate to the Philadelphia Convention, objected to this clause because "it involved the absurdity of increasing the power of a State in making laws for freemen, in proportion as that state violated the rights of freedom." William R. Davie, a delegate from North Carolina, says that the Southern States, "to acquire as much weight as possible in the legislation of the Union," insisted "that a certain proportion of our slaves should make a part of the computed population." General Charles C. Pinckney, another of the framers of the Constitution, said, "We determined that representatives should be apportioned among the several States by adding to the whole number of free persons three fifths of the slaves."

Permission of the African Slave Trade. (Const., Art. 4, sec. 9.)

Luther Martin, speaking of this section, says, "The design of this clause is to prevent the general government from prohibiting the importation of slaves; but the same reason which caused them to strike out the word 'national,' and not admit the word 'stamps,' influenced them here to guard against the word 'slaves.' They anxiously sought to avoid the admission of expressions which might be odious in the ears of Americans, although they were willing to admit into their system those things which the expression signified." * * *

"The Eastern States, notwithstanding their aversion to slavery, were very willing to indulge the Southern States, at least with a temporary liberty to prosecute the slave trade, provided the Southern States would in their turn gratify them, by laying no restriction on navigation acts."

Mr. Madison says, "*The Southern States would not have entered into the Union of America without the temporary permission of that trade.*" Mr. Spaight, of North Carolina, one of the framers, says that the Southern States would not consent "to exclude the importation of slaves absolutely; that South Carolina and Georgia insisted on this clause, as they were now in want of hands to cultivate their lands: that in the course of twenty years they would be fully supplied; that the trade would be abolished then, and that in the mean time some tax or duty might be laid on." Hon. Rawlins Lowndes, of South Carolina, thought it almost inhuman to put any limit to the trade. General Charles C. Pinckney said, "By this settlement we have secured an unlimited importation of negroes for twenty years; nor is it declared that the importation shall be then stopped; it may be continued; we have a security that the general government can never emancipate them."

RESTORATION OF FUGITIVE SLAVES. (Const., Art. 4, sec. 2.)

In the Virginia Convention, Mr. Madison said: "Another clause secures us that property which we now possess. At present, if any slave elopes to any of those States where slaves are free, he becomes emancipated by their laws; for the laws of the States are uncharitable (!) to one another in this respect. But in this Constitution, [then he quotes Art. 4, sec. 2.] *This clause was expressly inserted to enable owners of slaves to reclaim them.* This is a better security than any that now exists." In the North Carolina Convention, Mr. Iredell begged leave to explain the reason of this clause: "In some of the Northern States they have emancipated all their slaves. If any of our slaves," said he, "go there, and remain there a certain time, they would, by the present laws, be entitled to their freedom, so that their masters could not get them again. This would be extremely prejudicial to the inhabitants of the Southern States; and *to prevent it this clause is inserted in the Constitution.* Though the word *slave* be not mentioned, this is the meaning of it. The northern delegates, owing to their particular scruples on the subject of slavery, did not choose the word *slave* to be mentioned." In the South Carolina Convention, General Pinckney thus expresses his gratification at this clause: "*We have obtained a right to recover our slaves in whatever part of America they may take refuge, which is a right we had not before.* In short, considering all circumstances, we have made the best terms for the security of this species of property it was in our power to make. We would have made better if we could; but, on the whole, I do not think them bad." (!)

SUPPRESSION OF SLAVE INSURRECTIONS. (Const., Art. 1, sec. 8; Art. 4, sec. 4.)

In the Virginia Convention, Mr. George Nicholas said: "Another worthy member says there is no power in the States to quell an insurrection of slaves. Have they it now? If they have, does the Constitution take it away? * * * No; but it gives an additional security; for, besides the power in the State governments to use their own militia, *it will be the duty of the general government to aid them with the strength of the Union, when called for.* No part of this Constitution can show that this power is taken away."

Mr. Madison, respecting these clauses, says: "On application of the legislature, or executive, as the case may be, the militia of the other States are to be

called to suppress domestic insurrections. Does this bar the States from calling forth their own militia? No; *but it gives them a supplementary security to suppress insurrections and domestic violence.*"

III. The Constitution has been treated as a pro-slavery instrument, by the Government, in practice.

Apportionment of Representatives. (Const., Art. 1, sec. 2.)

In every census which has been taken by the government, the only distinction sanctioned has been between freemen and slaves; and on every occasion of apportioning representatives, according to the representative or federal number, such number has been invariably determined by adding to the whole number of free persons three fifths of the slaves. *If this, the pro-slavery interpretation of this section of the Constitution, be not right, then, since March 3, 1793, there has not been a single House of Representatives constitutionally elected, or a single statute or resolve constitutionally passed!* Who is ready to make this admission?

Permission of the African Slave Trade. (Const., Art. 1, sec. 9.)

On the 13th of May, 1789, in Congress: "Mr. Parker, of Virginia, moved to insert a clause in the bill, imposing a duty on the importation of slaves of ten dollars each person. He was sorry that the Constitution prevented Congress from prohibiting the importation altogether; he thought it a defect in that instrument that it allowed of such actions; it was contrary to the revolution principles, and ought not to be permitted; but, as he could not do all the good he desired, he was willing to do what lay in his power." Messrs. Sherman, of Connecticut, and Schureman, of New Jersey, thought the subject should be taken up independently. Mr. Madison thought otherwise:—"I conceive the Constitution, in this particular, was formed in order that the government, whilst it was restrained from laying a total prohibition, might be able to give some testimony of the serse [sense] of America with respect to the African trade. We have liberty to impose a tax or duty upon the importation of such persons as any of the States now existing shall think proper to admit; and this liberty was granted, I presume, upon two considerations. The first was, that, until the time arrived when they might abolish the importation of *slaves*, they might have an opportunity of evidencing their sentiments on the policy and humanity of such a trade." The motion of Mr. Parker was afterwards withdrawn.

In 1794, "An act to prohibit the carrying on the slave trade from the United States to any foreign place or country" was passed, (Stat. 1794, c. 11.) In 1800, an act in addition to the last was passed, (Stat. 1800, c. 51.) That both these laws were framed with reference to this section of the Constitution is apparent, because the later act expressly refers to it. Sec. 6 reads thus: "That nothing in this act contained shall be construed to authorize the bringing into either of the United States any person or persons, the importation of whom is, by the existing laws of such State, prohibited." See also Stat. 1803, c. 63.

And, not to multiply proof, on the 2d day of March, 1807, President Jefferson approved (Stat. 1807, c. 77) "An Act to prohibit the importation of *slaves* into any port or place within the jurisdiction of the United States from and after the

first day of January, in the year of our Lord *one thousand eight hundred and eight.*" That is, at the very earliest day allowed by the Constitution (Art. 1, sec. 9) for the passage by Congress of an act prohibiting the importation of persons, a law is passed totally prohibiting the *importation of* slaves.

RESTORATION OF FUGITIVE SLAVES. (Const., Art. 4, sec. 2.)

That the fugitive slave law of 1793, (Stat. 1793, c. 7,) entitled "An Act respecting fugitives from justice, and persons escaping from the service of their masters," and the act of Sept. 18, 1850, "to amend, and supplementary to" this act, are both framed to carry out this clause of the Constitution, is too apparent to need comment.

SUPPRESSION OF SLAVE INSURRECTIONS. (Const., Art. 1, sec. 8, Art. 4, sec. 4.)

The "Act to provide for calling forth the militia, to execute the laws of the Union, suppress insurrections, and repel invasions," (Stat. 1792, c. 28, sec. 1,) provides that, "*In case of an insurrection in any State* against the government thereof, it shall be lawful for the President of the United States, on application of the legislature of such State, or of the executive, (when the legislature cannot be convened,) to call forth such number of the militia of any other State or States as may be applied for, or as he may judge sufficient to suppress such insurrection." Precisely the same language is made use of in Stat. 1795, c. 101. By act, approved March 3, 1807, (Stat. 1807, c. 94,) the President is authorized "in *all* cases of insurrection," "when it is lawful for him to call forth the militia for the purpose of suppressing the same," "to employ for the same purpose such part of the land or naval force of the United States as shall be judged necessary."

That these laws have been held to include an insurrection of slaves is indisputable. On receipt of the intelligence of Nat Turner's insurrection in Southampton, Va., Colonel House, then commanding at Fortress Monroe, set out with three companies of United States troops, for the purpose of suppressing the revolt. He was reënforced by a detachment from the United States ships Warren and Natchez, amounting in all to about three hundred men. With *our* troops and *our* officers, we have actually aided the slaveholder in holding his fellow-man in slavery! We have actually done what our fathers engaged in the Constitution that we should do, namely, aid with the national strength in keeping the slaves in subjection!

IV. THE CONSTITUTION IS PRO-SLAVERY, ACCORDING TO THE EXPOSITION OF ITS FINAL INTERPRETER.

The Constitution declares itself to be "the supreme law of the land," (Art. 6, sec. 2.) It cannot possibly be such unless there is a final interpreter of its meaning. Now, to expound what the law is, is a judicial act. "The judicial power" extends to *all* cases arising under the Constitution, and laws, and treaties, (Const., Art. 3, sec. 2.) It therefore extends to the exposition of the meaning of the Constitution, when the case before the court properly calls for such exposition. This judicial power, and, consequently, this power to expound the meaning of the Constitution, is "vested in one Supreme Court," (Const., Art. 3, sec. 1.) The decision of this court, being supreme, must be final.

APPORTIONMENT OF REPRESENTATIVES. (Const., Art. 1, sec. 2.)

In Hylton vs. United States, (3 Dallas's Rep. 177,) Mr. Justice Paterson, delivering the opinion of the Supreme Court, says that the provision contained in this clause, that direct taxes shall be apportioned between the States according to their federal numbers, "was made in favor of the Southern States, and to prevent Congress from taxing "slaves at discretion, or arbitrarily." He also says, (p. 178,) "The rule of apportionment is radically wrong; it cannot be supported by any solid reasoning. Why should slaves, who are a species of property, be represented more than any other property?"

PERMISSION OF THE AFRICAN SLAVE TRADE. (Const., Art. 1, sec. 9.)

In the great case of Gibbons vs. Ogden, 9 Wheaton's Reports, pp. 206 and 207, (1824,) Chief Justice Marshall, delivering the opinion of the Supreme Court, says that the act of Congress, (1803, c. 63,) "prohibiting the importation of slaves into any State which shall itself prohibit their importation," was passed in virtue of power conferred by this clause in the Constitution.

RESTORATION OF FUGITIVE SLAVES. (Const., Art. 4, sec. 2.)

The following extracts are taken from the opinion of the Supreme Court in the well-known case, Prigg *vs.* The Commonwealth of Pennsylvania, (16 Pet. Rep. 609, &c.) Judge Story delivered the opinion. "Historically, it is well known that the object of this clause was to secure to the citizens of the slaveholding States the complete right and title of ownership in their slaves, as property, in every State in the Union into which they might escape from the State where they were held in servitude. The full recognition of this right and title was indispensable to the security of this species of property in all the slaveholding States; and, indeed, was so vital to the preservation of their domestic interests and institutions, that *it cannot be doubted that it constituted a fundamental article, without the adoption of which the Union could not have been formed,*" (p. 613.) "We have not the slightest hesitation in holding, that, under and in virtue of the Constitution, the owner of a slave is clothed with entire authority, in every State in the Union, to seize and recapture his slave, whenever he can do it without any breach of the peace, or any illegal violence. In this sense, and to this extent, this clause of the Constitution may properly be said to execute itself, and to require no aid from legislation, state or national."

SUPPRESSION OF SLAVE INSURRECTIONS. (Const., Art. 1, sec. 8; Art. 4, sec. 4.)

We are not aware of any decision of the Supreme Court upon the meaning of these clauses; but it seems difficult to conceive that they would hold that the word "insurrections" did not include all insurrections.

Such is the Constitution, according to the plain, obvious, and common meaning of its terms; such it was intended to be made by its framers; such has been the interpretation constantly followed in the practice of the government, from the time of its adoption until now; and such it is according to the decision of the final interpreter of its meaning. As reasonable men, seeking the truth, we

cannot say that there is the slightest doubt whatever on the subject. THE CONSTITUTION VERY MATERIALLY SUPPORTS SLAVERY.

"Yes! it cannot be denied—the slaveholding lords of the South prescribed, as a condition of their assent to the Constitution, three special provisions TO SECURE THE PERPETUITY OF THEIR DOMINION OVER THEIR SLAVES.

"The first was the immunity for twenty years of preserving the African slave trade; the second was the stipulation to surrender fugitive slaves—an engagement positively prohibited by the laws of God, delivered from Sinai; and thirdly, the exaction, fatal to the principles of popular representation, of a representation for slaves—for articles of merchandise, under the name of persons * * * in fact, the oppressor representing the oppressed! * * * To call government thus constituted a democracy, is to insult the understanding of mankind. It is doubly tainted with the infection of riches and slavery. Its reciprocal operation upon the government of the nation is to establish an artificial majority in the slave representation over that of the free people, in the American Congress; and thereby to make the *preservation, propagation, and perpetuation of slavery, the vital and animating spirit of the national government.*"—John Quincy Adams.

IT IS BECAUSE THE CONSTITUTION IS THUS A PRO-SLAVERY INSTRUMENT THAT THE RADICAL ABOLITIONISTS REFUSE TO VOTE OR TAKE OFFICE UNDER IT. CAN YOU, READER, GIVE IT COUNTENANCE OR SUPPORT, BY VOTING OR ACCEPTING OFFICE UNDER IT?

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EXTRACT FROM ANTI-SLAVERY TRACT NO. 7.

To the enlightened vision there is for this evil but one remedy. Our strength all lies in a single force—the conscience of the nation. All else is on the side of the oppressor. But conscience, that force of forces when properly instructed, is all, and always, on our side. It is to this element of strength, then, that our attention should be mainly directed. Our only hope is in being able to bring the conscience of the nation into active conflict with its present position, in respect to slavery, and thereby induce a radical change. What that position is we have already seen. The Constitution requires of the general government the protection of slavery in such of the States as choose to retain it, with no power to regulate or abolish it. Hence the private citizen has no course left to him but either to aid in upholding the system, or renounce his allegiance to the government. His only choice is between slaveholding and revolution. By this subtile device of the slave power the whole country has been leagued in defence of the institution, and the north reduced to a mere subjugated province of the plantation. The heart of the church has been corrupted by it, the conscience of the country fettered, and our statesmen converted into sycophants fawning at the feet of the slave power. Here, then, is the seat of this terrible

disease, and here especially must the remedy be applied. Our first great work is to cut this Gordian knot,—the Union,—and set free the northern conscience from the restraints of the constitutional oath. Till this is done, all other efforts will prove of little avail. There is no hope for the slave, nor for the country, but in revolution.

IMPLIED POWERS OF THE CONSTITUTION.

A Lecture by George Ticknor Curtis.

DELIVERED, BY SPECIAL REQUEST, BEFORE THE LAW SCHOOL OF GEORGETOWN UNIVERSITY, IN WASHINGTON, D. C., ON FEB. 16, 1885.

We hear a great deal, and probably we shall continue to hear a great deal, about a liberal and a strict construction of the Constitution. You are engaged in a study of the Constitution preparatory to taking your places in active life as lawyers and citizens. It is of great importance for you, therefore, to know whether it is correct to regard the so-called strict construction as inadmissible because it is too narrow; whether the so-called liberal construction is always the safe one; and whether there is not a clear and well-defined rule of interpretation, which should not be called either strict or liberal, in the sense of being harmful and injurious to the great objects for which this Constitution was created. And here let me advise you not to be governed by what is supposed to be the characteristic tendency of this or that political party in forming your opinions about the Constitution of your country. You have something higher and better to do, in prosecuting the studies in which you are now engaged, than to accept the dogmas of a party because you or your friends may happen to act with it. What you have to do is to subject party dogmas to the proper tests of truth and sound reasoning, leaving the result to fall where it may so far as all political parties are concerned.

Still there have been from the first two schools of interpretation, one of which has been characterized as liberal and the other as strict. Great names may be arrayed on either side. The two schools have mutually charged each other with very wrong and very dangerous tendencies. But I have long believed that it is best to discard the epithets of strict and liberal, and to inquire into the true and sound method of interpretation without characterizing it by either of these phrases. Nine men out of ten whom you hear talking glibly about the mode in which the Constitution should be construed could not tell the meaning of the strict or the liberal construction on which they insist. The true method of interpretation cannot be characterized or described by a phrase. It must be ascertained by certain fundamental rules, which are to be deduced from a careful study of the text, from the surrounding historical facts which show why the text was made as it was, and from the great leading purposes for which the Constitution was established. These sources of interpretation all point to certain conclusions, namely, that the

government of the United States is a limited government, with certain enumerated and described powers; that it is not a government of universal authority, like many other governments, but that its authority is specific, confined to certain described subjects and relations, which the Constitution itself denominates its "powers," and to one or more of which powers all its acts must be referred.

The fundamental principle on which our Constitution is based is that all government derives its existence and authority from the people. Hence it can have no powers but such as the people choose to confer upon it. Its powers are grants made to it by the people. From the limited number and specific character of the powers conferred by the Constitution on the general government—less than all the powers of sovereignty—it follows that the people of this country are a nation only for certain defined purposes and objects which concern them all alike. All other powers of government, all other objects of government, are expressly reserved to the respective states or their people, by a provision which is a part of the Constitution itself.

But there is another truth of equal importance and equally undeniable. This is the supremacy of the Federal Constitution. It declares itself to be the supreme law of the land. Its supremacy means that to the full extent of its granted powers the authority of the Constitution is perfect, incapable of being controlled by the state governments, and that when any conflict arises the state must give way. A mode of effecting a peaceful solution of all such conflicts is provided through the supreme federal judiciary. But it is sometimes a matter for careful interpretation how far the authority of this government extends, or what is the sphere of its constitutional operation. Hence arises the necessity for inquiring what are its implied powers, or powers which incidentally result from or are embraced in the express powers that are described in the text in general terms. This is the principal topic on which I propose to say something this evening.

I will, however, first advert to the unwritten history of opinion and belief concerning the nature of the Constitution. I call it an unwritten history, because, although the materials for it are ample, they have never yet been embodied in a connected and methodical narrative. I hope ere long to make an effort to do this. It is a part of our constitutional history that it is both very curious and very instructive. It bears directly upon that long conflict which finally culminated in a civil war; and it shows how completely the two opposite theories of the Constitution were matters of opinion and belief, about which men could and did honestly and conscientiously differ, whatever were the immediately exciting causes which more or less influenced them. I now make a passing reference to the doctrine of state secession from the Union only for the purpose of saying that secession was supposed to be a constitutional right resulting from a certain view of the nature of the Constitution. This view was that the powers that had been ceded by a state to the government of the Union could be revoked or withdrawn when the people of the state believed that their safety required it; and this was supposed to be the exercise of a constitutional right, and not an exercise of the right of revolution. Not very long ago I had in my possession the official copy of the Ordinance of Secession adopted by South Carolina in December, 1860, which was served upon President Buchanan, to give him formal notice that the state had withdrawn from the Union. The original bore the sign-man-

nal of every member of the state convention. The copy served upon the president repeated the signatures, and the document was authenticated by the great seal of the state. It was a remarkable instrument, and was, I believe, the model of all the other secession ordinances. It purported to repeal all the acts of the state by which it had ratified and adopted the Constitution of the United States. Of course its theory was that the cession of political powers and jurisdiction which the state had made to the Federal Government was constitutionally revocable. On the other hand, the opposite theory was that the grant of those powers was irrevocable by any constitutional proceeding, and that in every constitutional sense the people of South Carolina were just as much bound to obey the laws of the United States after secession as they were before. This was the theory on which the war was waged by the Federal Government for the purpose of putting down all obstructions to the exercise of its proper authority. This was the justification, and the only justification, for the war; and it was a complete justification, although it was all the while nothing but the assertion of a matter of opinion and belief concerning the true nature of the Constitution. It might and it did seem to intelligent and impartial foreigners who looked upon the terrible conflict a very strange question to put to the arbitrament and decision of war; but there was no other arbitrament to which it could be submitted. With this issue thus submitted to a trial of strength, in the form of regular war, if the Southern arms had prevailed the right of state secession from the Union would have been forever established as a constitutional right. The federal arms having prevailed, the right of state secession from the Union is forever negatived as a constitutional right. Men may entertain, as a matter of theory, whatever opinion about it their convictions lead them to entertain; but as a right capable of being practically exercised, all Americans are now happily agreed that it is ended.

But this great event, the final negation of the constitutional right of secession, has not changed the character of the Constitution as a limited government. There has been, since the close of the civil war, through certain amendments of the Constitution, some further diminution of the state sovereignties, and some addition to the powers of the Federal Government in matters to which I need not now specially refer. But it still remains true that this is a government of limited, specific, and defined powers. The rules of interpretation to be applied to those powers are still the same. It is still true that all the powers of government which the Federal Constitution and its amendments do not embrace, belong to the states or their people. No sensible person doubts this, although we do see now and then cropping out the idea that since the war the character of our mixed system of government is changed. It is not changed in a single iota, excepting in so far as the states have submitted to a few special diminutions of their own sovereignties, beyond what they had previously surrendered. We must still look to the same rules of interpretation of the federal powers, although the number of those powers has been increased in a few particulars, and the state sovereignties have been to just the same extent diminished. For this reason I propose to speak to you of the fundamental rule of interpretation in judging of the extent and character of what are called the incidental or implied powers.

But before doing so let me direct your attention to a matter which

seems almost to require some apology for alluding to it at all. We hear much nowadays about the so-called "general welfare clause" of the Constitution. The Constitution uses the words general welfare in just two places, and no more. In the preamble the promotion of the general welfare is one of the objects enumerated, along with five others, for which the people of the United States ordain and establish the Constitution. The wildest and most latitudinarian constructionist would hardly venture to tell an audience of intelligent law students that the preamble of the Constitution contains any grant of power. It simply asserts the grand objects which the people aim to secure by the Constitution; but as to the means by which they do secure these desirable objects we must look into the body of the Constitution and among its enumerated powers. Looking into the body of the instrument we come upon the 1st clause of the 8th section of article 1 of the Constitution, which contains the grant of taxing power. Here the words general welfare are used again; and, strange to say, there are persons who suppose that this clause contains a grant of authority to tax in order to promote the personal welfare of every man, woman, and child in the United States! I shall merely counsel you to analyze the clause and see how strange this notion is. The clause grants to the Congress a power to tax the people for three special purposes: First, to pay the debts of the United States; second, to provide for the common defence of the United States; third, to provide for the general welfare of the United States. In every one of these special purposes for which the taxing power is to be exercised, "the United States" means the political corporation known as the United States, and not the individual inhabitants of the country. The debts that are to be paid are the debts of the government; the common defence that is to be provided for is the defence of the government in all those matters in which it has duties of defence to discharge for the whole country; the general welfare that is to be provided for is the well-being of the government in all those matters of which it has special cognizance, and in respect to which its efficiency concerns the whole Union.* In the very

* No other meaning can be assigned to the words "the United States" that would be consistent with the framework of the Constitution. If it had been intended to create a government with an unlimited power of taxation for the purpose of promoting any other welfare than the welfare or efficiency of the government itself in the exercise of its specific powers, no enumeration or description of its powers would have been necessary. The taxing clause would have embraced an authority to legislate upon all possible subjects on which the levying of taxes would be needful to promote the well-being of the people of the United States. It is only by giving a uniform meaning to each of the three objects for which the taxing power is to be exercised, and by collating these objects with the defined and enumerated legislative powers which follow the taxing clause, that we can arrive at any consistent view of the welfare that is to be provided for by an exercise of the taxing power. As the source of an independent power, disconnected with the specific and enumerated legislative powers which follow it, the taxing clause would be in itself a creation of a government that would absorb every possible object that money could promote. Instead of legislating in the exercise of the described and enumerated legislative powers, and levying taxes to defray the expenses of the government incurred for the special objects of those powers, it would only be necessary for Congress to lay and collect whatever taxes it might deem needful to promote the general welfare of the country, and to

next clause, which contains the grant of power to borrow money on the credit of the United States, the "United States" is used in the same sense, meaning the government known as the United States. It is on the credit of the government,

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appropriate the money thus raised to any objects that could be considered as called for in the interest of the public good.

There is great force in the words "to provide for." The words are not "to promote the general welfare," as they are sometimes read. Congress is authorized to lay and collect taxes in order "to provide for" the "common defence and general welfare of the United States." The words "to provide for" are used many times in the Constitution, and they always have a meaning distinct from the term "to promote." In legal signification "to provide for" means "to legislate for," to accomplish by direct enactment, as to provide for the punishment of counterfeiting the securities and current coin of the United States; to provide and maintain a navy; to provide for calling forth the militia; to provide for organizing, arming, and disciplining the militia. "To promote," on the other hand, as used in the Constitution, is to secure an incidental effect. It signifies the main purpose to be accomplished by the exercise of a certain power of legislation, as "to promote the progress of science and the useful arts by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries." There is another phrase used in the Constitution in the same sense as "to provide for;" this is "to establish," as to "establish post-offices and post-roads," to "establish a uniform rule of naturalization." Still another phrase is "to constitute," as to "constitute tribunals inferior to the Supreme Court." In this use of the words "to establish" and "to constitute," there is a granted power to create, or to bring into legal existence. But "to provide for" a thing, although it has the same meaning as to create or bring into legal existence by legislation, is very different from the meaning of the phrase "to promote." The latter denotes an incidental object that is to be accomplished by the legislation. The former denotes the legislation itself. In the taxing clause two things are embraced. The first is the taxing power itself. The second comprehends the three objects for which the power is to be exercised and to which it is limited. The first of these is to obtain by legislation the means for paying the debts of the United States. The second is "to provide for the common defence of the United States." The third is "to provide for the general welfare of the United States." The "provision" that is to be made for each of these objects is a provision by the legislation which levies and collects the taxes.

I have noticed that in the Alphabetical Analysis given in Hickey's edition of the Constitution (a very useful manual) the words "general welfare" are indexed as follows:

"GENERAL WELFARE. — The Constitution established to promote the general welfare." . . .—*Preamble.*

"GENERAL WELFARE. — Congress shall have power to provide for the general welfare." . . .—*Art.* 1, *Sec.* 8, *cl.* 1.

While this mode of indexing preserves the distinction between "to promote" and "to provide for," the omission from the last reference of the words "the United States," would lead a cursory reader, consulting the index, to infer that Congress has power to provide for the general welfare of the country, or of the people of the country. With this idea in his mind, if he should turn to the taxing clause, to which he is referred, he would be apt to draw a very erroneous inference. It is not the general welfare of the country or of the people of the country that Congress is authorized to provide for by an exercise of the taxing power; it is the general welfare of "the United States," which means the political corporation or government known as the United States.

not on the credit of individuals or of states, that Congress is authorized to borrow money.

Now look at the stupendous communism that is wrapped up in the taxing power on the supposition that it includes a power to tax for the promotion of the welfare of individuals. There is no limit to the taxing power, excepting that duties, imposts, and excises must be uniform throughout the United States; and that direct taxes must be apportioned according to the representation in Congress. All the property in the country may be taxed without limit for the legitimate objects of taxation. If one of those legitimate objects is the welfare of individuals, or masses, or classes, or of the whole people, the two Houses of Congress and any president acting together can divide up all the property in the country upon the plea that a general division will promote the general welfare. By this process this government could devour itself, and there would be nothing left for it to subsist upon. But it happens that one of the grand purposes for which this government was established was the protection of property, and its Constitution contains guarantees designed for the protection of property that are more remarkable and efficient than any that exist under most of the other governments in the world. At the same time the Constitution contains guarantees of personal rights that are as strong and efficient as those afforded to the rights of property. But I will detain you no longer upon this very singular notion of the general welfare, excepting to remark that there are now large establishments in this government, on which great sums are expended every year, and which rest on no better constitutional foundation than this strange idea of "the general welfare clause." Some of these establishments cannot be referred to any specific power of the Constitution; they do not result by any rational rule of interpretation from any one or more of the admitted powers of the government. There are other establishments which do result from some one or more of the express powers of the Constitution. There are systems of federal legislation which can, and there are systems which cannot, be referred to some of the powers of the Constitution, as implied in, and resulting from, those powers when measured by the true rule of interpretation. There are other systems of legislation which flow from the fact that the government of the United States is a great landed proprietor—a capacity which is to be distinguished from its powers of political sovereignty. I am now considering the latter, and I wish to give you what I believe to be the true rule for interpreting them.

As I have criticised Hickey's Alphabetical Analysis in one place, it is but fair to add that in another place it gives the qualifying words "the United States," as follows:

"UNITED STATES.—Congress shall have power to provide for the common defence and general welfare of the United States." . . .—*Art.* 8, *Sec.* 1, *cl.* 1.

But even this mode of statement or analysis is incorrect. The taxing clause does not say that Congress shall have power to provide for the common defence and general welfare of the United States. It says that Congress shall have a power to lay and collect taxes, duties, imposts, and excises, in order to obtain means to pay the debts of the United States, and to make provision for the common defence and general welfare of the government. This welfare is its efficiency, in point of pecuniary means, for the exercise of all the specific powers which follow the grant of the taxing power.

If you take the express powers of the Constitution, the first thing that will strike you will be that they are described in general, but appropriate, terms. There are seventeen specific powers of legislation granted to the Congress in the 8th section of article 1. Take any one of them—the power to borrow money on the credit of the United States; or the power to regulate commerce with foreign nations, and among the several states and with the Indian tribes; or the power to establish post-offices and post-roads; or the power to raise and support armies; or the power to provide and maintain a navy, and so on. From the language in which each of the specific legislative powers is described, you will perceive that the details of the mode of its exercise are not given, as, indeed, they could not be well given in such an instrument as a written constitution. Again, the executive power, which is vested in the president, is simply described as the executive power, and how that power is to be exercised is not mentioned. So, too, of the judicial power; the tribunals in which it is or may be vested and the subjects to which it is to extend are mentioned, but the details of its exercise are not mentioned. In the process of framing the Constitution, when it had been determined in what language the powers of the three great departments—the legislative, the executive, and the judicial—should be couched, it was apparent that the filling up of the outline must be left to legislation. Here again the details of the legislation could not be foreseen, and therefore they could not be given in the Constitution itself. In each of the express and granted powers there must, from the very nature of government or political sovereignty, be many things implied, as part and parcel of each specific power. How then was this matter to be left? Was it to be left to implication, or was there to be a rule of determination given in the Constitution itself, which would forever remain as the measure of these incidental, undescribed, and resulting powers, which all were agreed must be included in the general terms that embraced the scope and nature of all the express and enumerated powers of the Constitution? The framers of the Constitution decided that such a rule must be laid down, and accordingly they ended the enumeration of the legislative powers by a clause which gave to the Congress authority "to make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States, or in any department or officer thereof."

It is not necessary for me to detain you with the controversies which sprang up from the first about the meaning of the terms "necessary and proper," as applied to the laws which Congress is thus authorized to enact, because the clause itself carries in its own language the meaning of these terms. The laws are not to be all such laws as the Congress may in its discretion deem necessary and proper; nor are they to be only such laws as are indispensably necessary to the exercise of a specific power, and without which the power must remain dormant. They are to be laws which are necessary and proper for *carrying into execution* the various specific powers of the government or some one of its branches, which powers are vested in the government or in one of its branches by the Constitution. That is to say, the law by which a specific power of the Constitution is to be exercised must bear the relation of means to an end; must be appropriate as a means to the attainment of the object of the specific power

or in other words, it must *execute* the power, and not be something which bears only a remote, fanciful, indirect, or incomplete relation to that power. Now the elements which go to make up an incidental or implied power, such as Congress can constitutionally resort to, were laid down by Chief-Justice Marshall and his associates on the bench of the Supreme Court more than sixty-five years ago, in a construction of this clause of the Constitution, which all men of all parties profess still to be guided by, but which is often nowadays mistaken. The elements are of a three-fold character: one of them is a negative quality, the two others are positive qualities. The negative quality is that the law must not be one that is prohibited by the Constitution. There are numerous prohibitory clauses which impose positive restraints upon the legislative authority, and a law which should violate one of these would be unconstitutional, even if it should be one that is constantly resorted to by other governments. Here you perceive that while our Constitution has made grants of certain specific powers of government, it has narrowed the scope of these powers by excluding from them certain modes in which they could be exercised if these restraints were not imposed. But this is not all. Not only must a law of this government be one that is not prohibited by the Constitution, but it must have two positive qualities as well. First, the means or instrumentality chosen for the execution of an acknowledged power of the Constitution must be plainly adapted to that end; the meaning of which is that it must execute the power. Finally, the law must be consistent with both the letter and the spirit of the Constitution; the meaning of which is that it must accord with every positive provision of the Constitution, and with its general intent and purpose. This is one great branch of the rule of interpretation of the implied powers of legislation.

There is another branch of this comprehensive rule. When you look into the clause which defines the scope of the legislative powers, you find that it assumes a certain range of legislative discretion. While this discretion is limited by the requirements which I have just mentioned, there are a variety of means or instrumentalities, within those limits, in regard to which Congress can exercise a choice by employing one or another. It has become customary to call this question of what means or instrumentalities, within certain limits, Congress may resort to a "political question." The meaning of this is that the necessity or expediency of resorting to one means or instrumentality rather than to another, when both possess the requisite qualities, is a question of legislative discretion. Of this question Congress is the judge, and the final judge. But the question whether the particular means or instrumentality which Congress decides to employ possesses the qualities and characteristics defined by the rule of interpretation, whether it bears the defined relations to the execution of one of the known specific powers of the Constitution, is not a political question, and is not committed to the final decision of Congress. It is a judicial question; and although Congress in enacting the law decides this question for itself, and in the first instance, it is for the judicial power to decide it finally. It was to determine this judicial question that the judicial power was created and was given cognizance of all cases arising under the Constitution.

Let me now give some illustrations of this great rule of interpretation. There is a power to make war. A particular military engine, although it did not

exist when the Constitution was established, may be employed as a means of making war, because it directly executes the power of carrying on war. It has all the requisite qualities and characteristics of the constitutional relation of means to an end, and whether it shall be employed is a mere matter of legislative discretion, or, as is said, it is a political question. Again, there is a power to collect and distribute revenue, and a power to borrow money. A national bank may be created by Congress, not because the creation of banks is an incident of general sovereignty, or because other governments create banks, but because a bank is an instrument that will directly execute the specific power to borrow money, or the specific power to collect and distribute revenue. It has all the qualities and capacities required for an exercise of one or more of the specific powers of the Constitution, and whether it shall be employed is a matter of legislative discretion. There is a power to establish post-offices and post-roads. Whether the mails shall be carried by railway or by stage coach is a matter of legislative discretion and choice. Whether one or the other means is used the means chosen directly executes the power. But when you come to the employment of a means which, although not expressly prohibited in the Constitution, does not execute the power which it professes to execute—does not bear the requisite relation to that power, and is not in accord with both the letter and the spirit of the Constitution—it is not within the constitutional range of the legislative choice; and whether it is or is not within that range, is, as a final question, a question for the judicial power.

You will next ask how you are to know that a law, or any provision of a law, is not in accord with the letter or the spirit of the Constitution? The answer to this question is very simple. If there is any clause of the Constitution with which the law is inconsistent, with which it comes in contact, with which it is not in harmony, the law is not in accord with the letter of the Constitution. If the law is inconsistent with any of the great purposes for which the Constitution was established it does not accord with the spirit of the Constitution. An apt illustration of this is the law which makes the promissory notes of the government a legal tender for private debts. There is a provision of the Constitution, a part of its letter, which confers on Congress the exclusive power of coining money and regulating its value. Those who deny the power of Congress to make paper money a legal tender for private debts can with good reason say that it is not reconcilable with the coinage power, because that power was established for the purpose of having a metallic standard and measure of values to operate everywhere throughout the country, whereas the value of paper money is a thing that no legislation can fix. All the laws that can be enacted cannot control the laws of trade, which are beyond the reach of legislation. If the condition of things at any time makes a piece of paper stamped as a dollar of less value than the gold standard, all the legislation in the world cannot make it of equal value. Again, the Constitution was established to secure justice, protect the rights of property, and give to our possessions a value that should be measured by the standard recognized throughout the commercial world. This is the spirit of the Constitution in relation to property and contracts, and those who deny the right of Congress to make government paper a legal tender in private contracts can with truth say that such a law is not in accord with the spirit of the Consti-

tution, any more than it is with its letter. I repeat, it is not enough that a law which selects and professes to make a particular means an execution of some granted power of the government, is not expressly prohibited in the Constitution. It is not enough that it is a law which other governments make, whose powers of legislation and government are unlimited. It must be a law which *this* government can make, and therefore it must have in addition to the negative quality of not being prohibited in the Constitution, two other positive qualities, namely, that the means or instrumentalities which it professes to employ for executing a specific power of the Constitution must really execute it, and must also be consistent with both the letter and the spirit of the Constitution.

I use again as an illustration of this great rule the power to borrow money on the credit of the United States. Beyond all doubt Congress can adopt any legislation by which this power can be executed; that is to say, it can issue any forms of bonds, bills, or notes, to be given to any person from whom money is to be borrowed. But when to such paper obligations or acknowledgments of public debt there is added the quality of being a compulsory legal tender in the payment of debts between private individuals, you perceive that a question instantly arises whether Congress has power to compel me as a creditor to receive from my debtor, as full value for my debt, a promissory note of the government which the government has given to *its* creditor, from whom *it* has borrowed money in a transaction with which I had nothing to do, when that note may have a market value below the gold standard of value. The argument that the issue of such legal-tender paper currency will facilitate the borrowing of money by the government does not satisfy the measure of the legislative powers. It could be said of a law which made government notes compulsory payments for theatre tickets, or for supplies of provisions, that it would facilitate the borrowing of money by the government, for such a currency might be sought for by persons who had money to lend to the government, especially if they could get it at a round discount. This idea of facilitating the borrowing of money by the government by making its promissory notes a legal tender for private debts, no matter what may be their depreciation, does not fulfil the great rule of interpretation of the implied powers; first, because it does not execute the government's power of borrowing money, inasmuch as the transaction by which the government borrows money on its note is, to use a legal phrase, *res inter alios acta*, and you or I, as a private creditor or a private debtor, have nothing to do with it; secondly, because no human ingenuity can make it consistent with the letter or the spirit of the Constitution to compel me to discharge the full face of a debt, measured by the gold standard of value, for a promissory note of the government, which some one or more of *its* creditors has been content to take, and which, when tendered to me, may be of less value than the gold standard.

I have adverted to the true rule for the interpretation of the implied powers, and to the particular application of it to the legal-tender paper question, because this is beyond all comparison the most important question of our time. It matters not who is responsible for the original enactment or the re-enactment of this legal-tender provision. There are men in all parties who believe it to be constitutionally right, and men who believe it to be constitutionally wrong. What you are most concerned in is to see what is to become of property, of the

value of property, if Congress possesses the power that has been attributed to it, and that it has exercised. The power that has been attributed to it, and that it has exercised, is not confined to any particular state of public affairs, because it is claimed that Congress can judge for itself when the public interest requires the issue of a legal-tender paper currency. So that it is only necessary at any time to elect a majority of members of both Houses of Congress, who for any reason whatever will favor the issue of any amount of such currency, and to have a president who agrees with them, and the man who counts his treasure by millions, and the day-laborer who buys his food with the currency which he may be compelled to take for his wages, or the farmer who must take that currency for his crops, are alike involved in an enormous confiscation, which results from displacing the gold standard and measure of values. It is useless to set up, as a barrier, any confidence that we may feel in the wisdom of our legislators. Their wisdom may lead them to do very unwise things. The only safe barrier is the wisdom that is embodied in the Constitution, and what that is is to be learned by a sound interpretation of the implied powers.

I could employ many other illustrations of the rule of interpretation, in which every one would concur, because there has been as yet no legislation which has entered into the politics of parties in the exercise of other constitutional powers. For example, take 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." The laws which regulate the granting of patents and copyrights, and which provide a judicial remedy for infringements, are strictly in execution of the power to secure such property. But now suppose that Congress should enact a law limiting the price at which an inventor should be allowed to sell his invention or an author to sell his book. Would any one say that this would be anything but a usurpation? Would any one pretend that such a law bore any sort of relation to the constitutional power, or was in any sense an execution of it?

Take the power to regulate commerce among the several states. This is rather in the nature of a police power. It is a power to protect persons and property in transit from one state to another, to prevent obstructions to free intercourse by state legislation, to prevent state taxation of property or persons passing from one state to another, and to prevent the establishment by the states of any exclusive right of land or water carriage from one state to another. Laws of the United States which effect these objects are direct executions of the commercial power of the Federal Government. But now suppose that Congress should enact a law regulating the price to be charged by a vendor of merchandise dwelling in one state which is to be delivered to a vendee dwelling in another state, or a law prescribing what charge should be made for drawing a bill of exchange at New Orleans on New York, or a law limiting the freight or passage money to be charged by a carrier of merchandise or passengers from Chicago to Baltimore. Would either of these be a regulation of inter-state commerce? Would either of them be a law bearing the requisite relation to the commercial power? Would either of them *execute* that power?

Let me again advise you in studying such questions as these not to be deterred from the prosecution of truth by the outcry of "strict construction." It

will not help you in the least to inquire what is the proper phrase to apply to the method of interpretation, whether it should be called liberal or strict. Neither is it of any sort of consequence to you how this or that political party habitually construes the Constitution. I take it that you do not attend a law-school for the purpose of learning what party you had better join. The study of the Constitution in which you are engaged will not be much promoted by consulting the "platforms" of parties or the professed sentiments of politicians. Go to other sources. Go to the judicial interpretations of the Constitution, from the beginning of the government to the present day, and extracting from them the sound rule which marks the boundaries of the federal powers, form your opinions and beliefs by that rule, and let others class you as strict or as liberal constructionists without the smallest care on your part about either phrase. You will find that what is called a liberal construction is sometimes right and sometimes wrong. You will find the same thing to be true of what is called a strict construction. The rule laid down by Chief-Justice Marshall and his brethren is broad enough to give this government all the scope that it ever ought to claim, and strict enough to prevent it from encroaching on the rights of states or of individuals. So long as it shall be observed this government cannot go wrong. When it is departed from this government will wander from its sphere, and although it may dazzle the beholders and excite their admiration and gratify their love of power, it will dislocate the whole political system that was established by our fathers and made consistent with liberty.

Let me give you one other counsel. Do not allow yourselves to be disturbed by that other outcry which seeks to bring reproach or disfavor upon the doctrine of state-rights. The abnormal assertion of the right of secession from the Union, as a constitutional right of the states, which is now happily eliminated from their constitutional rights, should never prevent you from seeing that our political system does embrace and uphold state-rights which are as unquestionable and positive as are the rights and powers of this government. Consider for one moment what would have happened if, at the time of the establishment of this Constitution, all the elements of political power and government had been fused into one mass; had been concentred and concentrated into the hands of one central authority; that the people of the states had not interposed by the tenth amendment and declared that "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." Give the freest scope to your imaginations, and imagine, if you can, whether we could have carried our civilization from ocean to ocean if the sovereignties of the states had not been thus protected; whether the central power could have wisely and safely legislated for all the objects of social life if the state sovereignties had not been thus preserved; whether the absorption of all the powers of government into one central authority would not have ended in a despotism that would at last have been broken down by its own feebleness. The truth is that our mixed system of separate states and a limited central government, the states holding and exercising each for itself and within itself all the powers of government which it has not, through this Constitution, ceded to the United States, or which the Constitution has not expressly prohibited, has enabled us to attain to a degree of civilization, of happiness and re-

nown to which no other system could have conducted us. We can preserve this system only by taking care that each of the two kinds of government confines itself to the sphere marked out for it.

RECONSTRUCTION ACT OF CONGRESS.

MARCH 2, 1867.

AN ACT TO PROVIDE FOR THE MORE EFFICIENT GOVERNMENT OF THE REBEL STATES.

Whereas no legal state governments or adequate protection for life or property now exists in the rebel states of Virginia, North Carolina, South Carolina, Georgia, Mississippi, Alabama, Louisiana, Florida, Texas, and Arkansas; and whereas it is necessary that peace and good order should be enforced in said states until loyal and republican state governments can be legally established; Therefore,

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That said rebel states shall be divided into military districts and made subject to the military authority of the United States as hereinafter prescribed, and for that purpose Virginia shall constitute the first district; North Carolina and South Carolina the second district; Georgia, Alabama, and Florida the third district; Mississippi and Arkansas the fourth district; and Louisiana and Texas the fifth district.

SECTION 2. *And be it further enacted*, That it shall be the duty of the president to assign to the command of each of said districts an officer of the army, not below the rank of brigadier-general, and to detail a sufficient military force to enable such officer to perform his duties and enforce his authority within the district to which he is assigned.

SECTION 3. *And be it further enacted*, That it shall be the duty of each officer assigned as aforesaid to protect all persons in their rights of person and property, to suppress insurrection, disorder, and violence, and to punish, or cause to be punished, all disturbers of the public peace and criminals; and to this end he may allow local civil tribunals to take jurisdiction of and to try offenders, or, when in his judgment it may be necessary for the trial of offenders, he shall have power to organize military commissions or tribunals for that purpose, and all interference under color of state authority with the exercise of military authority under this act shall be null and void.

SECTION 4. *And be it further enacted*, That all persons put under military arrest by virtue of this act shall be tried without unnecessary delay, and no cruel or unusual punishment shall be inflicted, and no sentence of any military commission or tribunal hereby authorized, affecting the life or liberty of any person, shall be executed until it is approved by the officer in command of the district, and the laws and regulations for the government of the army shall not be affected by this act, except in so far as they conflict with its provisions: *Provided*, That

no sentence of death under the provisions of the act shall be carried into effect without the approval of the president.

SECTION 5. *And be it further enacted*, That when the people of any one of said rebel states shall have formed a constitution of government in conformity with the Constitution of the United States in all respects, framed by a convention of delegates elected by the male citizens of said state, twenty-one years old and upwards, of whatever race, color, or previous conditions, who have been resident in said state for one year previous to the day of such election, except such as may be disfranchised for participation in the rebellion or for felony at common law, and when such constitution shall provide that the elective franchise shall be enjoyed by all such persons as have the qualifications herein stated for electors of delegates, and when such constitution shall be ratified by a majority of the persons voting on the question of ratification who are qualified as electors for delegates, and when such constitution shall have been submitted to Congress for examination and approval, and Congress shall have approved the same, and when said state, by a vote of its legislature elected under said constitution, shall have adopted the amendment to the Constitution of the United States, proposed by the Thirty-ninth Congress, and known as article fourteen, and when said article shall have become a part of the Constitution of the United States, said state shall be declared entitled to representation in Congress, and senators and representatives shall be admitted therefrom on their taking the oath prescribed by law, and then and thereafter the preceding sections of this act shall be inoperative in said state: *Provided*, That no person excluded from the privilege of holding office by said proposed amendment to the Constitution of the United States shall be eligible to election as a member of the convention to frame a constitution for any of said rebel states, nor shall any such person vote for members of such convention.

SECTION 6. *And be it further enacted*, That, until the people of said rebel states shall be by law admitted to representation in the Congress of the United States, any civil governments which may exist therein shall be deemed provisional only, and in all respects subject to the paramount authority of the United States at any time to abolish, modify, control, or supersede the same; and in all elections to any office under such provisional governments all persons shall be entitled to vote, and none others, who are entitled to vote under the provisions of the fifth section of this act; and no person shall be eligible to any office under any such provisional governments who would be disqualified from holding office under the provisions of the third *article* of said constitutional amendment.

SUPPLEMENTARY ACT.

MARCH 23, 1867.

AN ACT SUPPLEMENTARY TO AN ACT, ENTITLED "AN ACT TO PROVIDE FOR THE MORE EFFICIENT GOVERNMENT OF THE REBEL STATES," PASSED MARCH SECOND, EIGHTEEN HUNDRED AND SIXTY-SEVEN, AND TO FACILITATE RESTORATION.

Be it enacted by the Senate and the House of Representatives of the United States of America in Congress Assembled, That before the first day of September, eighteen hundred and sixty-seven, the commanding general in each district defined by act entitled "An act to provide for the more efficient government of the rebel states," passed March second, eighteen hundred and sixty-seven, shall cause a registration to be made of the male citizens of the United States, twenty-one years of age and upwards, resident in each county or parish in the state or states included in his district, which registration shall include only those persons who are qualified to vote for delegates by the act aforesaid, and who shall have taken and subscribed the following oath or affirmation: "I ————————, do solemnly swear (or affirm), in the presence of Almighty God, that I am a citizen of the state of ————————; that I have resided in said state for ——— months next preceding this day, and now reside in the county of ————————, or the parish of ————————, in said state (as the case may be); that I am twenty-one years old; that I have not been disfranchised for participation in any rebellion or civil war against the United States nor for felony committed against the laws of any state or of the United States; that I have never been a member of any state legislature, nor held any executive or judicial office in any state, and afterwards engaged in insurrection or rebellion against the United States, or given aid or comfort to the enemies thereof; that I have never taken an oath as a member of Congress of the United States, or as an officer of the United States, or as a member of any state legislature, or as an executive or judicial officer of any state, to support the Constitution of the United States, and afterwards engaged in insurrection or rebellion against the United States, or given aid or comfort to the enemies thereof; that I will faithfully support the Constitution and obey the laws of the United States, and will, to the best of my ability, encourage others so to do, so help me God." Which oath or affirmation may be administered by any registering officer.

SECTION 2. *And be it further enacted,* That after the completion of the registration hereby provided for in any state, at such time and places therein as the commanding general shall appoint and direct, of which at least thirty days public notice shall be given, an election shall be held of delegates to a convention for the purpose of establishing a constitution and civil government for such state loyal to the Union, said convention in each state, except Virginia, to consist of the same number of members as the most numerous branch of the state legislature of such state in the year eighteen hundred and sixty, to be apportioned among the several districts, counties, or parishes of such state by the commanding gen-

eral, giving to each representation in the ratio of voters registered as aforesaid as nearly as may be. The convention in Virginia shall consist of the same number of members as represented the territory now constituting Virginia in the most numerous branch of the legislature of said state in the year eighteen hundred and sixty, to be apportioned as aforesaid.

SECTION 3. *And be it further enacted*, That at said election the registered voters of each state shall vote for or against a convention to form a constitution therefor under this act. Those voting in favor of such a convention shall have written or printed on the ballots by which they vote for delegates, as aforesaid, the words "For a Convention," and those voting against such a convention shall have written or printed on such ballots the words "Against a Convention." The persons appointed to superintend said election, and to make returns of the vote given thereat, as herein provided, shall count and make return of the votes given for and against a convention; and the commanding general to whom the same shall have been returned shall ascertain and declare the total vote in each state for and against a convention. If a majority of the votes given on that question shall be for a convention, then such convention shall be held as hereinafter provided; but if a majority of said votes shall be against a convention, then no such convention shall be held under this act: *Provided*, That such convention shall not be held unless a majority of all such registered voters shall have voted on the question of holding such convention.

SECTION 4. *And be it further enacted*, That the commanding general of each district shall appoint as many Boards of Registration as may be necessary, consisting of three loyal officers or persons, to make and complete the registration, superintend the election, and make return to him of the votes, list of voters, and of the persons elected as delegates by a plurality of the votes cast at said election; and upon receiving said returns, he shall open the same, ascertain the persons elected as delegates, according to the returns of the officers who conducted said election, and make proclamation thereof; and if a majority of the votes given on that question shall be for a convention, the commanding general, within sixty days from the date of election, shall notify the delegates to assemble in convention at a time and place to be mentioned in the notification, and said convention, when organized, shall proceed to frame a constitution and civil government according to the provisions of this act and the act to which it is supplementary; and when the same shall have been so framed, said constitution shall be submitted by the convention for ratification to the persons registered under the provisions of this act at an election to be conducted by the officers or persons appointed or to be appointed by the commanding general, as hereinbefore provided, and to be held after the expiration of thirty days from the date of notice thereof, to be given by said convention; and the returns thereof shall be made to the commanding general of the district.

SECTION 5. *And be it further enacted*, That if, according to said returns, the constitution shall be ratified by a majority of the votes of the registered electors qualified as herein specified, cast at said election, at least one-half of all the registered voters voting upon the question of such ratification, the president of the convention shall transmit a copy of the same, duly certified, to the President of the United States, who shall forthwith transmit the same to Congress, if then in

session, and, if not in session, then immediately upon its next assembling; and if it shall, moreover, appear to Congress that the election was one at which all the electors in the state had an opportunity to vote freely and without restraint, fear, or the influence of fraud, and if the Congress shall be satisfied that such constitution meets the approval of a majority of all the qualified electors in the state, and if the said constitution shall be declared by Congress to be in conformity with the provisions of the act to which this is supplementary, and the other provisions of said act shall have been complied with, and the said constitution shall be approved by Congress, the state shall be declared entitled to representation, and senators and representatives shall be admitted therefrom as therein provided.

SECTION 6. *And be it further enacted*, That all elections in the states mentioned in the said "Act to provide for the more efficient government of the rebel states" shall, during the operation of said act, be by ballot, and all officers making the said registration of voters and conducting said elections shall, before entering upon the discharge of their duties, take and subscribe the oath prescribed by the act approved July second, eighteen hundred and sixty-two, entitled, "An act to prescribe an oath of office": *Provided*, That if any person shall knowingly and falsely take and subscribe any oath in this act prescribed, such person so offending, and being thereof duly convicted, shall be subject to the pains, penalties, and disabilities which by law are provided for the punishment of the crime of wilful and corrupt perjury.

SECTION 7. *And be it further enacted*, That all expenses incurred by the several commanding generals, or by virtue of any orders issued, or appointments made by them, under or by virtue of this act, shall be paid out of any moneys in the treasury not otherwise appropriated.

SECTION 8. *And be it further enacted*, That the convention for each state shall prescribe the fees, salaries, and compensation to be paid to all delegates and other officers and agents herein authorized, or necessary to carry into effect the purposes of this act not herein otherwise provided for, and shall provide for the levy and collection of such taxes on the property in such state as may be necessary to pay the same.

SECTION 9. *And be it further enacted*, That the word "article," in the sixth section of the act to which this is supplementary, shall be construed to mean "section."

PROCLAMATION OF PRESIDENT JOHNSON DECLARING END OF THE REBELLION.

APRIL 2, 1866.

Whereas by proclamations of the fifteenth and nineteenth of April, one thousand eight hundred and sixty-one, the President of the United States, in virtue of the power vested in him by the Constitution and the laws, declared that the laws of the United States were opposed, and the execution thereof obstructed, in

the states of South Carolina, Georgia, Alabama, Florida, Mississippi, Louisiana, and Texas by combinations too powerful to be suppressed by the ordinary course of judicial proceeding, or by the powers vested in the marshals by law;

And whereas by another proclamation made on the sixteenth day of August, in the same year, in pursuance of an act of Congress approved July thirteenth, one thousand eight hundred and sixty-one, the inhabitants of the states of Georgia, South Carolina, Virginia, North Carolina, Tennessee, Alabama, Louisiana, Texas, Arkansas, Mississippi, and Florida (except the inhabitants of that part of the state of Virginia lying west of the Alleghany Mountains, and to such other parts of that state and the other states before named as might maintain a loyal adhesion to the Union and the Constitution, or might be from time to time occupied and controlled by forces of the United States engaged in the dispersion of insurgents) were declared to be in a state of insurrection against the United States;

And whereas by another proclamation of the first day of July, one thousand eight hundred and sixty-two, issued in pursuance of an act of Congress, approved July seventh, in the same year, the insurrection was declared to be still existing in the states aforesaid, with the exception of certain specified counties in the state of Virginia;

And whereas by another proclamation made on the second day of April, one thousand eight hundred and sixty-three, in pursuance of the act of Congress of July thirteenth, one thousand eight hundred and sixty-one, the exceptions named in the proclamation of August sixteenth, one thousand eight hundred and sixty-one, were revoked, and the inhabitants of the states of Georgia, South Carolina, North Carolina, Tennessee, Alabama, Louisiana, Texas, Arkansas, Mississippi, Florida, and Virginia (except the forty-eight counties of Virginia designated as West Virginia, and the ports of New Orleans, Key West, Port Royal, and Beaufort, in South Carolina) were declared to be still in a state of insurrection against the United States;

And whereas the House of Representatives, on the twenty-second day of July, one thousand eight hundred and sixty-one, adopted a resolution in the words following, namely:

"*Resolved by the House of Representatives of the Congress of the United States*, That the present deplorable civil war has been forced upon the country by the disunionists of the Southern States, now in revolt against the constitutional government and in arms around the capital; that in this national emergency Congress, banishing all feelings of passion or resentment, will recollect only its duty to the whole country; that this war is not waged on our part in any spirit of oppression, nor for any purpose of conquest or subjugation, nor purpose of overthrowing or interfering with the rights or established institutions of those states, but to defend and maintain the supremacy of the Constitution and to preserve the Union, with all the dignity, equality, and rights of the several states unimpaired; that as soon as these objects are accomplished the war ought to cease;"

And whereas the Senate of the United States, on the twenty-fifth day of July, one thousand eight hundred and sixty-one, adopted a resolution in the words following, to wit:

"*Resolved*, That the present deplorable civil war has been forced upon the country by the disunionists of the Southern States, now in revolt against the constitutional government and in arms around the capital; that in this national emergency Congress, banishing all feeling of mere passion or resentment, will recollect only its duty to the whole country; that this war is not prosecuted on our part in any spirit of oppression nor for any purpose of conquest or subjugation, nor purpose of overthrowing or interfering with the rights or established institutions of those states, but to defend and maintain the supremacy of the Constitution and all laws made in pursuance thereof, and to preserve the Union with all the dignity, equality, and rights of the several states unimpaired; that as soon as these objects are accomplished the war ought to cease;"

And whereas these resolutions, though not joint or concurrent in form, are substantially identical, and as such may be regarded as having expressed the sense of Congress upon the subject to which they relate;

And whereas by my proclamation of the thirteenth day of June last the insurrection in the state of Tennessee was declared to have been suppressed, the authority of the United States therein to be undisputed and such United States officers as had been duly commissioned to be in the undisputed exercise of their official functions;

And whereas there now exists no organized armed resistance of misguided citizens or others to the United States in the states of Georgia, South Carolina, Virginia, North Carolina, Tennessee, Alabama, Louisiana, Arkansas, Mississippi, and Florida, and the laws can be sustained and enforced therein by the proper civil authority, state or federal, and the people of the said states are well and loyally disposed, and have conformed or will conform in their legislation to the condition of affairs growing out of the amendment of the Constitution of the United States prohibiting slavery within the limits and jurisdiction of the United States;

And whereas in view of the before-recited premises it is the manifest determination of the American people that no state of its own will has the right or the power to go out of, or separate itself from, or be separated from the American Union, and that, therefore, each state ought to remain and constitute an integral part of the United States;

And whereas the people of the several before-mentioned states have, in the manner aforesaid, given satisfactory evidence that they acquiesce in this sovereign and important resolution of national unity;

And whereas it is believed to be a fundamental principle of government that people who have revolted, and who have been overcome and subdued, must either be dealt with so as to induce them voluntarily to become friends, or else they must be held by absolute military power, or devastated, so as to prevent them from ever again doing harm as enemies, which last-named policy is abhorrent to humanity and freedom;

And whereas the Constitution of the United States provides for constituent communities only as states and not as territories, dependencies, provinces, or protectorates;

And whereas such constituent states must necessarily be and by the Constitution and laws of the United States are made equals and placed upon a like foot-

ing as to political rights, immunities, dignity, and power with the several states with which they are united;

And whereas the observance of political equality as a principle of right and justice is well calculated to encourage the people of the aforesaid states to be and become more and more constant and persevering in their renewed allegiance;

And whereas standing armies, military occupation, martial law, military tribunals, and the suspension of the privilege of the writ of *habeas corpus* are, in time of peace, dangerous to public liberty, incompatible with the individual rights of the citizen, contrary to the genius and spirit of our free institutions, and exhaustive of the national resources, and ought not therefore to be sanctioned or allowed, except in cases of actual necessity for repelling invasion or suppressing insurrection or rebellion;

And whereas the policy of the government of the United States, from the beginning of the insurrection to its overflow and final suppression, has been in conformity with the principles herein set forth and enumerated:

Now, therefore, I, Andrew Johnson, President of the United States, do hereby proclaim and declare that the insurrection which heretofore existed in the states of Georgia, South Carolina, Virginia, North Carolina, Tennessee, Alabama, Louisiana, Arkansas, Mississippi, and Florida is at an end, and is henceforth to be so regarded.

In testimony whereof I have hereunto set my hand, and caused the seal of the United States to be affixed.

L. S.

Done at the City of Washington, the second day of April, in the year of our Lord, one thousand eight hundred and sixty-six, and of the Independence of the United States of America the ninetieth.

ANDREW JOHNSON.

By the President,

WM. H. SEWARD, Secretary of State.

ANALYTICAL INDEX

TO THE

CONSTITUTION OF THE UNITED STATES

AND THE

AMENDMENTS THERETO

A.

	Art.	Sec.	Cl.
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Accounts of receipts and expenditures of public money shall be published from time to time. A statement of the	1	9	7
Accusation. In all criminal prosecutions the accused shall be informed of the cause and nature of the. [Amendments]	6	—	—
Accused shall have a speedy public trial. In all criminal prosecutions the. [Amendments]	6	—	—
He shall be tried by an impartial jury of the state and district where the crime was committed. [Amendments]	6	—	—
He shall be informed of the nature of the accusation. [Amendments]	6	—	—
He shall be confronted with the witnesses against him. [Amendments]	6	—	—
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He shall have the assistance of counsel for his defence. [Amendments]	6	—	—
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Acts, records, and judicial proceedings of another state. Full faith and credit shall be given in each state to the	4	1	—
Acts. Congress shall prescribe the manner of proving such acts, records, and proceedings	4	1	—
Adjourn from day to day. A smaller number than a quorum of each house may	1	5	1
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	Art.	Sec.	Cl.
Adjournment, the president may adjourn them to such time as he shall think proper. In case of disagreement between the two houses as to	2	3	—
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No person shall be a senator who shall not have attained thirty years of.	1	3	3
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	Art.	Sec.	Cl.
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Arrest during their attendance at the session of their respective houses, and in going to and returning from the same. Members shall in all cases, except treason, felony, and breach of the peace, be privileged from	1	6	1
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	Art.	Sec.	Cl.
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B.			
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Bills which have passed the Senate and House of Representatives shall, before they become laws, be presented to the president	1	7	2
If he approve, he shall sign them; if he disapprove, he shall return them, with his objections, to that house in which they originated	1	7	2
Bills. Upon the reconsideration of a bill returned by the president, with his objections, if two thirds of each house agree to pass the same, it shall become a law	1	7	2
Upon the reconsideration of a bill returned by the president, the question shall be taken by yeas and nays	1	7	2
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	Art.	Sec.	Cl.
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Citizen of the United States at the adoption of the Constitution shall be eligible to the office of president. No person not a natural born	2	1	4
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No person shall be a representative who shall not have attained the age of twenty-five years, and been seven years a	1	2	2
Citizenship. Citizens of each state shall be entitled to all the privileges and immunities of citizens of the several states	4	2	1
All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state in which they reside. [Amendments]	14	1	—
No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States. [Amendments]	14	1	—
Nor shall any state deprive any person of life, liberty, or property without due process of law. [Amendments]	14	1	—
Nor deny to any person within its jurisdiction the equal protection of the laws. [Amendments]	14	1	8
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Civil officers of the United States shall, on impeachment for and conviction of treason, bribery, and other high crimes and misdemeanors, be removed. All	2	4	—
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	Art.	Sec.	Cl.
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Coin a tender in payment of debts. No state shall make anything but gold and silver	1	10	1
Coin money and regulate the value thereof and of foreign coin. Congress shall have power to	1	8	5
Coin of the United States. Congress shall provide for punishing the counterfeiting the securities and current	1	8	6
Color, or previous condition of servitude. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any state on account of race. [Amendments]	15	1	—
Comfort. Treason against the United States shall consist in levying war against them, and giving their enemies aid and	3	3	1
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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. [Amendments]	7	—	—
Compact with another state. No state shall, without the consent of Congress, enter into any agreement or	1	10	3
Compact with a foreign power. No state shall, without the consent of Congress, enter into any agreement or	1	10	3
Compensation of senators and representatives to be ascertained by law	1	6	1
Compensation of the president shall not be increased or diminished during the period for which he shall be elected	2	1	6
Compensation of the judges of the Supreme and inferior courts shall not be diminished during their continuance in office	3	1	—
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	Art.	Sec.	Cl.
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Confession in open court. Conviction of treason shall be on the testimony of two persons to the overt act, or upon	3	3	1
Congress of the United States. All legislative powers shall be vested in a	1	1	—
Shall consist of a Senate and House of Representatives	1	1	—
Congress shall assemble at least once in every year, which shall be on the first Monday of December, unless they by law appoint a different day	1	4	2
May at any time alter regulations for elections of senators and representatives, except as to the places of choosing senators	1	4	1
Each house shall be the judge of the elections, returns, and qualifications of its own members	1	5	1
A majority of each house shall constitute a quorum to do business	1	5	1
A smaller number may adjourn from day to day and may be authorized to compel the attendance of absent members	1	5	1
Each house may determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two thirds, expel a member	1	5	2
Each house shall keep a journal of its proceedings	1	5	3
Neither house, during the session of Congress, shall, without the consent of the other, adjourn for more than three days	1	5	4
Senators and representatives shall receive a compensation to be ascertained by law	1	6	1
They shall in all cases, except treason, felony, and breach of the peace, be privileged from arrest during attendance at their respective houses, and in going to and returning from the same	1	6	1
No senator or representative shall, during his term, be appointed to any civil office which shall have been created, or of which the emoluments shall have been increased, during such term	1	6	2
No person holding any office under the United States shall, while in office, be a member of either house of Congress	1	6	2
All bills for raising revenue shall originate in the House of Representatives	1	7	1
Proceedings in cases of bills returned by the president with his objections	1	7	1
Shall have power to lay and collect duties, imposts, and excises, pay the debts, and provide for the common defence and general welfare	1	8	2
Shall have power to borrow money on the credit of the United States	1	8	2
To regulate foreign and domestic commerce, and with the Indian tribes	1	8	3
To establish an uniform rule of naturalization and uniform laws on the subject of bankruptcies	1	8	4
To coin money, regulate its value and the value of foreign coin, and to fix the standard of weights and measures	1	8	5
To punish the counterfeiting the securities and current coin of the United States	1	8	6
To establish post-offices and post-roads	1	8	7
To promote the progress of science and the useful arts	1	8	8
To constitute tribunals inferior to the Supreme Court	1	8	9

	Art.	Sec.	Cl.
Congress [continued]. To define and punish piracies and felonies on the high seas, and to punish offences against the law of nations	1	8	10
To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water	1	8	11
To raise and support armies, but no appropriation of money to that use shall be for a longer term than two years	1	8	12
To provide and maintain a navy	1	8	13
To make rules for the government of the army and navy	1	8	14
To call out the militia to execute the laws, suppress insurrections, and repel invasions	1	8	15
To provide for organizing, arming, and equipping the militia	1	8	16
To exercise exclusive legislation over the district fixed for the seat of government, and over forts, magazines, arsenals, and dockyards	1	8	17
To make all laws necessary and proper to carry into execution all powers vested by the Constitution in the government of the United States.	1	8	18
No person holding any office under the United States shall accept of any present, emolument, office, or title of any kind from any foreign state, without the consent of	1	9	8
May determine the time of choosing the electors for president and vice-president, and the day on which they shall give their votes	2	1	3
The president may, on extraordinary occasions, convene either House of.	2	3	—
The manner in which the acts, records, and judicial proceedings of the states shall be proved, shall be prescribed by	4	1	—
New states may be admitted by Congress into this Union	4	3	2
Shall have power to make all needful rules and regulations respecting the territory or other property belonging to the United States	4	3	1
Amendments to the Constitution shall be proposed whenever it shall be deemed necessary by two thirds of both houses of	5	—	—
Persons engaged in insurrection or rebellion against the United States disqualified for senators or representatives in. [Amendments]	14	3	—
But such disqualifications may be removed by a vote of two thirds of both houses of. [Amendments]	14	3	—
Shall have power to enforce, by appropriate legislation, the Thirteenth Amendment. [Amendments]	13	2	—
Shall have power to enforce, by appropriate legislation, the Fourteenth Amendment. [Amendments]	14	5	—
Shall have power to enforce, by appropriate legislation, the Fifteenth Amendment. [Amendments]	15	2	—
Consent. No state shall be deprived of its equal suffrage in the Senate without its	5	—	—
Consent of the legislature of the state in which the same may be. Congress shall exercise exclusive authority over all places purchased for the erection of forts, magazines, arsenals, dockyards, and other needful buildings by the	1	8	17
Consent of the legislatures of the states and of Congress. No states shall be formed by the junction of two or more states or parts of states without the	4	3	1
Consent of Congress. No person holding any office of profit or trust under the United States shall accept of any present, emolument, office, or title of any kind whatever, from any king, prince, or foreign potentate, without the	1	9	8

	Art.	Sec.	Cl.
Consent of Congress [continued]. No state shall lay any imposts, or duties on imports, except what may be absolutely necessary for executing its inspection laws, without the	1	10	2
No state shall lay any duty of tonnage, keep troops or ships of war in time of peace, without the	1	10	3
No state shall enter into any agreement or compact with another state, or with a foreign power, without the	1	10	3
No state shall engage in war unless actually invaded, or in such imminent danger as will not admit of delay, without the	1	10	3
No new state shall be formed or erected within the jurisdiction of any other state, nor any state be formed by the junction of two or more states or parts of states, without the consent of the legislatures thereof, as well as the	4	3	1
Consent of the other. Neither house, during the session of Congress, shall adjourn for more than three days, nor to any other place than that in which they shall be sitting, without the	1	5	4
Consent of the owner. No soldier shall be quartered in time of peace in any house without the. [Amendments]	3	—	—
Consent of the Senate. The president shall have power to make treaties, by and with the advice and	2	2	2
The president shall appoint ambassadors, other public ministers and consuls, judges of the Supreme Court, and all other officers created by law and not otherwise herein provided for, by and with the advice and	2	2	2
Constitution, in the government of the United States, or in any department or officer thereof. Congress shall have power to pass all laws necessary to the execution of the powers vested by the	1	8	18
Constitution, shall be eligible to the office of president. No person except a natural-born citizen, or a citizen at the time of the adoption of the	2	1	4
Constitution. The president, before he enters upon the execution of his office, shall take an oath to preserve, protect, and defend the	2	1	7
Constitution, laws, and treaties of the United States. The judicial power shall extend to all cases arising under the	3	2	1
Constitution shall be so construed as to prejudice any claims of the United States, or of any state (in respect to territory or other property of the United States). Nothing in the	4	3	2
Constitution. The manner in which amendments may be proposed and ratified	5	—	—
Constitution as under the Confederation shall be valid. All debts and engagements contracted before the adoption of the	6	—	1
Constitution and the laws made in pursuance thereof, and all treaties made, or which shall be made, by the United States, shall be the supreme law of the land. The	6	—	2
The judges in every state, anything in the constitution or laws of a state to the contrary notwithstanding, shall be bound thereby	6	—	2
Constitution. All officers, legislative, executive, and judicial, of the United States, and of the several states, shall be bound by an oath to support the	6	—	3
But no religious test shall ever be required as a qualification for any office or public trust	6	—	3

	Art.	Sec.	Cl.
Constitution, between the states so ratifying the same. The ratification of the conventions of nine states shall be sufficient for the establishment of the	7	—	—
Constitution of certain rights shall not be construed to deny or disparage others retained by the people. The enumeration in the. [Amendments]	9	—	—
Constitution, nor prohibited by it to the states, are reserved to the states respectively or to the people. Powers not delegated to the United States by the. [Amendments]	10	—	—
Constitution, and then engaged in rebellion against the United States. Disqualification for office imposed upon certain classes of persons who took an oath to support the. [Amendments]	14	3	—
Constitution. Done in convention by the unanimous consent of the states present, September 17, 1787	—	—	—
Contracts. No state shall pass any *ex post facto* law, or law impairing the obligation of	1	10	1
Controversies to which the United States shall be a party: 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; between a state or its citizens and foreign states, citizens, or subjects. The judicial power shall extend to	3	2	1
Convene Congress or either house, on extraordinary occasions. The president may	2	3	—
Convention for proposing amendments to the Constitution. Congress, on the application of two thirds of the legislatures of the states, may call a	5	—	—
Convention, by the unanimous consent of the states present on the 17th of September, 1787. Adoption of the Constitution in	7	—	—
Conventions of nine states shall be sufficient for the establishment of the Constitution. The ratification of the	7	—	—
Conviction in cases of impeachment shall not be had without the concurrence of two thirds of the members present	1	3	6
Copyrights to authors for limited times. Congress shall have power to provide for	1	8	8
Corruption of blood. Attainder of treason shall not work	3	3	2
Counsel for his defence. In all criminal prosecutions the accused shall have the assistance of. [Amendments]	6	—	—
Counterfeiting the securities and current coin of the United States. Congress shall provide for the punishment of	1	8	6
Courts. Congress shall have power to constitute tribunals inferior to the Supreme Court	1	8	9
Courts of law. Congress may by law vest the appointment of such inferior officers as they think proper in the president alone, in the heads of departments, or in the	2	2	2
Courts as Congress may establish. The judicial power of the United States shall be vested in one Supreme Court and such inferior	3	1	—
Courts. The judges of the Supreme and inferior courts shall hold their offices during good behavior	3	1	—
Their compensation shall not be diminished during their continuance in office	3	1	—

	Art.	Sec.	Cl.
Credit. No state shall emit bills of	1	10	1
Credit of the United States. Congress shall have power to borrow money on the	1	8	2
Credit shall be given in every other state to the public acts, records, and judicial proceedings of each state. Full faith and	4	1	—
Crime, unless on a presentment of a grand-jury. No person shall be held to answer for a capital or otherwise infamous. [Amendments]	5	—	—
Except in cases in the military and naval forces, or in the militia, when in actual service. [Amendments]	5	—	—
Crimes and misdemeanors. The president, vice-president, and all civil officers shall be removed on impeachment for and conviction of treason, bribery, or other	2	4	—
Crimes, except in cases of impeachment, shall be tried by jury. All	3	2	3
They shall be tried in the state within which they may be committed	3	2	3
When not committed in a state, they shall be tried at the places which Congress may by law have provided	3	2	3
Criminal prosecutions, the accused shall have a speedy and public trial by jury in the state and district where the crime was committed. In all. [Amendments]	6	—	—
He shall be informed of the nature and cause of the accusation. [Amendments]	6	—	—
He shall be confronted with the witnesses against him. [Amendments]	6	—	—
He shall have compulsory process for obtaining witnesses in his favor. [Amendments]	6	—	—
He shall have the assistance of counsel in his defence. [Amendments]	6	—	—
Criminate himself. No person as a witness shall be compelled to. [Amendments]	5	—	—
Cruel and unusual punishments inflicted. Excessive bail shall not be required, nor excessive fines imposed, nor. [Amendments]	8	—	—

D.

Danger as will not admit of delay. No state shall, without the consent of Congress, engage in war, unless actually invaded, or in such imminent	1	10	3
Day on which they shall vote for president and vice-president, which shall be the same throughout the United States. Congress may determine the time of choosing the electors, and the	2	1	3
Day to day, and may be authorized to compel the attendance of absent members. A smaller number than a quorum of each house may adjourn from	1	5	1
Death, resignation, or inability of the president, the powers and duties of his office shall devolve on the vice-president. In case of the	2	1	5
Death, resignation, or inability of the president. Congress may provide by law for the case of the removal	2	1	5
Debt of the United States, including debts for pensions and bounties incurred in suppressing insurrection or rebellion, shall not be questioned. The validity of the public. [Amendments]	14	4	—
Debts. No state shall make anything but gold and silver coin a tender in payment of	1	10	1
Debts and provide for the common defence and general welfare of the United States. Congress shall have power to pay the	1	8	1
Debts and engagements contracted before the adoption of this Constitution			

	Art.	Sec.	Cl.
shall be as valid against the United States under it as under the Confederation	6	—	1
Debts or obligations incurred in aid of insurrection or rebellion against the United States, or claims for the loss or emancipation of any slave. Neither the United States nor any state shall assume or pay any. [Amendments]	14	4	—
Declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water. Congress shall have power to	1	8	11
Defence, promote the general welfare, etc. To insure the common. [Preamble]	—	—	—
Defence and general welfare throughout the United States. Congress shall have power to pay the debts and provide for the common	1	8	1
Defence. In all criminal prosecutions the accused shall have the assistance of counsel for his. [Amendments]	6	—	—
Delaware entitled to one representative in the first Congress	1	2	3
Delay. No state shall, without the consent of Congress, engage in war unless actually invaded, or in such imminent danger as will not admit of	1	10	3
Delegated to the United States, nor prohibited to the states, are reserved to the states or to the people. The powers not. [Amendments]	10	—	—
Deny or disparage others retained by the people. The enumeration in the Constitution of certain rights shall not be construed to. [Amendments]	9	—	—
Departments upon any subject relating to their duties. The president may require the written opinion of the principal officers in each of the executive	2	2	1
Departments. Congress may by law vest the appointment of inferior officers in the heads of	2	2	2
Direct tax shall be laid unless in proportion to the census or enumeration. No capitation or other	1	9	4
Direct taxes and representatives, how apportioned among the several states. [Repealed by the second section of the Fourteenth Amendment]	1	2	3
Disability of the president and vice-president. Provisions in case of the	2	1	5
Disability. No person shall be a senator or representative in Congress, or presidential elector, or hold any office, civil or military, under the United States, or any state, who, having previously taken an oath as a legislative, executive, or judicial officer of the United States, or of any state, to support the Constitution, afterwards engaged in insurrection or rebellion against the United States. [Amendments]	14	3	—
But Congress may, by a vote of two thirds of each house, remove such. [Amendments]	14	3	—
Disagreement between the two houses as to the time of adjournment, the president may adjourn them to such time as he may think proper. In case of	2	3	—
Disorderly behavior. Each house may punish its members for	1	5	2
And with the concurrence of two thirds, expel a member	1	5	2
Disparage others retained by the people. The enumeration in the Constitution of certain rights shall not be construed to deny or. [Amendments]	9	—	—
Disqualification. No senator or representative shall, during the time for which he was elected, be appointed to any office under the United States which shall have been created or its emoluments increased during such term	1	6	2

	Art.	Sec.	Cl.
Disqualification [continued]. No person holding any office under the United States shall be a member of either house during his continuance in office	1	6	2
No person shall be a member of either house, presidential elector, or hold any office under the United States, or any state, who, having previously sworn to support the Constitution, afterwards engaged in insurrection or rebellion. [Amendments]	14	3	—
But Congress may, by a vote of two thirds of each house, remove such disability. [Amendments]	14	3	—
District of Columbia. Congress shall exercise exclusive legislation in all cases over the	1	8	17
Dockyards. Congress shall have exclusive authority over all places purchased for the erection of	1	8	17
Domestic tranquillity, provide for the common defence, etc. To insure. [Preamble]	—	—	—
Domestic violence. The United States shall protect each state against invasion and	4	4	—
Due process of law. No person shall be compelled, in any criminal case, to be a witness against himself, nor be deprived of life, liberty, or property without. [Amendments]	5	—	—
No state shall deprive any person of life, liberty, or property without. [Amendments]	14	1	—
Duties and powers of the office of president, in case of his death, removal, or inability to act, shall devolve on the vice-president	2	1	5
In case of the disability of the president and vice-president, Congress shall declare what officer shall act	2	1	5
Duties, imposts, and excises. Congress shall have power to lay and collect taxes	1	8	1
Shall be uniform throughout the United States	1	8	1
Duties in another state. Vessels clearing in the ports of one state shall not be obliged to pay	1	9	6
On imports and exports, without the consent of Congress, except where necessary for executing its inspection laws. No state shall lay any	1	10	2
Duties on imports or exports. The net produce of all such duties shall be for the use of the Treasury of the United States	1	10	2
All laws laying such duties shall be subject to the revision and control of Congress	1	10	2
Duties shall be laid on articles exported from any state. No tax or	1	9	5
Duty of tonnage without the consent of Congress. No state shall lay any	1	10	3

E.

Election of president and vice-president. Congress may determine the day for the	2	1	3
Shall be the same throughout the United States. The day of the	2	1	3
Elections for senators and representatives. Returns and qualifications of its own members. Each house shall be judge of the	1	5	1
Elections for senators and representatives. The legislatures of the states shall prescribe the times, places, and manner of holding	1	4	1
But Congress may, at any time, alter such regulations, except as to the places of choosing senators	1	4	1
Electors for members of the House of Representatives. Qualifications of	1	2	1

	Art.	Sec.	Cl.
Electors for president and vice-president. 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	2	1	2
But no senator or representative, or person holding an office of trust or profit under the United States, shall be appointed an elector	2	1	2
Congress may determine the time of choosing the electors and the day on which they shall give their votes	2	1	3
Which day shall be the same throughout the United States	2	1	3
The electors shall meet in their respective states and vote by ballot for president and vice-president, one of whom, at least, shall not be an inhabitant of the same state with themselves. [Amendments]	12	—	—
Electors shall name, in their ballots, the person voted for as president; and in distinct ballots the person voted for as vice-president. [Amendments]	12	—	—
They shall make distinct lists of the persons voted for as president and of persons voted for as vice-president, which they shall sign and certify, and transmit sealed to the seat of government, directed to the president of the Senate. [Amendments]	12	—	—
No person having taken an oath as a legislative, executive, or judicial officer of the United States, or of any state, and afterwards engaged in insurrection or rebellion against the United States, shall be an elector	14	3	—
But Congress may, by a vote of two thirds of each house, remove such disability. [Amendments]	14	3	—
Emancipation of any slave shall be held to be illegal and void. Claims for the loss or. [Amendments]	14	4	—
Emit bills of credit. No state shall	1	10	1
Emolument of any kind from any king, prince, or foreign state, without the consent of Congress. No person holding any office under the United States shall accept any	1	9	8
Enemies. Treason shall consist in levying war against the United States, in adhering to, or giving aid and comfort to, their	3	3	1
Engagements contracted before the adoption of this Constitution shall be valid. All debts and	6	—	1
Enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people. The. [Amendments]	9	—	—
Enumeration of the inhabitants shall be made within three years after the first meeting of Congress, and within every subsequent term of ten years thereafter	1	2	3
Ratio of representation not to exceed one for every 30,000 until the first enumeration shall be made	1	2	3
Equal protection of the laws. No state shall deny to any person within its jurisdiction the. [Amendments]	14	1	—
Equal suffrage in the Senate. No state shall be deprived without its consent of its	5	—	—
Establishment of this Constitution between the states ratifying the same. The ratification of nine states shall be sufficient for the	7	—	—
Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted. [Amendments]	8	—	—

	Art.	Sec.	Cl.
Excises. Congress shall have power to lay and collect taxes, duties, imposts, and	1	8	1
Shall be uniform throughout the United States. All duties, imposts, and	1	8	1
Exclusive legislation, in all cases, over such district as may become the seat of government. Congress shall exercise	1	8	17
Exclusive legislation over all places purchased for the erection of forts, magazines, arsenals, dockyards, and other needful buildings. Congress shall exercise	1	8	17
Executive and judicial officers of the United States and of the several states shall be bound by an oath to support the Constitution	6	—	3
Executive departments. On subjects relating to their duties the president may require the written opinions of the principal officers in each of the	2	2	1
Congress may by law vest the appointment of inferior officers in the heads of	2	2	2
Executive of a state. The United States shall protect each state against invasion and domestic violence on the application of the legislature or the	4	4	—
Executive power shall be vested in a President of the United States of America. The	2	1	1
Expel a member. Each house, with the concurrence of two thirds, may	1	5	2
Expenditures of public money shall be published from time to time. A regular statement of the receipts and	1	9	7
Exportations from any state. No tax or duty shall be laid on	1	9	5
Exports or imports, except upon certain conditions. No state shall, without the consent of Congress, lay any duties on	1	10	2
Laid by any state shall be for the use of the Treasury. The net produce of all duties on	1	10	2
Shall be subject to the revision and control of Congress. All laws of the states laying duties on	1	10	2
Ex post facto law shall be passed. No bill of attainder or	1	9	3
Ex post facto law, or law impairing the obligation of contracts. No state shall pass any bill of attainder	1	10	1
Extraordinary occasions. The president may convene both houses or either house of Congress on	2	3	—

F.

Faith and credit in each state shall be given to the acts, records, and judicial proceedings of another state. Full	4	1	—
Felonies committed on the high seas. Congress shall have power to define and punish piracies and	1	8	10
Felony, and breach of the peace. Members of Congress shall not be privileged from arrest for treason	1	6	1
Fines. Excessive fines shall not be imposed. [Amendments]	8	—	—
Foreign coin. Congress shall have power to coin money, fix the standard of weights and measures, and to regulate the value of	1	8	5
Foreign nations, among the states, and with the Indian tribes. Congress shall have power to regulate commerce with	1	8	3
Foreign power. No state shall, without the consent of Congress, enter into any compact or agreement with any	1	10	3

	Art.	Sec.	Cl.
Forfeiture, except during the life of the person attainted. Attainder of treason shall not work	3	3	2
Formation of new states. Provisions relating to the	4	3	1
Form of government. The United States shall guarantee to every state in this Union a republican	4	4	—
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	4	4	—
Forts, magazines, arsenals, dockyards, and other needful buildings. Congress shall exercise exclusive authority over all places purchased for the erection of	1	8	17
Freedom of speech or the press. Congress shall make no law abridging the. [Amendments]	1	—	—
Free state, the right of the people to keep and bear arms shall not be infringed. A well-regulated militia being necessary to the security of a. [Amendments]	2	—	—
Fugitives from crime found in another state shall, on demand, be delivered up to the authorities of the state from which they may flee	4	2	2
Fugitives from service or labor in one state, escaping into another state, shall be delivered up to the party to whom such service or labor may be due.	4	2	3
G.			
General welfare and secure the blessings of liberty, etc. To promote the. [Preamble]	—	—	—
General welfare. Congress shall have power to provide for the common defence and	1	8	1
Georgia shall be entitled to three representatives in the first Congress	1	2	3
Gold and silver coin a tender in payment of debts. No state shall make anything but	1	10	1
Good behavior. The judges of the Supreme and inferior courts shall hold their offices during	3	1	—
Government. The United States shall guarantee to every state in this Union a republican form of	4	4	—
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	4	4	—
Grand jury. No person shall be held to answer for a capital or otherwise infamous crime, unless on the presentment of a. [Amendments]	5	—	—
Except in cases arising in the land and naval forces, and in the militia when in actual service. [Amendments]	5	—	—
Guarantee to every state in this Union a republican form of government. The United States shall	4	4	—
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	4	4	—
H.			
Habeas corpus shall not be suspended unless in cases of rebellion or invasion. The writ of	1	9	2
Heads of departments. Congress may, by law, vest the appointment of inferior officers in the	2	2	2

	Art.	Sec.	Cl.
Heads of departments. On any subject relating to their duties, the president may require the written opinion of the principal officers in each of the executive departments	2	2	1
High crimes and misdemeanors. The president, vice-president, and all civil officers shall be removed on impeachment for and conviction of treason, bribery, or other	2	4	—
House of Representatives. Congress shall consist of a Senate and	1	1	—
Shall be composed of members chosen every second year	1	2	1
Qualifications of electors for members of the	1	2	1
No person shall be a member who shall not have attained the age of twenty-five years, and been seven years a citizen of the United States	1	2	2
The executive of the several states shall issue writs of election to fill vacancies in the	1	2	4
Shall choose their Speaker and other officers	1	2	5
Shall have the sole power of impeachment	1	2	5
Shall be the judge of the elections, returns, and qualifications of its own members	1	5	1
A majority shall constitute a quorum to do business	1	5	1
Less than a majority may adjourn from day to day, and compel the attendance of absent members	1	5	1
May determine its own rules of proceedings	1	5	2
May punish its members for disorderly behavior, and, with the concurrence of two thirds, expel a member	1	5	2
Shall keep a journal of its proceedings	1	5	3
Shall not adjourn for more than three days during the session of Congress without the consent of the Senate	1	5	4
Members shall not be questioned for any speech or debate in either house, or in any other place	1	6	1
No person holding any office under the United States shall, while holding such office, be a member of the	1	6	2
No person, while a member of either house, shall be appointed to an office which shall have been created, or the emoluments increased, during his membership	1	6	2
All bills for raising revenue shall originate in the	1	7	1
The votes for president and vice-president shall be counted in the presence of the Senate and. [Amendments]	12	—	—
If no person have a majority of electoral votes, then from the three highest on the list the House of Representatives shall immediately, by ballot, choose a president. [Amendments]	12	—	—
They shall vote by states, each state counting one vote. [Amendments].	12	—	—
A quorum shall consist of a member or members from two thirds of the states, and a majority of all the states shall be necessary to the choice of a president. [Amendments]	12	—	—
No person having as a legislative, executive, or judicial officer of the United States, or of any state, taken an oath to support the Constitution, and afterwards engaged in insurrection or rebellion against the United States, shall be a member of the. [Amendments]	14	3	—
But Congress may, by a vote of two thirds of each house, remove such disability. [Amendments]	14	3	—

I.

	Art.	Sec.	Cl.
Imminent danger as will not admit of delay. No state shall, without the consent of Congress, engage in war, unless actually invaded or in such	1	10	3
Immunities. Members of Congress 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 and returning from the same	1	6	1
No soldier shall be quartered in any house without the consent of the owner in time of peace. [Amendments]	3	—	—
No person shall be twice put in jeopardy of life and limb for the same offenee. [Amendments]	5	—	—
All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States, and of the state in which they reside. [Amendments]	14	1	—
No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States. [Amendments].	14	1	—
Nor shall any state deprive any person of life, liberty, or property without due process of law. [Amendments]	14	1	—
Nor deny to any person within its jurisdiction the equal protection of the laws. [Amendments]	14	1	—
Impeachment for and conviction of treason, bribery, and other high crimes and misdemeanors. The president, vice-president, and all civil officers shall be removed upon	2	4	—
Impeachment. The president may grant reprieves and pardons except in cases of	2	2	1
The House of Representatives shall have the sole power of	1	2	5
The trial of all crimes shall be by jury, except in cases of	3	2	3
Impeachments. The Senate shall have the sole power to try all	1	3	6
The Senate shall be on oath, or affirmation, when sitting for the trial of.	1	3	6
When the President of the United States is tried the chief-justice shall preside	1	3	6
No person shall be convicted without the concurrence of two thirds of the members present	1	3	6
Judgment shall not extend beyond removal from office and disqualification to hold office	1	3	7
But the party convicted shall be liable to indictment and punishment according to law	1	3	7
Importation of slaves prior to 1808 shall not be prohibited by the Congress.	1	9	1
But a tax or duty of ten dollars for each person may be imposed on such.	1	9	1
Imports or exports except what may be absolutely necessary for executing its inspection laws. No state shall, without the consent of Congress, lay any imposts or duties on	1	10	2
Imports or exports laid by any state shall be for the use of the treasury. The net produce of all duties on	1	10	2
Imports or exports shall be subject to the revision and control of Congress. All laws of states laying duties on	1	10	2
Imposts and excises. Congress shall have power to lay and collect taxes, duties	1	8	1
Shall be uniform throughout the United States. All taxes, duties	1	8	1
Inability of the president, the powers and duties of his office shall devolve on the vice-president. In case of the death, resignation, or	2	1	5

	Art.	Sec.	Cl.
Inability of the president or vice-president. Congress may provide by law for the case of the removal, death, resignation, or	2	1	5
Indian tribes. Congress shall have power to regulate commerce with the	1	8	3
Indictment or presentment of a grand jury. No person shall be held to answer for a capital or infamous crime unless on. [Amendments]	5	—	—
Indictment. Except in cases arising in the land or naval forces, and in the militia when in actual service. [Amendments]	5	—	—
Indictment, trial, judgment, and punishment, according to law. The party convicted in case of impeachment shall nevertheless be liable and subject to	1	3	7
Infamous crime unless on presentment or indictment of a grand jury. No person shall be held to answer for a capital or. [Amendments]	5	—	—
Inferior courts. Congress shall have power to constitute tribunals inferior to the Supreme Court	1	8	9
Inferior courts as Congress may establish. The judicial power of the United States shall be vested in one supreme court and such	3	1	—
The judges of both the Supreme and inferior courts shall hold their offices during good behavior	3	1	—
Their compensation shall not be diminished during their continuance in office	3	1	—
Inferior officers in the courts of law, in the president alone, or in the heads of departments. Congress, if they think proper, may by law vest the appointment of	2	2	2
Inhabitant of the state for which he shall be chosen. No person shall be a senator who shall not have attained the age of thirty years, been nine years a citizen of the United States, and who shall not, when elected, be an	1	3	3
Insurrection or rebellion against the United States. No person shall be a senator or representative in Congress, or presidential elector, or hold any office, civil or military, under the United States, or any state, who, having taken an oath as a legislative, executive, or judicial officer of the United States, or of a state, afterwards engaged in. [Amendments].	14	3	—
But Congress may, by a vote of two thirds of each house, remove such disabilities. [Amendments]	14	3	—
Debts declared illegal and void which were contracted in aid of. [Amendments]	14	4	—
Insurrections and repel invasions. Congress shall provide for calling forth the militia to suppress	1	8	15
Invasion. No state shall, without the consent of Congress, engage in war unless actually invaded, or in such imminent danger as will not admit of delay	1	10	3
Invasion. The writ of habeas corpus shall not be suspended unless in case of rebellion or	1	9	1
Invasion and domestic violence. The United States shall protect each state against	4	4	—
Invasions. Congress shall provide for calling forth the militia to suppress insurrections and repel	1	8	15
Inventors and authors in their inventions and writings. Congress may pass laws to secure for limited times exclusive rights to	1	8	8
Involuntary servitude, except as a punishment for crime, abolished in the United States. Slavery and. [Amendments]	13	1	—

J.

	Art.	Sec.	Cl.
Jeopardy of life and limb for the same offence. No person shall be twice put in. [Amendments]	5	—	—
Journal of its proceedings. Each house shall keep a	1	5	3
Judges in every state shall be bound by the Constitution, the laws and treaties of the United States, which shall be the supreme law of the land	6	—	2
Judges of the Supreme and inferior courts shall hold their offices during good behavior	3	1	—
Their compensation shall not be diminished during their continuance in office	3	1	—
Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold any office of honor, trust, or profit under the United States	1	3	7
But the party convicted shall nevertheless be liable and subject to indictment, trial, judgment, and punishment according to law	1	3	7
Judicial and executive officers of the United States and of the several states shall be bound by an oath to support the Constitution	6	—	3
Judicial power of the United States. Congress shall have power to constitute tribunals inferior to the Supreme Court	1	8	9
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	3	1	—
The judges of the Supreme and inferior courts shall hold their offices during good behavior	3	1	—
Their compensation shall not be diminished during their continuance in office	3	1	—
It shall extend to all cases in law and equity arising under the Constitution, laws, and treaties of the United States	3	2	1
To all cases affecting ambassadors, other public ministers and consuls.	3	2	1
To all cases of admiralty and maritime jurisdiction	3	2	1
To controversies to which the United States shall be a party	3	2	1
To controversies between two or more states	3	2	1
To controversies between a state and citizens of another state	3	2	1
To controversies between citizens of different states	3	2	1
To citizens of the same state claiming lands under grants of different states	3	2	1
To controversies between a state or its citizens and foreign states, citizens, or subjects	3	2	1
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	3	2	2
In all other cases before mentioned it shall have appellate jurisdiction, both as to law and fact, with such exceptions and under such regulations as Congress shall make	3	2	2
The trial of all crimes, except in cases of impeachment, shall be by jury.	3	2	3
The trial shall be held in the state where the crimes shall have been committed	3	2	3
But when not committed in a state, the trial shall be at such place or places as Congress may by law have directed	3	2	3
The judicial power of the United States shall not be held to extend to any suit in law or equity commenced or prosecuted against one of the			

	Art.	Sec.	Cl.
United States by citizens of another state, or by citizens or subjects of any foreign state. [Amendments]	11	—	—
Judicial proceedings of every other state. Full faith and credit shall be given in each state to the acts, records, and	4	1	—
Congress shall prescribe the manner of proving such acts, records, and proceedings	4	1	—
Judiciary. The Supreme Court shall have original jurisdiction in all cases affecting ambassadors, other public ministers and consuls, and those in which a state may be a party	3	2	2
The Supreme Court shall have appellate jurisdiction both as to law and fact, with such exceptions and regulations as Congress may make	3	2	2
Junction of two or more states or parts of states without the consent of the legislatures and of Congress. No state shall be formed by the	4	3	1
Jurisdiction of another state. No new state shall, without the consent of Congress, be formed or erected within the	4	3	1
Jurisdiction, both as to law and fact, with such exceptions and under such regulations as Congress may make. The Supreme Court shall have appellate	3	2	2
Jurisdiction. In all cases affecting ambassadors, and other public ministers and consuls, and in cases where a state is a party, the Supreme Court shall have original	3	2	2
Jury. The trial of all crimes, except in cases of impeachment, shall be by.	3	2	3
In all criminal prosecutions the accused shall have a speedy and public trial by. [Amendments]	6	—	—
All suits at common law, where the value exceeds twenty dollars, shall be tried by. [Amendments]	7	—	—
Where a fact has been tried by a jury it shall not be re-examined except by the rules of the common law. [Amendments]	7	—	—
Just compensation. Private property shall not be taken for public use without. [Amendments]	5	—	—
Justice, insure domestic tranquillity, etc. To establish. [Preamble]	—	—	—

L.

Labor, in one state, escaping into another state, shall be delivered up to the party to whom such service or labor may be due. Fugitives from service or	4	2	3
Land and naval forces. Congress shall make rules for the government and regulation of the	1	8	14
Law and fact, with exceptions and under regulations to be made by Congress. The Supreme Court shall have appellate jurisdiction as to	3	2	2
Law of the land. The Constitution, the laws made in pursuance thereof, and treaties of the United States, shall be the supreme	6	—	2
The judges in every state shall be bound thereby	6	—	2
Law of nations. Congress shall provide for punishing offences against the.	1	8	10
Laws. Congress shall provide for calling forth the militia to suppress insurrection, repel invasion, and to execute the	1	8	15
Laws necessary to carry into execution the powers vested in the government, or in any department or officer of the United States. Congress shall make all	1	8	18
Laws and treaties of the United States. The judicial power shall extend to all cases in law and equity arising under the Constitution or the	3	2	1

	Art.	Sec.	Cl.
Legal tender in payment of debts. No state shall make anything but gold and silver coin a	1	10	1
Legislation in all cases over such district as may become the seat of government. Congress shall exercise exclusive	1	8	17
Over all places purchased for the erection of forts, magazines, arsenals, dockyards, and other needful buildings. Congress shall exercise exclusive	1	8	17
Legislation. Congress shall have power to make all laws necessary and proper for carrying into execution all the powers vested by the Constitution in the government of the United States, or in any department or officer thereof	1	8	18
Legislation. Congress shall have power to enforce the Thirteenth Amendment by appropriate. [Amendments]	13	2	—
Congress shall have power to enforce the Fourteenth Amendment by appropriate. [Amendments]	14	5	—
Congress shall have power to enforce the Fifteenth Amendment by appropriate. [Amendments]	15	2	—
Legislative powers herein granted shall be vested in Congress. All	1	1	—
Legislature, or the Executive (when the legislature cannot be convened). The United States shall protect each state against invasion and domestic violence, on the application of the	4	4	—
Legislatures of two thirds of the states, Congress shall call a convention for proposing amendments to the Constitution. On the application of the.	5	—	—
Letters of marque and reprisal. Congress shall have power to grant	1	8	11
Letters of marque and reprisal. No state shall grant	1	10	1
Liberty to ourselves and our posterity, etc. To secure the blessings of. [Preamble]	—	—	—
Life, liberty, and property without due process of law. No person shall be compelled, in any criminal case, to be a witness against himself, or be deprived of. [Amendments]	5	—	—
No state shall abridge the privileges or immunities of citizens of the United States, or deprive any person of. [Amendments]	14	1	—
Life or limb for the same offence. No person shall be twice put in jeopardy of. [Amendments]	5	—	—
Loss or emancipation of any slave shall be held to be illegal and void. Claims for the. [Amendments]	14	4	—

M.

Magazines, arsenals, dockyards, and other needful buildings. Congress shall have exclusive authority over all places purchased for the erection of.	1	8	17
Majority of each house shall constitute a quorum to do business. A	1	5	1
But a smaller number may adjourn from day to day and may be authorized to compel the attendance of absent members	1	5	1
Majority of all the states shall be necessary to a choice. When the choice of a president shall devolve on the House of Representatives, a quorum shall consist of a member or members from two thirds of the states; but a. [Amendments]	12	—	—
When the choice of a vice-president shall devolve on the Senate, a quorum shall consist of two thirds of the whole number of senators, and a majority of the whole number shall be necessary to a choice. [Amendments]	12	—	—

	Art.	Sec.	Cl.
Maritime jurisdiction. The judicial power shall extend to all cases of admiralty and	3	2	1
Marque and reprisal. Congress shall have power to grant letters of	1	8	11
No state shall grant any letters of	1	10	1
Maryland entitled to six representatives in the first Congress	1	2	3
Massachusetts entitled to eight representatives in the first Congress	1	2	3
Measures. Congress shall fix the standard of weights and	1	8	5
Meeting of Congress. 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	1	4	2
Members of Congress and of state legislatures shall be bound by oath or affirmation to support the Constitution	6	—	3
Militia to execute the laws, suppress insurrections, and repel invasions. Congress shall provide for calling forth the	1	8	15
Congress shall provide for organizing, arming, and disciplining the	1	8	16
Congress shall provide for governing such part of them as may be employed by the United States	1	8	16
Reserving to the states the appointment of the officers and the right to train the militia according to the discipline prescribed by Congress	1	8	16
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. [Amendments]	2	—	—
Misdemeanors. The president, vice-president, and all civil officers shall be removed on impeachment for and conviction of treason, bribery, or other high crimes and	2	4	—
Money on the credit of the United States. Congress shall have power to borrow	1	8	2
Regulate the value thereof and of foreign coin. Congress shall have power to coin	1	8	5
Shall be drawn from the treasury but in consequence of appropriations made by law. No	1	9	7
Shall be published from time to time. A regular statement and account of receipts and expenditures of public	1	9	7
For raising and supporting armies. No appropriation of money shall be for a longer term than two years	1	8	12
N.			
Nations. Congress shall have power to regulate commerce with foreign	1	8	3
Congress shall provide for punishing offences against the law of	1	8	10
Natural-born citizen, or a citizen at the adoption of the Constitution, shall be eligible to the office of president. No person except a	2	1	4
Naturalization. Congress shall have power to establish a uniform rule of	1	8	4
Naturalized in the United States, and subject to their jurisdiction, shall be citizens of the United States and of the states in which they reside. All persons born, or. [Amendments]	14	1	—
Naval forces. Congress shall make rules and regulations for the government and regulation of the land and	1	8	14
Navy. Congress shall have power to provide and maintain a	1	8	13
New Hampshire entitled to three representatives in the first Congress	1	2	3
New Jersey entitled to four representatives in the first Congress	1	2	3
New states may be admitted by Congress into this Union	4	3	1

	Art.	Sec.	Cl.
New states [continued]. But no new state shall be formed within the jurisdiction of another state without the consent of Congress	4	3	1
Nor shall any state be formed by the junction of two or more states, or parts of states, without the consent of the legislatures and of Congress.	4	3	1
New York entitled to six representatives in the first Congress	1	2	3
Nobility shall be granted by the United States. No title of	1	9	8
No state shall grant any title of	1	10	1
Nominations for office by the president. The president shall nominate, and, by and with the advice and consent of the Senate, shall appoint ambassadors and other public officers	2	2	2
He may grant commissions to fill vacancies that happen in the recess of the Senate, which shall expire at the end of their next session	2	2	3
North Carolina entitled to five representatives in the first Congress	1	2	3
Number of electors for president and vice-president in each state shall be equal to the number of senators and representatives to which such state may be entitled in Congress	2	1	2
O.			
Oath of office of the President of the United States. Form of the	2	1	7
Oath or affirmation. No warrants shall be issued except upon probable cause, supported by. [Amendments]	4	—	—
Oath or affirmation to support the Constitution. Senators and representatives, members of state legislatures, executive and judicial officers of the United States and of the several states, shall be bound by	6	—	3
But no religious test shall ever be required as a qualification for office.	6	—	3
The Senators, when sitting to try impeachment, shall be on	1	3	6
Objections. If he shall not approve it, the president shall return the bill to the house in which it originated with his	1	7	2
Obligation of Contracts. No state shall pass any *ex post facto* law, or law impairing the	1	10	1
Obligations incurred in aid of insurrection or rebellion against the United States to be held illegal and void. All debts or. [Amendments]	14	4	—
Offence. No person shall be twice put in jeopardy of life or limb for the same. [Amendments]	5	—	—
Offences against the law of nations. Congress shall provide for punishing	1	8	10
Offences against the United States, except in cases of impeachment. The president may grant reprieves or pardons for	2	2	1
Office under the United States. No person shall be a member of either house while holding any civil	1	6	2
No senator or representative shall be appointed to any office under the United States which shall have been created, or its emoluments increased, during the term for which he is elected	1	6	2
Or title of any kind from any king, prince, or foreign state, without the consent of Congress. No person holding any office under the United States shall accept of any present, emolument	1	9	8
Office of president, in case of his removal, death, resignation, or inability, shall devolve on the vice-president. The powers and duties of the	2	1	5
During the term of four years. The president and vice-president shall hold	2	1	1
Of trust or profit under the United States, shall be an elector for president and vice-president. No person holding an	2	1	2

	Art.	Sec.	Cl.
Office, civil or military, under the United States, or any state, who had taken an oath as a legislative, executive, or judicial officer of the United States, or of any state, and afterwards engaged in insurrection or rebellion. No person shall be a senator, representative, or presidential elector, or hold any. [Amendments]	14	3	—
Officers in the president alone, in the courts of law, or in the heads of departments. Congress may vest the appointment of such inferior	2	2	2
Officers of the United States shall be removed on impeachment for and conviction of treason, bribery, or other high crimes and misdemeanors. The president, vice-president, and all civil	2	4	—
The House of Representatives shall choose their speaker and other	1	2	5
The Senate, in the absence of the vice-president, shall choose a president *pro tempore*, and also their other	1	3	5
Offices becoming vacant in the recess of the Senate may be filled by the president, the commissions to expire at the end of the next session	2	2	3
One fifth of the members present, be entered on the journal of each house. The yeas and nays shall, at the desire of	1	5	3
Opinion of the principal officers in each of the executive departments on any subject relating to their duties. The president may require the written	2	2	1
Order, resolution, or vote (except on the question of adjournment), requiring the concurrence of the two houses, shall be presented to the president. Every	1	7	3
Original jurisdiction, in all cases affecting ambassadors, other public ministers and consuls, and in which a state may be a party. The Supreme Court shall have	3	2	2
Overt act, or on confession in open court. Conviction of treason shall be on the testimony of two witnesses to the	3	3	1

P.

Pardons, except in cases of impeachment. The president may grant reprieves and	2	2	1
Patent rights to inventors. Congress may pass laws for securing	1	8	8
Peace. Members of Congress shall not be privileged from arrest for treason, felony, and breach of the peace	1	6	1
No state shall, without the consent of Congress, keep troops or ships of war in time of	1	10	3
No soldier shall be quartered in any house without the consent of the owner in time of. [Amendments]	3	—	—
Pennsylvania entitled to eight representatives in the first Congress	1	2	3
Pensions and bounties, shall not be questioned. The validity of the public debt incurred in suppressing insurrection and rebellion against the United States, including the debt for. [Amendments]	14	4	—
People, peaceably to assemble and petition for redress of grievances, shall not be abridged by Congress. The right of the. [Amendments]	1	—	—
To keep and bear arms shall not be infringed. A well-regulated militia being necessary to the security of a free state, the right of the. [Amendments]	2	—	—
To be secure in their persons, houses, papers, and effects against unreasonable searches and seizures shall not be violated. The right of the. [Amendments]	4	—	—

	Art.	Sec.	Cl.
People. The enumeration of certain rights in the Constitution shall not be held to deny or disparage others retained by the. [Amendments]	9	—	—
Powers not delegated to the United States, nor prohibited to the states, are reserved to the states or to the. [Amendments]	10	—	—
Perfect union, etc. To establish a more. [Preamble]	—	—	—
Persons, houses, papers, and effects against unreasonable searches and seizures. The people shall be secure in their. [Amendments]	4	—	—
Persons as any state may think proper to admit, shall not be prohibited prior to 1808. The migration or importation of such	1	9	1
But a tax or duty of ten dollars shall be imposed on the importation of each of such	1	9	1
Petition for the redress of grievanees. Congress shall make no law abridging the right of the people peaceably to assemble and to. [Amendments]	1	—	—
Piracies and felonies committed on the high seas. Congress shall define and punish	1	8	10
Place than that in which the two houses shall be sitting. Neither house during the session shall, without the consent of the other, adjourn for more than three days, nor to any other	1	5	4
Places of choosing senators. Congress may by law make or alter regulations for the election of senators and representatives, except as to the	1	4	1
Ports of one state over those of another. Preference shall not be given by any regulation of commerce or revenue to the	1	9	6
Ports. Vessels clearing from the ports of one state shall not pay duties in another	1	9	6
Post-offices and post-roads. Congress shall establish	1	8	7
Powers and duties of the office shall devolve on the vice-president, on the removal, death, resignation, or inability of the president. The	2	1	5
Powers herein granted shall be vested in Congress. All legislative	1	1	—
Powers not delegated to the United States, nor prohibited to the states, are reserved to the states and to the people. [Amendments]	10	—	—
The enumeration of certain rights in this Constitution shall not be held to deny or disparage others retained by the people. [Amendments].	9	—	—
Powers vested by the Constitution in the government or in any department or officer of the United States. Congress shall make all laws necessary to carry into execution the	1	8	18
Preference, by any regulation of commerce or revenue, shall not be given to the ports of one state over those of another	1	9	6
Prejudice any claims of the United States or of any particular state in the territory or property of the United States. Nothing in this Constitution shall	4	3	2
Present, emolument, office, or title of any kind whatever from any king, prince, or foreign state. No person holding any office under the United States shall, without the consent of Congress, accept any	1	9	8
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. No person shall be held to answer for a capital or otherwise infamous crime, unless on a. [Amendments]	5	—	—
President of the United States. The senate shall choose a president *pro tempore* when the vice-president shall exercise the office of	1	3	5

	Art.	Sec.	Cl.
President of the United States [continued]. The chief-justice shall preside upon the trial of the	1	3	6
Shall approve and sign all bills passed by Congress before they shall become laws	1	7	2
Shall return to the house in which it originated, with his objections, any bill which he shall not approve	1	7	2
If not returned within ten days (Sundays excepted), it shall become a law, unless Congress shall adjourn before the expiration of that time.	1	7	2
Every order, resolution, or vote which requires the concurrence of both houses, except on a question of adjournment, shall be presented to the	1	7	3
If disapproved by him, shall be returned and proceeded on as in the case of a bill	1	7	3
The executive power shall be vested in a	2	1	1
He shall hold his office during the term of four years	2	1	1
In case of the removal of the president from office, or of his death, resignation, or inability to discharge the duties of his office, the vice-president shall perform the duties of	2	1	5
Congress may declare, by law, in case of the removal, death, resignation, or inability of the president, what officer shall act as	2	1	5
The president shall receive a compensation which shall not be increased or diminished during his term, nor shall he receive any other emolument from the United States	2	1	6
Before he enters upon the execution of his office he shall take an oath of office	2	1	7
Shall be commander-in-chief of the army and navy, and of the militia of the states when called into actual service	2	2	1
He may require the opinion, in writing, of the principal officers in each of the executive departments	2	2	1
He may grant reprieves or pardons for offences, except in cases of impeachment	2	2	1
He may make treaties, by and with the advice and consent of the Senate, two thirds of the senators present concurring	2	2	2
He may appoint, by and with the advice and consent of the Senate, ambassadors, other public ministers and consuls, judges of the Supreme Court, and all other officers whose appointments may be authorized by law and not herein provided for	2	2	2
Congress may vest the appointment of inferior officers in the	2	2	2
He may fill up all vacancies that may happen in the recess of the Senate by commissions which shall expire at the end of their next session	2	2	3
He shall give information to Congress of the state of the Union, and recommend measures	2	3	—
On extraordinary occasions he may convene both houses or either house of Congress	2	3	—
In case of disagreement between the two houses as to the time of adjournment, he may adjourn them to such time as he may think proper.	2	3	—
He shall receive ambassadors and other public ministers	2	3	—
He shall take care that the laws be faithfully executed	2	3	—
He shall commission all the officers of the United States	2	3	—
On impeachment for, and conviction of, treason bribery, or other high crimes and misdemeanors, shall be removed from office. The	2	4	—

	Art.	Sec.	Cl.
President of the United States [continued]. No person except a natural born citizen, or a citizen of the United States at the adoption of the Constitution, shall be eligible to the office of	2	1	4
No person who shall not have attained the age of thirty-five years, and been fourteen years a citizen of the United States, shall be eligible to the office of	2	1	4
President and vice-president. Manner of choosing. Each state, by its legislature, shall appoint a number of electors equal to the whole number of senators and representatives to which the state may be entitled in the Congress	2	1	2
No senator or representative or person holding an office of trust or profit under the United States shall be an elector	2	1	2
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	2	1	3
The electors shall meet in their respective states and vote by ballot for president and vice-president, one of whom, at least, shall not be an inhabitant of the same state with themselves. [Amendments]	12	—	—
They shall name, in distinct ballots, the person voted for as president, and the person voted for as vice-president. [Amendments]	12	—	—
They shall make distinct lists of the persons voted for as president and as vice-president, which they shall sign and certify, and transmit sealed to the president of the Senate at the seat of government. [Amendments]	12	—	—
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. [Amendments]	12	—	—
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. [Amendments]	12	—	—
If no person have such majority, then from the persons having the highest numbers, not exceeding three, on the list of those voted for as president, the House of Representatives shall choose immediately, by ballot, the president. [Amendments]	12	—	—
In choosing the president, the votes shall be taken by states, the representation from each state having one vote. [Amendments]	12	—	—
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. [Amendments]	12	—	—
But if no choice shall be made before the 4th of March next following, then the vice-president shall act as president, as in the case of the death or disability of the president. [Amendments]	12	—	—
President of the Senate, but shall have no vote unless the Senate be equally divided. The vice-president shall be	1	3	4
President pro tempore. In the absence of the vice-president the Senate shall choose a	1	3	5
When the vice-president shall exercise the office of President of the United States, the Senate shall choose a	1	3	5
Press. Congress shall pass no law abridging the freedom of speech or of the. [Amendments]	1	—	—

	Art.	Sec.	Cl.
Previous condition of servitude. The right of citizens of the United States to vote shall not be denied or abridged by the United States, or by any state, on account of race, color, or. [Amendments]	15	1	—
Private property shall not be taken for public use without just compensation. [Amendments]	5	—	—
Privilege. Senators and representatives shall, in all cases except treason, felony, and breach of the peace, be privileged from arrest during their attendance at the session of their respective houses, and in going to and returning from the same	1	6	1
They shall not be questioned for any speech or debate in either house, in any other place	1	6	1
Privileges and immunities of citizens of the United States. The citizens of each state shall be entitled to all the privileges and immunities of the citizens of the several states	4	2	1
No soldier shall be quartered in any house without the consent of the owner in time of peace. [Amendments]	3	—	—
No person shall be twice put in jeopardy of life and limb for the same offence. [Amendments]	5	—	—
All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States, and of the state in which they reside. [Amendments]	14	1	—
No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States. [Amendments]	14	1	—
No state shall deprive any person of life, liberty, or property without due process of law. [Amendments]	14	1	—
Nor deny to any person within its jurisdiction the equal protection of its laws. [Amendments]	14	1	—
Prizes captured on land or water. Congress shall make rules concerning	1	8	11
Probable cause. 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 warrant shall issue for such but upon. [Amendments]	4	—	—
Process for obtaining witnesses in his favor. In all criminal prosecutions the accused shall have. [Amendments]	6	—	—
Process of law. No person shall be compelled in any criminal case to be a witness against himself, or be deprived of life, liberty, or property without due. [Amendments]	5	—	—
No state shall deprive any person of life, liberty, or property without due. [Amendments]	14	1	—
Progress of science and useful arts. Congress shall have power to promote the	1	8	8
Property of the United States. Congress may dispose of and make all needful rules and regulations respecting the territory or	4	3	2
Property without due process of law. No person shall be compelled in any criminal case to be a witness against himself, nor shall he be deprived of his life, liberty, or. [Amendments]	5	—	—
No state shall abridge the privileges or immunities of citizens of the United States, nor deprive any person of his life, liberty, or. [Amendments]	14	1	—

	Art.	Sec.	Cl.
Prosecutions. The accused shall have a speedy and public trial in all criminal. [Amendments]	6	—	—
He shall be tried by a jury in the state or district where the crime was committed. [Amendments]	6	—	—
He shall be informed of the nature and cause of the accusation. [Amendments]	6	—	—
He shall be confronted with the witnesses against him. [Amendments]	6	—	—
He shall have compulsory process for obtaining witnesses. [Amendments]	6	—	—
He shall have counsel for his defence. [Amendments]	6	—	—
Protection of the laws. No state shall deny to any person within its jurisdiction the equal. [Amendments]	14	1	—
Public debt of the United States, incurred in suppressing insurrection or rebellion, shall not be questioned. The validity of the. [Amendments]	14	4	—
Public safety may require it. The writ of *habeas corpus* shall not be suspended, unless when in cases of rebellion or invasion the	1	9	2
Public trial by jury. In all criminal prosecutions the accused shall have a speedy and. [Amendments]	6	—	—
Public use. Private property shall not be taken for, without just compensation. [Amendments]	5	—	—
Punishment according to law. Judgment in cases of impeachment shall not extend further than to removal from, and disqualification for, office; but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment, and	1	3	7
Punishments inflicted. Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual. [Amendments]	8	—	—
Q.			
Qualification for office. No religious test shall ever be required as a	6	—	3
Qualifications of electors of members of the House of Representatives shall be the same as electors for the most numerous branch of the state legislature	1	2	1
Qualifications of members of the House of Representatives. They shall be twenty-five years of age, seven years a citizen of the United States, and an inhabitant of the state in which chosen	1	2	2
Of senators. They shall be thirty years of age, nine years a citizen of the United States, and an inhabitant of the state in which chosen	1	3	3
Of its own members. Each house shall be the judge of the election, returns, and	1	5	1
Of the president. No person except a natural-born citizen, or a citizen of the United States at the time of the adoption of the Constitution, shall be eligible to the office of president	2	1	4
Neither shall any person be eligible to the office of president who shall not have attained the age of thirty-five years, and been fourteen years a resident within the United States	2	1	4
Of the vice-president. No person constitutionally ineligible to the office of president shall be eligible to that of vice-president. [Amendments]	12	—	—
Quartered in any house without the consent of the owner in time of peace. No soldier shall be. [Amendments]	3	—	—
Quorum to do business. A majority of each house shall constitute a	1	5	1

	Art.	Sec.	Cl.
Quorum to do business [continued]. But a smaller number than a quorum may adjourn from day to day and may be authorized to compel the attendance of absent members	1	5	1
Of the House of Representatives for choosing a president 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. [Amendments]	12	—	—
Quorum to elect a vice-president by the Senate. Two thirds of the whole number of senators shall be a. [Amendments]	12	—	—
A majority of the whole number shall be necessary to a choice. [Amendments]	12	—	—

R.

Race, color, or previous condition of servitude. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any state on account of. [Amendments]	15	1	—
Ratification of amendments to the Constitution shall be by the legislatures of three fourths of the several states or by conventions in three fourths of the states, accordingly as Congress may propose	5	—	—
Ratification of the conventions of nine states shall be sufficient to establish the Constitution between the states so ratifying the same	7	—	—
Ratio of representation until the first enumeration under the Constitution shall be made not to exceed one for every thirty thousand	1	2	3
Ratio of representation shall be apportioned among the several states according to their respective numbers, counting the whole number of persons in each state, excluding Indians not taxed. [Amendments]	14	2	—
Ratio. But when the right to vote for presidential electors or members of Congress, or the legislative, executive, and judicial officers of the state, except for engaging in rebellion or other crime, shall be denied or abridged by a state, the basis of representation shall be reduced therein in the proportion of such denial or abridgment of the right to vote. [Amendments]	14	2	—
Rebellion against the United States. Persons who, while holding certain federal and state offices, took an oath to support the Constitution, afterwards engaged in insurrection or rebellion, disabled from holding office under the United States. [Amendments]	14	3	—
But Congress may, by a vote of two thirds of each house, remove such disability. [Amendments]	14	3	—
Rebellion against the United States. Debts incurred for pensions and bounties for services in suppressing the rebellion shall not be questioned. [Amendments]	14	4	—
All debts and obligations incurred in aid of the rebellion, and all claims for the loss or emancipation of slaves, declared and held to be illegal and void. [Amendments]	14	4	—
Rebellion or invasion. The writ of *habeas corpus* shall not be suspended except when the public safety may require it in cases of	1	9	2
Receipts and expenditures of all public money shall be published from time to time. A regular statement of	1	9	7
Recess of the Senate. The president may grant commissions, which shall expire at the end of the next session, to fill vacancies that may happen during the	2	2	3

	Art.	Sec.	Cl.
Reconsideration of a bill returned by the president with his objections. Proceedings to be had upon the	1	7	2
Records, and judicial proceedings of every other state. Full faith and credit shall be given in each state to the acts	4	1	—
Congress shall prescribe the manner of proving such acts, records, and proceedings	4	1	—
Redress of grievances. Congress shall make no law abridging the right of the people peaceably to assemble and to petition for the. [Amendments]	1	—	—
Regulations, except as to the places of choosing senators. The time, places, and manner of holding elections for senators and representatives shall be prescribed by the legislatures of the states, but Congress may, at any time, by law, make or alter such	1	4	1
Regulations of commerce or revenue. Preference to the ports of one state over those of another shall not be given by any	1	9	6
Religion or prohibiting the free exercise thereof. Congress shall make no law respecting the establishment of. [Amendments]	1	—	—
Religious test shall ever be required as a qualification for any office or public trust under the United States. No	6	—	3
Removal of the president from office, the same shall devolve on the vice-president. In case of the	2	2	1
Representation. No state, without its consent, shall be deprived of its equal suffrage in the Senate	5	—	—
Representation and direct taxation, how apportioned among the several states. [This provision is changed by the second section of the Fourteenth Amendment]	1	2	3
Representation until the first enumeration under the Constitution not to exceed one for every thirty thousand. The ratio of	1	2	3
Representation in any state. The executive thereof shall issue writs of election to fill vacancies in the	1	2	4
Representation among the several states shall be according to their respective numbers, counting the whole number of persons in each state, excluding Indians not taxed. The ratio of. [Amendments]	14	2	—
But where the right to vote in certain federal and state elections is abridged for any cause other than rebellion or other crime, the basis of representation shall be reduced. [Amendments]	14	2	—
Representatives. Congress shall consist of a Senate and House of	1	1	—
Qualifications of electors of members of the House of	1	2	1
No person shall be a representative who shall not have attained the age of twenty-five years, been seven years a citizen of the United States, and an inhabitant of the state in which he shall be chosen	1	2	2
And direct taxes, how apportioned among the several states. [Amended by the second section of the Fourteenth Amendment]	1	2	3
Shall choose their speaker and other officers. The House of	1	2	5
Shall have the sole power of impeachment. The House of	1	2	5
Executives of the states shall issue writs of election to fill vacancies in the House of	1	2	4
The times, places, and manner of choosing representatives shall be prescribed by the legislatures of the states	1	4	1
But Congress may at any time by law make or alter such regulations except as to the places of choosing senators	1	4	1
And senators shall receive a compensation to be ascertained by law	1	6	1

	Art.	Sec.	Cl.
Representatives [continued]. Shall in all cases, except treason, felony, and breach of the peace, be privileged from arrest during attendance at the session of the House, and in going to and returning from the same.	1	6	1
Shall not be questioned in any other place for any speech or debate. Members of the House of	1	6	1
No member shall be appointed during his term to any civil office which shall have been created, or the emoluments of which shall have been increased, during such term	1	6	2
No person holding any office under the United States shall, while holding such office, be a member of the House of	1	6	2
All bills for raising revenue shall originate in the House of	1	7	1
No senator or representative shall be an elector for president or vice-president	2	1	2
Representatives shall be bound by an oath or affirmation to support the Constitution of the United States. The senators and	6	—	3
Representatives among the several states. Provisions relative to the apportionment of. [Amendments]	14	2	—
Representatives and Senators. Prescribing certain disqualifications for office as. [Amendments]	14	3	—
But Congress may, by a vote of two thirds of each house, remove such disqualification. [Amendments]	14	3	—
Reprieves and pardons except in cases of impeachment. The president may grant	2	2	1
Reprisal. Congress shall have power to grant letters of marque and	1	8	11
No state shall grant any letters of marque and	1	10	1
Republican form of government. The United States shall guarantee to every state in this Union a	4	4	—
And shall protect each of them against invasion; and on the application of the legislature, or of the executive (when the legislature cannot be convened), against domestic violence	4	4	—
Reserved rights of the states and the people. The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people. [Amendments]	9	—	—
The powers not delegated to the United States by the Constitution, or prohibited by it to the states, are reserved to the states respectively, or to the people. [Amendments]	10	—	—
Resignation, or inability of the president, the duties and powers of his office shall devolve on the vice-president. In case of the death	2	1	5
Resignation, or inability of the president. Congress may by law provide for the case of the removal, death	2	1	5
Resolution, or vote (except on a question of adjournment) requiring the concurrence of the two houses shall, before it becomes a law, be presented to the president. Every order	1	7	3
Revenue shall originate in the House of Representatives. All bills for raising	1	7	1
Revenue. Preference shall not be given to the ports of one state over those of another by any regulations of commerce or	1	9	6
Rhode Island entitled to one representative in the first Congress	1	2	3
Right of Petition. Congress shall make no law abridging the right of the people peaceably to assemble and to petition for the redress of grievances. [Amendments]	1	—	—

	Art.	Sec.	Cl.
Right to keep and bear arms. 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. [Amendments]	2	—	—
Rights in the Constitution shall not be construed to deny or disparage others retained by the people. The enumeration of certain. [Amendments]	9	—	—
Rights not delegated to the United States nor prohibited to the states are reserved to the states or to the people. [Amendments]	10	—	—
Rules of its proceedings. Each House may determine the	1	5	2
Rules and regulations respecting the territory or other property of the United States. Congress shall dispose of and make all needful	4	3	2
Rules of the common law. All suits involving over twenty dollars shall be tried by jury according to the. [Amendments]	7	—	—
No fact tried by a jury shall be re-examined except according to the. [Amendments]	7	—	—
S.			
Science and the useful arts, by securing to authors and inventors the exclusive right to their writings and discoveries. Congress shall have power to promote the progress of	1	8	8
Searches and seizures shall not be violated. The right of the people to be secure against unreasonable. [Amendments]	4	—	—
And no warrants shall be issued but upon probable cause, on oath or affirmation, describing the place to be searched and the person or things to be seized. [Amendments]	4	—	—
Seat of government. Congress shall exercise exclusive legislation in all cases over such district as may become the	1	8	17
Securities and current coin of the United States. Congress shall provide for punishing the counterfeiting of the	1	8	6
Security of a free state, the right of the people to keep and bear arms shall not be infringed. A well-regulated militia being necessary to the. [Amendments]	2	—	—
Senate and House of Representatives. The Congress of the United States shall consist of a	1	1	—
Senate of the United States. The Senate shall be composed of two senators from each state, chosen by the legislature for six years	1	3	1
If vacancies happen during the recess of the legislature of a state, the executive thereof may make temporary appointments until the next meeting of the legislature	1	3	2
The vice-president shall be president of the Senate, but shall have no vote unless the Senate be equally divided	1	3	4
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	1	3	5
The Senate shall have the sole power to try all impeachments. When sitting for that purpose they shall be on oath or affirmation	1	3	6
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	1	3	6
It shall be the judge of the elections, returns, and qualifications of its own members	1	5	1

	Art.	Sec.	Cl.
Senate of the United States [continued]. A majority shall constitute a quorum to do business, but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members	1	5	1
It may determine the rules of its proceedings, punish a member for disorderly behavior, and, with the concurrence of two thirds, expel a member	1	5	2
It shall keep a journal of its proceedings and from time to time publish the same, except such parts as may in their judgment require secrecy.	1	5	3
It shall not adjourn for more than three days during a session without the consent of the other house	1	5	4
It may propose amendments to bills for raising revenue, but such bills shall originate in the House of Representatives	1	7	1
The Senate shall advise and consent to the ratification of all treaties, provided two thirds of the members present concur	2	2	2
It shall advise and consent to the appointment of ambassadors, other public ministers and consuls, judges of the Supreme Court, and all other officers not herein otherwise provided for	2	2	2
It may be convened by the president on extraordinary occasions	2	3	—
No state, without its consent, shall be deprived of its equal suffrage in the Senate	5	—	—
Senators. They shall, immediately after assembling, under their first election, be divided into three classes, so that the seats of one third shall become vacant at the expiration of every second year	1	3	2
No person shall be a senator who shall not be thirty years of age, nine years a citizen of the United States, and an inhabitant when elected of the state for which he shall be chosen	1	3	3
The times, places, and manner of choosing senators may be fixed by the legislature of a state, but Congress may by law make or alter such regulations, except as to the places of choosing	1	4	1
If vacancies happen during the recess of the legislature of a state, the executive thereof may make temporary appointments until the next meeting of the legislature	1	3	2
They shall in all cases, except treason, felony, and breach of the peace, be privileged from arrest during their attendance at the session of the Senate and in going to and returning from the same	1	6	1
Senators and representatives shall receive a compensation to be ascertained by law	1	6	1
Senators and representatives shall not be questioned for any speech or debate in either house in any other place	1	6	1
No senator or representative shall, during the time for which he was elected, be appointed to any civil office under the United States which shall have been created, or of which the emoluments shall have been increased, during such term	1	6	2
No person holding any office under the United States shall be a member of either house during his continuance in office	1	6	2
No senator or representative or person holding an office of trust or profit under the United States shall be an elector for president and vice-president	2	1	2
Senators and representatives shall be bound by an oath or affirmation to support the Constitution	6	—	3

	Art.	Sec.	Cl.
Senators [continued]. No person shall be a senator or representative who having, as a federal or state officer, taken an oath to support the Constitution, afterwards engaged in rebellion against the United States. [Amendments]	14	3	—
But Congress may, by a vote of two thirds of each house, remove such disability. [Amendments]	14	3	—
Service or labor in one state, escaping into another state, shall be delivered up to the party to whom such service or labor may be due. Fugitives from	4	2	3
Servitude, except as a punishment for crime, whereof the party shall have been duly convicted, shall exist in the United States or any place subject to their jurisdiction. Neither slavery nor involuntary. [Amendments]	13	1	—
Servitude. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any state on account of race, color, or previous condition of. [Amendments]	15	1	—
Ships of war in time of peace, without the consent of Congress. No state shall keep troops or	1	10	3
Silver coin a tender in payment of debts. No state shall make anything but gold and	1	10	1
Slave. Neither the United States nor any state shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion, or any claim for the loss or emancipation of any. [Amendments]	14	4	—
Slavery nor involuntary servitude, except as a punishment for crime, whereof the party shall have been duly convicted, shall exist in the United States, or any places subject to their jurisdiction. Neither. [Amendments]	13	1	—
Soldiers shall not be quartered, in time of peace, in any house without the consent of the owner. [Amendments]	3	—	—
South Carolina entitled to five representatives in the first Congress	1	2	3
Speaker and other officers. The House of Representatives shall choose their	1	2	5
Speech or of the press. Congress shall make no law abridging the freedom of. [Amendments]	1	—	—
Speedy and public trial by a jury. In all criminal prosecutions the accused shall have a. [Amendments]	6	—	—
Standard of weights and measures. Congress shall fix the	1	8	5
State legislatures, and all executive and judicial officers of the United States, shall take an oath to support the Constitution. All members of the several	6	—	3
State of the Union. The president shall, from time to time, give Congress information of the	2	3	—
States. When vacancies happen in the representation from any state, the executive authority shall issue writs of election to fill such vacancies.	1	2	4
Congress shall have power to regulate commerce among the several	1	8	3
No state shall enter into any treaty, alliance, or confederation	1	10	1
Shall not grant letters of marque and reprisal	1	10	1
Shall not coin money	1	10	1
Shall not emit bills of credit	1	10	1
Shall not make anything but gold and silver coin a tender in payment of debts	1	10	1

	Art.	Sec.	Cl.
States [continued]. Shall not pass any bill of attainder, *ex post facto* law, or law impairing the obligation of contracts	1	10	1
Shall not grant any title of nobility	1	10	1
Shall not, without the consent of Congress, lay any duties on imports or exports, except what may be absolutely necessary for executing its inspection laws	1	10	2
Shall not, without the consent of Congress, lay any duty of tonnage, keep troops or ships of war in time of peace, enter into any agreement or compact with another state or with a foreign power, or engage in war unless actually invaded or in such imminent danger as will not admit of delay	1	10	3
Full faith and credit in every other state shall be given to the public acts, records, and judicial proceedings of each state	4	1	—
Congress shall prescribe the manner of proving such acts, records, and proceedings	4	1	—
Citizens of each state shall be entitled to all privileges and immunities of citizens in the several states	4	2	1
New states may be admitted by Congress into this Union	4	3	1
But no new state shall be formed or erected within the jurisdiction of another state	4	3	1
Nor any state formed by the junction of two or more states or parts of states, without the consent of the legislatures as well as of Congress	4	3	1
No state shall be deprived, without its consent, of its equal suffrage in the Senate	5	—	—
Three fourths of the legislatures of the states or conventions of three fourths of the states, as Congress shall prescribe, may ratify amendments to the Constitution	5	—	—
The United States shall guarantee a republican form of government to every state in the Union	4	4	—
They shall protect each state against invasion	4	4	—
And on application of the legislature, or of the executive (when the legislature cannot be convened), against domestic violence	4	4	—
The ratification by nine states shall be sufficient to establish the Constitution between the states so ratifying the same	7	—	—
When the choice of president shall devolve on the House of Representatives, the vote shall be taken by states. [Amendments]	12	—	—
But in choosing the president the vote shall be taken by states, the representation from each state having one vote. [Amendments]	12	—	—
A quorum for choice of president 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. [Amendments]	12	—	—
States or to the people. Powers not delegated to the United States, nor prohibited to the states, are reserved to the. [Amendments]	10	—	—
Suffrage in the Senate. No state shall be deprived without its consent of its equal	5	—	—
Suits at common law, where the value in controversy shall exceed twenty dollars, shall be tried by jury. [Amendments]	7	—	—
In law or equity against one of the states, by citizens of another state, or by citizens of a foreign state. The judicial power of the United States shall not extend to. [Amendments]	11	—	—

	Art.	Sec.	Cl.
Suppress insurrections and repel invasions. Cougress shall provide for calling forth the militia to execute the laws	1	8	15
Suppression of insurrection or rebellion shall not be questioned. The public debt, including the debt for pensions and bounties, incurred in the. [Amendments]	14	4	—
Supreme Court. Congress shall have power to constitute tribunals inferior to the	1	8	9
Supreme Court, and such inferior courts as Congress may establish. The judicial power of the United States shall be vested in one	3	1	—
Supreme Court. The judges of the Supreme and inferior courts shall hold their offices during good behavior	3	1	—
The compensation of the judges shall not be diminished during their continuance in office	3	1	—
Shall have original jurisdiction. In all cases affecting ambassadors, other public ministers and consuls, and in which a state may be a party, the	3	2	2
Shall have appellate jurisdiction, both as to law and the fact, with such exceptions and regulations as Congress may make. The	3	2	2
Supreme law of the land. This Constitution, the laws made in pursuance thereof, and the treaties of the United States, shall be the	6	—	2
The judges in every state shall be bound thereby	6	—	2
T.			
Tax shall be laid unless in proportion to the census or enumeration. No capitation or other direct	1	9	4
Tax or duty shall be laid on articles exported from any state. No	1	9	5
Taxes (direct) and representatives, how apportioned among the several states. [See Fourteenth Amendment, section 2]	1	2	3
Taxes, duties, imposts, and excises. Congress shall have power to lay	1	8	1
They shall be uniform throughout the United States	1	8	1
Temporary appointments until the next meeting of the legislature. If vacancies happen in the Senate in the recess of the legislature of a state, the executive of the state shall make	1	3	2
Tender in payment of debts. No state shall make anything but gold and silver coin a	1	10	1
Term of four years. The president and vice-president shall hold their offices for the	2	1	1
Term for which he is elected. No senator or representative shall be appointed to any office under the United States which shall have been created or its emoluments increased during the	1	6	2
Territory or other property of the United States. Congress shall dispose of and make all needful rules and regulations respecting the	4	3	2
Test as a qualification for any office or public trust shall ever be required. No religious	6	—	3
Testimony of two witnesses to the same overt act, or on confession in open court. No person shall be convicted of treason except on the	3	3	1
Three fourths of the legislatures of the states, or conventions in three fourths of the states, as Congress shall prescribe, may ratify amendments to the Constitution	5	—	—
Tie. The vice-president shall have no vote unless the Senate be equally divided	1	3	4

	Art.	Sec.	Cl.
Times, places, and manner of holding elections for senators and representatives shall be prescribed in each state by the legislature thereof.....	1	4	1
But Congress may at any time by law make or alter such regulations, except as to the places of choosing senators.....	1	4	1
Title of nobility. The United States shall not grant any.....	1	9	8
No state shall grant any.....	1	10	1
Title of any kind, from any king, prince, or foreign state, without the consent of Congress. No person holding any office under the United States shall accept of any.....	1	9	8
Tonnage without the consent of Congress. No state shall lay any duty of.....	1	10	3
Tranquillity, provide for common defence, etc. To insure domestic. [Preamble].....	—	—	—
Treason shall consist only in levying war against the United States, or in adhering to their enemies, giving them aid and comfort.....	3	3	1
Treason. No person shall, unless on the testimony of two witnesses to the same overt act, or on confession in open court, be convicted of.....	3	3	1
Congress shall have power to declare the punishment of.....	3	3	2
Shall not work corruption of blood. Attainder of.....	3	3	2
Shall not work forfeiture, except during the life of the person attainted. Attainder of.....	3	3	2
Treason, bribery, or other high crimes and misdemeanors. The president, vice-president, and all civil officers shall be removed from office on impeachment for and conviction of.....	2	4	—
Treason, felony, and breach of the peace. Senators and representatives shall be privileged from arrest while attending or while going to or returning from the sessions of Congress, except in cases of.....	1	6	1
Treasury, but in consequence of appropriations made by law. No money shall be drawn from the.....	1	9	7
Treaties. The president shall have power, with the advice and consent of the Senate, provided two thirds of the senators present concur, to make.....	2	2	2
The judicial power shall extend to all cases arising under the Constitution, laws, and.....	3	2	1
They shall be the supreme law of the land, and the judges in every state shall be bound thereby.....	6	—	2
Treaty, alliance or confederation. No state shall enter into any.....	1	10	1
Trial, judgment, and punishment according to law. Judgment in cases of impeachment shall not extend further than to removal from, and disqualification for, office; but the party convicted shall nevertheless be liable and subject to indictment.....	1	3	7
Trial by jury. All crimes, except in cases of impeachment, shall be tried by jury.....	3	2	3
Such trial shall be held in the state within which the crime shall have been committed.....	3	2	3
But when not committed within a state, the trial shall be at such place as Congress may by law have directed.....	3	2	3
In all criminal prosecutions the accused shall have a speedy and public. [Amendments].....	6	—	—
Suits at common law, when the amount exceeds twenty dollars, shall be by. [Amendments].....	7	—	—

	Art.	Sec.	Cl.
Tribunals inferior to the Supreme Court. Congress shall have power to constitute	1	8	9
Troops or ships of war in time of peace without the consent of Congress. No state shall keep	1	10	3
Trust and profit under the United States shall be an elector for president and vice-president. No senator, representative, or person holding any office of	2	1	2
Two thirds of the members present. No person shall be convicted on impeachment without the concurrence of	1	3	6
Two thirds, may expel a member. Each house, with the concurrence of	1	5	2
Two thirds. A bill returned by the president with his objections may be repassed by each house by a vote of	1	7	2
Two thirds of the senators present concur. The president shall have power, by and with the advice and consent of the Senate, to make treaties, provided	2	2	2
Two thirds of the legislatures of the several states. Congress shall call a convention for proposing amendments to the Constitution on the application of	5	—	—
Two thirds of both houses shall deem it necessary. Congress shall propose amendments to the Constitution whenever	5	—	—
Two thirds of the states. When the choice of a president shall devolve on the House of Representatives, a quorum shall consist of a member or members from. [Amendments]	12	—	—
Two thirds of the whole number of senators. A quorum of the Senate, when choosing a vice-president, shall consist of. [Amendments]	12	—	—
Two thirds, may remove the disabilities imposed by the third section of the Fourteenth Amendment. Congress, by a vote of. [Amendments]	14	3	—
Two years. Appropriations for raising and supporting armies shall not be for a longer term than	1	8	12
U.			
Union. To establish a more perfect. [Preamble]	—	—	—
The president shall, from time to time, give to Congress information of the state of the	2	3	1
New states may be admitted by Congress into this	4	3	1
But no new state shall be formed or erected within the jurisdiction of another	4	3	1
Unreasonable searches and seizures. The people shall be secured in their persons, houses, papers, and effects against. [Amendments]	4	—	—
And no warrants shall be issued 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. [Amendments]	4	—	—
Unusual punishments inflicted. Excessive bail shall not be required, nor excessive fines imposed, nor cruel and. [Amendments]	8	—	—
Use without just compensation. Private property shall not be taken for public. [Amendments]	5	—	—
Useful arts, by securing for limited times to authors and inventors the exclusive right to their writings and inventions. Congress shall have power to promote the progress of science and the	1	8	8

V.

	Art.	Sec.	Cl.
Vacancies happening in the representation of a state. The executive thereof shall issue writs of election to fill	1	2	4
Vacancies happening in the Senate in the recess of the legislature of a state. How filled	1	3	2
Vacancies that happened during the recess of the Senate, by granting commissions which shall expire at the end of the next session. The president shall have power to fill	2	2	3
Validity of the public debt incurred in suppressing insurrection against the United States, including debt for pensions and bounties, shall not be questioned. [Amendments]	14	4	—
Vessels bound to or from the ports of one state shall not be obliged to enter, clear, or pay duties in another state	1	9	6
Veto of a bill by the president. Proceedings of the two houses upon the	1	7	2
Vice-president of the United States shall be president of the Senate	1	3	4
He shall have no vote unless the Senate be equally divided	1	3	4
The Senate shall elect a president *pro tempore* in the absence of the	1	3	5
He shall be chosen for a term of four years	2	1	1
The number and the manner of appointing electors for president and	2	1	2
In case of the removal, death, resignation, or inability of the president, the powers and duties of his office shall devolve on the	2	1	5
Congress may provide by law for the case of the removal, death, resignation, or inability both of the president and	2	1	5
Vice-president. On impeachment for and conviction of treason, bribery, and other high crimes and misdemeanors shall be removed from office. The	2	4	—
Vice-president. The manner of choosing the. The electors shall meet in their respective states and vote by ballot for president and vice-president, one of whom, at least, shall not be an inhabitant of the same state with themselves. [Amendments]	12	—	—
The electors shall name, in distinct ballots, the person voted for as vice-president. [Amendments]	12	—	—
They shall make distinct lists of the persons voted for as vice-president, which lists they shall sign and certify, and send sealed to the seat of government, directed to the President of the Senate. [Amendments].	12	—	—
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. [Amendments]	12	—	—
The person having the greatest number of votes shall be vice-president, if such number be a majority of the whole number of electors. [Amendments]	12	—	—
If no person have a majority, then from the two highest numbers on the list the Senate shall choose the vice-president. [Amendments]	12	—	—
A quorum for this 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. [Amendments]	12	—	—
But if the House shall make no choice of a president before the 4th 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. [Amendments]	12	—	—
No person constitutionally ineligible as president shall be eligible as. [Amendments]	12	—	—

	Art.	Sec.	Cl.
Violence. The United States shall guarantee to every state a republican form of government, and shall protect each state against invasion and domestic	4	4	—
Virginia entitled to ten representatives in the First Congress	1	2	3
Vote. Each senator shall have one	1	3	1
The vice-president, unless the Senate be equally divided, shall have no.	1	3	4
Vote requiring the concurrence of the two houses (except on a question of adjournment) shall be presented to the president. Every order, resolution, or	1	7	3
Vote shall not be denied or abridged by the United States, or by any state, on account of race, color, or previous condition of servitude. The right of citizens of the United States to. [Amendments]	15	1	—
Vote of two thirds. Each house may expel a member by a	1	5	2
A bill vetoed by the president may be repassed in each house by a	1	7	2
No person shall be convicted on an impeachment except by a	1	3	6
Whenever both houses shall deem it necessary, Congress may propose amendments to the Constitution by a	5	—	—
The president may make treaties, with the advice and consent of the Senate, by a	2	2	2
Disabilities incurred by participation in insurrection or rebellion may be relieved by Congress by a. [Amendments]	14	3	—
W.			
War, grant letters of marque and reprisal, and make rules concerning captures on land and water. Congress shall have power to declare	1	8	11
For governing the land and naval forces. Congress shall have power to make rules and articles of	1	8	14
No state shall, without the consent of Congress, unless actually invaded, or in such imminent danger as will not admit of delay, engage in	1	10	3
War against the United States, adhering to their enemies, and giving them aid and comfort. Treason shall consist only in levying	3	3	1
Warrants shall issue but upon probable cause, on oath or affirmation, describing the place to be searched, and the persons or things to be seized. No. [Amendments]	4	—	—
Weights and measures. Congress shall fix the standard of	1	8	5
Welfare, and to secure the blessings of liberty, etc. To promote the general. [Preamble]	—	—	—
Welfare. Congress shall have power to provide for the common defence and general	1	8	1
Witness against himself. No person shall, in a criminal case, be compelled to be a. [Amendments]	5	—	—
Witnesses against him. In all criminal prosecutions the accused shall be confronted with the. [Amendments]	6	—	—
Witnesses in his favor. In all criminal prosecutions the accused shall have compulsory process for obtaining. [Amendments]	6	—	—
Witnesses to the same overt act, or on confession in open court. No person shall be convicted of treason unless on the testimony of two	3	3	1
Writ of habeas corpus shall not be suspended, unless in case of rebellion or invasion the public safety may require it	1	9	2
Writs of election to fill vacancies in the representation of any state. The executive of the state shall issue	1	2	4

	Art.	Sec.	Cl.
Written opinion of the principal officer in each of the executive departments on any subject relating to the duties of his office. The president may require the	2	2	1
Y			
Yeas and nays of the members of either house shall, at the desire of one fifth of those present, be entered on the journals	1	5	3
The votes of both houses upon the reconsideration of a bill returned by the president with his objections shall be determined by	1	7	2

NOTE.—See "Latest Citations to Decisions on Constitutional Questions," *ante*, pp. 474–496. J. C. C.

THE PROCLAMATION OF EMANCIPATION.

WHEREAS, on the twenty-second day of September, in the year of our Lord, one thousand eight hundred and sixty-two, a proclamation was issued by the President of the United States, containing, among other things, the following, to wit:

"That on the first day of January, in the year of our Lord, one thousand eight hundred and sixty-three, all persons held as slaves within any State, or designated part of a State, the people whereof shall then be in rebellion against the United States, shall be then, thenceforward, and forever, free; and the executive government of the United States, including the military and naval authority thereof, will recognize and maintain the freedom of such persons, and will do no act or acts to repress such persons, or any of them, in any efforts they may make for their actual freedom.

"That the executive will, on the first day of January aforesaid, by proclamation, designate the State and parts of States, if any, in which the people thereof, respectively, shall then be in rebellion against the United States; and the fact that any State, or the people thereof, shall on that day be in good faith represented in the Congress of the United States, by members chosen thereto at elections wherein a majority of the qualified voters of such States shall have participated, shall, in the absence of strong countervailing testimony, be deemed conclusive evidence that such State, and the people thereof, are not in rebellion against the United States."

Now, therefore, I, Abraham Lincoln, President of the United States, by virtue of the power in me vested as Commander-in-Chief of the Army and Navy of the United States, in time of actual armed rebellion against the authority and government of the United States, and as a fit and necessary war-measure for suppressing said rebellion, do, on this first day of January, in the year of our Lord one thousand eight hundred and sixty-three, and in accordance with my purpose so to do, publicly proclaimed for the full period of one hundred days from the day first above mentioned, order and designate as the States and parts of States wherein the people thereof, respectively, are this day in rebellion against the United States, the following, to wit:

Arkansas, Texas, Louisiana (except the parishes of St. Bernard, Plaquemines, Jefferson, St. John, St. Charles, St. James, Ascension, Assumption, Terre Bonne, Lafourche, St. Mary, St. Martin, and Orleans, including the city of New Orleans), Mississippi, Alabama, Florida, Georgia, South Carolina, North Carolina, and Virginia (except the forty-eight counties designated as West Virginia, and also the counties of Berkeley, Accomac, Northampton, Elizabeth City, York, Princess Anne, and Norfolk, including the cities of Norfolk and Portsmouth), and which excepted parts are for the present left precisely as if this proclamation were not issued.

And by virtue of the power, and for the purpose aforesaid, I do order and declare that all persons held as slaves within said designated States and parts of States, are, and henceforward shall be, free; and that the executive government

of the United States, including the military and naval authorities thereof, will recognize and maintain the freedom of said persons.

And I hereby enjoin upon the people so declared to be free to abstain from all violence, unless in necessary self-defence; and I recommend to them that, in all cases when allowed, they labor faithfully for reasonable wages.

And I further declare and make known that such persons, of suitable condition, will be received into the armed service of the United States to garrison forts, positions, stations, and other places, and to man vessels of all sorts in said service.

And upon this act, sincerely believed to be an act of justice, warranted by the Constitution upon military necessity, I invoke the considerate judgment of mankind, and the gracious favor of Almighty God.

In witness whereof, I have hereunto set my hand, and caused the seal of the United States to be affixed.

Done at the city of Washington this first day of January, in the year
[L.S.] of our Lord one thousand eight hundred and sixty-three, and of the independence of the United States of America the eighty-seventh.

By the President: ABRAHAM LINCOLN.

WILLIAM H. SEWARD, *Secretary of State.*

PROCLAMATION ANNOUNCING THE ADOPTION OF XIII. AMENDMENT.

WILLIAM H. SEWARD, *Dec.* 18, 1865.

SECRETARY OF STATE OF THE UNITED STATES.

To all to whom these presents may come, greeting:

KNOW ye, that whereas the Congress of the United States, on the 1st of February last, passed a resolution which is in the words following, namely: Preamble.

"A RESOLUTION SUBMITTING TO THE LEGISLATURES OF THE SEVERAL STATES A PROPOSITION TO AMEND THE CONSTITUTION OF THE UNITED STATES.

"*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled* (two thirds of both Houses concurring), That the following article be proposed to the legislatures of the several States as an amendment to the Constitution of the United States, which, when ratified by three fourths of said legislatures, shall be valid, to all intents and purposes, as a part of the said Constitution, namely:

"ARTICLE XIII.

"SECTION 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly

convicted, shall exist within the United States, or any place subject to their jurisdiction.

"SECTION 2. Congress shall have power to enforce this article by appropriate legislation."

Amendment to the Constitution ratified by twenty-seven States.

And whereas it appears from official documents on file in this department that the amendment to the Constitution of the United States proposed, as aforesaid, has been ratified by the legislatures of the States of Illinois, Rhode Island, Michigan, Maryland, New York, West Virginia, Maine, Kansas, Massachusetts, Pennsylvania, Virginia, Ohio, Missouri, Nevada, Indiana, Louisiana, Minnesota, Wisconsin, Vermont, Tennessee, Arkansas, Connecticut, New Hampshire, South Carolina, Alabama, North Carolina, and Georgia; in all, twenty-seven States;

And whereas the whole number of States in the United States is thirty-six; and whereas the before specially named States, whose legislatures have ratified the said proposed amendment, constitute three fourths of the whole number of States in the United States:

Now, therefore, be it known that I, WILLIAM H. SEWARD, Secretary of State of the United States, by virtue and in pursuance of the second section of the act of Congress, approved the twentieth of April, eighteen hundred and eighteen, entitled "An Act to provide for the publication of the laws of the United States and for other purposes," do hereby certify that the amendment aforesaid has become valid, to all intents and purposes, as a part of the Constitution of the United States.

In testimony whereof, I have hereunto set my hand, and caused the seal of the Department of State to be affixed.

Done at the city of Washington, this eighteenth day of December, in the year of our Lord one thousand eight hundred
[L. S.] and sixty-five, and of the Independence of the United States of America the ninetieth.

WILLIAM H. SEWARD, *Secretary of State.*

FIRST PROCLAMATION ANNOUNCING THE ADOPTION OF XIV. AMENDMENT.

July 20, 1868.

WILLIAM H. SEWARD,

SECRETARY OF STATE OF THE UNITED STATES.

To all to whom these presents may come, greeting:

Preamble.

WHEREAS the Congress of the United States, on or about the sixteenth of June, in the year one thousand eight hundred and

sixty-six, passed a resolution which is in the words and figures following, to wit:

"JOINT RESOLUTION PROPOSING AN AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES.

"*Be it resolved by the Senate and House of Representatives of the United States of America in Congress assembled* (two thirds of both Houses concurring), That the following article be proposed to the legislatures of the several States as an amendment to the Constitution of the United States, which, when ratified by three fourths of said legislatures, shall be valid as part of the Constitution, namely: Vol. xiv. p. 358.

"ARTICLE XIV.

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

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

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

"SECTION 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or

rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations, and claims shall be held illegal and void.

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

"SCHUYLER COLFAX,
"*Speaker of the House of Representatives.*
"LA FAYETTE S. FOSTER,
"*President of the Senate pro tempore.*

"Attest:
"EDWD. MCPHERSON,
"*Clerk of the House of Representatives.*
"J. W. FORNEY,
"*Secretary of the Senate.*"

1818, ch. 80, § 2. Vol. iii. p. 429.

And whereas by the second section of the act of Congress, approved the twentieth of April, one thousand eight hundred and eighteen, entitled "An act to provide for the publication of the laws of the United States, and for other purposes," it is made the duty of the Secretary of State forthwith to cause any amendment to the Constitution of the United States, which has been adopted according to the provisions of the said Constitution, to be published in the newspapers authorized to promulgate the laws, with his certificate specifying the States by which the same may have been adopted, and that the same has become valid, to all intents and purposes, as a part of the Constitution of the United States;

And whereas neither the act just quoted from, nor any other law, expressly or by conclusive implication, authorizes the Secretary of State to determine and decide doubtful questions as to the authenticity of the organization of State legislatures, or as to the power of any State legislature to recall a previous act or resolution of ratification of any amendment proposed to the Constitution;

And whereas it appears from official documents on file in this Department that the amendment to the Constitution of the United States, proposed as aforesaid, has been ratified by the legislatures of the States of Connecticut, New Hampshire, Tennessee, New Jersey, Oregon, Vermont, New York, Ohio, Illinois, West Virginia, Kansas, Maine, Nevada, Missouri, Indiana, Minnesota, Rhode Island, Wisconsin, Pennsylvania, Michigan, Massachusetts, Nebraska, and Iowa;

And whereas it further appears from documents on file in this Department that the amendment to the Constitution of the United States, proposed as aforesaid, has also been ratified by newly constituted and newly established bodies avowing themselves to be and

acting as the legislatures, respectively, of the States of Arkansas, Florida, North Carolina, Louisiana, South Carolina, and Alabama;

And whereas it further appears from official documents on file in this Department that the legislatures of two of the States first above enumerated, to wit, Ohio and New Jersey, have since passed resolutions respectively withdrawing the consent of each of said States to the aforesaid amendment; and whereas it is deemed a matter of doubt and uncertainty whether such resolutions are not irregular, invalid, and therefore ineffectual for withdrawing the consent of the said two States, or of either of them, to the aforesaid amendment;

And whereas the whole number of States in the United States is thirty-seven, to wit: New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, Vermont, Kentucky, Tennessee, Ohio, Louisiana, Indiana, Mississippi, Illinois, Alabama, Maine, Missouri, Arkansas, Michigan, Florida, Texas, Iowa, Wisconsin, Minnesota, California, Oregon, Kansas, West Virginia, Nevada, and Nebraska;

And whereas the twenty-three States first hereinbefore named, whose legislatures have ratified the said proposed amendment, and the six States next thereafter named, as having ratified the said proposed amendment by newly constituted and established legislative bodies, together constitute three fourths of the whole number of States in the United States:

Fourteenth amendment to the Constitution has been adopted, if, &c.

Now, therefore, be it known that I, WILLIAM H. SEWARD, Secretary of State of the United States, by virtue and in pursuance of the second section of the act of Congress, approved the twentieth of April, eighteen hundred and eighteen, hereinbefore cited, do hereby certify that if the resolutions of the legislatures of Ohio and New Jersey ratifying the aforesaid amendment are to be deemed as remaining of full force and effect, notwithstanding the subsequent resolutions of the legislatures of those States, which purport to withdraw the consent of said States from such ratification, then the aforesaid amendment has been ratified in the manner hereinbefore mentioned, and so has become valid, to all intents and purposes, as a part of the Constitution of the United States.

In testimony whereof, I have hereunto set my hand, and caused the seal of the Department of State to be affixed.

Done at the city of Washington, this twentieth day of July, in the year of our Lord one thousand eight hundred and sixty-
[L. S.] eight, and of the Independence of the United States of America the ninety-third.

WILLIAM H. SEWARD, *Secretary of State.*

SECOND PROCLAMATION ANNOUNCING ADOPTION OF XIV. AMENDMENT.

July 28, 1868.

WILLIAM H. SEWARD,

SECRETARY OF STATE OF THE UNITED STATES.

To all to whom these presents may come, greeting:

Preamble. 1818, ch. 80, § 2. Vol. iii. p. 439.

WHEREAS by an act of Congress passed on the twentieth of April, one thousand eight hundred and eighteen, entitled, "An act to provide for the publication of the laws of the United States and for other purposes," it is declared that whenever official notice shall have been received at the Department of State that any amendment which heretofore has been and hereafter may be proposed to the Constitution of the United States has been adopted according to the provisions of the Constitution, it shall be the duty of the said Secretary of State forthwith to cause the said amendment to be published in the newspapers authorized to promulgate the laws, with his certificate, specifying the States by which the same may have been adopted, and that the same has become valid to all intents and purposes as a part of the Constitution of the United States.

Vol. xiv. p. 358.

And whereas the Congress of the United States, on or about the sixteenth day of June, one thousand eight hundred and sixty-six, submitted to the legislatures of the several States a proposed amendment to the Constitution in the following words, to wit:

"JOINT RESOLUTION PROPOSING AN AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES.

"*Be it resolved by the Senate and House of Representatives of the United States of America in Congress assembled* (two thirds of both Houses concurring), That the following article be proposed to the legislatures of the several States as an amendment to the Constitution of the United States, which, when ratified by three fourths of said legislatures, shall be valid as part of the Constitution, namely:

"ARTICLE XIV.

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

"SECTION 2. Representatives shall be apportioned among the

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

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

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

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

"SCHUYLER COLFAX,
"Speaker of the House of Representatives.
"LA FAYETTE S. FOSTER,
"President of the Senate pro tempore.

"Attest:
"EDWD. MCPHERSON,
"Clerk of the House of Representatives.
"J. W. FORNEY,
"Secretary of the Senate."

And whereas the Senate and House of Representatives of the Congress of the United States, on the twenty-first day of July, one thousand eight hundred and sixty-eight, adopted and transmitted to the Department of State a concurrent resolution, which concurrent resolution is in the words and figures following, to wit:

"IN SENATE OF THE UNITED STATES,
"July 21, 1868.

"Whereas the legislatures of the States of Connecticut, Tennessee, New Jersey, Oregon, Vermont, West Virginia, Kansas, Missouri, Indiana, Ohio, Illinois, Minnesota, New York, Wisconsin, Pennsylvania, Rhode Island, Michigan, Nevada, New Hampshire, Massachusetts, Nebraska, Maine, Iowa, Arkansas, Florida, North Carolina, Alabama, South Carolina, and Louisiana, being three fourths and more of the several States of the Union, have ratified the fourteenth article of amendment to the Constitution of the United States, duly proposed by two thirds of each House of the Thirty-ninth Congress; therefore,

"*Resolved by the Senate* (the House of Representatives concurring), That said fourteenth article is hereby declared to be a part of the Constitution of the United States, and it shall be duly promulgated as such by the Secretary of State.

"Attest: GEO. C. GORHAM, *Secretary.*

"IN THE HOUSE OF REPRESENTATIVES,
July 21, 1868.

"*Resolved*, That the House of Representatives concur in the foregoing concurrent resolution of the Senate 'declaring the ratification of the fourteenth article of amendment of the Constitution of the United States.'

"Attest: EDWD. MCPHERSON, *Clerk.*"

And whereas official notice has been received at the Department of State that the legislatures of the several States next hereinafter named have, at the times respectively herein mentioned, taken the proceedings hereinafter recited upon or in relation to the ratification of the said proposed amendment, called article fourteenth, namely:

The legislature of Connecticut ratified the amendment June 30th, 1866; the legislature of New Hampshire ratified it July 7th, 1866; the legislature of Tennessee ratified it July 19th, 1866; the legislature of New Jersey ratified it September 11th, 1866, and the legislature of the same State passed a resolution in April, 1868, to withdraw its consent to it; the legislature of Oregon ratified it September 19th, 1866; the legislature of Texas rejected it November 1st, 1866; the legislature of Vermont ratified it on or previous to November 9th, 1866; the legislature of Georgia rejected it November 13th, 1866, and the legislature of the same State ratified it July 21st, 1868; the legislature of North Carolina rejected it December 4th, 1866, and the legislature of the same State ratified it July 4th, 1868; the legislature of South Carolina rejected it December 20th, 1866, and the legislature of the same State ratified it July 9th, 1868; the legislature of Virginia rejected it January 9th, 1867; the legislature of Kentucky rejected it January 10th, 1867; the legislature of New York ratified it January 10th, 1867; the legislature of Ohio

ratified it January 11th, 1867, and the legislature of the same State passed a resolution in January, 1868, to withdraw its consent to it; the legislature of Illinois ratified it January 15th, 1867; the legislature of West Virginia ratified it January 16th, 1867; the legislature of Kansas ratified it January 18th, 1867; the legislature of Maine ratified it January 19th, 1867; the legislature of Nevada ratified it January 22d, 1867; the legislature of Missouri ratified it on or previous to January 26th, 1867; the legislature of Indiana ratified it January 29th, 1867; the legislature of Minnesota ratified it February 1st, 1867; the legislature of Rhode Island ratified it February 7th, 1867; the legislature of Delaware rejected it February 7th, 1867; the legislature of Wisconsin ratified it February 13th, 1867; the legislature of Pennsylvania ratified it February 13th, 1867; the legislature of Michigan ratified it February 15th, 1867; the legislature of Massachusetts ratified it March 20th, 1867; the legislature of Maryland rejected it March 23d, 1867; the legislature of Nebraska ratified it June 15th, 1867; the legislature of Iowa ratified it April 3d, 1868; the legislature of Arkansas ratified it April 6th, 1868; the legislature of Florida ratified it June 9th, 1868; the legislature of Louisiana ratified it July 9th, 1868; and the legislature of Alabama ratified it July 13th, 1868.

Fourteenth amendment to the Constitution certified to be adopted, and declared valid.

Now, therefore, be it known that I, WILLIAM H. SEWARD, Secretary of State of the United States, in execution of the aforesaid act, and of the aforesaid concurrent resolution of the 21st of July, 1868, and in conformance thereto, do hereby direct the said proposed amendment to the Constitution of the United States to be published in the newspapers authorized to promulgate the laws of the United States, and I do hereby certify that the said proposed amendment has been adopted in the manner hereinbefore mentioned by the States specified in the said concurrent resolution, namely, the States of Connecticut, New Hampshire, Tennessee, New Jersey, Oregon, Vermont, New York, Ohio, Illinois, West Virginia, Kansas, Maine, Nevada, Missouri, Indiana, Minnesota, Rhode Island, Wisconsin, Pennsylvania, Michigan, Massachusetts, Nebraska, Iowa, Arkansas, Florida, North Carolina, Louisiana, South Carolina, Alabama, and also by the legislature of the State of Georgia; the States thus specified being more than three fourths of the States of the United States.

And I do further certify that the said amendment has become valid to all intents and purposes as a part of the Constitution of the United States.

In testimony whereof I have hereunto set my hand and caused the seal of the Department of State to be affixed.

Done at the city of Washington this twenty-eighth day of July, in the year of our Lord one thousand eight hundred and [L. S.] sixty-eight, and of the Independence of the United States of America the ninety-third.

WILLIAM H. SEWARD, *Secretary of State.*

PROCLAMATION ANNOUNCING ADOPTION OF XV. AMENDMENT.

March 30, 1870.

HAMILTON FISH,

SECRETARY OF STATE OF THE UNITED STATES.

To all to whom these presents may come, greeting:

Pub. Res. No. 14. Vol. xv. p. 346.

KNOW ye, that the Congress of the United States, on or about the twenty-seventh day of February, in the year one thousand eight hundred and sixty-nine, passed a resolution in the words and figures following, to wit:

"A RESOLUTION PROPOSING AN AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES.

"*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled* (two thirds of both Houses concurring), That the following article be proposed to the legislatures of the several States as an amendment to the Constitution of the United States, which, when ratified by three fourths of said legislatures, shall be valid as part of the Constitution, namely:

"ARTICLE XV.

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

"SECTION 2. The Congress shall have power to enforce this article by appropriate legislation."

Fifteenth amendment to the Constitution ratified by twenty-nine States.

And, further, that it appears from official documents on file in this Department that the amendment to the Constitution of the United States, proposed as aforesaid, has been ratified by the legislatures of the States of North Carolina, West Virginia, Massachusetts, Wisconsin, Maine, Louisiana, Michigan, South Carolina, Pennsylvania, Arkansas, Connecticut, Florida, Illinois, Indiana, New York, New Hampshire, Nevada, Vermont, Virginia, Alabama, Missouri, Mississippi, Ohio, Iowa, Kansas, Minnesota, Rhode Island, Nebraska, and Texas, in all twenty-nine States.

And, further, that the States whose legislatures have so ratified the said proposed amendment constitute three fourths of the whole number of States in the United States.

New York withdraws.

And, further, that it appears from an official document on file in this Department that the legislature of the State of New York has since passed resolutions claiming to withdraw the said ratification of the said amendment which had been made by the legislature of that State, and of which official notice had been filed in this Department.

And, further, that it appears from an official document on file in this Department that the legislature of Georgia has by resolution ratified the said proposed amendment: Georgia ratifies.

Now, therefore, be it known that I, HAMILTON FISH, Secretary of State of the United States, by virtue and in pursuance of the second section of the act of Congress approved the twentieth day of April, in the year eighteen hundred and eighteen, entitled "An act to provide for the publication of the laws of the United States and for other purposes," do hereby certify that the amendment aforesaid has become valid to all intents and purposes as part of the Constitution of the United States. Amendment declared valid. 1818, ch. 80, § 2. Vol. iii. p. 439.

In testimony whereof, I have hereunto set my hand, and caused the seal of the Department of State to be affixed.

Done at the city of Washington, this thirtieth day of March, in the year of our Lord one thousand eight hundred and seventy, and of the Independence of the United States the ninety-fourth.

[L. S.]

HAMILTON FISH.

LATEST CITATIONS TO DECISIONS ON CONSTITUTIONAL QUESTIONS.

These citations are chiefly of cases subsequent to those cited in the "Annotated Constitution," *ante*, pp. 474–496.

Preamble.....Van Bracklin *v.* Tennessee, 117 U. S., 151; Chinese exclusion case, 130 U. S., 581.

Art. I., Sec. 1.....U. S. *v.* Texas, 143 U. S., 621; Field *v.* Clark, 143 U. S., 649; Fong Yue Ting *v.* U. S., 149 U. S., 698.

" I., " 4, Clause 1.....*Ex parte* Clark, 100 U. S., 399.

" I., " 5, " 1.....Matter of Coy, 127 U. S., 731; U. S. *v.* Ballin, 144 U. S., 1.

" I., " 5, " 2.....U. S. *v.* Ballin, 144 U. S., 1.

" I., " 6, " 1.....Kilbourn *v.* Thompson, 103 U. S., 168.

" I., " 8, " 1. ...(Income tax cases) Pollock *v.* Farmers' Loan and Trust Co., 157 U. S., 429; *idem*, 158 U. S., 601.
Hyde *v.* Continental Trust Co., 157 U. S., 585; 158 U. S., 601.

" I., " 8, " 3.....Kimmish *v.* Ball, 129 U. S., 217; Leidy *v.* Hardin, 135 U. S., 78; Minnesota *v.* Barber, 136 U. S, 314; Brimmer *v.* Rebman, 138 U. S., 78; Leeper *v.* Texas, 139 U. S., 462; matter of Rahner, 140 U. S., 545; Pullman Palace Car. Co. *v.* Pennsylvania, 141 U. S., 13; Crutcher *v.* Kentucky, 141 U. S., 47; Budd *v.* New York, 143 U. S., 517; Voights *v.* Wright, 148 U. S., 62; Brennan *v.* Titusville, 153 U. S., 289; Harmon *v.* Chicago, 147 U. S., 396; Brass *v.* Stoeser, 153 U. S., 391; Ashley *v.* Ryan, 153 U. S., 436; Luxton *v.* N. R. Bridge Co., 153 U. S., 525; Postal Telegraph Co. *v.* Charleston, 153 U. S., 692; Covington & Cincinnati Bridge Co. *v.* Kentucky, 154 U. S., 204; matter of Debs, 158 U. S., 563.

" I., " 8, " 4.....[1]Chay Yung *v.* Freeman, 92 U. S., 275; [1]Chew Heong *v.* U. S., 112 U. S., 536; [1]Yick Wo *v.* Hopkins, 118 U. S., 356; [1]U. S. *v.* Yung Ah Lung, 124 U. S., 624; [1]Chae Chan Ping *v.* U. S., 130 U. S., 581; [1]Nishimura Ekin *v.* U. S., 142 U. S., 651; [1]Fong Yue Ting *v.* U. S., 149 U. S., 698; [1]Lee *v.* U. S., 150 U. S., 476.

" I., " 8, " 7.....Matter of Debs, 158 U. S., 563.

" I., " 8, " 17.....Gibbons *v.* District of Columbia, 116 U. S., 404; Stoutenburg *v.* Henrick, 129 U. S., 141; Bonson *v.* U. S., 146 U. S., 325; Shoemaker *v.* U. S., 147 U. S., 282.

" I., " 9, " 2.....*Ex parte* Siebold, 100 U. S., 371; *ex parte* Clark *v.* U. S, 106

U. S., 399; *ex parte* Curtis, 106 U. S., 371; U. S., *v.* Gale, 109 U. S., 65; *ex parte* Wilson, 114 U. S., 417; matter of Ayres, 123 U. S., 443; matter of Coy, 127 U. S., 731; U. S. *v.* Jung Ah Lung, 124 U. S., 621; matter of Shubuya Jugiro, 140 U. S., 291; Fong Yue Ting *v.* U. S., 149 U. S., 698.

Art. I., Sec. 9, Clause 3.....King *v.* Missouri, 107 U. S., 221; Hopt *v.* Utah, 110 U. S., 574.

" I., " 9, " 4.....(Income tax cases) Pollock *v.* Farmers' Loan and Trust Co., 157 U. S., 429; *idem*, 158 U. S., 601; Hyde *v.* Continental Trust Co., 157 U. S., 585; and 158 U. S., 601.

" I., " 10, " 1.....[3]Scotland County *v.* Hill, 140 U. S., 41; [3]Essex Public Road Board *v.* Skinkle, 140 U. S., 41; [3]Stein *v.* B. Water Supply Co., 141 U. S., 67; [3]Morley *v.* Lake Shore, etc., Co., 146 U. S., 162; [3]Hamilton Gas, etc., Co. *v.* Hamilton, 146 U. S., 258; [3]Schurz *v.* Cook, 148 U. S., 397; [3]Bryant *v.* Board of Education, 151 U. S., 639; [2]Duncan *v.* Missouri, 152 U. S., 377; N. Y., Lake Erie & W. R. R. *v.* Pennsylvania, 153 U. S., 628.

" I., " 10, " 2.....Stone *v.* Farmers' Loan and Trust Co., 116 U. S., 307.

" II., " 1, " 2.....McPherson *v.* Blacker, 146 U. S., 1.

" II., " 2, " 1.....Knote *v.* U. S., 95 U. S., 149.

" II., " 2, " 2.....U. S. *v.* Rauscher, 119 U. S., 407; Baldwin *v.* Frank, 120 U. S., 678; Chinese exclusion cases, 130 U. S., 581; Shoemaker *v.* U. S., 147 U. S., 282.

" III., Sec. 2, Clause 1..U. S. *v.* Texas, 143 U. S., 621.

" III., " 2, " 3..Callan *v.* Wilson, 127 U. S., 540; Nashville & Chattanooga Railway *v.* Alabama, 128 U. S., 96.

" III., " 3, " 1..Hanauer *v.* Doane, 12 Wall., 342; Carlisle *v.* U. S., 16 Wall., 147; Spratt *v.* U. S., 20 Wall., 459; Young *v.* U. S., 97 U. S., 39.

" III., " 3, " 2..Pike *v.* Russell, 94 U. S., 711; U. S. *v.* Dannington, 146 U. S., 338; Jenkins *v.* Collard, 145 U. S., 546.

" IV., " 1.....Cole *v.* Cunningham, 133 U. S., 107.

" IV., " 2, Clause 2..Mahne *v.* Justice, 127 U. S., 700; Lascelles *v.* Georgia, 148 U. S., 537.

" VI., Clause 2.....W. U. Tel. Co. *v.* Massachusetts, 125 U. S., 530; The Gulf, C., & Santa Fé R. R. Co. *v.* Hefley, 158 U. S., 96.

AMENDMENTS.

Art. I.....Eilenbecker *v.* Plymouth Co., 134 U. S., 31; matter of Rapier, 143 U. S., 110.

" V.....Matter of Ross, 140 U. S., 453; New Orleans *v.* N. O. Water Works Co., 142 U. S., 79; Counselman *v.* Hitchcock, 142 U. S., 547; Nishimura Ekin *v.* U. S., 142 U. S., 651; Thomington *v.* Montgomery, 147 U. S., 490; Monongahela Navigation Co. *v.* U. S., 148 U. S., 312; Paulsen *v.* Portland, 149 U. S., 30; Marchant *v.* Penn. R. R. Co., 153 U. S., 380; Pittsburg C. C., etc., R. R. Co. *v.* Bachus, 154 U.

S., 421; Thompson *v.* U. S., 155 U. S., 268; Johnson *v.* Sayre, 158 U. S., 107.

Art. VI. . . . . Callan *v.* Wilson, 127 U. S., 540.

" VII. . . . . Scott *v.* Neely, 140 U. S., 106; Cates *v.* Allen, 147 U. S., 451.

" XI. . . . . Lincoln County *v.* Laning, 133 U. S., 529; Haws *v.* Louisiana, 134 U. S., 1; Pennoyer *v.* McConnaughy, 140 U. S., 1; Reagan *v.* Farmers' Loan and Trust Co., 154 U. S., 362.

" XIV., Sec. 5. . . . . McMillan *v.* Anderson, 95 U. S., 37; Pennoyer *v.* Neff, 95 U. S., 714; Railroad Company *v.* Richmond, 96 U. S., 700; Strauder *v.* West Virginia, 100 U. S., 339; Missouri *v.* Lewis, 101 U. S., 22; Langford *v.* U. S., 101 U. S., 141; U. S. *v.* Harris, 106 U. S., 629; Pace *v.* Alabama, 106 U. S., 583; Bush *v.* Kentucky, 107 U. S., 110; Gross *v.* The U. S. Mortgage Co., 108 U. S., 477; civil rights cases, 109 U. S., 3; Louisiana *v.* New Orleans, 109 U. S., 285; Hurtado *v.* California, 110 U. S., 516; Hager *v.* Reclamation District, 111 U. S., 701; Elk *v.* Wilkins, 112 U. S., 94; Foster *v.* Kansas, 112 U. S., 201; Head *v.* Amoskeag M'f'g Co., 113 U. S., 9; Barbier *v.* Connolly, 113 U. S., 27; Provident Institution *v.* Jersey City, 113 U. S., 506; Soon King *v.* Crowley, 113 U. S., 703; Wurts *v.* Hoagland, 114 U. S., 606; Kentucky R. R. tax cases, 115 U. S., 321; Campbell *v.* Holt, 115 U. S., 620; Presser *v.* Illinois, 116 U. S., 252; Missouri Pacific R. R. Co. *v.* Humes, 116 U. S., 512; Yick Wo *v.* Hopkins, 128 U. S., 356; Santa Clara County *v.* Southern Pacific R. R., 118 U. S., 394; Philadelphia Fire Association *v.* New York, 119 U. S., 110; Schmidt *v.* Cobb, 119 U. S., 286; Hayes *v.* Missouri, 120 U. S., 68; Mugler *v.* Kansas, 123 U. S., 623; Pembina Mining Co. *v.* Pennsylvania, 125 U. S., 181; Spencer *v.* Merchant, 125 U. S., 345; Dow *v.* Beidelman, 125 U. S., 680; Ro Bards *v.* Lamb, 127 U. S., 58; Missouri Pacific Railway Co. *v.* Mackey, 127 U. S., 205 and 210; Powell *v.* Pennsylvania, 127 U. S., 678; Kidd *v.* Pearson, 128 U. S., 1; Nashville & Chattanooga Railway *v.* Alabama, 128 U. S., 96; Walstein *v.* Nevin, 128 U. S., 578; Minneapolis & St. Louis Railway *v.* Beckwith, 128 U. S., 26; Dente *v.* West Virginia, 129 U. S., 114; Freeland *v.* Williams, 131 U. S., 405; Eilenbecker *v.* Plymouth County, 134 U. S., 31; Bell Gap Railroad Co. *v.* Pennsylvania, 134 U. S., 232; *In re* Converse, 137 U. S., 624; Caldwell *v.* Texas, 137 U. S., 692; Leeper *v.* Texas, 139 U. S., 462; *In re* Manning, 139 U. S., 504; Natal *v.* Louisiana, 139 U. S., 621; Lent *v.* Tillson, 140 U. S., 316; Wankauna Water Power Co. *v.* Green Bay, etc., 142 U. S., 254; Jennings *v.* Coal Ridge Coal Co., 147 U. S., 147; Charlotte, Augusta & Columbia Railroad Co. *v.* Gibbes, 142 U. S., 386; Counselman *v.* Hitchcock, 142 U. S., 547; New York *v.* Squires, 145 U. S., 175; Morley *v.* Lake Shore & Michigan Southern Railway Co., 146 U. S., 162; Hallinger

v. Davis, 146 U. S., 314; Paulsen *v.* Portland, 146 U. S., 30; Columbus Southern Railway Co. *v.* Wright, 151 U. S., 470; Lawson *v.* Steele, 152 U. S., 133; Duncan *v.* Missouri, 152 U. S., 377; Marchant *v.* Pennsylvania Railroad Co., 153 U. S., 380; Scott *v.* McNeal, 154 U. S., 34; Reagan *v.* Farmers' Loan and Trust Co., 154 U. S., 362; Pittsburg, Cincinnati, Chicago, & St. Louis Railway Co. *v.* Bachus, 154 U. S., 421; Chicago, K. & W. R. R. Co. *v.* Pontius, 157 U. S., 207.

EXECUTIVE POWER.*

DEDICATION.

TO ALL PERSONS WHO HAVE SWORN TO SUPPORT

THE CONSTITUTION OF THE UNITED STATES,

AND

TO ALL CITIZENS WHO VALUE THE PRINCIPLES OF CIVIL LIBERTY WHICH THAT CONSTITUTION EMBODIES, AND FOR THE PRESERVATION OF WHICH IT IS OUR ONLY SECURITY,

These Pages

ARE RESPECTFULLY DEDICATED

BY THE AUTHOR.

PREFACE.

EXTRACT FROM PRESIDENT LINCOLN'S PROCLAMATION OF SEPTEMBER 22, 1862.

"THAT, on the first day of January, in the year of our Lord one thousand eight hundred and sixty-three, all persons held as slaves within any State, or designated part of a State, the people whereof shall then be in rebellion against the United States, shall be then, thenceforward, and for ever free; and the Executive Government of the United States, including the military and naval authority thereof, will recognize and maintain the freedom of such persons, and will do no act or acts to suppress such persons, or any of them, in any efforts they may make for their actual freedom.

"That the Executive will, on the first day of January aforesaid, by proclamation, designate the States, and parts of States, if any, in which the people thereof respectively shall then be in rebellion against the United States; and the fact that any State, or the people thereof, shall on that day be in good faith represented in the Congress of the United States, by members chosen thereto at elections wherein a majority of the qualified voters of such State shall have participated, shall, in the absence of strong countervailing testimony, be deemed conclusive evidence that such State, and the people thereof, are not then in rebellion against the United States."

* This is a reprint of the second edition of a pamphlet written by Judge Benjamin R. Curtis, in October, 1862. See note to chapters XVI. and XVII.

"Understand, I raise no objection against it on legal or constitutional grounds; for *as commander-in-chief of the army and navy, in time of war, I suppose I have a right to take any measure which may best subdue the enemy.*"—PRESIDENT LINCOLN TO THE CHICAGO DELEGATION.

PROCLAMATION OF SEPTEMBER 24, 1862.

"Whereas, it has become necessary to call into service not only volunteers, but also portions of the militia of the States by draft, in order to suppress the insurrection existing in the United States, and disloyal persons are not adequately restrained by the ordinary processes of law from hindering this measure, and from giving aid and comfort in various ways to the insurrection:

"Now, therefore, be it ordered,—

"First. That, during the existing insurrection, and as a necessary measure for suppressing the same, all rebels and insurgents, their aiders and abettors, within the United States, and all persons discouraging volunteer enlistments, resisting militia drafts, or guilty of any disloyal practice, affording aid and comfort to the rebels against the authority of the United States, shall be subject to martial law, and liable to trial and punishment by courts-martial or military commission.

"Second. That the writ of habeas corpus is suspended in respect to all persons arrested, or who are now, or hereafter during the rebellion shall be, imprisoned in any fort, camp, arsenal, military prison, or other place of confinement, by any military authority, or by the sentence of any court-martial or military commission.

"In witness whereof, I have hereunto set my hand, and caused the seal of the United States to be affixed.

"Done at the city of Washington, this twenty-fourth day of September, in
[L. S.] the year of our Lord one thousand eight hundred and sixty-two, and of the independence of the United States the eighty-seventh.

"ABRAHAM LINCOLN.

"By the President:

"WILLIAM H. SEWARD, *Secretary of State.*"

ORDERS OF THE SECRETARY OF WAR PROMULGATED SEPTEMBER 26, 1862.

"First. There shall be a provost-marshal-general of the war department, whose headquarters will be at Washington, and who will have the immediate supervision, control, and management of the corps.

"Second. There will be appointed in each State one or more special provost-marshals, as necessity may require, who will report and receive instructions and orders from the provost-marshal-general of the war department.

"Third. It will be the duty of the special provost-marshal to arrest all deserters, whether regulars, volunteers, or militia, and send them to the nearest military commander or military post, where they can be cared for and sent to their respective regiments; to arrest, upon the warrant of the judge advocate, all disloyal persons subject to arrest under the orders of the war department; to inquire into and report treasonable practices, seize stolen or embezzled property of the government, detect spies of the enemy, and perform such other duties as may be enjoined upon them by the war department, and report all their proceedings promptly to the provost-marshal-general.

"Fourth. To enable special provost-marshals to discharge their duties efficiently, they are authorized to call on any available military force within their respective districts, or else to employ the assistance of citizens, constables, sheriffs, or police-officers, so far as may be necessary under such regulations as may be prescribed by the provost-marshal-general of the war department, with the approval of the Secretary of War.

"Fifth. Necessary expenses incurred in this service will be paid on duplicate bills certified by the special provost-marshals, stating time and nature of service, after examination and approval by the provost-marshal-general.

"Sixth. The compensation of special provost-marshals will be —— dollars per month, and actual travelling expenses and postage will be refunded on bills certified under oath and approved by the provost-marshal-general.

"Seventh. All appointments in this service will be subject to be revoked at the pleasure of the Secretary of War.

"Eighth. All orders heretofore issued by the war department, conferring authority upon other officers to act as provost-marshals, except those who received special commissions from the war department, are hereby revoked.

"By order of the Secretary of War.

"L. THOMAS, *Adjutant-General.*"

EXECUTIVE POWER.

No citizen can be insensible to the vast importance of the late proclamations and orders of the President of the United States. Great differences of opinion already exist concerning them. But whatever those differences of opinion may be, upon one point all must agree. They are assertions of transcendent executive power.

There is nothing in the character or conduct of the chief magistrate, there is nothing in his present position in connection with these proclamations, and there is nothing in the state of the country which should prevent a candid and dispassionate discussion either of their practical tendencies, or of the source of power from whence they are supposed to spring.

The President on all occasions has manifested the strongest desire to act cautiously, wisely, and for the best interests of the country. What is commonly called his proclamation of emancipation is, from its terms and from the nature of the case, only a declaration of what, at its date, he believed might prove expedient, within yet undefined territorial limits, three months hence, thirty days after the next meeting of Congress, and within territory not at present subject even to our military control. Of course such an executive declaration as to his future intentions must be understood by the people to be liable to be modified by events, as well as subject to such changes of views, respecting the extent of his own powers, as a more mature, and possibly a more enlightened consideration may produce.

In April, 1861, the President issued his proclamation, declaring that he would treat as pirates all persons who should cruise, under the authority of the so-called Confederate States, against the commerce of the United States.

But subsequent events induced him, with general acquiescence, to exchange them as prisoners of war. Not from any fickleness of purpose; but because the interests of the country imperatively demanded this departure from his proposed course of action.

In like manner, it is not to be doubted by any one who esteems the President honestly desirous to do his duty to the country, under the best lights possible, that when the time for his action on his recent proclamations and orders shall arrive, it will be in conformity with his own wishes that he should have those lights which are best elicited in this country by temperate and well-considered public discussion; discussion not only of the practical consequences of the proposed measures, but of his own constitutional power to decree and execute them.

The Constitution has made it incumbent on the President to recommend to Congress such measures as he shall deem necessary and expedient. Although Congress will have been in session nearly thirty days before any executive action is proposed to be taken on this subject of emancipation, it can hardly be supposed that this proclamation was intended to be a recommendation to them. Still, in what the President may perhaps regard as having some flavor of the spirit of the Constitution, he makes known to the people of the United States his proposed future executive action; certainly not expecting or desiring that they should be indifferent to such a momentous proposal, or should fail to exercise their best judgments, and afford their best counsels upon what so deeply concerns themselves.

Our public affairs are in a condition to render unanimity, not only in the public councils of the nation, but among the people themselves, of the first importance. But the President must have been aware, when he issued these proclamations, that nothing approaching towards unanimity upon their subjects could be attained among the people, save through their public discussion. And as his desire to act in accordance with the wisest and best settled and most energetic popular sentiment cannot be doubted, we may justly believe that executive action has been postponed, among other reasons, for the very purpose of allowing time for such discussion.

And in reference to the last proclamation, and the orders of the Secretary of War intended to carry it into practical effect, though their operation is immediate, so far as their express declarations can make them so, they have not yet been practically applied to such an extent or in such a way as not to allow it to be supposed that the grounds upon which they rest are open for examination.

However this may be, these are subjects in which the people have vast concern. It is their right, it is their duty, to themselves and to their posterity, to examine and to consider and to decide upon them; and no citizen is faithful to his great trust if he fail to do so according to the best lights he has or can obtain. And if, finally, such examination and consideration shall end in diversity of opinion, it must be accepted as justly attributable to the questions themselves, or to the men who have made them.

It has been attempted by some partisan journals to raise the cry of "disloyalty" against any one who should question these executive acts.

But the people of the United States know that loyalty is not subserviency to a man or to a party or to the opinions of newspapers, but that it is an honest and

wise devotion to the safety and welfare of our country, and to the great principles which our constitution of government embodies, by which alone that safety and welfare can be secured. And when those principles are put in jeopardy, every truly loyal man must interpose, according to his ability, or be an unfaithful citizen.

This is not a government of men. It is a government of laws. And the laws are required by the people to be in conformity with their will declared by the Constitution. Our loyalty is due to that will. Our obedience is due to those laws; and he who would induce submission to other laws, springing from sources of power not originating in the people, but in casual events, and in the mere will of the occupants of places of power, does not exhort us to loyalty, but to a desertion of our trust.

That they whose principles he questions have the conduct of public affairs; that the times are most critical; that public unanimity is highly necessary—while these facts afford sufficient reasons to restrain all opposition upon any personal or party grounds, they can afford no good reason—hardly a plausible apology—for failure to oppose usurpation of power, which, if acquiesced in and established, must be fatal to a free government.

The war in which we are engaged is a just and necessary war. It must be prosecuted with the whole force of this government till the military power of the South is broken, and they submit themselves to their duty to obey, and our right to have obeyed, the Constitution of the United States as "the supreme law of the land." But with what sense of right can we subdue them by arms to obey the Constitution as the supreme law of *their* part of the land, if we have ceased to obey it, or failed to preserve it, as the supreme law of *our* part of the land?

I am a member of no political party. Duties inconsistent, in my opinion, with the preservation of any attachments to a political party caused me to withdraw from all such connections many years ago, and they have never been resumed. I have no occasion to listen to the exhortations, now so frequent, to divest myself of party ties and disregard party objects, and act for my country. I have nothing but my country for which to act in any public affair; and solely because I have that yet remaining, and know not but it may be possible, from my studies and reflections, to say something to my countrymen which may aid them to form right conclusions in these dark and dangerous times, I now reluctantly address them.

I do not propose to discuss the question whether the first of these proclamations of the President, if definitively adopted, can have any practical effect on the unhappy race of persons to whom it refers; nor what its practical consequences would be upon them and upon the white population of the United States if it should take effect; nor through what scenes of bloodshed, and worse than bloodshed, it may be, we should advance to those final conditions; nor even the lawfulness, in any Christian or civilized sense, of the use of such means to attain *any* end.

If the entire social condition of nine millions of people has, in the providence of God, been allowed to depend upon the executive decree of one man, it will be the most stupendous fact which the history of the race has exhibited. But, for myself, I do not yet perceive that this vast responsibility is placed upon the

President of the United States. I do not yet see that it depends upon his executive decree whether a servile war shall be invoked to help twenty millions of the white race to assert the rightful authority of the Constitution and laws of their country over those who refuse to obey them. *But I do see that this proclamation asserts the power of the executive to make such a decree.*

I do not yet perceive how it is that my neighbors and myself, residing remote from armies and their operations, and where all the laws of the land may be enforced by constitutional means, should be subjected to the possibility of military arrest and imprisonment, and trial before a military commission, and punishment at its discretion for offences unknown to the law; a possibility to be converted into a fact at the mere will of the President, or of some subordinate officer clothed by him with this power. *But I do perceive that this executive power is asserted.*

I am quite aware that in times of great public danger unexpected perils, which the legislative power have failed to provide against, may imperatively demand instant and vigorous executive action, passing beyond the limits of the laws; and that when the executive has assumed the high responsibility of such a necessary exercise of mere power, he may justly look for indemnity to that department of the government which alone has the rightful authority to grant it—an indemnity which should be always sought and accorded *upon the clearest admission of legal wrong*, finding its excuse in the exceptional case which made that wrong absolutely necessary for the public safety.

But I find no resemblance between such exceptional cases and the substance of these proclamations and these orders. They do not relate to exceptional cases: they establish a system. They do not relate to some instant emergency: they cover an indefinite future. They do not seek for excuses: they assert powers and rights. They are general rules of action, applicable to the entire country and to every person in it, or to great tracts of country and to the social condition of their people; and they are to be applied whenever and wherever and to whomsoever the President, or any subordinate officer whom he may employ, may choose to apply them.

Certainly these things are worthy of the most deliberate and searching examination.

Let us, then, analyze these proclamations and orders of the President; let us comprehend the nature and extent of the powers they assume. Above all, let us examine that portentous cloud of the military power of the President, which is supposed to have overcome us and the civil liberties of the country, pursuant to the will of the people, ordained in the Constitution *because we are in a state of war.*

And, first, let us understand the nature and operation of the proclamation of emancipation, as it is termed; then let us see the character and scope of the other proclamation, and the orders of the Secretary of War designed to give it practical effect, and having done so, let us examine the asserted source of these powers.

The proclamation of emancipation, if taken to mean what in terms it asserts, is an executive decree that, on the first day of January next, all persons held as slaves, within such States or parts of States as shall then be designated, shall

cease to be lawfully held to service, and may by their own efforts, and with the aid of the military power of the United States, vindicate their lawful right to their personal freedom.

The persons who are the subjects of this proclamation are held to service by the laws of the respective States in which they reside, enacted by State authority as clear and unquestionable, under our system of government, as any law passed by any State on any subject.

This proclamation, then, by an executive decree, proposes to repeal and annul valid State laws which regulate the domestic relations of their people. Such is the mode of operation of the decree.

The next observable characteristic is that this executive decree holds out this proposed repeal of State laws as a threatened *penalty* for the continuance of a governing majority of the people of each State, or part of a State, in rebellion against the United States. So that the President hereby assumes to himself the power to denounce it as a punishment against the entire people of a State, that the valid laws of that State which regulate the domestic condition of its inhabitants shall become null and void, at a certain future date, by reason of the criminal conduct of a governing majority of its people.

This penalty, however, it should be observed, is not to be inflicted on those persons who have been guilty of treason. The freedom of *their* slaves was already provided for by the act of Congress recited in a subsequent part of the proclamation. It is not, therefore, as a punishment of guilty persons that the commander-in-chief decrees the freedom of slaves. It is upon the slaves of loyal persons, or of those who, from their tender years, or other disability, cannot be either disloyal or otherwise, that the proclamation is to operate, if at all; and it is to operate to set them free, in spite of the valid laws of their States, because a majority of the legal voters do not send representatives to Congress.

Now it is easy to understand how persons held to service under the laws of these States, and how the army and navy, under the orders of the President, may overturn these valid laws of the States, just as it is easy to imagine that any law may be *violated by physical force*. But I do not understand it to be the purpose of the President to incite a part of the inhabitants of the United States to rise in insurrection against valid laws; but that by virtue of some power which he possesses, he proposes to annul those laws, so that they are no longer to have any operation.

The second proclamation, and the orders of the Secretary of War, which follow it, place every citizen of the United States under the direct military command and control of the President. They declare and define new offences, not known to any law of the United States. They subject all citizens to be imprisoned upon a military order, at the pleasure of the President, when, where, and so long as he, or whoever is acting for him, may choose. They hold the citizen to trial before a military commission appointed by the President, or his representative, for such acts or omissions as the President may think proper to decree to be offences; and they subject him to such punishment as such military commission may be pleased to inflict. They create new offices, in such number, and whose occupants are to receive such compensation, as the President may direct; and the holders of these offices, scattered through the States, but with one chief inquisitor at Washington,

are to inspect and report upon the loyalty of the citizens, with a view to the above described proceedings against them, when deemed suitable by the central authority.

Such is a plain and accurate statement of the nature and extent of the powers asserted in these executive proclamations.

What is the source of these vast powers? Have they any limit? Are they derived from, or are they utterly inconsistent with, the Constitution of the United States?

The only supposed source or measure of these vast powers appears to have been designated by the President, in his reply to the address of the Chicago clergymen, in the following words: "Understand, I raise no objection against it on legal or constitutional grounds; for, *as commander-in-chief of the army and navy, in time of war, I suppose I have a right to take any measure which may best subdue the enemy.*" This is a clear and frank declaration of the opinion of the President respecting the origin and extent of the power he supposes himself to possess; and, so far as I know, *no source of these powers other than the authority of commander-in-chief in time of war, has ever been suggested.*

There has been much discussion concerning the question whether the power to suspend the "privilege of the writ of habeas corpus" is conferred by the Constitution on Congress, or on the President. The only judicial decisions which have been made upon this question have been adverse to the power of the President. Still, very able lawyers have endeavored to maintain, perhaps to the satisfaction of others have maintained, that the power to deprive a particular person of "the privilege of the writ," is an executive power. For while it has been generally, and, so far as I know, universally admitted, that Congress alone can suspend a law, or render it inoperative, and consequently that Congress alone can prohibit the courts from issuing the writ, yet the executive might, in particular cases, suspend or deny the privilege which the writ was designed to secure. I am not aware that any one has attempted to show that, under this grant of power to suspend "the privilege of the writ of habeas corpus," the President may annul the laws of States, create new offences, unknown to the laws of the United States, erect military commissions to try and punish them, and then, by a sweeping decree, suspend the writ of habeas corpus as to all persons who shall be "arrested by any military authority." I think he would make a more bold than wise experiment on the credulity of the people, who should attempt to convince them that this power is found in the habeas corpus clause of the Constitution. No such attempt has been, and I think none such will be made. And therefore I repeat, that no other source of this power *has ever been suggested*, save that described by the President himself, as belonging to him as the commander-in-chief.

It must be obvious to the meanest capacity, that if the President of the United States has an *implied* constitutional right, as commander-in-chief of the army and navy in time of war, to disregard any one positive prohibition of the Constitution, or to exercise any one power not delegated to the United States by the Constitution, because, in his judgment, he may thereby "best subdue the enemy," he has the same right, for the same reason, to disregard each and every provision of the Constitution, and to exercise all power, *needful, in his opinion*, to enable him "best to subdue the enemy."

It has never been doubted that the power to abolish slavery within the States was not delegated to the United States by the Constitution, but was reserved to the States. If the President, as commander-in-chief of the army and navy in time of war, may, by an executive decree, exercise this power to abolish slavery in the States, which power was reserved to the States, because he is of opinion that he may thus "best subdue the enemy," what other power, reserved to the States or to the people, may not be exercised by the President, for the same reason, that he is of opinion he may thus best subdue the enemy? And if so, what distinction can be made between powers not delegated to the United States at all, and powers which, though thus delegated, are conferred by the Constitution upon some department of the government other than the executive? Indeed, the proclamation of September 24, 1862, followed by the orders of the war department, intended to carry it into practical effect, are manifest assumptions, by the President, of powers delegated to the Congress and to the judicial department of the government. It is a clear and undoubted prerogative of Congress alone, to define all offences, and to affix to each some appropriate and not cruel or unusual punishment. But this proclamation and these orders create new offences, not known to any law of the United States. "Discouraging enlistments," and "any disloyal practice," are not offences known to any law of the United States. At the same time, they may include, among many other things, acts which are offences against the laws of the United States, and, among others, treason. Under the Constitution and laws of the United States, except in cases arising in the land and naval forces, every person charged with an offence is expressly required to be proceeded against, and tried by the judiciary of the United States and a jury of his peers; and he is required by the Constitution to be punished, in conformity with some act of Congress applicable to the offence proved, enacted before its commission. But this proclamation and these orders remove the accused from the jurisdiction of the judiciary; they substitute a report, made by some deputy provost-marshal, for the presentment of a grand jury; they put a military commission in place of a judicial court and jury required by the Constitution; and they apply the discretion of the commission and the President, fixing the degree and kind of punishment, instead of the law of Congress fixing the penalty of the offence.

It no longer remains to be suggested, that if the ground of action announced by the President be tenable, he *may*, as commander-in-chief of the army and navy, use powers not delegated to the United States by the Constitution; or *may* use powers by the Constitution exclusively delegated to the legislative and the judicial department of the government. These things have been already done, so far as the proclamations and orders of the President can effect them.

It is obvious, that if no private citizen is protected in his liberty by the safeguards thrown around him by the express provisions of the Constitution, but each and all of those safeguards may be disregarded, to subject him to military arrest upon the report of some deputy provost-marshal, and imprisonment at the pleasure of the President, and trial before a military commission, and punishment at its discretion, because the President is of opinion that such proceedings "may best subdue the enemy," then all members of either house of Congress, and every judicial officer is liable to be proceeded against as a "disloyal person," by the same means and in the same way. So that, under this assumption concerning the im-

plied powers of the President as commander-in-chief in time of war, if the President shall be of opinion that the arrest and incarceration, and trial before a military commission, of a judge of the United States, for some judicial decision, or of one or more members of either house of Congress for words spoken in debate, is "a measure which may best subdue the enemy," there is then conferred on him by the Constitution the rightful power so to proceed against such judicial or legislative officer.

This power is certainly not found in any express grant of power made by the Constitution to the President, nor even in any delegation of power made by the Constitution of the United States to any department of the government. It is claimed to be found solely in the fact that he is the commander-in-chief of its army and navy, charged with the duty of subduing the enemy. And to this end, as he understands it, he is charged with the duty of using, not only those great and ample powers which the Constitution and laws and the self-devotion of the people in executing them, have placed in his hands, but charged with the duty of using powers which the people have reserved to the States, or to themselves; and is permitted to break down those great constitutional safeguards of the partition of governmental powers, and the immunity of the citizen from mere executive control, which are at once both the end and the means of free government.

The necessary result of this interpretation of the Constitution is, that, in time of war, the President has any and all power, which he may deem it necessary to exercise, to subdue the enemy; and that every private and personal right of individual security against mere executive control, and every right reserved to the States or to the people, rests merely upon executive discretion.

But the military power of the President is derived solely from the Constitution; and it is as sufficiently defined there as his purely civil power. These are its words: "The President shall be 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."

This is his military power. He is the general-in-chief; and as such, in prosecuting war, may do what generals in the field are allowed to do within the sphere of their actual operations, *in subordination to the laws of their country, from which alone they derive their authority.**

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* The case of Mitchel *vs.* Harmony (13 How. 115) presented for the decision of the Supreme Court of the United States the question of the extent of the right of a commanding general in the field to appropriate private property to the public service, and it was decided that such an appropriation might be made, in case it should be rendered necessary by an immediate and pressing danger or urgent necessity existing at the time, and not admitting of delay, but not otherwise.

In delivering the opinion of the Court, the Chief Justice said: "Our duty is to determine under what circumstances private property may be taken from the owner by a military officer in a time of war. And the question here is: whether the law permits it to be taken, to insure the success of any enterprise against a public enemy, which the commanding officer may deem it advisable to undertake. And we think it very clear that the law does not permit it. The case mentioned by Lord Mansfield, in delivering his opinion in Mostyn *vs.* Fabrigas (1. Cowp. 180), illustrates the principle of which we are speaking. Captain Gambier of the British navy, by the order of Admiral Boscawen, pulled down the houses of

When the Constitution says that the President shall be 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, does it mean that he shall possess military power and command *over all citizens of the United States;* that, by military edicts, he may control all citizens as if enlisted in the army or navy, or in the militia called into the actual service of the United States? Does it mean that he may make himself a legislator, and enact penal laws governing the citizens of the United States, and erect tribunals, and create offices to enforce his penal edicts upon citizens? Does it mean that he may, by a prospective executive decree, repeal and annul the laws of the several States, which respect subjects reserved by the Constitution for the exclusive action of the States and the people? The President is the commander-in-chief of the army and navy, not only by force of the Constitution, but under and subject to the Constitution, and to every restriction therein contained, and to every law enacted by its authority, as completely and clearly as the private in his ranks.

He is general-in-chief; but can a general-in-chief *disobey any law of his own country?* When he can, he superadds to his *rights* as commander the *powers* of a usurper; and that is military despotism. In the noise of arms have we become deaf to the warning voices of our fathers, to take care that the military shall always be subservient to the civil power? Instead of listening to these voices, some persons now seem to think that it is enough to silence objection, to say, true enough, there is no civil right to do this or that, but it is a military act. They seem to have forgotten that every military act is to be tested by the Constitution and laws of the country under whose authority it is done. And that under the Constitution and laws of the United States, no more than under the government of Great Britain, or under any free or any settled government, the mere authority to command an army is not an authority to disobey the laws of the country.

The framers of the Constitution thought it wise that the powers of the commander-in-chief of the military forces of the United States should be placed in the hands of the chief civil magistrate. But the powers of commander-in-chief are in no degree enhanced or varied by being conferred upon the same officer who has important civil functions. If the Constitution had provided that a commander-

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some sutlers on the coast of Nova Scotia, who were supplying the sailors with spirituous liquors, the health of the sailors being injured by frequenting them. The motive was evidently a laudable one, and the act done for the public service. Yet it was an invasion of the rights of private property and without the authority of law; and the officer who executed the order was held liable to an action; and the sutlers recovered damages against him to the value of the property destroyed. This case shows how carefully the rights of property are guarded by the laws of England; and they are certainly not less valued, nor less securely guarded, under the Constitution and laws of the United States."

It may safely be said that neither of the very eminent counsel by whom that case was argued, and that no judge before whom it came, had then advanced to the conception that a commanding general may lawfully take any measure which may best subdue the enemy. The wagons, mules, and packages seized by General Donophon, in that case, were of essential service in his brilliant and successful attack on the lines of Chihuahua. But this did not save him from being liable to their owner as a mere wrongdoer, under the Constitution of the United States.

in-chief should be appointed by Congress, his powers would have been the same as the military powers of the President now are. And what would be thought by the American people of an attempt by a general-in-chief to legislate by his decrees for the people and the States?

Besides, all the powers of the President are executive merely. He cannot make a law. He cannot repeal one. He can only execute the laws. He can neither make, nor suspend, nor alter them. He cannot even make an article of war. He may govern the army, either by general or special orders, but only in subordination to the Constitution and laws of the United States, and the articles of war enacted by the legislative power.

The time has certainly come when the people of the United States *must* understand, and *must* apply, those great rules of civil liberty which have been arrived at by the self-devoted efforts of thought and action of their ancestors, during seven hundred years of struggle against arbitrary power. If they fail to understand and apply them, if they fail to hold every branch of their government steadily to them, who can imagine what is to come out of this great and desperate struggle. The military power of eleven of these States being destroyed, what then? What is to be their condition? What is to be *our* condition?

Are the great principles of free government to be used and consumed as means of war? Are we not wise enough and strong enough to carry on this war to a successful military end, without submitting to the loss of any one great principle of liberty? We are strong enough. *We are wise enough*, if the people and their servants will but understand and observe the just limits of military power.

What, then, are those limits? They are these. There is military law; there is martial law. *Military* law is that system of laws enacted by the legislative power for the government of the army and navy of the United States, and of the militia when called into the actual service of the United States. It has no control whatever over any person or any property of any citizen. It could not even apply to the teamsters of an army, save by force of express provisions of the laws of Congress, making such persons amenable thereto. The persons and the property of private citizens of the United States are as absolutely exempted from the control of military law as they are exempted from the control of the laws of Great Britain.

But there is also *martial law*. What is this?* It is the will of a military

*The following extracts from the opinion of Mr. Justice Woodbury, delivered in the Supreme Court of the United States in the case of Luther *vs.* Borden (7 How. 62), states what martial law is, and some of the incidents of its history:

"By it every citizen, instead of reposing under the shield of known and fixed laws as to his liberty, property, and life, exists with a rope round his neck, subject to be hung up by a military despot at the next lamp-post, under the sentence of some drumhead court-martial. See Simmons's Practice of Courts-Martial, 40. See such a trial in Hough on Courts-Martial, 383, where the victim on the spot was 'blown away by a gun,' 'neither time, place, nor persons considered.' As an illustration how the passage of such a law may be abused, Queen Mary put it in force in 1558, *by proclamation merely*, and declared, 'that whosoever had in his possession any heretical, treasonable, or seditious books, and did not presently burn them, without reading them or showing them to any

commander, operating without any restraint, save his judgment, upon the lives, upon the property, upon the entire social and individual condition of all over whom this law extends. But, under the Constitution of the United States, *over whom does such law extend?*

Will any one be bold enough to say, in view of the history of our ancestors and ourselves, that the President of the United States can extend such law as that over the entire country, or over any defined geographical part thereof, save in connection with some particular military operations which he is carrying on there? Since Charles I. lost his head, there has been no King in England who could make such law in that realm. And where is there to be found, in our history, or our constitutions, either State or national, any warrant for saying that a President of the United States has been empowered by the Constitution to extend martial law over the whole country, and to subject thereby to his military power every right of every citizen? He has no such authority.

In time of war, a military commander, whether he be the commander-in-chief, or one of his subordinates, must possess and exercise powers both over the persons and the property of citizens which do not exist in time of peace. But he possesses and exercies such powers, *not in spite of the Constitution and laws of the United States, or in derogation from their authority, but in virtue thereof*

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other person, should be esteemed a rebel, and without any further delay be executed by the martial law.' Tytler on Military Law, p. 50, c. i., § 1.

"For convincing reasons like these, in every country which makes any claim to political or civil liberty, 'martial law' as here attempted, and as once practised in England against her own people, has been expressly forbidden there for near two centuries, as well as by the principles of every other free constitutional government. 1 Hallam's Const. Hist. 420. And it would be not a little extraordinary, if the spirit of our institutions, both State and national, was not much stronger than in England against the unlimited exercise of martial law over a whole people, whether attempted by any chief magistrate, or even by a legislature.

"One object of Parliamentary inquiry, as early as 1620, was to check the abuse of martial law by the King, which had prevailed before. Tytler on Military Law, 502. The Petition of Right, in the first year of Charles I., reprobated all such arbitrary proceedings in the just terms and in the terse language of that great patriot as well as judge, Sir Edward Coke, and prayed they might be stopped and never repeated. To this the King wisely replied, 'Soit droit fait comme est désiré' (Let right be done as desired). Petition of Right in Statutes at Large, 1 Charles I.

"Putting it in force by the King alone was not only restrained by the Petition of Right, early in the seventeenth century, but virtually denied as lawful by the Declaration of Rights in 1688. Tytler on Military Law, 307. Hallam, therefore, in his Constitutional History, 420, declares, that its use by 'the commissioners to try military offenders by martial law, was a procedure necessary, within certain limits, to the discipline of an army, but unwarranted by the constitution of this country.' Indeed, a distinguished English judge has since said, that 'martial law,' as of old, now 'does not exist in England at all,' was 'contrary to the Constitution, and has been for a century totally exploded.' Grant *vs.* Gould, 2 Hen. Bl. 69; 1 Hale, P. C. 346; Hale Com. Law, c. ii., p. 36; 1 MacArthur, 55.

"This is broad enough, and is correct as to the community generally, in both war and peace."

and in strict subordination thereto. The general who moves his army over private property in the course of his operations in the field, or who impresses into the public service means of transportation, or subsistence, to enable him to act against the enemy, or who seizes persons within his lines as spies, or destroys supplies in immediate danger of falling into the hands of the enemy, uses authority unknown to the Constitution and laws of the United States in time of *peace;* but not unknown to that Constitution and those laws in time of *war.* The power to declare war, includes the power to use the customary and necessary means effectually to carry it on. As Congress may institute a state of war, it may legislate into existence and place under executive control the means for its prosecution. And, in time of war without any special legislation, not the commander-in-chief only, but every commander of an expedition, or of a military post, is lawfully empowered by the Constitution and laws of the United States to do whatever is necessary, and is sanctioned by the laws of war, to accomplish the lawful objects of his command. But it is obvious that this implied authority must find early limits somewhere. If it were admitted that a commanding general in the field might do whatever in his discretion might be necessary to subdue the enemy, he could levy contributions to pay his soldiers; he could force conscripts into his service; he could drive out of the entire country all persons not desirous to aid him—in short, he would be the absolute master of the country for the time being.

No one has ever supposed—no one will now undertake to maintain that the commander-in-chief, in time of war, has any such lawful authority as this.

What, then, is his authority over the persons and property of citizens? I answer, that, over all persons enlisted in his forces he has military power and command; that over all persons and property *within the sphere of his actual operations in the field,* he may lawfully exercise such restraint and control as the successful prosecution of his particular military enterprise may, in his honest judgment, absolutely require; and upon such persons as have committed offences against any article of war, he may, through appropriate military tribunals, inflict the punishment prescribed by law. *And there his lawful authority ends.*

The military power over citizens and their property is a power to *act,* not a power to prescribe rules for *future* action. It springs from present pressing emergencies, and is limited by them. It cannot assume the functions of the statesman or legislator, and make provision for future or distant arrangements by which persons or property may be made subservient to military uses. It is the physical force of an army in the field, and may control whatever is so near as to be actually reached by that force, in order to remove obstructions to its exercise.

But when the military commander controls the persons or property of citizens who are beyond the sphere of his actual operations in the field, when he makes laws to govern their conduct, he becomes a legislator. Those laws may be made actually operative; obedience to them may be enforced by military power; their purpose and effect may be solely to recruit or support his armies, or to weaken the power of the enemy with whom he is contending. *But he is a legislator still;* and whether his edicts are clothed in the form of proclamations or of military orders, by whatever name they may be called, they

are laws. If he have the legislative power conferred on him by the people, it is well. If not, he usurps it.

He has no more lawful authority to hold all the *citizens* of the entire country, outside of the sphere of his actual operations in the field, amenable to his military edicts, than he has to hold all the *property* of the country subject to his military requisitions. He is not the military commander of the *citizens* of the United States, but of its *soldiers.*

Apply these principles to the proclamations and orders of the President. They are not designed to meet an existing emergency in some particular military operation in the field; they prescribe future rules of action touching the persons and property of citizens. They are to take effect, not merely within the scope of military operations in the field, or in their neighborhood, but throughout the entire country, or great portions thereof. Their subject-matter is not military offences or military relations, but civil offences and domestic relations; the relation of master and servant; the offences of "disloyalty, or treasonable practices." Their purpose is not to meet some existing and instant military emergency, but to provide for distant events, which may or may not occur; and whose connections, if they should coincide with any particular military operations, are indirect, remote, casual, and possible merely.

It is manifest that in proclaiming these edicts the President is not acting under the authority of military law; first, because military law extends only over the persons actually enlisted in the military service; and, second, because these persons are governed by laws enacted by the legislative power. It is equally manifest that he is not acting under that implied authority which grows out of particular actual military operations; for these executive decrees do not spring from the special emergencies of any particular military operations and are not limited to any field in which any such operations are carried on.

Whence, then, do these edicts spring? They spring from the assumed power to extend martial law over the whole territory of the United States; a power for the exercise of which by the President there is no warrant whatever in the Constitution; a power which no free people could confer upon an executive officer and remain a free people. For it would make him the absolute master of their lives, their liberties, and their property, with power to delegate his mastership to such satraps as he might select, or as might be imposed on his credulity or his fears. Amidst the great dangers which encompass us, in our struggles to encounter them, in our natural eagerness to lay hold of efficient means to accomplish our vast labors, let us beware how we borrow weapons from the armory of arbitrary power. They cannot be wielded by the hands of a free people. Their blows will finally fall upon themselves.

Distracted councils, divided strength, are the very earliest effects of an attempt to use them. What lies beyond no patriot is now willing to attempt to look upon.

These conclusions concerning the powers of the President cannot be shaken by the assertion that "rebels have no rights." The assertion itself is not true, in reference either to the seceding States or their people.

It is not true of those States; for the government of the United States has never admitted, and cannot admit, that, as States, they are in rebellion. A State

is simply incapable of doing any valid act in conflict with the Constitution or laws of the United States; and the Constitution is as much "the supreme law of the land" in Tennessee to-day, as it was before the void act of secession was attempted by a part of its people. Else the act was effectual, and the State is independent of the government of the United States, and the war is a war of conquest and subjugation.

Nor is the assertion that "rebels have no rights" applicable to the people of those States. It is strange that any one having even that acquaintance with public law which Chatham's indignant protest has made familiar to Americans, could have failed to feel it to be untrue. When many millions of people are involved in civil war, humanity, and that public law which in modern times is humane, forbid their treatment as outlaws. And if public law and the Constitution and laws of the United States are now their rules of duty towards *us*, on what ground shall we deny that public law and the Constitution, and the laws made under it, are also *our* rules of duty towards *them*? The only just idea of a law is that it is a rule of action which governs all who are within its scope. None are so degraded, even by crime, as to be too low for its protection; none so elevated by position or power as to be above its reach. And when we advance to that highest conception of human law, known, practically, in our own country only, and come to constitutional law, the embodied will of the people by which they govern the governors, what governors are beyond its control, what citizens are too low for its protection? Penalties and forfeitures may be inflicted by the legislative power as punishment for crime; but not even treason, the most deadly of all crimes, can set free the legislative or executive power from the restraint which the *people's* law has imposed upon them, or remove one man, or any number of men, from under its protection.

But, if it were conceded that "rebels have no rights," there would still be matter demanding the gravest consideration. For the inquiry which I have invited is not, what are *their* rights, but what are *our* rights?

Whatever may be thought of the wisdom of the proclamation of the President concerning the emancipation of slaves, no one can doubt its practical importance, if it is to take effect. To set free about four millions of slaves, at an early fixed day, with absolutely no preparation for their future, and with no preparation for our future in their relations with us, and to do this by force, must be admitted to be a matter of vast concern, not only to them and to their masters, but to the whole continent upon which they must live.

There may be great diversities of opinion concerning the effect of such an act. But that its effect must be of stupendous importance, extending not only into the border loyal States, but into all the States, North as well as South, I suppose no rational man can doubt. How has the President acquired the power to decide the question whether this great act shall be done? How have the people of the United States, or any part of them, conferred on him the rightful power to determine for them this question of such an emancipation, to be made under such circumstances?

If the people who are in rebellion have "no rights," the loyal people of Kentucky, of Indiana, Illinois, Ohio, Maryland, and Pennsylvania have rights. It is among those rights that the President shall not assume to decide for them a ques-

tion which they deem of vast practical importance to themselves, and which they have never consented he should decide. It is among the rights of all of us that the powers of each State to govern its own internal affairs should not be trespassed on by any department of the Federal power; and it is a right essential to the maintenance of our system of government. It is among the rights of all of us that the executive power should be kept within its prescribed constitutional limits, and should not legislate, by its decrees, upon subjects of transcendent importance to the whole people.

Whether such decrees are wise or unwise, whether their subjects are citizens or not, if they are usurpations of power, our rights are both infringed and endangered. They are infringed, because the power to decide and to act is taken from the people without their consent. They are endangered, because, in a constitutional government, every usurpation of power dangerously disorders the whole framework of the state.

A leading and influential newspaper, while expressing entire devotion to the President, and approbation of his proclamation of emancipation, says: "The Democrats talk about 'unconstitutional acts.' Nobody pretends that this act is constitutional, and nobody cares whether it is or not."

I think too well of the President to believe he has done an act involving the lives and fortunes of millions of human beings, and the entire social condition of a great people, without *caring* whether it is conformable to that Constitution which he has, many times, sworn to support.

Among all the causes of alarm which now distress the public mind there are few more terrible to reflecting men than the tendency to lawlessness which is manifesting itself in so many directions. No stronger evidence of this could be afforded than the open declaration of a respectable and widely circulated journal that "nobody cares" whether a great public act of the President of the United States is in conformity with or is subversive of the supreme law of the land—the only basis upon which the government rests; that our public affairs have become so desperate, and our ability to retrieve them by the use of honest means is so distrusted, and our willingness to use other means so undoubted, that our great public servants may themselves break the fundamental laws of the country, and become usurpers of vast powers not intrusted to them, in violation of their solemn oaths of office; and "nobody cares."

It is not believed that this is just to the people of the United States. They do *care*, and the President *cares*, that he and all other public servants should obey the Constitution. Partisan journals, their own honest and proper desire to support the President—on whose wisdom and firmness they rely to relieve their country from its evils and dangers—and the difficulties which the mass of the people encounter in forming opinions on questions of constitutional law, may prevent them, for a limited time, from arriving at a just judgment of such questions, *or of the vast practical effects dependent on them.*

But the people of the United States do not expect national concord to spring from usurpations of power; or national security from the violation of these great principles of public liberty which are the only possible foundation, in this country, of private safety and of public order. Their instincts demand a purer and more comprehensive statesmanship than that which seizes upon unlaw-

ful expedients, because they may possibly avert for the moment some threatening danger, at the expense of the violation of great principles of free government, or of the destruction of some necessary safeguard of individual security.

It is a subject of discussion in the public journals whether it is the intention of the executive to use the powers asserted in the last proclamation and in the orders of the Secretary of War to suppress free discussion of political subjects. I have confidence in the purity and the patriotism both of the President and of the Secretary of War. I fear no such present application of this proclamation and these orders by them. But the execution of such powers must be intrusted to subordinate agents, and it is of the very essence of arbitrary power that it should be in hands which can act promptly and efficiently and unchecked by forms. These great powers must be confided to persons actuated by party or local or personal feelings and prejudices; or, what would often prove as ruinous to the citizen, actuated by a desire to commend their vigilance to their employers, and by a blundering and stupid zeal in their service.

But it is not this or that particular application of power which is to be considered. It is the existence of the power itself, and the uses of which it is susceptible, while following out the principle on which it has been assumed.

The uses of power, even in despotic monarchies, are more or less controlled by usages and customs, or, in other words, by public opinion. In good hands and in favorable times despotic power is not commonly allowed to be felt to be oppressive; and, always, the forms of a free government, which has once existed, so far as is practicable, are carefully and speciously preserved. But a wise people does not trust its conditions and rights to the happy accident of favorable times or good hands. It is jealous of power. It knows that of all earthly things, it is that thing most likely to be abused; and when it affects a nation, most destructive by its abuse. They will rouse themselves to consider what is the power claimed; what is its origin; what is its extent; what uses may be made of it in dangerous times, and by men likely to be produced in such times; and while they will trust their public servants, and will pour out their dearest blood like water to sustain them in their honest measures for their country's salvation, they will demand of these servants obedience to their will as expressed in the fundamental laws of the government, to the end that there shall not be added to all the sufferings and losses they have uncomplainingly borne, that most irreparable of all earthly losses—the ruin of the principles of their free government.

What, then, is to be done? Are we to cease our utmost efforts to save our country, because its chief magistrate seems to have fallen, for the time being, into what we believe would be fatal errors if persisted in by him and acquiesced in by ourselves? Certainly not. Let the people but be right, and no President can long be wrong; nor can he effect any fatal mischief if he should be.

The sober second thought of the people has yet a controlling power. Let this gigantic shadow, which has been evoked out of the powers of the commander-in-chief, once be placed before the people, so that they can see clearly its proportions and its mien, and it will dissolve and disappear like the morning cloud before the rising sun.

The people yet can and will take care, by legitimate means, without dis-

turbing any principle of the Constitution, or violating any law, or relaxing any of their utmost efforts for their country's salvation, that their will, embodied in the Constitution, shall be obeyed. If it needs amendment, they will amend it themselves. They will suffer nothing to be added to it, or taken from it, by any other power than their own. If they should, neither the government itself, nor any right under it, will any longer be theirs.

NOTES.

NOTE TO CHAPTER II.

Constitutional Cases in the Supreme Court.

When the foot-note was made to Chapter II. the Editor contemplated the preparation of an elaborate note commenting upon the constitutional cases not cited by Mr. Curtis. Since then he has put into the Appendix a copy of the Constitution with very full Annotations citing every constitutional case, so that there is now no occasion for the proposed note.

NOTE TO CHAPTER III.

The Nominating Convention.

An irresponsible body, unknown to the Constitution or the laws, the creature of party, and organized by the action of probably not a tenth part of the American people, assembles in one of the large cities; a form of balloting is gone through with, and a name is announced as the only name which one-half of the people are thereafter to think of in connection with the presidency, to be opposed only by one other name which will be selected in the same manner for the other half of the nation to contend for under similar rules of action. Thereupon, instantly, all over the land, the press, which had previously urged with all the force and talent it could command the high political and moral expediency of electing some illustrious statesman, becomes immediately dumb, or passes, with the greatest facility, at once into the service of an inferior candidate. Principles of political conduct, which before were thought to be the highest political virtue, become at once improper to be professed and unworthy of men of honor. Some cannot surrender them, and are silent; others who can do so become boisterous in their praises of what a little while ago they thought or spoke of only with disapprobation. The few who will neither surrender their principles nor bury them in silence are denounced, and the nomenclature borrowed from the "turf," where it describes the reluctance of a beast under whip and spur, is employed to designate them as "bolters."

In the meantime nothing known to the law of the country has happened. The election by which the people are to choose the chief magistrate is not to take place for several months. An interval, in which opinion ought to be as free

as the very air, in which inquiry, deliberation, sober reflection, ought to be everywhere sedulously guarded by all men, is filled with a savage praise and dispraise of two opposing candidates. The people, although nominally free to choose where they will, have suddenly become restricted in their choice to two individuals as absolutely as if the law of the land had ordained the limitation, and the whole political power of one-half of society is put forth, with an enormous tyranny, to fasten the restriction beyond the possibility of removal. What brings all this about?

To whatever else it is due, it is not due to the Constitution of the country. The wise framers of the institutions under which we live contemplated no such state of things, designed no such operation of the work of their hands, imagined no such results of the provisions which they framed.

The Constitution, it is little to say, could never have been established by them if it had been foreseen that such a state of things was to be its result. With infinite pains and far-seeing wisdom they devised a system for the appointment of a chief executive magistrate of the Union which they believed was morally certain to secure, from time to time, the election of some person eminently fitted for the station, and therefore possessing the real confidence of the people. But their system, framed with so much care, has been deflected from its purpose.

We have wandered so far from the principles of the Constitution that perhaps it will occasion some surprise when I state, in the first place, that the Constitution does not contemplate or intend that the president shall be conclusively designated by a popular vote. Yet it is strictly true. There is no proposition in reference to the Constitution more clear and indisputable. In all the discussions which attended its formation and adoption, the great effort may be traced to frame a system by which the president should be appointed without being absolutely designated by a popular vote. Project after project was brought forward in the Federal Convention, all of them differing from each other, but all designed as substitutes for a direct appointment by the people. At one time it was proposed that the national executive should be appointed by the national legislature; at another, by the legislatures of the states; and still another project was that of electors to be appointed by the state legislatures or the state executives.

At length, after the most laborious and careful consideration, the plan was adopted of "electors," to be chosen by the people of the different states according to the ratio of their representation in Congress. These officers were designed to be real electors. They were interposed between the popular vote and the actual choice, with the intent that they should make that choice; that they, as individuals, vested with the power of election, should exercise a real choice of their own, upon high public motives, without positive instruction, pledge, or obligation. They were to be chosen for this sole purpose, and having discharged their function, their political existence was to cease. Such is the provision of the Constitution.

Its purpose was twofold. First it was intended by it to secure a body of electors, whose moderate and sound judgment might be relied upon, to prevent the government from falling into the hands of men of great personal popularity,

acquired by means of military distinction, wealth, or influence, or through any other distinction not accompanied by high qualifications for the executive office. It does not seem to have been the intention of the framers of the Constitution that the sense of the people should not operate in the election. On the contrary, it is manifest that the sense of the people was intended to be regarded by the electors. But it is equally certain, both from the provision itself and from all the discussions which attended its adoption, that the electors were to exercise a real choice, to weigh the sense of the people, but not to be controlled by it if a sound judgment of the public good required them to disregard it. The electors were to be the agents of the people in choosing a president, but not to be their agents for the inevitable selection of a particular individual.

The other great leading object of this provision was to avoid conferring the appointment of the president upon any previously existing body of men who might be managed, corrupted, or influenced in favor of a particular candidate. Except for this reason, the president might as well have been chosen by the state legislatures, or by either branch of Congress, as by a separate body appointed for the express purpose. But observe how careful the Constitution has been to avoid the operation of all influence upon the electors: They are to be chosen in separate states; they are to meet and vote, not in one college for the whole Union, upon which influence might be exerted, but in their respective states.

In the whole history of governments there is no parallel to this institution, by which a nation might confer its chief executive power along with its highest personal confidence. To this point the framers of the Constitution directed their efforts. They believed that a body of electors proceeding fresh from the people, clothed with this single trust, and defended from every open assault, would be impartial, pure, fearless, wise. They believed that an honest people would select honest agents for this duty, and that thus a great popular election for the supreme office might be made to work out a result which the world had never seen.

Let it be given, they said, to the most worthy. They knew that the value of their system of government would depend chiefly upon their success in incorporating this principle into the process by which its executive was to be selected. They knew that this principle was not only republican, but that without it a republic is the merest fallacy with which social man can delude himself. They knew that a suffrage nearly universal must lie at the basis of this great office. They sought, therefore, to give to that suffrage such an operation as would forever keep before the popular mind the cardinal principle that capacity must be the great qualification. No mere popularity, no feat of arms, no temporary expediency, was to be the ruling influence. High talent, statesmanship, character tried in the walks of public life which lead to the arts of civil government—these and these alone, they fondly believed, would be secured for the people by the provisions which they devised.

But their wise and careful institutions have been entirely defeated of their purpose. The electors have become mere machines, living *automata*, meeting solely to register the previous decrees of a political party. They exercise no choice, no judgment, no volition of their own. They come into official existence pledged to vote for a particular candidate, and are dishonored if they fail to do it. In some states they are appointed by a vote of the majority of the people, and in some a plurality only determines the candidate for whom they are to vote,

while a majority of votes is cast against him. The constitutional function of the electors is therefore wholly gone—lost, it may be, irretrievably.

Let us now turn and see how it has fared with the people. The candidate for whom the electors are now expected and required to vote is not only designated before they have assembled, but he is practically designated by a body of persons wholly irresponsible, and instituted by a small minority of the whole people. Whence does a party convention derive its authority? Certainly not from the law. The law knows no such body. Certainly not from the people in any proper sense. It derives its authority and its existence from the active portion of a party who choose to get together and institute it. Now, although the social usages and customs of a portion of the people, larger or smaller, can do nothing to alter or abrogate the provisions of their fundamental law, they may, if acquiesced in, produce such a departure from the observance of those provisions as virtually to set the law aside altogether. In the present case these party conventions have fully accomplished this result. Notwithstanding their total want of all authority, notwithstanding the notorious fact that only a small portion of the people participate in their formation, we need not dwell on their immense social power. We see it and feel it everywhere around us. The whole political machinery of society bends beneath their sway. To break away from their dictation requires a moral effort that few men like to make. The patronage of a government, which annually disburses hundreds of millions of money, is set up as the prize for the successful party, and stimulates the activity and the zeal of thousands of partisans throughout the land. Party spirit, the enormous power of association, the influence of political principles believed by individuals to be of great consequence, all combine to force the nation into a position where it can do nothing but accept one of two candidates, previously designated by bodies notoriously open to influence, possessed of no authority, acting under the influence of excited passions and unscrupulous leaders wholly irresponsible for their conduct.

The Constitution is not designed that the people should conclusively determine who was to be the president. It intended that the sense of the people should operate through the electors, but not conclusively, and not at all in the way of positive, binding instruction. But for a long course of years, ever since the time of Mr. Jefferson, the American people have been gradually led to put a practical construction upon the Constitution, which has made the popular vote conclusive upon the electors, and perhaps the true function of the electors can never be restored. But this is not all; for while the people have accepted this control over the electors, they have at the same time lost all freedom of choice in casting the popular vote.

That they have lost it is beyond all question. The present theory is that the election is popular. It is not popular if by that is meant that the people, or a majority of them, express their preferences by their votes. They have no opportunity for such an expression. They are just as much debarred of all proper freedom of choice as if a foreign army, able to overrun the country, were to land upon our coast and say, "Choose one of two men whom we present to you." The people do not choose the president; they determine which of two candidates shall be president, and that is all.

So that whether we take the strict constitutional theory that the sense of the

people shall *operate* through the electors but not be conclusive, or whether we take the practical construction by which the people have accepted the theory that makes their votes conclusive, in neither case, as things are now managed, is the real sense of the people permitted to govern. Two candidates are placed before them. They must vote for one or the other, or their votes, as they are told, will be thrown away, and yet all the while they may know and feel that neither of them is fit for the station, and that some other person is so pre-eminently fit for it that they would "coin their hearts and drop their blood for drachmas" to place him in the office.

Need I stop to describe how we have been brought to this position? We are all aware that after Washington's, Adams's, and Jefferson's time, until the conventions were resorted to, the nominations of candidates for the presidency were made by caucuses of members of Congress at Washington. This method was no better and no worse than the mode of nominating by conventions, which followed it about sixty years ago. Both of them have the same vicious principle; both involve the country in the "limited choice" between two persons only, and both tend necessarily, and in proportion to their success, to deprive the electors and the people of their constitutional rights. Both of them enable a few designing politicians, who have an object to gain by elevating a particular man to the presidency, to impose that individual upon the voters of a party, and through the machinery of party to place him in office. The people meanwhile, and the constitutional agents of the people, are entirely powerless in the matter.*

NOTE TO CHAPTER VII.

Tariff for Revenue Only.

This question being in the domain of party politics rather than in that of constitutional history, the note suggested at p. 190 is omitted. Whether protection to manufacturers should be the *direct* object of a tariff, or whether it should be *incident* thereto appear to be matters of mere verbal dispute. Every tariff is for revenue; and every tariff is intended to be so laid as to protect rather than to injure. If a tariff were laid for protection *only*, it would find no constitutional warrant. Whether or not a given tariff discriminates unfairly in favor of one class at the expense of the others is a question for the law-making power to decide; and self-interest and party spirit will largely determine the conduct of legislators upon that question.

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* The evolution of the Nominating Convention is well described in Ch. LXIX. of Bryce's American Commonwealth, Vol. II., lxix., 114.

See also Jameson's Constitutional Convention; also Nominating Convention by Alexander Johnston, Lalor's Political Cyclopædia, Vol. II., 1039.

NOTE TO CHAPTER VIII.

THE TREATY WITH MEXICO, AND ACQUISITION OF NEW MEXICO AND CALIFORNIA.—THE TREATY WITH SPAIN.—ANNEXATIONS.

ON February 22, 1819, at Washington, a treaty was concluded with Spain by which the United States acquired Florida; and by which the western boundary of the Louisiana purchase from France was defined.

The rightfulness of our war with Mexico finds few supporters. One eminent writer credits President Polk with the astute unscrupulousness of a Machiavelli in his efforts to provoke war with Mexico; another denounces the war as having been prompted by the spirit of "ruthless aggrandizement;" and the "Biglow Papers" employed all the bitterness of wit in characterizing the administration which carried on the war.

In 1846–48 the extremists of both parties were swayed by what they conceived to be their party interests. Then, as now, partisans preferred personal political triumph to the general welfare of the State. The ultimate result of the policy of President Polk has, as we can all now see, been of great value to the body politic. For, as the outcome of that short but brilliant war, the treaty of Guadalupe Hidalgo was made between the United States and Mexico, February 2, 1848. It was styled "A Treaty of Peace, Friendship, Limits, and Settlement between the United States of America and the Republic of Mexico" (9 *U. S. Stat. at Large*). At the close of the war the United States were in possession, by conquest, of New Mexico and Upper California. By the terms of the treaty named the United States formally acquired perfect title to those lands. Subsequently disputes arose between Mexico and the United States as to what is now the southern part of Arizona, and the Mesilla Valley between the Gila River and Chihuahua, and Santa Anna threatened to renew the war. By the *Gadsden* Treaty, of December 30, 1853, the United States acquired the disputed territory.

The *annexations* to the territory of the United States are as follows:

Annexations.	Year.	Square Miles.	Stat. at Large.
Louisiana	1803	1,171,931	8
Florida	1819	59,268	8
Texas	1845	370,133	5
New Mexico } California }	1848	545,783	9
Gadsden Purchase	1853	45,535	10
Alaska	1867	577,390	15
Total		2,770,040	

NOTE TO CHAPTER XII.

CONCERNING "RECONSTRUCTION."

No better note can be made than by selecting an extract from an article upon "Reconstruction," written by Professor Alexander Johnston, contained in *Lalor's Political Cyclopædia*, Vol. III., p. 554:

"FAILURES OF RECONSTRUCTION.

"Prophets were not wanting who predicted the speedy collapse of the highly artificial governmental edifices erected by Congress in the Southern States. Certainly he must have been a very short-sighted person who expected from them an immediate and permanent establishment of the freedmen in all the new privileges granted to them. If the weapon of suffrage, which the white race had secured only after centuries of arduous struggle, could be safely and surely wielded by a race which had hardly ever known any condition other than slavery, we must certainly rank slavery, as an educating process, higher than we have been accustomed to place it. And, on the other hand, if the pyramid must be supported on its apex by national power, it was not to be expected that the country would allow all other business to lapse, and wage an eternal war of irritations on behalf of a helpless race. Plainly, if Southern resistance should be open, the South would be reconquered every decade; and if Southern resistance was guarded but persistent, negro suffrage was destined, sooner or later, to at least a temporary eclipse. In almost all the States the downward career of the reconstructed governments was short and swift. Until the negro legislators learned the machinery of politics, they submitted with patience to the guidance of white leaders, generally Northern immigrants, or 'carpet-baggers,' and these endeavored with considerable success to keep up at least a semblance of the decent methods to which they had been accustomed. But the negro showed an astonishing quickness in learning the tactics of politics, in grasping the shell while ignoring the kernel. Points of order, parliamentary rulings, filibustering methods, the means of putting fraud into a fair legislative form, almost immediately became as familiar to the negroes as to any other experts in legislation; and then the State treasuries lay at the mercy of a race whose incorrigible and notorious vice, during slavery, had always been theft. No storming force ever made quicker work of a captured city. Most of the 'carpet-bag' leaders yielded to the current, and took a share of the spoils. The impoverished treasuries were instantly swept clean. The issue of bonds was then resorted to, except in States like Mississippi, whose bonds were unsalable through previous repudiation; and in this process the lion's share fell to the more expert white leaders. In one State, South Carolina, the debt rose from about $5,000,000 in 1868 to nearly $30,000,000 in 1872; and about $20,000,000 of this amount were issued by the governor by virtue of a legislative permission to issue $2,000,000. In almost any State, a lobby rich enough to purchase the legislators could secure the passage of an act issuing State bonds in aid of a railroad, supplemented by a subsequent act releasing the State's lien on the road, the whole

making up an absolute gift of the money. But the land, which must ultimately be taxed for the payment of such gifts, remained in the hands of the whites. Under universal suffrage, made harsher by a partial white disfranchisement, the whites were helpless so long as they observed the forms of law; and in the conflict of interests the forms of law went down. At first the struggle was mainly peaceful. Negro voters were paid to remain at home on election day, or were induced to do so by threats of loss of work; negro leaders were bribed to wink at false counting or registration; and when the whites had thus carried the legislature, measures were enacted to secure white control of the government in future. In this manner the government fell into white hands in Tennessee in 1869, in North Carolina in 1870, and in Texas, Georgia, and Virginia from their first reconstruction in 1870–71. All these were States in which the white vote only needed union to become dominant. Alabama and Arkansas were much more difficult States, but here the reconstructed governments went down in 1874, after a struggle of some two years, in the course of which actual violence became a political factor. Four States were now left—South Carolina, Florida, Mississippi, and Louisiana, in which the reconstructed governments held their ground. In apparent despair of other means, the 'Mississippi plan' was begun in that State in 1875. It was only an amplification of the violent means which had never been left entirely out of calculation. Much of its success was no doubt due to a change of the negro vote. H. R. Revels, the colored United States senator of the State, thus wrote to President Grant in 1876: 'Since reconstruction, the masses of my people have been enslaved in mind by unprincipled adventurers. My people are naturally republicans, but, as they grow older in freedom, so do they in wisdom. A great portion of them have learned that they were being used as tools, and, as in the late election, they determined, by casting their ballots against these unprincipled adventurers, to overthrow them.' On the other hand, the evidence that violence was the finally effective factor is not only overwhelming, but confessed. Bands of horsemen, armed and in uniform, attended and overawed negro meetings; and the roads were picketed to prevent the free transit of negro organizers. Actual violence to the mass of voters was unnecessary, beyond a few midnight whippings. The negro vote was helpless without its leaders and organizers, and the Mississippi plan was to strike only at the tallest. Actual murders do not seem to have been numerous, but they were tremendous in their effects from the position of the victims. There were now left but three States, and in these the Mississippi plan was put into practice in 1876 with a similar success. But in these the 'returning boards' prolonged the struggle beyond the election, and threw the whole presidential election of that year into confusion. As soon as President Hayes was seated, in 1877, the last vestige of the Congressional scheme of reconstruction disappeared from the surface. In each State the negro vote was practically suppressed after the overthrow of the reconstructed government. The violence did not necessarily continue in active operation; the negro vote was in part cast and counted, and negro local officers and even Congressmen were occasionally elected. But every one knew that the negro vote would be tolerated just far enough to insure a permanent union of the white vote, and no further. The results are seen in the significant smallness of the vote in most of the reconstructed States. In 1880, for example, the Congressional districts were each sup-

posed to contain at least 131,400 inhabitants, which should have furnished over 30,000 voters. Alabama and Wisconsin correspond very closely in population, and each has eight Congressmen. In 1880 the votes of these districts were as follows: Alabama, 18,645; 22,207; 16,319; 17,644; 11,219; 10,043; 19,146; 25,573: Wisconsin, 31,167; 30,875; 29,226; 33,737; 32,926; 38,435; 35,855; 33,894. It thus appears that, on the same census population, Wisconsin furnishes 265,115 voters, an average of 33,139 to a district, while Alabama has but 140,796 voters, an average of 17,599 to a district. It is difficult to find more than one controlling explanation for this essential difference. It must not be understood that the 'subversion of the reconstructed governments' included any essential change in the reconstructed constitutions. These remained formally unaltered, so far as the fundamental conditions of readmission were concerned, though most of the States have revised their constitutions in non-essentials. The Supreme Court has decided that the State, on accepting readmission, is estopped from denying the validity of the conditions; and the Federal judiciary, with the enlarged powers given to it since 1860, would undoubtedly make short work with any attempt to repudiate the conditions of reconstruction. The organic law is unchanged: the revolution has taken place beneath the surface.

"*Force Bill.*—At the first indication of attack by violence upon the reconstructed government, Congress took steps to defeat the attempt. A bill for the enforcement of the last two amendments, commonly called the Force Bill, was introduced, passed by strict party votes, and became a law May 31, 1870. It made punishable by fine and imprisonment, or both, with exclusive cognizance to the United States Courts, the following offences: Hindering any person in the performance of registration or any other qualification for voting; refusing to give full effect to any person's vote; preventing, or confederating with others to prevent, by force, threats, or bribery, any person from qualifying or voting; conspiring to go in disguise upon the highway, or upon the premises of another, with intent to deprive any citizen of his constitutional rights; personating other voters, voting or registering illegally, or interfering with election officers at Congressional elections, or the registration therefor; violations of State or Federal election laws, by State or Federal officials; and violations of the civil-rights act of 1866, which was expressly re-enacted. April 20, 1871, a far stronger force bill was enacted. It was directed particularly at conspiracies against the civil-rights legislation; its second, or conspiracy section, however, was decided to be unconstitutional by the Supreme Court, January 22, 1883. Its fourth section, providing that such conspiracies, when connived at by the State authorities, should be 'deemed a rebellion against the government of the United States,' and be suppressed by the President, by the suspension of the writ of *habeas corpus*, and the use of the army and navy, was to expire at the end of the next session of Congress. In May, 1872, an attempt was made to extend it for another session. It passed the Senate, but the House refused to consider it. The refusal seemed to have been largely due to a belief in the House that the Ku-klux disorder had subsided. It must be noticed that this section of the act of 1871 was really a first step towards a recognition of a new rebellion, and the result would have been, as before stated, a new reconstruction, if the *casus belli* had not been removed. This standing rule of American constitutional law, the necessary consequence of the

reconstruction precedent, makes a singular paradox: we must repudiate State sovereignty; and yet we must hold that a State can practically declare and wage war, be warred against by the nation, and, if conquered, be subjected to the laws of war.

"*The Successes of Reconstruction.*—We have described the Southern legislation of 1866 and 1867. The infinitely milder and more equitable legislation which followed the successful seizure of power by the white race in the different States in 1869 to 1877, is, of itself, a proof that reconstruction was in an essential point a success. It gave the freedmen a *status* as *men* which, if not altogether satisfactory, is more than they could have hoped for in a century under the simple *restoration* policy. If the ballot is a nullity to the negro, his other rights are not, and he owes this to reconstruction. Further, the ballot itself will not always be a nullity. There stands the unchanged and unchangeable organic law of the State, waiting for the time when the negro shall be ready for the rights of suffrage; and we may be sure that the recognition of his readiness will come far sooner and more easily by reason of the fact that it has nothing to fight against in the State Constitutions. We have noticed, also, the portentous reappearance in the seceding States, after their reconstruction by the President, as an *imperium in imperio*. It would have been an impossibility for Southern representatives under that *régime*, however honest their intentions, to divest themselves suddenly of the prejudices and traditions of a lifetime's training, and come back in full sympathy with the economic laws which were thenceforth to attach to their own section as well as to the rest of the country. They must, then, have returned as a compact phalanx of irreconcilables, sure of their ground at home, and a permanent source of irritation, sectional strife, and positive danger to the rest of the country. All this was ended by reconstruction. This process, to speak simply, and perhaps brutally, gave the Southern whites enough to attend to at home, until a new generation should grow up with more sympathy for the new and less for the old. The energies which might have endangered the national peace were drawn off to a permanent local struggle for good government and security of property. Whatever may be alleged on humanitarian grounds against the policy, which, for a time, converted some of the States into political hells, it must be confessed that the policy was a success, and that it secured the greatest good of the greatest number."

NOTE TO CHAPTER XIV.

The Impeachment of President Johnson.

Nothing in the political history of our times discloses such bitter partisanship as the impeachment of Andrew Johnson, President of the United States. The conflict between him and the Congress, because of their very positive differences concerning the measures of the "reconstruction" period, was fierce, unscrupulous, undignified, and unworthy on both sides. Yet it now seems true that the president was generally right on the questions involving constitutionality.

The act of March 2, 1867, known as the "Tenure of Office Act," was a bold step in the effort to restrict the powers of the president, and looked towards the subordination of his will to that of the Congress in the important matters of appointment and removal. That the president (and his cabinet also) sincerely believed this act to be unconstitutional no one now disputes. The coward's vice—insincerity—was incompatible with his high though obstinate courage. And there were not then lacking many publicists of the first rank who fully agreed with him.

Whether unconstitutional or not, that act was clearly in conflict with the powers of the president as established by continuous custom from the days of Washington. And it seems now that nothing but the exceeding rancor of an unseemly contest could have brought about the passage of an act in such direct contravention of sound and ancient precedents.

So clear was its unconstitutionality (*after* the acquittal, and after it was seen that there were none of the dire consequences foretold by the Managers) that its obnoxious features were soon repealed—April 2, 1869. The failure to convict, too, should be regarded as a reluctant act of Congressional repentance.

The same recklessness of law and right which caused the passage of this lamentable act led to two attempts to remove the president by political assassination in the guise of "impeachment."

The first attempt was made through a resolution offered by Mr. Ashley of Ohio, January 7, 1867. After taking some testimony, the Judiciary Committee (five to four) reported a resolution in favor of impeachment, but it was defeated by a vote of 57 yeas to 108 nays. There were also two minority reports against impeachment.

Failing in this effort, the foundation of a second attempt was laid by passing, in the following March, the Tenure of Office Act.

Its vital portion was this:

"That any person holding any civil office to which he has been appointed by and with the advice and consent of the Senate, and every person who shall be hereafter appointed to any such office, and shall become duly qualified to act therein, is and shall be entitled to hold such office until a successor shall have been in a like manner duly appointed and duly qualified, except as herein otherwise provided.

"*Provided*, That the Secretaries of State, of the Treasury, of War, of the Navy, and of the Interior, the Postmaster-General, and the Attorney-General, shall hold their offices respectively for and during the term of the President, by whom they may have been appointed, and for one month thereafter, subject to removal by and with the advice and consent of the Senate."

The argument in favor of the president's position was:

1. The act was unconstitutional.
2. The uniform custom ran counter to the act.
3. The secretaries were excepted from its action.

The Constitution declared that "*The* executive power shall be vested in a President of the United States." Nowhere in that instrument is there any other provision for the investment of executive power—it is *all* given to a president.

The power of amotion from office *must* exist; the public welfare requires that there should be some sure and prompt means of getting rid of an obnoxious officer. "Impeachment" is the only mode expressed by the Constitution; but that applies

to cases of *high* crimes and misdemeanors only, and is very slow and uncertain in operation. By *necessary implication* the fountain of executive power, the president, must have the power to *instantly remove* an obnoxious officer—it is an *executive duty;* and above all others a secretary, who is, as the very name implies, his *writer*, his *aid, assistant,* mouth-piece, or confidential clerk. It was monstrous to attempt to deprive the president of that power of removing his secretary (who is but an upper servant) that every master has in private life. Unless that power was in the president under the Constitution it was nowhere, save by the cumbrous process of impeachment, which was not applicable to cases of inefficiency, personal offensiveness, or to any disqualification short of *high* crimes or misdemeanors. And in fact all the presidents unhesitatingly used that power, and granted commissions running *during the pleasure of the* president. The construction contemporaneous with the Constitution, and the legislative construction, both uniformly recognized the custom sought to be changed by the Tenure of Office Act. In so far, then, as that act sought to rob the executive of the *power to remove* obnoxious officers (especially upper servants like "secretaries"), it violated a clearly implied grant of the sole power to the president, and he was in the line of the highest duty when he made stern resistance. The express language of the act excepts the secretaries; a different contention is a brutal violence to the language of the statute itself.

The Managers contended that Mr. Lincoln's "term" did not expire until the end of the term for which he was last elected; that not even death ended his *term;* and that that being the case Mr. Stanton, under the proviso of the act, was entitled to retain his office, notwithstanding any act of President Johnson, until one month after the end of the second term for which Mr. Lincoln was elected. They utterly ignored the fact that Mr. Johnson, too, had a definite term *as president*, beginning when he took the presidential oath of office and ending with the end of the term for which he had been chosen as vice-president.

The utmost extent of tenure claimable for Mr. Stanton *under the act* should have been that he could hold on against President Johnson's wish or act for *one month after* death had ended the term of Mr. Lincoln. It was many months after that most calamitous event before the president removed the secretary, who beclouded his own honor as a gentleman by persistence in holding a confidential office against the will of his chief.

No absurdity was ever so utterly unreasonable as this contention of the Managers; the fact that it received the support of almost enough senators to convict is overwhelming evidence of the madness of the hour.

Mr. Stanton, the truly great Secretary of War, was appointed by President Lincoln in his first term, and received no other appointment to that office either by Mr. Lincoln or Mr. Johnson. He simply "held over," and remained a secretary solely by the sufferance of Mr. Johnson—*unless* the act of March 2 conferred a special and new kind of *tenure.*

The statute (passed over a veto) was clearly intended to restrict the powers such as were heretofore used by all presidents in regard to suspension, reappointment, and removal. Its partisans generally appeared to deem it a cunningly devised weapon to control or destroy "Andrew Johnson," especially if he dared to disturb the tenure of Mr. Stanton, the war secretary.

Whatever the intent of the enactors of this law may have been when they debated and passed it, it is certain that the Managers of the prosecution insisted upon that construction, and were supported by the votes of a large majority of the Republican senators, many of whom filed "opinions" to the same effect.

It is true that Senator Sherman, who had been one of the conferees during the genesis of this act, passionately protested that it was not intended to apply to the secretaries.

In that debate he said:

"I say that the Senate have not legislated with a view to any persons or any president. . . . We do not legislate in order to keep in the Secretary of War, the Secretary of the Navy, or the Secretary of State. . . . That the Senate had no such purpose is shown by its vote twice to make this exception. That this provision does not apply to the present case is shown by the fact that its language is so framed as not to apply to the present president. The Senator shows that himself, and argues truly that it would not prevent the present president from removing the Secretary of War, the Secretary of the Navy, and the Secretary of State. And if I supposed that either of these gentlemen was so wanting in manhood, in honor, as to hold his place after the politest intimation by the President of the United States that his services were no longer needed, I certainly, as a senator, would consent to his removal at any time, and so would we all."

But the *gravamen* of the impeachment was in the charge that the president "removed" Secretary Stanton and "appointed" Thomas *ad interim* as his successor, contrary to the act. And it must be believed that most of those who participated in the passage of that monumental act of partisanry hoped that it would keep that secretary in his berth against the will of his chief.

Aside from the purely partisan motive of the impeachment, the trial in itself afforded a great and impressive spectacle—the Chief-Justice as presiding officer, the House of Representatives by its Managers as prosecutor, the Senate as judges, and the president as the accused, both sides being represented by able and eminent counsel. But no one now will dispute the fact that when Benjamin Robbins Curtis had concluded the opening address for the defendant an acquittal was assured. With strong, clear, and simple words, in a masterly argument, he *established* the unconstitutionality of the act, its violation of ancient and unbroken custom, and showed that on its very face it did not apply to Stanton.

It is pleasant to remember that even during that savage fight there were found so many as *seven* Republican senators who could not vote, even for "party," in support of a manifest wrong.

The president's acquittal resulted from the vote of 35 to 19 upon the chief issues; the others were not put to vote.

In a very short time the common judgment of the people ratified the verdict, and within a year afterwards the act was repealed—in respect to the portions involved in the impeachment case.

A strange illustration of the perversity of the human intellect when it resolves to "make the wrong the right appear" may be found in the written opinions filed by some of the senators whose creed appeared to be "Anything to overthrow Johnson." Nineteen of the filed opinions favored, and twelve opposed conviction.

Senator Sherman's "opinion" was couched in vigorous language, which pro-

tested against the contention of the Managers that the act applied to the secretaries. Upon that point he said:

"I can only say, as one of the Senate conferees under the solemn obligations that now rest upon us in construing this act, that I did not understand it to include members of the cabinet not appointed by the president, and that it was with extreme reluctance, and only to secure the passage of the bill, that in the face of the votes of the Senate I agreed to the report limiting at all the power of the president to remove heads of departments. What I stated to the Senate is shown by your records. One of your conferees (Mr. Buckalew) refused to agree to the report. Another (Mr. Williams) thought that a case of a cabinet officer refusing to resign when requested by the president was not likely to occur. I stated explicitly that the act as reported did not protect from removal the members of the cabinet appointed by Mr. Lincoln, that President Johnson might remove them at his pleasure; and I named the Secretary of War as one that might be removed. I yielded the opinion of the Senate that *no* limitation should be made upon the power of the president to remove heads of departments solely to secure the passage of the bill. I could not conceive a case where the Senate would require the president to perform his great executive office upon the advice and through heads of departments personally obnoxious to him, and whom he had not appointed, and therefore no such case was provided for. . . . This construction of the law, made, etc., . . . is binding upon no one but myself. But can I, who made it and declared it to you, and still believe it to be the true and legal interpretation of those words, can I pronounce the president guilty of crime, and by that vote aid to remove him from his high office for doing what I declared and still believe he had a legal right to do? God forbid! A Roman emperor attained immortal infamy by posting his laws above the reach of the people and then punishing their violation as a crime. An American senator would excel this refinement of tyranny, if, when passing a law, he declared an act to be innocent, and then, as a judge, punished the same act as a crime." *

And yet, in respect to the *ad interim* "appointment" of General Thomas—the logical sequence of Stanton's removal—Senator Sherman saw only a criminal violation of the act, and voted "guilty," notwithstanding his views above cited. The bias of party must have had fearful strength when, although he upheld the president's power to remove, he yet condemned the exercise of its related power to *appoint* an *ad interim* successor to the secretary he had lawfully *removed*.

We doubt not that those of us whose blood was heated by that most important of all forensic scenes since the days of Cromwell—the president's trial—may find a curious interest in now reading its proceedings, in the calmness which none then felt, and which only the lapse of a whole generation can give.

The exordium of Senator Sumner's "opinion" affords the most notable illustration on record, even in this case, of a burning lust for conviction on those "general principles" and that "higher law" which actuate the fanatic, without any regard to that "due process of law" and "orderly procedure" without which an impeachment trial degenerates into a mere pageant organized to convict. Hear him sound the key-note of the pack that hunted the president:

* Trial of Andrew Johnson, Vol. III., p. 9.

"This is one of the last great battles with slavery. Driven from those legislative chambers, driven from the field of war, this monstrous power has found a refuge in the executive mansion, where, in utter disregard of the Constitution and laws, it seeks to exercise its far-reaching sway. All this is very plain. Nobody can question it. Andrew Johnson is the impersonation of the tyrannical slave power. In him it lives again. He is the lineal successor of John C. Calhoun and Jefferson Davis; and he gathers about him the same supporters. Original partisans of slavery North and South; habitual compromisers of great principles; maligners of the Declaration of Independence; politicians without heart; lawyers for whom a technicality is everything; and a promiscuous company who at every stage of the battle have set their faces against equal rights—these are his allies. It is the old troop of slavery, with a few recruits, ready, as of old, for violence—cunning in device, and heartless in quibble. With the president at their head, they are intrenched in the executive mansion.

"Not to dislodge them is to leave the country a prey to one of the most hateful tyrannies of history. Especially is it to surrender the Unionists of the rebel states to violence and bloodshed. Not a month, not a week, not a day should be lost. The safety of the republic requires action at once. The lives of innocent men must be rescued from sacrifice.

"I would not in this judgment depart from that moderation which belongs to the occasion; but God forbid that, when called to deal with so great an offender, I should affect a coldness which I cannot feel. Slavery has been our worst enemy, assailing all, murdering our children, filling our homes with mourning, and darkening the land with tragedy; and now it rears its crest with Andrew Johnson as its representative. Through him it assumes once more to rule the republic and to impose its cruel law. The enormity of his conduct is aggravated by his bare-faced treachery. He once declared himself the Moses of the colored race. Behold him now the Pharaoh. With such treachery in such a cause there can be no parley. Every sentiment, every conviction, *every vow against slavery must now be directed against him.* Pharaoh is at the bar of the Senate for judgment.

"The formal accusation is founded on certain recent transgressions, enumerated in articles of impeachment, but it is wrong to suppose that this is the whole of the case. *It is very wrong to try this impeachment merely on these articles.* It is unpardonable to higgle over words and phrases when, for more than two years, the tyrannical pretensions of this offender, now in evidence before the Senate, as I shall show, have been manifest in their terrible, heart-rending consequences."

And then, in the same fierce spirit, as if "slavery," and not the president, were on trial, he contends that, being avowedly a *political trial*, it has nothing in common with a *judicial trial;* that the laws governing *courts* do not apply; that the Senate is trying the case, and not the constitutional court of impeachment. He said: "It is impossible not to conclude that in trying impeachments senators exercise a function which is not regarded by the Constitution as 'judicial,' or, in other words, as subject to the ordinary conditions of judicial power. Call it senatorial, or political, it is a power by itself and subject to its own conditions."

He adds, in speaking of "impeachment": "It is a *political* proceeding before a *political* body, with *political* purposes; it is founded on *political* offences, proper for the consideration of a *political* body, and subject to a *political* judgment only."

The monstrousness of this law-despising contention will be even more apparent if we substitute in the clause just quoted the apter word "partisan" for "political." The clause would then exactly characterize this particular impeachment: "It is a *partisan* proceeding, before a *partisan* body, with *partisan* purposes; it is founded on *partisan* offences, proper for the consideration of a *partisan* body, and subject to a *partisan* judgment only!"

Such a definition of "impeachment," as authorized by the Constitution, borders upon sacrilege.

The "opinion" filed by Senator Reverdy Johnson is luminous with the spirit of law and justice, and shines in superb contrast with the diatribe of Senator Sumner.

Senator Johnson used these words: "It has also been said by some inconsiderate persons that our judgment should be influenced by party considerations. We have been told in substance that party necessity requires a conviction; and the same is invoked to avoid what it is madly said will be the result of acquittal —civil commotion and bloodshed. Miserable insanity; a degrading dereliction of patriotism! These appeals are made evidently from the apprehension that senators may conscientiously be convinced that the president is innocent of each of the crimes and misdemeanors alleged in the several articles, and are intended to force them to a judgment of guilt. No more dishonoring efforts were ever made to corrupt a judicial tribunal. They are disgraceful to the parties resorting to them, and should they be successful, as I am sure they will not, they would forever destroy the heretofore unblemished honor of this body, and inflict a wound upon the Constitution itself which, perhaps, no time could heal."

Nearly thirty years have passed since that great trial. Many of the actors have departed; but those of us who shared in the excitement of that time can all now say (whatever our opinion then): We rejoice at the failure to convict; for nothing but the very extremity of partisan hatred could have brought about the Impeachment Trial; and because a partisan conviction of a President of the United States, on partisan grounds, would have been a national calamity and a shock to mankind.*

All students of public affairs may learn grave lessons from that trial, solemn warnings against the crime of sacrificing "right" to "party," and may there see a portrait of political unscrupulousness—the most hideous conceivable. They will also see some of the greatest constitutional arguments ever made; and, best of all, they will see that even in that fierce time of hatefulness the party that was overwhelmingly dominant still had *seven* senators† who could not and did not bow "the knee to Baal," but stood up, like men (against party and party-threats), for the rights of Johnson the *President*, notwithstanding their profound disapproval of Johnson the *man*. From what depth of shame their *manliness* saved the nation can never be imagined.

Are we so far removed from the madness that ruled our public men in 1867–1868 as to be able to make a calm and just estimate of their conduct?

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* See Trial of Andrew Johnson, President, 3 vols., 1868. Government Printing Office.

† The honor-list of Republican senators: FESSENDEN, FOWLER, GRIMES, HENDERSON, TRUMBULL, ROSS, VAN WINKLE.

Perhaps—perhaps not. But to this writer it seems that the sober judgment of dispassionate and thoughtful students of constitutional law and history will credit President Andrew Johnson with having successfully made the bravest and noblest struggle ever made to sustain the constitutional rights of the executive against the usurpation of the legislative department. No more savage blow has ever been aimed at the vital constitutional provision that the government shall be vested in three distinct sets of powers—executive, legislative, and judicial. The Tenure of Office Act seriously abridged the constitutional power of the executive department, and for his desperate resistance to that encroachment President Johnson deserves the profoundest gratitude of all who revere the Constitution. For that great service we can gladly condone whatever errors of judgment, of temper, or of taste have been charged against him. Upon the very "hazard of a die" he bravely risked everything; his success, so hardly won, is a standing rebuke to all attempts on the part of one department to encroach upon another; it is a re-ratification of the chief feature of the Constitution—the *division* of executive, legislative, and judicial powers.

NOTE TO CHAPTERS XVI. AND XVII.

MR. CURTIS announced these chapters as being in contemplation when his *prospectus* was issued. In the former he intended to consider the constitutional aspect of the Proclamation of Emancipation; in the latter, to question the authority of the President to suspend the writ of *habeas corpus*.

Neither of these chapters was written. But we find the views of Mr. Curtis expressed with singular vigor upon both of those great questions in a pamphlet* written in 1862 by his brother Benjamin Robbins Curtis under the title "Executive Power."

In a memoir of that eminent judge and advocate,† Mr. Curtis said: "The tone of this pamphlet, calm, serious, unimpassioned, but firm and unshrinking, and the personal authority of its author, made it exceedingly obnoxious to the excited partisans of the administration. If an attack had been made upon the proclamations in any incendiary spirit, or by one who had less weight of character to support and less of logical power to enforce the objections to them, there would have been far less of violent denunciation of the writer. But this compact, perspicuous, and reasoned exhibition of the lawlessness of the executive acts, in which there was no superfluous word and no word that could justly irritate—pointing as it plainly did to the character of the revolution which those acts were likely to precipitate—was met in some quarters by cries of 'treason' and the like objurgations.

"Yet it would have been well if those who had only opprobrious epithets to

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* See, in Appendix, "EXECUTIVE POWER."

† *Life and Writings of Benjamin R. Curtis*, Vol. I., p. 351. Boston: Little, Brown & Co. 2 vols., 1879.

oppose to such a production had paused upon a single passage, in which the author said:

"'The war in which we are now engaged is a just and necessary war. It must be prosecuted with the whole force of this government till the military power of the South is broken and they submit themselves to their duty to obey, and our right to have obeyed, the Constitution of the United States as the 'supreme law of the land.' But with what sense of right can we subdue them by arms to obey the Constitution as the supreme law of *their* part of the land if we have ceased to obey it or failed to preserve it as the supreme law of *our* part of the land? I am a member of no political party. Duties inconsistent, in my opinion, with the preservation of any attachment to a political party caused me to withdraw from all such associations many years ago, and they have never been resumed. I have no occasion to listen to the exhortations now so frequent to divest myself of party ties, and disregard party objects and act for my country. I have nothing but my country for which to act in any public affair; and solely because I have that yet remaining, and know not but it may be possible from my studies and reflections to say something to my countrymen which may aid them to form right conclusions in these dark and dangerous times, I now reluctantly address them.'

"If one who dealt with momentous public questions in this spirit was to be regarded as a 'disloyal citizen,' then the free discussion of public measures was at an end, and the time for an irresponsible despotism, having no basis save in the passions of the multitude and the caprices of rulers, had arrived. But the violence and in some good degree the prejudices of that period have passed away.

"It is now apparent that it was to courage such as his, to the refusal of men like him to be silenced by the frowns of power, and to their adhesion to sound principle in times that tried the souls as those who are to come after us may haply never be tried, that we owe that we still have the Constitution of the United States, with its guarantees of social order and personal freedom.

"Certainly it will not be denied that Judge Curtis contributed his part to prevent 'the loss of ideas,' the preservation of which was essential to our welfare, in the manner and spirit that become him."

LIST OF BOOKS CONSULTED IN PREPARING OR EDITING THIS VOLUME.

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" American Statesmen.
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Francis Lieber, Civil Liberty and Self-Government.
J. C. Hurd, Theory of our National Existence.
T. D. Woolsey, Political Science.
W. S. Church, Habeas Corpus.
Proceedings of the Electoral Commission.
Emile Boutmy, Studies in Constitutional Law.
" " English Constitution.
D. J. Medley, Manual of English Constitutional History.

Through the courtesy of Mr. *Paul Leicester Ford* we add his excellent *Bibliography of the Constitution* (chiefly contemporaneous) as enlarged and revised by him. *June*, 1896.

BIBLIOGRAPHY OF THE CONSTITUTION,

COMPILED BY PAUL LEICESTER FORD.

NOTE.

The titles in the following list are arranged alphabetically, by the authors' or editors' names if known, or by the first word of the title, omitting articles, with the exception of the editions of the Constitution (which are brought together under that head), and the debates and journals of the State Conventions, which are placed under each State.

The initials which precede the numbers at the end of the description, indicate certain public libraries in which the work may be consulted.

A.	signifies	Astor Library.
A. A. S.	"	Am. Antiquarian Society Library.
B.	"	Boston Public Library.
B. A.	"	Boston Athenæum Library.
B. M.	"	British Museum Library.
C.	"	Library of Congress.
H.	"	Library of Harvard University.
M.	"	Mass. Historical Society Library.
N.	"	N. Y. Historical Society Library.
P.	"	Library Company of Philadelphia.
P. H. S.	"	Penn. Historical Society Library.
P. L.	"	Library of Compiler.
S.	"	New York State Library.
S. D.	"	Department of State Library.
...	"	A line omitted in the title.
.....	"	Two or more lines omitted in the title.
+	"	That what is omitted is already sufficiently given in title of previous edition.

The numbers attached to certain titles in the reference list are cross references to the same title in the bibliography.

I am under obligation to Mr. C. A. Cutter, Mr. W. Eames, Mr. William Kelby, Mr. E. M. Barton, Mr. C. J. Hoadly, and Mr. Bumford Samuel, for aid in compiling this list.

BIBLIOGRAPHY.

Account of the Grand Federal Procession. *See Nos.* 97–99.

Additional number of Letters. *See No.* 113.

The / Address and Reasons of Dissent / of the / Minority of the Convention, / Of the State of Pennsylvania, to their Constituents. [Colophon] Philadelphia: Printed by E. Oswald, at the Coffee House.

Fo. pp. (3). A. A. S. 1

Reprinted in Carey's *American Museum*, ii, 536, and answered by Noah Webster's "To the Dissenting members of the late Convention of Pennsylvania," in his "*Collection of Essays. . . . Boston:* 1790," page 142.

Address and Reasons of Dissent of the Minority of the Convention of the State of Pennsylvania, to their Constituents. [Philadelphia: 1787.]

8vo. pp. 22. B A. 2

Title from Sabin's *Dictionary of Books relating to America.* See No. 138.

Address / to the / Citizens of Pennsylvania. / Calculated to shew the Safety, — Advantages — and Necessity of adopting the proposed Constitution of the / United States. / In which are included answers to the objections that have been made to it. / [Colophon] Philadelphia: Printed by Hall and Sellers.

Fo. pp. (4). N. 3

A Federalist compilation, containing:

Reply to the Address of the seceding members of the Pennsylvania Legislature.

To the Freemen of Pennsylvania [in reply to the Address of the seceding members], by Federal Constitution.

Speech of James Wilson, October 6th, 1787.

Examination of the Federal Constitution, by An American [Tench Coxe].

Circular Letter from the Federal Convention.

Address from an officer. *See No.* 80.

Address to the Freemen of S. C. *See Nos.* 144–145.

Address to the People of N. Y. *See Nos.* 106–7 *and* 150–1.

"*Agrippa.*" *See No.* 84.

"*American Citizen.*" *See Nos.* 3, 30–1.

"Aristides." See Nos. 94–5.

Articles. See No. 12.

BALDWIN (SIMEON).

An / Oration / pronounced before the / Citizens of New Haven, / July 4th, 1788; / in commemoration of the / Declaration / of / Independence / and establishment of the Constitution / of the / United States of America. / By Simeon Baldwin, Esquire. / New Haven. / Printed by J. Meigs, / M,DCC,LXXXVIII.

8vo. pp. 16. P. L. 4

BANCROFT (GEORGE).

History / of the / Formation of the Constitution / of the / United States of America. / By / George Bancroft. / In two volumes, / Vol. I. / New York: / D. Appleton and Company, / 1, 3, and 5 Bond Street, / 1882.

2 vols., 8vo. pp. xxiv, 520—xiv, 501 (2). 5

Each volume contains not only Mr. Bancroft's History, but a series of hitherto unpublished "Letters and Papers," adding greatly to the value of the work. In 1885 a one volume edition was published, from the same plates, but omitting these documents—pp. xxii., 495.

Reviewed by B. F. De Costa, in the *Mag. of Am. Hist.*, viii, 669; and in *The Nation*, xxxiv, 524, and xxxvi, 127.

Breckenridge, H. H. See No. 84.

Bryan, Samuel. See Nos. 138, 155.

By the United States in Congress / assembled, / September 13, 1788.

Fo. Broadside. P. L. 6

Naming day for new Congress to meet.

Carroll, D. See No. 84.

"Cassius." See No. 84.

"Cato." See No. 84.

"Caution." See No. 84.

"Centinel." See No. 138.

Chase, S. See No. 84.

Childs, Francis. See No. 129.

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"Citizen of New Haven." See No. 84.

"Citizen of New York." See Nos. 106–7.

"Citizen of Philadelphia." See Nos. 163–5.

"Civis." See Nos. 104, 144–5.

Clinton, G. See No. 84.

"Columbian Patriot." See Nos. 87–9.

The Committee consisting of Mr. Carrington, Mr. Edwards, / Mr. Baldwin, Mr. Otis, and Mr. Tucker to whom were / referred the Ratifications of the New Constitution which have been transmitted to Congress by the several ratifying States / Report as follows.

Fo. Broadside. P. L. 7

CONSTITUTION. *Philadelphia.* 1787.

We, the People of the States / of New-Hampshire, Massachusetts, / Rhode-Island and Providence Plan- / tations, Connecticut, New-York, New-Jersey, Penn- / sylvania, Delaware, Maryland, Virginia, North-Caro- / lina, South- / Carolina, and Georgia, do ordain, declare / and establish the following Constitution for the Govern- / ment of Ourselves and our Posterity.

Fo. 7 ll. S. D., C., M. 8

In the following list of editions, the compiler only attempts to include such as were published during the discussion of the Constitution, prior to its ratification. First in order come the two "reports" secretly printed for the federal Convention, followed by the official editions printed for that body and for the Continental Congress. Then follow all subsequent issues, arranged alphabetically under the first word of the title, articles excepted.

The "Report" of the "Committee of five," of the Federal Convention, brought in August 6th, 1787. Printed only for the use of the members, as a basis for a continuation of the discussion. Both this and the following edition, it is needless to say, are of the greatest rarity, the number printed being probably not over sixty copies, and as confidential documents, were saved by few of the members. The Department of State possesses Washington's copy of No. 9, and David Brearly's and James Madison's copies of both drafts. The Library of Congress possesses William Samuel Johnson's copies, and the Massachusetts Historical Society has those of Elbridge Gerry. All of these contain MS. alterations by their respective owners; and George Mason's copy of No. 9, in the possession of Miss Kate Mason Rowland of Virginia, contains not only alterations, but the objections of Mason to the Constitution, in his own handwriting. What are apparently the original MS. compilations from which these drafts were printed are in the Wilson Papers, now in the Pennsylvania Historical Society.

CONSTITUTION. *Philadelphia.* 1787.

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

Fo. 4 ll. S. D., C., M. 9

The "Report" of the "Committee on style and arrangement" of the Federal Convention, brought in September 13th, 1787. It was printed for the use of the members only and with the utmost secrecy.

CONSTITUTION. *Philadelphia.* 1787.

We, the People of the United States in order to form / a more perfect union, to establish justice, insure domestic tranquility, provide / for the common defense,

promote the general welfare, and secure the blessings / of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America. [Colophon] Printed by Dunlap & Claypoole [1787].

Fo. pp. 6. 10

This is the official edition printed for the convention. It is printed from the same forms as No. 9, with the addition of the two convention letters.

CONSTITUTION. *New York.* 1787.

We, the People of the United States, in order to / form a more perfect Union, establish Justice, / insure domestic Tranquility, provide for the / Common Defense, promote the general Wel- / fare and secure the Blessings of Liberty to / ourselves and our Posterity, do ordain and establish this Constitution for the United / States of America. [New York: 1787.]

Fo. pp. 4. S. D. 11

This is the official edition of the Continental Congress. It is apparently printed from the forms of Nos. 12 and 27.

CONSTITUTION. *New York.* 1787.

Articles agreed upon by the Federal Convention of the United States of / America, his Excellency, General Washington, Esq., President, / . . . . / New York: Printed by J. M'Lean, No. 41, Hanover Square [1787].

Fo. pp. 4. N. 12

CONSTITUTION. *Albany.* 1788.

De Constitutie, / eenpariglyk geaccordeerd by de / Algem eene Conventie, / gehouden in de / Stad von Philadelphia, / in 't Jaar 1787: / en gesubmitteer aan hit / Volk de Vereenigde Staaten / van Noord—Amerika: / Zynde van ses derzelvir Staaten alreede / geadopteerd, namentlyk, / Massachusetts, Connecticut, Nieuw-Jersey, Pennsylvania, Delaware en Georgia / Vertaald door Lambertus de Ronde, V. D. M. / Gedrukt by Ordervan de Federal Committee, in de Stad van Albany, / Door Charles R. Webster, in zyne Vrye Boek- / Druking, No. 36, Staat-Straat, na by de / Engelsche Kirke in dezelvde Stad, 1788.

Sq. 12mo. pp. 32. B. 13

CONSTITUTION. *Philadelphia.* 1787.

The / Constitution / as formed for the / United States, / by the / Fœderal Convention, / Held at / Philadelphia, / In the Year 1787, / With the Resolves of / Congress, / and of the / Assembly of Pennsylvania / thereon. / Philadelphia: / Printed by T. Bradford, / in Front-Street, four doors below the Coffee-House / M,DCC,LXXXVII.

12mo. pp. 16. C. H. S. 14

CONSTITUTION. *Hartford.* 1788.

The / Constitution / of the United States / [Hartford: 1788].

Fo. pp. 8. 14 a

CONSTITUTION. *New Haven.* 1787.

The Constitution of / The United States. / . . . . / New Haven: Printed by Josiah Meigs, M.DCC.LXXXVII.

Fo. Broadside. C. S. L. 15

CONSTITUTION. *Portsmouth.* 1787.

The / Constitution / of / the / United States, / as / recommended / to / Congress / the 17th of September, 1787, / by / the Federal Convention / Portsmouth: New-Hampshire, / Printed and sold by John Melcher / N,DCC,LXXXVII. [*sic.*]

8vo. pp. 16. P. L. 16

CONSTITUTION. *Boston.* 1787.

The / Constitution / or Frame of / Government, / For the United States of / America, / As reported by the Convention of Delegates, from the / United States, begun and held at Philadelphia, on the / first Monday of May, 1787, and continued by Adjournments to / the seventeenth Day of September following—[Colophon at p. 16] Printed by Thomas and John Fleet, in Boston.

8vo. pp. 20. P. L. 17.

Includes the resolves of the Continental Congress and the Massachusetts General Court. Sabin gives a copy "12mo. pp. 16," but it is this edition, lacking the last four leaves, or the "resolves."

CONSTITUTION. *Boston.* 1787.

The / Constitution / or Frame of / Government, / for the / United States / of / America, / As reported by the Convention of Delegates, from / the United States, begun and held at Philadel- / phia, on the first Monday of May, 1787, and continued / by Adjournments to the seventeenth Day of September fol- / lowing.—Which they resolved should be laid before the / United States in Congress Assembled; and afterwards be / submitted to a Convention of Delegates, chosen in each State, / by the People thereof, under the recommendation of its Le- / gislature, for their Assent and Ratification / Together with the Resolutions of the General Court of the / Commonwealth of Massachusetts, for calling said Convention, agreca- / ble to the recommendation of Congress. / Published by order of Government. / Printed at Boston, Massachusetts, / By Adams & Nourse, / Printers to the Honorable the General Court. / M,DCC,LXXXVII.

8vo. pp. 32. C. M., A. A. S. 18

CONSTITUTION. *Philadelphia.* 1787.

The / Constitution / proposed for / The Government of the United States of / America, by the Fœderal Conven- / tion, held at Philadelphia, in the / Year One Thousand Seven Hundred / and Eighty-seven. / To which is Annexed, / The Ratifications thereof by the Dele- / gates of Pennsylvania in the / State Convention. / Philadelphia: Printed by Hall & Sellers. / M,DCC,LXXXVII.

8vo. pp. 24. C. 19

CONSTITUTION. *Richmond.* 1787–8.

The / Federal Constitution / for the United States of America, &c. [Colophon] Richmond: Printed by Augustin Davis.

4to. pp. 11. 20

CONSTITUTION. *New York.* 1787.

The / Fœderal Constitution, / Being the Result of the important Deliberations / of the / Fœderal Convention, / Who completed their Business on the / 17th September, 1787, at Philadelphia. / New York, Printed by Thomas Greenleaf. [1787.]

16mo. pp. 18. S. D. 21

CONSTITUTION. *Richmond.* 1787.

Plan / of the / Fœderal Constitution. / Richmond: Printed by John Dixon, / Printer to the Commonwealth. [1787.]

16mo. pp. 16. P. L. 22

CONSTITUTION. *London.* 1787.

Plan / of the / New Constitution / for the / United States of America, / Agreed upon in a / Convention of the States / With / A Preface by the Editor. / London: / Printed for J. Debrett, Piccadilly. / MDCCLXXXVII.

8vo. pp. (2) 30, 8. P. L. 23

CONSTITUTION. *Boston.* 1787.

(1) / Proceedings / of the / Federal Convention. / [Colophon at p. 16] Printed by Thomas and John Fleet, in Boston.

8vo. pp. 20. P. 24

The Constitution, with the resolutions, etc., of the Massachusetts General Court. See No. 17.

CONSTITUTION. *Philadelphia.* 1787.

Proceedings / of the / Federal Convention, / Held at / Philadelphia / in the Year 1787, / And the Twelfth Year / of / American Independence. / Philadelphia :/ Printed by T. Bradford, / in Front-street, four doors below the Coffee-House / M,DCC,-LXXXVII.

8vo. pp. 15. C. 25

CONSTITUTION. *Philadelphia.* 1787.

Results / of the Deliberations / of the / Federal Convention. / In Convention, Sept. 17, 1787 [Philadelphia: ? 1787].

8vo. pp. 16. P. H. S. 26

CONSTITUTION. *New York.* 1787.

Supplement to the Independent Journal, / Saturday, September 22, 1787. / Copy of the Result of the Deliberations of the / Federal Convention / In Convention, September 17, 1787, / [New York: J. M'Lean. 1787].

Fo. pp. 4. S. L. 27

CONSTITUTION. *Hartford.* 1787.

We the People / of the United / States, / . . . . . / . . . do ordain and esta- / blish this Constitution for the United States of / America. / Hartford: / Printed and sold by Nathaniel Patten. / M,DCC,LXXXVII.

Sq. 16mo. pp. 16. P. H. S. 28

CONSTITUTION. *Poughkeepsie.* 1788.

We the People of the United States, in order to form a / more perfect Union, establish Justice, insure domestic Tran- / quillity, provide for the common Defense, promote the ge- / neral Welfare, and secure the Blessings of Liberty to ourselves / and our Posterity, do ordain and establish this Constitu- / tion for the United States of America. [Poughkeepsie: Nicholas Power, 1788.]

4to. pp. 20. S. 29

The official edition printed for the use of the New York Convention. The text is only printed on one side of page, to page 17—after that on both sides.

"*Countryman, A.*" *See No.* 84.

[COXE (TENCH).]

An / Examination / of the / Constitution / for the / United States / of / America, / Submitted to the People / by the / General Convention, / At Philadelphia, the 17th Day of September, 1787, / and since adopted and ratified / by the / Conventions of Eleven States, / chosen for the purpose of considering it, being all / that have yet decided on the subject. / By an American Citizen. / To which is added, / A Speech / of the / Honorable James Wilson, Esquire. / on the same subject. / Philadelphia: / Printed by Zachariah Poulson, Junr. in Fourth- / Street, between Market and Arch-Street. / M.DCC.LXXXVIII.

8vo. pp. 33. P. 30

Reprinted in Ford's *Pamphlets on the Constitution* and in No. 3; and the Letters by "An American Citizen" are printed in No. 124, No. 155, and in Carey's *American Museum*, ii, pp. 301 and 387.

COXE (TENCH).

[An Examination of the Constitution. Reprinted, Brooklyn, N. Y.: 1887.]

8vo. pp. 22. 31

A few copies separately printed from No. 68.

CURTIS (GEORGE TICKNOR).

History / of the / Origin, Formation, and Adoption / of the / Constitution of the United States; / with / notices of its principal framers. / By / George Ticknor Curtis. / In two volumes. / Volume I. / New York: / Harper and Brothers, / Franklin Square. / 1854 [-8].

2 vols. 8vo. pp. xxxvi, 518—xvi, 663. 32

This work, which is by far the best history of our Constitution, has been for several years out of print, and is difficult to procure in second-hand condition. There are issues with different dates. It was reviewed, by C. C. Smith, in *The Christian Examiner*, lviii, 75, lxv, 67; in *The Methodist Review*, xv, 187; in *The American Quarterly Church Review*, xv, 541; and in *The North American Review*, lxxx, 259, by A. P. Peabody.

CURTIS (GEORGE TICKNOR).

Constitutional History / of / The United States / from their Declaration of Independence / to the close of their Civil War / by / George Ticknor Curtis / In two volumes / Vol. I. / New York / Harper and Brothers / Franklin Square / 1889. /

2 vols. 8vo. pp. 32 a

This volume is a revision of the two volume edition, No. 32. Mr. Curtis died before completing the second volume, and it was edited and prepared for the press by Mr. Clayton, from manuscript left by Mr. Curtis. The major part of the text was complete, but some of the chapters were unfinished. The title of this second volume is:

Constitutional History / of / The United States / from their Declaration of Independence / to the Close of their Civil War / by George Ticknor Curtis / in two Volumes / Vol. II / Edited by / Joseph Culbertson Clayton / New York / Harper and Brothers / Franklin Square / 1896.

32 b

The editor has provided an appendix containing notes, important historical documents, an elaborately annotated copy of the Constitution, cognate writings of Mr. Curtis, and Bibliographical Notes, etc. Each volume has a full index. The two volumes constitute the most convenient *apparatus* for the study of the Constitution.

[DAVIE (WILLIAM RICHARDSON) AND OTHERS.]

[An address to the People of North Carolina, by Publicola. Answer to George Mason's Objections to the new Constitution recommended by the late Convention, by Marcus, etc. Newbern: Printed by Hodge and Wills. 1788.]

pp. 33

A hypothetical title of a tract frequently alluded to in McRee's *Life of James Iredell*, but of which I have been able to find no other trace. William R. Davie wrote Publicola, James Iredell wrote Marcus, and Archibald Maclaine apparently contributed as well. See No. 103.

Debates of the State Conventions (Elliot). *See Nos.* 36–9.

Decius's Letters. *See Nos.* 126, 133.

[DICKINSON (JOHN).]

The / Letters / of / Fabius, / in 1788, / on the Federal Constitution, / and / in 1797, / on the present situation / of / public affairs. / Copy-Right Secured. / From the office of the Delaware / Gazette, Wilmington, / by W. C. Smyth. / 1797.

8vo. pp. iv, 202 (1). H. 34

Reprinted in *Political Writings of John Dickinson*, and the first series is in Ford's *Pamphlets on the Constitution.*

See Washington's *Writings*, xi, 354.

The first series of *Fabius* were also printed in *The New Hampshire Gazette*, from which Mr. Dawson reprinted a single number in the *The Historical Magazine* (xviii, 359), apparently under the impression that it was an original New Hampshire essay.

DICKINSON (JOHN).

[The Letters of Fabius. Brooklyn, N. Y.: 1888.]

8vo. pp. 54. 35

A few copies separately printed from No. 82.

ELLIOT (JONATHAN). *First edition.*

The / Debates, / Resolutions, and other Proceedings, / in / Convention, / on the adoption of the / Federal Constitution, / as recommended by the / General Convention at Philadelphia, / on the 17th of September, 1787: / With the yeas and nays on the decision of the / main question. / Collected and revised, from contemporary publications, / by Jonathan Elliot. / . . ./ . . . . / Washington, / Printed by and for the Editor, / on the Pennsylvania Avenue. / 1827 [-30].

3 vols. 8vo. 36

"Volume I. / Containing the Debates in Massachusetts and New York." pp. viii, 358, *8.

"Volume II. / Containing the Debates in the Commonwealth of Virginia." pp. viii, 33–487.

"Volume III. / Containing the Debates in the States of North Carolina and Pennsylvania." pp. (8), 17–322.

The star leaves in volume I. were originally issued in volume III., and are sometimes found bound in that volume. They are a fragment of the debates in the New York Convention.

An additional volume was issued in 1830, with the following title:

Journal / and / Debates of the Federal Convention, / Held at Philadelphia, from May 14, to September 17, 1787 / with the / Constitution / of the / United States, / illustrated by the opinions of twenty / successive Congresses, / and a / Digest of Decisions in the Courts of the Union, / involving constitutional principles: / thus shewing / the rise, progress, present condition, and practice / of the Constitution, / in the / National Legislature and Legal Tribunals of the Republic. / With / full indexes on all subjects embraced in the Work. / By Jonathan Elliot. / Volume IV. / (Supplementary to the State Constitutions, in 3 Vols. on adopting the Federal Constitution) / Washington, / Printed and sold by the Editor, / on the Pennsylvania Avenue. / 1830. /

8vo. pp. (8), 272, 404, (4). 37

Reviewed by Jared Sparks in *The North American Review*, xxv, 249.

ELLIOT (JONATHAN). *Second Edition.*

The / Debates / in the several / State Conventions, / on the adoption of the /

Federal Constitution, / as recommended by the / General Convention at Philadelphia, / in / 1787. / Together with / the Journal of the Federal Convention, Luther / Martin's Letter, Yates' Minutes, Congressional / Opinions, Virginia & Kentucky Resolutions of '98–'99, / and other illustrations of the Constitution. / In four volumes—Volume I. / Second Edition, / with considerable additions, / collected and revised from contemporary publications, / by Jonathan Elliot. / Published under the Sanction of Congress. / Washington: / Printed by and for the Editor, / on the Pennsylvania Avenue. / 1836.

4 vols. 8vo. 38

I. pp. vii, (3), xix–xxxii, 33–*79, 73–551.
II. pp.
III. pp.
IV. pp. (4), vii–xvi, 33–662, xvi.

ELLIOT (JONATHAN). [*Third*] *Edition.*

The / Debates / in the several / State Conventions, / on the adoption of the / Federal Constitution, / as recommended by the / General Convention at Philadelphia, / in / 1787. / together with the / Journal of the Federal Convention, / Luther Martin's Letter, / Yates' Minutes, / Congressional Opinions, / Virginia and Kentucky Resolutions of '98–'99, / and / other illustrations of the Constitution. / In Four Volumes. / Vol. I. / Second Edition, with considerable additions. / Collected and Revised from contemporary publications, / by Jonathan Elliot. / Published under the sanction of Congress. / Washington: Printed for the Editor. / 1836.

4 vols. 8vo. 39

I. pp. xvi, 508 Ante-Constitutional History, Journal of Convention, Martin's Genuine Information, Yates' Minutes, Ratifications and Amendments, Official letters of Delegates, partisan arguments, and private letters.
II. pp. xi, 556. Debates in the Conventions of Massachusetts, Connecticut (fragmentary), New Hampshire (fragmentary), New York, and Pennsylvania (fragmentary). Account of Maryland and Harrisburg Conventions.
III. pp. xi, 663. Debates in the Virginia Convention.
IV. pp. xii, 639. Debates in the (first) North Carolina Convention and in the Legislature and Convention (fragment) of South Carolina, Opinions on Constitutional questions, 1789–1836.

In 1845 a supplementary volume was added, with the following title:

Debates / on the / adoption of the Federal Constitution, / in the Convention held at Philadelphia, / in / 1787; / with a diary of the debates of / the Congress of the Confederation; / as reported / By James Madison, / a member, and deputy from Virginia. / Revised and newly arranged / By Jonathan Elliot. / Complete in one volume. / Vol. V. / Supplementary to Elliot's Debates. / Published under the sanction of Congress. / Washington: / Printed for the Editor. / 1845.

8vo. pp. xxii, 641. 40

Elliot's Debates (especially this edition), in spite of its imperfections, is the great storehouse of American constitutional history. It is almost impossible to exaggerate its importance; and though Nos. 116 and 124 have rendered the portion relating to Massachusetts

and Pennsylvania of little value, the remaining contents are only to be found in contemporary publications of greater or lesser rarity.

In 1858 the plates passed into the hands of J. B. Lippincett & Co., who have printed several issues, with change of date only.

Examination into the leading principles. *See Nos.* 161–2.

Examination of the Constitution. *See Nos.* 30–1.

Fabius. *See Nos.* 34–5.

Federal Constitution. *See Nos.* 28–9.

Federal Farmer. *See Nos.* 109–113.

THE FEDERALIST. 1787–8.

The Fœderalist. No. I. To the People of the State of New York . . . . [signed] Publius.

This is the heading to the first of the series of eighty-five essays, now known as the *The Federalist*, and was first published October 27, 1787. With occasional breaks in its regularity, it continued to be published by at least two New York newspapers until August 16, 1788.

Nos. 1–7, 11, 13, 15, 17, 19, 21, 26, 31, 33, 35, 37–8, 55, 65, 71, and 76 first appeared in *The Independent Journal.* Nos. 8, 12, 16, 18, 20, 22, 27, 29, 30, 32, 56, 64, 70, 72, and 75 first appeared in *The New York Packet.* Nos. 10 and 36 first appeared in *The Daily Advertiser.* Nos. 9, 14, 23–5, and 34 appeared simultaneously in two or more papers. Nos. 77–85 first appeared in the first edition in book form. The first publication of the remaining essays I have not been able to find.

Jay wrote Nos. 2, 3, 4, 5, and 64; Madison, Nos. 10, 14, 37 to 48 inclusive; Nos. 18, 19, and 20 are the joint work of Madison and Hamilton; Nos. 49 to 58, 62, and 63 are claimed by both Madison and Hamilton; the rest of the numbers are by Hamilton. The authorship of the 12 numbers claimed by both Madison and Hamilton is fully discussed by Mr. Lodge in *The Proceedings of the American Antiquarian Society for* 1882, and volume ix of *The Works of Hamilton;* by Mr. Dawson and Mr. J. C. Hamilton in the introductions to their respective editions of *The Federalist;* by Mr. Rives in his *History of the Life and Times of James Madison;* by Mr. Bancroft in the *History of the Formation of the Constitution*, ii, 236; and in *The Historical Magazine*, viii, 305. The latest contribution to the subject is P. L. Ford's "Authorship of the Federalist" in *The Nation*, LIX, 440.

"He is certainly a judicious and ingenious writer, though not well calculated for the common people."—*Maclaine to Iredell, March* 4, 1788.

"In a series of essays in the New York Gazettes, under title of *Federalist*, it [the Constitution] has been advocated with great ability."—*Washington to Luzerne*, Feb. 7, 1788.

"The Federalist, as he terms himself, or Publius, puts me in mind of some of the gentlemen of the long robe when hard pressed, in a bad cause, with a rich client. They frequently say a good deal, which does not apply; but yet if it will not convince the judge and jury, may perhaps, help to make them forget some part of the evidence—embarrass their opponents, and make the audience stare."—*N. Y. Journal*, Feb. 14, 1788.

"It would be difficult to find a treatise, which, in so small a compass, contains so much valuable political information, or in which the true principles of republican government are unfolded with such precision."—*American Magazine* for March, 1788.

See also,

A / List of Editions / of / "The Federalist." / By / Paul Leicester Ford. / Brooklyn, N. Y., / 1886. 8vo. pp. 25.

THE FEDERALIST. *Virginia.* 1787.

13 / The Federalist, No. 2. / To the People. [n. p. n. d.]

12mo. pp. 13–16. P. L. 42

A fragment of an entirely unknown edition of "The Federalist," which must take precedence of what has hitherto been supposed to be the first issue in book form. My proof that it was printed in Virginia is based on the fact that, when discovered, it was bound up in a collection of Virginia pamphlets of the dates 1784–1790. Washington procured the republication of the early numbers of "The Federalist" in several of the Virginia papers, but when the scope and length of the work was realized the printers abandoned its republication. Probably this edition was printed from the type used in some one of these papers and the intention was to issue it in parts as printed. This is the second part and contains numbers 2 and 3.

THE FEDERALIST. *New York.* 1788.

The / Federalist: / A Collection / of / Essays, / written in Favour of the / New Constitution, / as agreed upon by the Federal Convention, / September 17, 1787. / In Two Volumes. / Vol. I. / New York: / Printed and Sold by J. and A. M'Lean, / No. 41, Hanover-Square. / M,DCC,LXXXVIII.

2 vols. 12mo, pp. vi, 227—vi, 384. C., P., N., B. A. 43

The first edition in book form. It is difficult to find in uncut condition, or on thick paper. Ordinary copies were priced by Leon at $30, and Hawkins' copy sold for $48.

Reviewed in *The American Magazine*, 1788, pp. 260, 327, 423, 503.

THE FEDERALIST. *Paris.* 1792.

Le Fédéraliste, / ou / Collection de quelques Écrits en faveur de / la Constitution proposée aux États-Unis / de l'Amérique, par la Convention convoquée / en 1787; / Publiés dans les États-Unis de l'Amérique par / MM. Hamilton, Madisson et Gay, / Citoyens de l'État de New York. / Tome Premier. / A Paris, / Chez Buisson, Libraire, rue Hautefeuille, / No. 20 / 1792.

2 vols. 8vo. pp. lii, 366—(4), 511. P. L. 44

2 vols. 8vo. pp. (5), xxii–lii, 366—(4), 511.

The two variations noted above are indentical as to matter and composition, with the exception of the introduction, which is omitted in the second.

Translated by Trudaine de la Sablière, who added an Introduction, and Notes, most of which are merely explanatory of such parts of the text as would be unintelligible to the French reader.

"Both issues of this first French edition are of the utmost rarity. I have heard of but one example of the first issue, the imperfect copy in the library of Harvard College, referred to by Mr. Dawson. The second is almost equally rare. There is one copy in the New York State Library (mentioned by Mr. Dawson), another in the library of Yale College, and a third was sold at auction not long since, in Boston, for twenty-five dollars a volume."—*Mr. Lodge's Introduction to The Federalist.*

THE FEDERALIST. *Paris.* 1795.

Le Fédéraliste, / ou / Collection de quelques Ecrits en faveur / de la Constitu-

tion proposée aux États-Unis / de l'Amérique, par la Convention convoquée / en 1788 ; / Publiés dans les États-Unis de l'Amérique par / MM. Hamilton, Madisson et Jay. / Citoyens de l'État de New York. / Seconde Édition. / Tome Premier, / A Paris, / Chez Buisson, Libraire, rue Hautefeuille, No. 20. / An 3e. de la Répnblique.

2 vols. 8vo. pp. (5), xxii–lii, 366—(4), 511. 45

A reissue with new titles of the second issue of No. 44.

THE FEDERALIST. *New York.* 1799.

The / Federalist: / A Collection of / Essays, / written in favour of the / new Constitution, / as agreed upon by the / Federal Convention, / September 17, 1787. / In Two Volumes. / Vol. I. / New-York: / Printed and sold by John Tiebout, / No. 358 Pearl-Street. / 1799.

2 vols. 12mo. pp. vi, 227—vi, 384. P. L. 46

Of the first edition of *The Federalist* a few copies remained unsold, which passed into the hands of John Tiebout, who reissued it with new titles only.

"It is said that in the year 1799, a new edition of *The Federalist*, the fifth in book-form, was published by John Tiebout. . . . The most diligent search has been made for a copy of that edition, but without finding it or obtaining any other information concerning it. It is not in any of the principal public libraries, nor, so far as can be learned, is a copy of it in any private library in this part of the country. The newspapers of that period—both Federal and Republican—have been carefully examined, with the hope of finding the Proposals for its publication; personal enquiries have been made of Mr. Tiebout's sons, and of several of the older inhabitants of the city; and those whose intimate knowledge of books entitles them to the respect of every student have been applied to on the subject; yet no trace whatever, beyond the single allusion above referred to, has been obtained from any quarter concerning this or any other edition of *The Federalist* from the press of John Tiebout."—*Mr. Dawson's Introduction to the Federalist*, lxvii.

"Mr. Dawson, after the most exhaustive research, failed to find a copy, and only heard of one, or what appeared to be one, in the collection of Mr. Force, while his own volume was passing through the press, and he was therefore compelled to leave the existence of such an edition largely a matter of conjecture. This gap is now filled. There is a copy of this edition, probably unique, for the Force copy has disappeared, in the Long Island Historical Society."—*Mr. Lodge's Introduction to the Federalist.*

This copy mentioned by Mr. Lodge is, however, imperfect, there being but one volume.

THE FEDERALIST. *New York.* 1802.

The / Federalist, / on the New Constitution. / By Publius. / Written in 1788. / To which is added, / Pacificus, / on the Proclamation of Neutrality. / Written in 1793. / Likewise, / The Federal Constitution, / with all the Amendments. / Revised and Corrected. / In Two Volumes. / Vol. I. / Copy-right secured. / New-York: / Printed and sold by George F. Hopkins, / At Washington's Head. / 1802.

2 vols. 8vo. pp. viii, 317, (1)—v, 351. C., H., N. 47

Mr. Dawson hazards the guess that this edition was edited by William Coleman, but by Mr. Hopkins' statement he appears in error.

"Mr. Hopkins informed me to-day that this edition was in the first instance corrected by John Wells, who compared it with the original edition, published by McLean [sic] in 1788,

and that it was subsequently revised by my father, at whose casual suggestion Pacificus was printed with it."—*Memoranda by J. C. Hamilton, Feb.* 6, 1847.

From the "prefatory remarks" prefixed to the Washington edition, it would appear that Mr. Jay also revised in this edition the numbers contributed by him. See No. 51.

"In the year 1802, Mr. Hopkins, printer, of this city, intending to publish a new edition of The Federalist, took this opportunity to apply to Gen. Hamilton, and solicit him to correct and revise the numbers, and, so far succeeded, as to obtain his consent to assist in the revisal, provided a gentleman of competent literary talents would undertake to make the first verbal corrections, for the original idea was to be strictly adhered to:—He then examined the whole with his own eye, previous to its being committed to the press, and saw that it was free from literary blemishes."—William A. Coleman in the *N. Y. Evening Post*, March 25, 1817.

THE FEDERALIST. *New York.* 1810.

The / Federalist, / on the New Constitution; / written in 1788, / by Mr. Hamilton, Mr. Jay, and Mr. Madison. / To which is added, / Pacificus, / on the Proclamation of Neutrality / written in 1793, / by Mr. Hamilton. / A new edition, with the Names and Portraits of the / several Writers. / In Two Volumes. / Vol. I. / New-York: / Published by Williams & Whiting, / at their Theological and Classical Book-store, / No. 118, Pearl-street. / Printed by J. Seymour. / 1810.

2 vols. 8vo. pp. iv, 368, 2 portraits—iv, 368, portrait. 48

A separate edition of volumes ii. and iii. of the "*Works of Hamilton*," as edited by John Wells, in 1810. It is identical in matter with No. 47, with the addition of the names of the authors from "a private memorandum in his (Hamilton's) own handwriting."

THE FEDERALIST. *Philadelphia.* 1817.

The / Federalist, / on the New Constitution; / written in 1788, / by Mr. Hamilton, Mr. Jay, and Mr. Madison, / A New Edition, / with the Names and Portraits of the several Writers. / Philadelphia: / Published by Benjamin Warner, No. 147, Market Street. / William Greer, Printer. Harrisburg. / 1817.

8vo. pp. 477, 3 portraits.

The first single volume edition. It follows the 1810 edition in text. P. L. 49

THE FEDERALIST. *Philadelphia.* 1818.

The / Federalist, / on the New Constitution; / written in 1788, / by Mr. Hamilton, Mr. Jay, and Mr. Madison. / A New Edition, / with the Names and Portraits of the several Writers. / Philadelphia: / Published by Benjamin Warner, No. 147, Market Street, / and sold at his stores, Richmond, Virginia, / and Charleston, South Carolina. / 1818.

8vo. pp. 504, 3 portraits. B. 50

Printed from the same forms as No. 49, with the addition of an appendix containing the Articles of Confederation and the Constitution.

THE FEDERALIST. *Washington.* 1818.

The / Federalist, / on / the New Constitution, / written in / the Year 1788, / by / Mr. Hamilton, Mr. Madison, and Mr. Jay, / with / an Appendix, / Containing / the

Letters of Pacificus and Helvidius, / on the / Proclamation of Neutrality of 1793; / Also, the / Original Articles of Confederation, / and / the Constitution of the United States, / with the / Amendments made thereto. / A New Edition. / The Numbers written by Mr. Madison corrected by Himself. / City of Washington: / Printed and published by Jacob Gideon, Jun. / 1818.

8vo. pp. 671. P. L. 51

"The present edition of the Federalist contains all the numbers of that work, as revised by their authors, and is the only one to which the remark will apply. Former editions, indeed, it is understood, had the advantage of a revisal from Mr. Hamilton, and Mr. Jay, but the numbers written by Mr. Madison still remain in the state in which they originally issued from the press, and contain many inaccuracies. The publisher of this volume has been so fortunate as to procure from Mr. Madison the copy of the work which that gentleman had preserved for himself, with corrections of the papers of which he was the author, in his own hand."—Prefatory remarks by Jacob Gideon, Jr.

Mr. Madison claims the authorship, in this edition, of Nos. 18, 19, and 20, which Hamilton had given as their joint work; and 49 to 58, 62 and 63, which Mr. Hamilton had claimed for himself. In spite of the research and study devoted to the dispute, it is to-day impossible to give the authorship to either with any certainty.

THE FEDERALIST. *Washington.* 1821.

The / Federalist, / on / the New Constitution, / Written in / the Year 1788, / by / Mr. Hamilton, Mr. Madison, and Mr. Jay, / with / an Appendix, / Containing / the Letters of Pacificus and Helvidius, / on the / Proclamation of Neutrality of 1793; / Also, the / Original Articles of Confederation, / and / the Constitution of the United States, / with the / Amendments made thereto. / A New Edition. / The Numbers written by Mr. Madison corrected by Himself. / City of Washington: / Printed and published by Jacob Gideon, Jun. / 1821.

8vo. pp. 671. P. L. 52

A reissue of No. 51 with new titles only. It is not in Mr. Dawson's list of editions.

THE FEDERALIST. *Hallowell.* 1826.

The / Federalist, / on the New Constitution, / Written in / the Year 1788, / by / Mr. Hamilton, Mr. Madison, and Mr. Jay: / With / an Appendix, / Containing / the Letters of Pacificus and Helvidius, / on the / Proclamation of Neutrality of 1793; / Also, the / Original Articles of Confederation, / and the / Constitution of the United States, / with the / Amendments made thereto. / A New Edition. / The Numbers written by Mr. Madison corrected by Himself. / Hallowell, (Me.): / Printed and published by Glazier & Co. / 1826.

8vo. pp. 582. H. 53

A reprint of Gideon's edition of 1818.

THE FEDERALIST. *Philadelphia.* 1826.

The / Federalist, / on the New Constitution, / written in the year / 1788, / by / Mr. Hamilton, Mr. Madison, and Mr. Jay: / With / an Appendix, / containing / The Letters of Pacificus and Helvidius / on the / Proclamation of Neutrality of 1793; /

Also the / Original Articles of Confederation, / and the / Constitution of the United States, / with the amendments made thereto. / A New Edition. / The numbers written by Mr. Madison corrected by himself. / Philadelphia: / Published by M'Carty and Davis, / 171 Market-street. / 1826.

8vo. pp. 582. P. L. 54

Identical with No. 53, excepting title-page. It is not in Sabin's or Dawson's lists, or in Ford's *List of Editions of "The Federalist."*

THE FEDERALIST. *Hallowell.* 1831.

The / Federalist / on / the New Constitution, / written in the Year 1788, / by / Mr. Hamilton, Mr. Madison, and Mr. Jay: / With / an Appendix, / Containing / the Letters of Pacificus and Helvidius, / on the / Proclamation of Neutrality of 1793; / also, the / Original Articles of Confederation, and the Con- / stitution of the United States, / with the Amendments made thereto. / A New Edition. / The Numbers written by Mr. Madison corrected by Himself. / Hallowell: / Printed and published by Glazier, Masters & Co. / 1831.

8vo. pp. 542. P. L. 55

Not in Mr. Sabin's *Dictionary of Books relating to America,* and Mr. Dawson, who had heard of such an edition, was unable to find a copy.

THE FEDERALIST. *Washington.* 1831.

The / Federalist, / on / The New Constitution, / written in / the Year 1788, / by / Alexander Hamilton, James Madison and John Jay, / With an Appendix, / Containing the Original Articles of Confederation; the / Letter of General Washington, as President of the / Convention, to the President of Congress; the Consti- / tution of the United States, and the Amendments to / the Constitution. / A New Edition, / with a Table of Contents, / and / a copious Alphabetical Index. / The Numbers written by Mr. Madison corrected by Himself. / Washington: / Published by Thompson & Homans. / Way & Gideon, Printers. / 1831.

12mo. pp. vii, 3–420. P. L. C. 56

The first edition with an index, prepared by Philip R. Fendall.

THE FEDERALIST. *Hallowell.* 1837.

The / Federalist, / on / the New Constitution, / written in the year 1788, / by / Mr. Hamilton, Mr. Madison, and Mr. Jay: / with / an Appendix, / Containing / the Letters of Pacificus and Helvidius / on the / Proclamation of Neutrality of 1793; / also, / the Original Articles of Confederation, and the / Constitution of the United States, / with the Amendments made thereto. / A New Edition. / The Numbers written by Mr. Madison corrected by Himself. / Hallowell: / Glazier, Masters & Smith. / 1837.

8vo. pp. 500. A., C. 57

THE FEDERALIST. *Rio de Janeiro.* 1840.

O Federalista, publicado em inglez por Hamilton, Madisson e Jay, cidadãos de

Nova-York, e traduzido em portuguez por . . . Rio de Janeiro: Typ. Imperial e Const. de J. Villeneuve & Ca. 1840.

3 vols. 8vo. pp. 244—285—246. 58

Title from Sabin's *Dictionary of Books relating to America.* It is unknown to Mr. Dawson, and I have been unable to find a copy. From the misspelling of Madison's name, it is apparently a translation of the Paris edition, No. 44.

THE FEDERALIST. *Hallowell.* 1842.

The / Federalist, / on / the New Constitution, / Written in 1788, / by / Mr. Hamilton, Mr. Madison, and Mr. Jay: / With / an Appendix, / Containing / the Letters of Pacificus and Helvidius / on the / Proclamation of Neutrality of 1793; / also, / the Original Articles of Confederation, / and the / Constitution of the United States. / A New Edition. / The Numbers written by Mr. Madison corrected by Himself. / Hallowell: / Glazier, Masters & Smith. / 1842.

8vo. pp. 484. P. L. 59

Reviewed by J. Parker in the *North American Review*, xciv, 435.

THE FEDERALIST. *Washington.* 1845.

The / Federalist, / on / the New Constitution, / Written in / the Year 1788, / by / Alexander Hamilton, James Madison, and John Jay, / With an Appendix, / Containing / the Original Articles of Confederation; the Letter of General Wash / ington, as President of the Convention, to the President of Con- / gress; the Constitution of the United States; the Amend- / ments to the Constitution; and the Act of Congress in / Relation to the election of President, passed / January 23, 1845. / Sixth Edition, / with / a Copious Alphabetical Index. / The numbers written by Mr. Madison corrected by Himself. / Washington: / Printed by J. & G. S. Gideon. / 1845.

8vo. pp. (2), v, (1), 391. P. L. 60

Neither in Mr. Dawson's nor Mr. Sabin's lists of editions.

THE FEDERALIST. *Philadelphia.* 1847.

The / Federalist, / on / the New Constitution, / Written in / the Year 1788, / by / Alexander Hamilton, James Madison, and John Jay. / With an Appendix, / Containing / the Letters of Pacificus and Helvidius on the Proclamation of Neu- / trality of 1793; the Original Articles of Confederation; the Let- / ter of General Washington, as President of the Convention, to the President of Congress; the Constitution of the / United States; the Amendments to the Constitution; / and the Acts of Congress in Relation to the Elec- / tion of President, passed January 23, 1845. / Sixth edition, / with / a Copious Alphabetical Index. / The Numbers written by Mr. Madison corrected by Himself. / Philadelphia: / R. Wilson Desilver, 18 South Fourth Street, / 1847.

8vo. pp. (2), v, 391, 102. B. M. 61

The "Letters of Pacificus and Helvidius" has a separate title-page and pagination, and is often found as a separate work.

THE FEDERALIST. *Washington.* 1847.

The Federalist, on the New Constitution . . . . . Washington: J. & G. S. Gideon 1847.

8vo. pp. 62

Title quoted by Sabin from "Mr. Bartlett's List."

THE FEDERALIST. *Hallowell.* 1852.

The / Federalist, / on / the New Constitution, / Written in 1788. / by / Mr. Hamilton, Mr. Madison, and Mr. Jay: / With / an Appendix, / Containing the / Letters of Pacificus and Helvidius / on the / Proclamation of Neutrality of 1793; / Also, / the Original Articles of Confederation, / and the / Constitution of the United States. / New Edition: / The Numbers written by Mr. Madison corrected by Himself. / Hallowell: / Masters, Smith, & Company. / 1852.

8vo. pp. 496. 63

THE FEDERALIST. *Hallowell.* 1857.

The / Federalist, / on the / New Constitution, / Written in 1788, / by / Mr. Hamilton, Mr. Madison, and Mr. Jay: / With / an Appendix, / Containing the Letters of / Pacificus and Helvidius / on the / Proclamation of Neutrality of 1793; / Also, / the Original Articles of Confederation, / and the Constitution of the United States. / New Edition: / The Numbers written by Mr. Madison corrected by Himself. / Hallowell: / Masters, Smith, & Co. / 1857.

8vo. pp. 496. B. 64

THE FEDERALIST. *New York.* 1863.

The Fœderalist: / A / Collection of Essays, Written in Favor / of the New Constitution, as / agreed upon by / the Fœderal Convention, / September 17, 1787. / Reprinted from the Original Text. / with an / Historical Introduction and Notes, / By Henry B. Dawson. / In Two Volumes. / Vol. I. / New York: / Charles Scribner, 124 Grand Street, / London: Sampson Low, Son & Co. / 1863.

8vo. pp. cxlii, (2), 615, portrait. 65

All ever printed. This volume contains the text of *The Federalist*, entire, and an Introduction, giving a history of the origin, original publication, the controversy over the disputed numbers, and a bibliographical list of editions, all being treated with great thoroughness. It was Mr. Dawson's intention to give, in the second volume, the alterations which had been made in the text of the various editions, and MS. notes from copies of the work which had belonged to the authors and other statesmen. The Introduction gave offense to the Hamilton and Jay families, and occasioned the following pamphlets:

Correspondence / between / John Jay and Henry B. Dawson, / and between / James A. Hamilton and Henry B. Dawson, / concerning / The Federalist. / New York: / Printed by J. M. Bradstreet & Son. / 1864.

8vo. and 4to. pp. 48, covers. 66

Of the 4to. edition only 25 copies were printed. The title on the cover reads *Current*

Fictions tested by Uncurrent Facts. Mr. Dawson advertised *Current Fictions No. II.*, but it was never printed.

New Plottings in Aid of the Rebel Doctrine of / State Sovereignty. / Mr. Jay's Second Letter / on / Dawson's Introduction to the Federalist, / Exposing its Falsification of the History of the Constitution; its / Libels on Duane, Livingston, Jay and Hamilton; and / its relation to recent efforts by Traitors at home, and / Foes abroad, to maintain the Rebel Doctrine of State / Sovereignty, for the subversion of the Unity of / the Republic and the Supreme Sovereignty of / the American People / . . . . / New York: / A. D. F. Randolph. / 1864. / 8vo. pp. 54, viii, covers. 67

[Same.] New York: / American News Company, 121 Nassau street. / London: / Trubner & Company, 60 Paternoster Row. / 1864. / 8vo, pp. 54. vii, covers 68

[Same.] London: Sampson Low . . . 1864. 8vo. pp. 50 69

All three editions were suppressed by Mr. Jay, and the bulk of the copies burnt. See *Current Fictions*, p. 26.

This edition is reviewed by H. W. Torrey in *The North American Review*, cxcviii, 586; and by Historicus in *The New York Times*, Feb. 17, 1864.

THE FEDERALIST. *New York.* 1864.

The Fœderalist: / A / Collection of Essays, Written in Favor / of the New Constitution, as / agreed upon by / the Fœderal Convention, / September 17, 1787. / Reprinted from the Original Text. / With an / Historical Introduction and Notes, / By Henry B. Dawson. / In Two Volumes. / Vol. I. / New York: / Charles Scribner & Co. . . . / . . . 1864.

8vo. pp. cxlii, (2), 615, portrait. 70

THE FEDERALIST. *Morrisania.* 1864.

The Fœderalist: / A Collection of Essays, written in Favor / of the New Constitution, as agreed / upon by the Fœderal Conven- / tion, September 17, 1787. / Reprinted from the Original Text, / with an / Historical Introduction and Notes / By Henry B. Dawson. / In Two Volumes. / Vol. I. / Morrisania, N. Y.: / 1864.

Royal 8vo. pp. cxlii, (2), 615, portrait. 71

Printed from the same plates as the New York editions of 1863 and 1864. 250 copies printed.

THE FEDERALIST. *Philadelphia.* 1865.

The / Federalist: / A Commentary / on the / Constitution of the United States. / A Collection of Essays, / By Alexander Hamilton, / Jay, and Madison. / Also, / The Continentalist, and other Papers, / By Hamilton. / Edited by / John C. Hamilton, / Author of "The History of the Republic of the United States." / Philadelphia: / J. B. Lippincott & Co. / 1864.

8vo. pp. clxv, (1), 659, vi, portrait. B. A. 72

Many reissues, with a change of date only.

Contains an "Historical Notice," which is an endeavor to prove Hamilton the author of the doubtful numbers; in fact, the whole tendency is to magnify Hamilton's part of the work, even the names of the other authors being printed in much smaller type on the title-page.

The alterations in the text made by the different editions are added, as also the papers signed "Philo-Publius" by William Duer.

Reviewed by Mr. Horace Binney in the following:

A Review of Hamilton's Edition of the Federalist. Philadelphia: 1864.

8vo. pp. 8. 73

THE FEDERALIST. *Philadelphia.* 1865.

The / Federalist: / A Commentary / on the / Constitution of the United States. / A Collection of Essays / By Alexander Hamilton, / Jay, and Madison. / Also, / The Continentalist, and other Papers, / By / Hamilton. / Edited by / John C. Hamilton, / Author of "The History of the Republic of the United States." / Vol. I. / Philadelphia: / J. B. Lippincott & Co. / 1865.

2 vols. rl. 8vo. pp. clxv, (1), 242.—(2), 243–659, vi, portrait. 74

From the same plates as No. 72, but divided into two volumes, and printed on larger and finer paper. 100 copies only printed.

THE FEDERALIST. *New York.* 1876.

University Edition, / The Federalist: / A / Collection of Essays, written in Favor / of the New Constitution, as / agreed upon by / Federal Convention, / September 17, 1787 / Reprinted from the Original Text / under the Editorial Supervision of / Henry B. Dawson. / New York: / Scribner, Armstrong and Co. / 1876.

8vo. pp. lvi, 615. 75

Also undated issues. A cheap edition from the plates of No. 65, with the omission of the Introduction, a short Preface taking its place.

THE FEDERALIST. *New York.* 1886.

The Works / of / Alexander Hamilton / Edited by / Henry Cabot Lodge / . . . . . / Vol. IX. / New York & London / G. P. Putnam's Sons / The Knickerbocker Press / 1886.

8vo. pp. xlv, 598. 76

THE FEDERALIST. *New York.* 1888.

The Federalist / a commentary on / The Constitution of the United States / being / A Collection of Essays written in Support of the Constitution / agreed upon September 17, 1787, by / The Federal Convention / Reprinted from the original text of / Alexander Hamilton / John Jay, and James Madison / Edited by / Henry Cabot Lodge / . . . . . / New York & London / C. P. Putnam's Sons / The Knickerbocker Press / 1888.

12mo. pp. xiv, 586. 77

Printed from the same forms as the preceding title.

THE FEDERALIST. *Chicago.* 1894.

The / Federalist / and / Other Constitutional Papers / by / Hamilton, Jay, Madison, / and other statesmen of their time / with a full index / Volume I. / edited / by / E. H. Scott / Chicago / Albert, Scott & Company / 1894.

2 vols. rl. 8vo. pp. 482; (3) 484–945. 78

"*Federal Republican.*" *See No.* 149.

[FINDLEY (WILLIAM).]

To the Citizens of Philadelphia. / . . . . . / Philadelphia, November, 1787. / An officer of the late Continental Army.

4to. broadside. P. L. 79

This was originally printed in the *Independent Gazetteer*, of Philadelphia, and was then reprinted in the *Independent Chronicle* in Richmond. It was replied to in the letters by "An Old State Soldier."

[FINDLEY (WILLIAM).]

Address / from / an officer / in the / late Continental Army. [Richmond: 1787–8.]

16mo. pp. 8. P. L. 80

FORD (PAUL LEICESTER).

A / List of the Members / of the / Federal Convention / of / 1787. / By / Paul Leicester Ford. / Brooklyn, N. Y.: / 1888.

16mo. pp. 15. 81

100 copies privately printed.

"In 1819, when John Quincy Adams, by direction of Congress, edited and published the Journal of the Federal Convention, he drew up . . . a list of the members . . . This list was accepted and republished by Elliot, . . . by Curtis . . . and more recently in the Official Programme of the Constitutional Centennial . . . Thus this list, prepared in 1819, has become a fixture . . . There are, however, several omissions and by reference to original documents, acts, etc., I have increased the list to seventy-four. To this I have added, in such cases as I have been able, the reasons of members for declining the appointment, and non-attendance of such as failed to be present in the Convention; the day of arrival of attending members; the absence of attending members; the date of leaving of those who failed to sign the Constitution, with their reasons, and the part the non-attending and non-signing members took in their own States in support or opposition to the ratification."—*Extract from preface.*

FORD (PAUL LEICESTER).

Pamphlets / on the / Constitution of the United States / Published during / Its Discussion by the People / 1787–1788. / Edited / with notes and a bibliography / by / Paul Leicester Ford. / Brooklyn, N. Y.: / 1888.

8vo. pp. xi, 451. 82

500 copies printed.

"Of all the able writings by our great statesmen in favor of or opposition to the ratification of our national Constitution, The Federalist alone is really accessible to the student and historian; the rest, for the most part published anonymously, having suffered the usual fate of pamphlets, and are now only to be found, widely scattered, and without marks of identification, in our public and private libraries, rendering their examination so difficult that, as a class, they have been singularly neglected in the study of that instrument."—*Prospectus.*

Reviewed by James C. Welling in *The Nation*, XLVIII, p. 56, January 17, 1889; by St. Clair McKelway in the *Brooklyn Eagle*, October 21, 1889; by W. F. Whitcher in the *Boston Traveler*, December 7, 1888; in the *Springfield Republican*, February 11, 1889; in the *New York Tribune*, December 24, 1889; and in the *Boston Post*, February 14, 1889.

Includes reprints of the following pamphlets, and a bibliography and reference list to the literature relating to the formation and adoption of the Constitution:

[GERRY (ELBRIDGE).] Observations on the New Constitution, and on the Federal and State Conventions. By a Columbian Patriot.

[WEBSTER (NOAH).] An Examination into the leading principles of the Federal Constitution. By a Citizen of America.

[JAY (JOHN).] An Address to the People of the State of New York. By a Citizen of New York.

[SMITH (MELANCTHON).] Address to the People of the State of New York. By a Plebeian.

[WEBSTER (PELATIAH).] The Weakness of Brutus exposed: or some remarks in vindication of the Constitution. By a Citizen of Philadelphia.

[COXE (TENCH).] An Examination of the Constitution of the United States of America. By an American Citizen.

WILSON (JAMES). Speech on the Federal Constitution, delivered in Philadelphia.

[DICKINSON (JOHN).] Letters of Fabius on the Federal Constitution.

[HANSON (ALEXANDER CONTEE).] Remarks on the Proposed Plan of a Federal Government. By Aristides.

RANDOLPH (EDMUND). Letter on the Federal Constitution.

[LEE (RICHARD HENRY).] Observations on the System of Government proposed by the late Convention. By a Federal Farmer.

MASON (GEORGE). Objections to the Federal Constitution.

[IREDELL (JAMES).] Observations on George Mason's Objections to the Federal Constitution. By Marcus.

[RAMSAY (DAVID).] An Address to the Freemen of South Carolina on the Federal Constitution. By Civis.

FORD (PAUL LEICESTER).

Essays / on the / Constitution of the United States. / Published during / its discussion by the people / 1787–1788. / Edited / by / Paul Leicester Ford. / Brooklyn, N. Y.: / Historical Printing Club, / 1892.

8vo. pp. viii, 424. 83

500 copies printed.

"In the great discussion which took place in the years 1787 and 1788 of the adoption or rejection of the Constitution of the United States, not the least important method of influencing public opinion, resorted to by the partisans and enemies of the proposed frame of government, was the contribution of essays to the press of that period. The newspapers were filled with anonymous articles on this question, usually the product of the great statesmen and writers of that period. Often of marked ability and valuable as the personal views of the writers, the dispersion and destruction of the papers that contained them have resulted in their almost entire neglect as historical or legal writings, and the difficulty of their proper use has been further added to by their anonymous character, which largely destroyed the authority and weight they would have carried had their true writers been known.

"From an examination of over forty files of newspapers and many thousand separate issues, scattered in various public and private libraries, from Boston to Charleston, the editor has selected a series of these essays and reprinted them in this volume. From various

sources he has obtained the name of the writer of each. All here reprinted are the work of well-known men. Five of the writers were signers of the Declaration of Independence; ten were members of the Federal Convention; many were members of the State Conventions, and there discussed the Constitution. All had had a wide experience in law and government. Their arguments are valuable, not merely for their reasoning, but from their statement of facts. New light is thrown upon the proceedings in the Federal Convention, so large a part of which is yet veiled in mystery; and personal motives and State interests are mercilessly laid bare, furnishing clues of both the support of and opposition to the Constitution. Subsequently most of the writers were prominent in administering this Constitution or opposing its development, and were largely responsible for the resulting tendencies of our government.—*Prospectus.*

Reviewed in *The Nation*, August 18; *New York Sun*, September 25; *Louisville Courier-Journal*, October 1; *Brooklyn Eagle*, July 31; *New York Times*, August 7; *Chicago Inter-Ocean*, July 31; *Boston Herald*, August 15; *Philadelphia Item*, August 7; *Baltimore Sun*, September 8.

The essays reprinted are:

SULLIVAN, JAMES. The Letters of "Cassius." From the *Massachusetts Gazette.*

WINTHROP, JAMES. The Letters of "Agrippa." From the *Massachusetts Gazette.*

GERRY, ELBRIDGE. Replies to "A *Massachusetts* Landholder." From the *Centinel*, and the *New York Journal.*

ELLSWORTH, OLIVER. Letters of "A Landholder." From the *Connecticut Courant.*

WILLIAMS, WILLIAM. A Letter to "A Landholder." From the *American Mercury.*

SHERMAN, ROGER. The Letters of "A Countryman," and of "A Citizen of New Haven," From the *New Haven Gazette.*

CLINTON, GEORGE. The Letters of "Cato." From the *New York Journal.*

HAMILTON, ALEXANDER. The Letters of "Cæsar." From the *Daily Advertiser.*

YATES, ROBERT. The Letters of "Sydney." From the *New York Journal.*

BRACKENRIDGE, HUGH HENRY. Cursory Remarks on the Constitution. From the *Pittsburg Gazette.*

CHASE, SAMUEL. A Letter of "Caution." From the *Maryland Journal.*

CARROLL, DANIEL. A Letter of "A Friend to the Constitution." From the *Maryland Journal.*

MARTIN (LUTHER), Letters of. From the *Maryland Journal.*

ROANE, SPENCER. A Letter of "A Plain Dealer." From the *Virginia Independent Chronicle.*

WILLIAMSON, HUGH. Remarks on the Constitution. From the *North Carolina State Gazette.*

PINCKNEY, CHARLES. A Letter of "A Steady and Open Republican." *State Gazette of South Carolina.*

FORD (PAUL LEICESTER).

The / Origin, Purpose, and Result / of the / Harrisburg Convention of 1788. / A / study in popular government, / by Paul Leicester Ford. / Brooklyn, N. Y. / 1890.

4to. pp. 40. 84

Edition 250 copies. Contains matter never before in print, giving an entirely new insight into the objects of that meeting.

Franklin B. *See No.* 115.

"*Friend to the Constitution.*" *See No.* 84.

From the Independent Gazetteer, &c. / Mr. Printer / . . . . . / [signed] An Old Whig. / Philadelphia: Printed by Ebenezer Oswald, at the Coffee-House.

4to. broadside. P. L. 85–6

"An Old Whig No. IV." "An Old Whig No. V." was issued with the same title.

[GERRY (ELBRIDGE).] *See also No.* 155.

Observations / On the new Constitution, and on the Federal / and State Conventions. / By a Columbian Patriot. / . . . . . / [Boston: 1788.]

12mo. pp. 19. C., M., B. A. 87

The above title is merely a caption on the first page. It is not advertised in any Massachusetts paper that I have been able to find, and was probably printed for Gerry for limited circulation only. It is reprinted in Ford's *Pamphlets on the Constitution*, and as below. See No. 82.

[GERRY (ELBRIDGE).]

Observations / on the / New Constitution, / and on the / Fœderal and State Conventions. / By a Columbian Patriot / . . . . / Boston Printed, New York Re-printed, / M,DCC,LXXXVIII.

8vo. pp. 22. N., C., S. 88

Printed by Thomas Greenleaf, in the *N. Y. Journal*, and reprinted, from the same forms, for the "New York [Anti] Federal Committee," who distributed 1630 copies among the county committees in the State.

GERRY (ELBRIDGE).

[Observations on the New Constitution. Brooklyn, N. Y.: 1887.]

8vo. pp. 23. 89

A few copies separately printed from No. 82.

GRIGSBY (H. B.).

The History / of the / Virginia Federal Convention / of / 1788, / with some account of the eminent Virginians of / that era who were members of that body / by / Hugh Blair Grigsby, LL.D. / With a / Biographical Sketch of the Author / and / Illustrative Notes / edited by R. A. Brock. / . . . / Vol. I. / Richmond, Virginia. / Published by the Society / MDCCXC.

2 vols. 8vo. pp. xxviii, 372–411. 90

HALL (AARON).

An / Oration, / delivered at the Request / of the / Inhabitants of Keene, / June 30, 1788; / To Celebrate the Ratification / of the / Federal Constitution / by the / State of New-Hampshire. / By Aaron Hall, M. A. / Member of the late State Convention. / Keene: State of New-Hampshire: / Printed by James D. Griffith. / M,DCC,LXXXVIII.

8vo. pp. 15. B. A. 91

HAMILTON (ALEXANDER). *See also Nos.* 41–78, 84.

Propositions / of Col. Hamilton, of New York, / In Convention for Establishing a Consti-/ tutional Government for the / United States. / Also / a Summary of the Political Opinions of / John Adams, / . . . . . / Pittsfield: Printed by Phineas Allen. 1802.

8vo. pp. 32. N. 92

HAMILTON (A. BOYD).

Harrisburg Conference, / September, 1788. / Prepared by A. Boyd Hamilton, and / Published in the Harrisburg Daily / Patriot in its issues from Nov. / 10 to November 18, 1879.

8vo. pp. 30. 93

25 copies printed.

[HANSON (ALEXANDER CONTEE).]

Remarks / on the / Proposed Plan / of a / Federal Government. / Addressed to the Citizens of the / United States of America, / And Particularly to the People of / Maryland, / By Aristides. / . . . / . . . / . . . / . . . / . . / Annapolis; / Printed by Frederick Green, / Printer to the State.

8vo. pp. 42. N., P. H. S., M. 94

Reprinted in Ford's *Pamphlets on the Constitution.*

HANSON (ALEXANDER CONTEE).

[Remarks on the Proposed Plan of a Federal Government. Brooklyn, N Y.: 1888.]

8vo. pp. 39. 95

A few copies separately printed from No. 82.

HITCHCOCK (ENOS).

An / Oration: / delivered July 4, 1788, / at the request of the Inhabitants / of the / Town of Providence, / in / celebration / of the / Anniversary / of / American Independence, / and of / the accession of nine States / to the / Federal Constitution. / By Enos Hitchcock, A.M. / Providence: / Printed by Bennett Wheeler.

8vo. pp. 24. 96

[HOPKINSON (FRANCIS).]

Account / of the / Grand Federal / Procession, / Philadelphia, July 4, 1788. / To which is added, / a / Letter / on the / Same Subject. / . . . / [Philadelphia:] M. Carey, Printer. [1788.]

8vo. pp. (2), 22. 97

Appeared originally in Carey's *American Museum*, iv, 57, and the same forms were used to print this edition. Only the "Account" and Wilson's speech are reprinted in Hopkinson's *Miscellaneous Essays*, ii, 349, showing that the "Letter" is not by him.

[HOPKINSON (FRANCIS).]

Account / of the / Grand Federal / Procession, / Philadelphia, July 4, 1788. /

. . . / To which is added, / Mr. Wlson's [*sic*] Oration, / and a / Letter / on the / Subject of the Procession. / [Philadelphia: M. Carey. 1788.]

8vo. pp. (2), 22. 98

[HOPKINSON (FRANCIS).]

Account / of the / Grand Federal / Procession, / Philadelphia, July 4, 1788. / To which is added, / Mr. Wilson's Oration, / and a / Letter / on the / Subject of the Procession. / (Price 5d. h.) / M. Carey, Printer.

8vo. pp. (2), 22. P. L. 99

[HOPKINSON (FRANCIS).]

An Ode / for the 4th of July, 1788 / . . . . . / Printed by M. Carey. 1788.]

Fo. broadside. H. S. P. 100

This poem was printed and distributed to the public during the Federal procession. See Hopkinson's "Account" p. 10.

An / Impartial / Address, / to the / Citizens / of the / City and County of Albany: / or, the / 35 Anti-Federal Objections / refuted. / By the Federal Committee / of the City of Albany. / Printed by Charles R. Webster, at / his Free Press, No. 36, State-street, near / the English Church, Albany.

12mo. pp. 28. S. 101

Interesting / Documents / Containing: / An Account of the Federal Procession, &c. July 23, 1788. / A sketch of the proceedings of the Convention of the State of New-/ York, which adopted the Constitution 2 days after the Procession. / The articles of Confederation and perpetual Union between Thirteen United States, as proposed by the Congress of the United States, / 17th Nov. 1777, and approved by this State, Feb. 6, 1778. / The Constitution of the United States with all its Amendments. / The Constitution of the State of New-York, with its Amendments. / The Declaration of Independence. / New York. / Published by John S. Murphy, Southwick & Pilsne, Print. 9 Wall St. / 1819.

12mo. pp. 128. N. 102

Introduction. See No. 133.

IREDELL (JAMES).

Answers to Mr. Mason's Objections to the New Constitution, recommended by the late Convention at Philadelphia. By Marcus. [Brooklyn, N. Y.: 1888.]

8vo. pp. 38. 103

Printed in Ford's *Pamphlets on the Constitution*, from which a few copies were separately printed as above. The original tract is described in No. 33.

[JACKSON (JONATHAN).]

Thoughts / upon the / Political Situation / of the / United States of America, / in which that of / Massachusetts / Is more particularly considered. / With some / Observations on the Constitution / for a / Federal Government. / Addressed to

the People of the Union. / By a Native of Boston. / . . . / . . . / . . . / Printed at Worcester, Massachusetts, / by Isaiah Thomas. MDCCLXXXVIII.

8vo. pp. 209. M., B. A., S. 104

Signed at end "Civis." The authorship of this pamphlet is also frequently given to G. R. Minot, but both Sabin and Cushing give it as above. Reviewed in *The American Magazine*, 744 and 804.

JAMESON (J. F.).

Essays / in the / Constitutional History of / the United States / in the / Formative period / 1775–1789 / by / graduates and former members of the Johns Hopkins University / edited by / J. Franklin Jameson, Ph. D. / late associate in the Johns Hopkins University, professor of History in Brown University / Boston and New-York / Houghton, Mifflin and Company / The Riverside Press, Cambridge / 1889.

12mo. pp. xi. 321. 105

Contents: The Predecessor of the Supreme Court, by the Editor; The Movement towards a Second Constitutional Convention in 1788, by Edward P. Smith; The Development of the Executive Departments, by Jay C. Guggenheimer; The Period of Constitution-Making in the American Churches, by William P. Trent; The Status of the Slave, 1775–1789, by Jeffrey R. Brackett.

[JAY (JOHN).] *See also Nos.* 41–78.

An / Address / to the / People / of the / State of New York / On the Subject of the / Constitution, / Agreed upon at Philadelphia, / The 17th of September, 1787. / New York: / Printed by Samuel and John Loudon, / Printers to the State.

4to. pp. 19. N., B. A., C. S. 106

Reprinted in Ford's *Pamphlets on the Constitution.*

JAY (JOHN).

An Address to the People of the State of New York, on the Subject of the Constitution. [Brooklyn, N. Y.: 1887.]

8vo. pp. 20. 107

A few copies separately printed from No. 82.

Journal, / Acts and Proceedings, / of / the Convention, / assembled at Philadelphia, Monday, May 14, and dis- / solved Monday, September 17, 1787, / which formed / The Constitution / of the / United States, / Published under the direction of the President of the United States, conformably to a / Resolution of Congress of March 27, 1818. / Boston: / Printed and Published by Thomas B. Wait. / 1819.

8vo. pp. 510. N., P., B., H. 108

Edited by John Quincy Adams. Reviewed in *The Southern Review*, ii, 432, and in Taylor's *New Views of the Constitution. Washington:* 1823. *See also No.* 36.

Landholder, A. See No. 84.

[LEE (RICHARD HENRY).] *See also No.* 155.

Observations / leading to a fair examination / of the / System of Government, / proposed by the late / Convention; / and to several essential and necessary / alterations in it. / In a number of / Letters / from the / Federal Farmer to the Republican. / Printed in the Year M,DCC,LXXVII. [*sic.*]

8vo. pp. 40. A. A. S. 109

The *Letters of a Federal Farmer* was, to the Anti-Federalists, what *The Federalist* was to the supporters of the Constitution. Reprinted in Ford's *Pamphlets on the Constitution.*

[LEE (RICHARD HENRY).]

Observations / leading to a fair examination / of the / System of Government, / proposed by the late / Convention; / and to several essential and neces- / sary alterations in it. / In a number of / Letters / from the / Federal Farmer to the Republican. / Printed [in New York, by Thomas Greenleaf] in the Year M,DCC,LXXXVII.

8vo. pp. 40. B. A., H., A. A. S., N., C. 110

[LEE (RICHARD HENRY).]

Observations / leading to a fair examination / of the / System of Government; / proposed by the late / Convention; / and to several essential and necessary / alterations in it. / In a number of / Letters / from the / Federal Farmer to the Republican. / Reprinted [in New York by Thomas Greenleaf] by order of a Society of Gentlemen. / M.DCC.LXXXVII.

8vo. pp. 40. A. A. S. 111

LEE (RICHARD HENRY).

Observations leading to a fair examination of the System of Government, Proposed by the late Convention. [Brooklyn, N. Y.: 1888.]

8vo. pp. (2), 47. 112

A few copies separately printed from No. 82.

[LEE (RICHARD HENRY).]

An / Additional number / of / Letters / from the / Federal Farmer / to the / Republican; / leading to a fair examination / of the / System of Government, / proposed by the late / Convention; / to several essential and neces- / sary alterations in it; / And calculated to Illustrate and Support the / Principles and Positions / Laid down in the preceding / Letters. / Printed [in New York by Thomas Greenleaf] in the year M,DCC,LXXXVIII.

8vo. pp. [41]–181. B. A., H., C. 113

Letters of Fabius. See Nos. 34–5.

LIMBY (O. G.).

Bulletin of the University of Wisconsin / Economics, Political Science, and History Series / Vol. I, No. 1, pp. 1–116. / The Geographical Distribution of the Vote of the Thirteen States on the Federal Constitution, 1787–8 / by / Orin Grant

Libby, M. L. / Fellow in History / Published by Authority of Law and with the approval of the regents of the university / Madison, Wis. / Published by the University / June, 1894.

8vo. pp. vii, 116. 2 maps. 114

Lloyd, Thomas. *See Nos.* 115, 140.

Maclaine, Archibald. *See No.* 33.

M'Kean (Thomas), and Wilson (James).

Commentaries / on the / Constitution / of the / United States of America, / with that Constitution prefixed, / In which are unfolded, / the / Principles of Free Government, / and the Superior / Advantages of Republicanism Demonstrated. / By James Wilson, L.L.D. / . . . . . / and Thomas M'Kean, L.L.D. / . . . / The whole extracted from Debates, published in Philadelphia by / T. Lloyd. / London: / Printed for J. Debrett, opposite Burlington House, Piccadilly; / J. Johnson, St. Paul's Church Yard; and J. S. Jordan, / No. 166, Fleet Street. / 1792.

8vo. pp. (2), 5—23, 25—147, (3). 115

This is a reissue of the remainder of the edition of Lloyd's *Debates in the Convention of Pennsylvania* (No. 140) with a new title and pp. 20–23, which were printed in England.

McMaster (John Bach), and Stone (Frederick D).

Pennsylvania / and the / Federal Constitution / 1787–1788 / Edited by / John Bach McMaster / and / Frederick D. Stone / Published for the Subscribers by / The Historical Society of Pennsylvania / 1888.

8vo. pp. viii, 803, 15 portraits. 116

A most valuable volume, including a history of the struggle over the ratification, the debates in the Convention, now for the first time collected, sketches of the Pennsylvania members of the Federal Convention, and of the Pennsylvania Convention, and the letters of Centinel.

Madison (James). *See Nos.* 36–40.

The / Papers / of / James Madison, / purchased by order of Congress; / being / his Correspondence and Reports of Debates during / the Congress of the Confederation / and / his Reports of Debates / in the / Federal Convention; / now published from the original manuscripts, depos- / ited in the Department of State, by direction of / the joint library committee of Congress, / under the superintendence / of / Henry D. Gilpin. / Volume I. / Washington: / Lantree & O'Sullivan. / 1840.

3 vols. 8vo. pp. (2) lx, 580, xxii, (2), xxii, (2), (581)–1242, (2), xiv, (2), (1243)–1624, ccvlvi, 16 ll. 117

Also issues with change of date in New York and Mobile and Boston. The whole of these three volumes were also embodied in the fifth volume of *Elliot* (No. 40), but this edition is much preferable from the larger type.

Reviewed in *The Democratic Review*, v, 243; vi, 140, 337: in *The American Church Review* xv, 541, and by C. F. Adams in *The North American Review*, liii, 41.

MADISON (JAMES).

Journal / of the / Federal Convention / kept by / James Madison / reprinted from the edition of 1840, which was published under the direction of the / United States government from the original manuscripts. A complete / index specially adapted to this edition is added / edited by / E. H. Scott / Volume I / Chicago / Albert, Scott & Co. / 1893.

Rl. 8vo. pp. 390; (2) 391–805. 118

Marcus. *See Nos.* 33 *and* 103.

MARTIN (LUTHER). *See also No.* 84.

The / Genuine Information, / delivered to the / Legislature of the State of / Maryland, / Relative to the Proceedings / of the / General Convention, / Lately held at Philadelphia; / By / Luther Martin, Esquire, / Attorney-General of Maryland, / and / One of the Delegates in the said Convention. / Together with / A Letter to the Hon. Thomas C. Deye, / Speaker of the House of Delegates, / An Address to the Citizens of the United / States, / And some Remarks relative to a Standing / Army, and a Bill of Rights. / . . . / Philadelphia; / Printed by Eleazer Oswald, at the Coffee-House. / M,DCC,LXXXVIII.

8vo. pp. viii, 93. P. L. 119

By direction of the Legislature of Maryland, Mr. Martin reported the proceedings of the Federal Convention to them. It is a work of the greatest value from the inside light that this member, and opposer of the Constitution, sheds on this secret history of the Convention, but must be taken as a partisan statement. It is reprinted in *Elliot* and in Nos. 169–72.

MASON (GEORGE). *See also No.* 155.

The Objections of the / Hon. George Mason, / to the proposed Fœderal Constitution. / Addressed to the Citizens of Virginia. / . . . . . / Printed by Thomas Nicholas [in Richmond: 1787].

Fo. broadside. S. 120

Reprinted in Ford's *Pamphlets on the Constitution* and "extracts" are given in *Elliot*, i.

MASON (GEORGE).

[The objections of the Hon. George Mason, to the proposed Fœderal Constitution. Brooklyn, N. Y.: 1888.]

8vo. pp. 6. 121

A few copies separately printed from No. 82.

MASSACHUSETTS DEBATES. *Boston:* 1788.

Debates, / Resolutions and other Proceedings, / of the / Convention / of the / Commonwealth of Massachusetts, / Convened at Boston, on the 9th of January, 1788, / and continued until the 7th of February follow- / ing, for the purpose of assenting to and ratify- / ing the Constitution recommended by the / Grand Federal Convention. / Together with / The Yeas and Nays on the / Decision of the Grand Question. / To which / The Federal Constitution / is prefixed. / Boston: /

Printed and sold by Adams and Nourse, in Court-Street; and / Benjamin Russell, and Edmund Freeman, in State-Street. / M,DCC,LXXXVIII.

8vo. pp. 219. C., M., B. A. 122

Reported by Benjamin Russell, printer of *The Massachusetts Centinel.* His own account is given in Buckingham's *Specimens of Newspaper Literature*, ii, 49.

MASSACHUSETTS DEBATES. *Boston:* 1808.

Debates, / Resolutions and other proceedings / of the / Convention / of the / Commonwealth of Massachusetts. / Convened at Boston, on the 9th of January, / 1788, and continued until the 7th of Februa- / ry following, for the purpose of assenting / to and ratifying the Constitution recom- / mended by the grand Federal Convention. / Together with the / Yeas and Nays / on / the decision of the grand question. / To which / The Federal Constitution is prefixed; / and to which are added, / the Amendments / which have been made therein. / Boston: / Printed and sold by Oliver & Monroe, / and Joshua Cushing, State-Street, / 1808.

12mo. pp. 236. H. 123

MASSACHUSETTS DEBATES. *Boston:* 1856.

Debates and Proceedings / in the / Convention / of the / Commonwealth of Massachusetts, / held in the year / 1788, / and which finally ratified the / Constitution of the United States. / Printed by authority of Resolves of the Legislature, 1856. / Boston: / William White, / Printer to the Commonwealth. / 1856.

8vo. pp. (16), 442. 124

Edited by Bradford K. Pierce and Charles Hale. It contains not only the debates as printed in the two former editions, but the *ante* and *post* proceedings of the General Court; Gerry's official letter; the Journal of the Convention; Judge Parsons' "Minutes" of the debates; an account of the reception of the news of the ratification, and of the procession which followed; the "Letters of an American;" Speeches of Franklin in the Federal Convention, and Wilson in the Pa. Convention; 4 "Letters of Brutus," and a series of personal letters relating to the proceedings in Massachusetts, mostly taken from Sparks' *Writings of Washington.*

It is a most valuable volume for the history of the struggle over ratification in Massachusetts, but it is a little strange that the editors should pass over the essays on the Constitution from Massachusetts pens and select the letters of "An American" and of "Brutus" —the first a Pennsylvania series, by Tench Coxe, and the second a New York series, by Robert Yates.

Minot, George R. *See No.* 104.

Minutes of the Convention. *See Nos.* 127–8 *and* 141.

[MONROE (JAMES).]

Observations / upon the proposed plan of / Federal Government. / With an attempt to answer some of the principal objections that have been made to it / By a Native of Virginia. / Petersburg. / Printed by Hunter and Prentis. / M,DCC,-LXXXVIII.

Sm. 4to. pp. 64, (2). S. D. 125

No mention is made of this pamphlet in Gilman's *Life of Monroe*, nor in any bibliography. There was a copy in the Jefferson Library, but it was lost in the fire of 1839, and the above is the only copy I have been able to trace.

"From the first view I had of the report from Phila. I had some strong objections to it—but as I had no inclination to inlist myself on either side, made no communication or positive declaration of my sentiments until after the convention met—being however desirous to communicate them to my constituents, I address'd the enclos'd letter to them, with intention of giving them a view thereof eight or ten days before it met, but the impression was delayed so long, and so incorrectly made, and the whole performance upon re-examination so loosely drawn that I thought it best to suppress it. There appear'd likewise to be an impropriety in interfering with the subject in that manner in that late stage of the business. I enclose it you for your perusal & comment on it."—*Letter of Monroe*, Fredericksburg, July 12, 1788.

[MONTGOMERY (JAMES).]

Decius's / Letters / on the / Opposition / to the / New Constitution / in / Virginia, / 1789. / Richmond: / Printed by Aug. Davis.

8vo. pp. 134. C. 126

"Written by Dr. Montgomery, except the dedication, which was by John Nicholas, of Albemarle. MS. notes by John Nicholas." MS. note by Jefferson, in his own copy now in the Congressional Library.

This volume includes, not only the Letters signed Decius, contributed to the *Virginia Independent Chronicle*, between December, 1788, and July, 1789, but also many answers to the same, signed "Juvenal," "Philo Pat. Pat. Patria," "Anti Decius," "Honestus," and others.

It is a most scathing attack on the Anti-Federalists in Virginia, and especially on their leader, Patrick Henry. Perhaps nothing illustrates better the rarity and difficulty of finding the pamphlets of this period than the fact that Mr. Tyler, so well read in American literature, has in his *Life of Patrick Henry* entirely overlooked this most plain-spoken laying bare of the motives and actions of Henry, of which I have been able to discover only a single (imperfect) copy.

I have been able to find nothing concerning Dr. Montgomery, except that he was a member of the Virginia Convention. The so-called third edition is under John Nicholas —No. 133.

"*Native of Boston.*" *See No.* 104.

NEW JERSEY JOURNAL.

Minutes / of the / Convention / of the / State of New Jersey, / Holden at Trenton the 11th Day of December 1787. / Trenton: / Printed by Isaac Collins, Printer to the State. / M,DCCC,LXXXVIII.

4to. pp. 31. P. H. S. 127

750 copies printed.

NEW JERSEY JOURNAL.

Minutes / of the / Convention / of the / State of New Jersey, / Holden at Trenton the 11th Day of December 1787. / Trenton: / Printed by Isaac Collins, Printer to the State. / M,DCC,LXXXVIII. / Trenton—Reprinted by Clayton L. Traver, MDCCCLXXXVIII.

4to. pp. 31. 128

NEW YORK DEBATES.

The / Debates / and / Proceedings / of the / Convention / of the / State of New-York, / Assembled at Ponghkeepsie, / on the 17th June, 1788. / To deliberate and decide on the Form of Federal Govern- / ment recommended by the General Convention at / Philadelphia, on the 17th September, 1787. / Taken in short hand. / New-York: / Printed and sold by Francis Childs. / M,DCC,LXXXVIII.

8vo. pp. (2), 144. N. S. 129

From a letter in the Lamb papers (N. Y. Historical Soc.) it appears probable that at least Hamilton, Jay, and Lansing revised their speeches, though Francis Childs, the reporter, in his preface, virtually says that no such revision took place. It is reprinted in *Elliot*, ii.

NEW YORK JOURNAL.

Journal / of the / Convention / of the / State of New-York; / Held at Poughkeepsie, in Dutchess County, the 17th of June, 1788. / Ponghkeepsie: / Printed by Nicholas Power, a few rods East from the Court-house. [1788.]

4to. pp. 86. S. 130

NEW YORK.

State of New York / In Assembly, January 31st, 1788.

Fo. broadside. S. D. 131

The act calling a State convention.

NEW YORK.

An Act / for appointing Deputies from this Commonwealth to a Convention / proposed to be held in the City of Philadelphia in May next, for / the purpose of Revising the Fœderal Constitution. / . . . . .

Fo. broadside. S. D. 132

"*Native of Virginia.*" *See No.* 125.

[NICHOLAS (JOHN).]

[½ title] Introduction / and Concise View of/ Decius's Letters, / With the Title-page, and the Substance and contents of the whole work, / Hereafter to be published at full length in a volume / . . .

Decius's Letters, / on the / opposition to the / Federal Convention, / in Virginia: / Written in 1788 and 1789. / The Third Edition. / With / a new Introduction, / and additional pieces and notes, / on the / Principles and Operation of Party Spirit since. / With an Appendix, / consisting of / Various Interesting Letters, &c. / from Washington, Jefferson, Madison, / and other High Characters, / in support of the last Letters; / Written in 1818. / Richmond: / Published by the Author. / Printed at the office of the Virginia Patriot. / 1818.

8vo. pp. 48. B. A. 133

"Written by John Nicholas, Esqr. formerly a member of Congress from Virginia now resident in the State of New York. Boston 25 Sept 1818 W. S. Shaw Sec. Bost. Athen."

Mr. Shaw probably derived his note given above from John Adams, whose copy this was.

The first edition (No. 126) is referred by Jefferson, apparently on Nicholas' own authority, to Dr. Montgomery, so that we seemingly have Jefferson giving the authorship to Montgomery, and Adams giving it to Nicholas. They may both be right, however, for the above pamphlet is merely the prospectus of a new edition, and therefore might be written by an entirely different man from the author.

The prospectus was issued immediately after the appearance of Wirt's *Life of Patrick Henry*, with the avowed purpose of neutralizing that rose-colored narrative. It was never, however, carried further than the prospectus.

[NICHOLSON (JOHN).]

A / View / of the / Proposed Constitution / of the / United States, / as agreed to by the / Convention / of Delegates from several States at Philadelphia, the 17th Day of September, / 1787 — Compared with the present Confederation. / With sundry Notes and Observations. / Philadelphia: / Printed by R. Aitken & Son, at Popes Head / in Market Street. / M.DCC.LXXXVII.

8vo. pp. 37. B. A., N., B. 134

A comparison in parallel columns between the Articles of Confederation and the proposed Constitution, with Anti-Federal notes.

NORTH CAROLINA JOURNAL.

Journal / of the / Convention / of the / State of North Carolina. / At a Convention begun and held at Fayetteville, on the Third Monday of November, One Thousand Seven Hundred and Eighty Nine, agreeable to the Resolutions of the Last General Assembly, bearing Date the Seventeenth of November, one Thousand Seven Hundred and Eighty Eight. . . . [Colophon] Edenton: / Printed by Hodge & Wills, / Printers to the State.

4to. pp. 16. 135

This Convention adopted the Federal Constitution. There is a copy of this very rare pamphlet, together with the original minutes, in the office of the Secretary of State of North Carolina. It was reprinted in full by the *State Chronicle*, of Raleigh, Nov. 15, 1889.

NORTH CAROLINA AMENDMENTS.

State of North Carolina: / In Convention, August 1, 1788.

Fo. 1 l. S. 136

The Declaration of Rights, and Amendments, of the first Convention of North Carolina.

NORTH CAROLINA DEBATES.

Proceedings / and / Debates / of the / Convention / of / North-Carolina, / Convened at Hillsborough on Monday the 21st Day / of July, 1788, for the Purpose of deliberating / and determining on the Constitution recom- / mended by the General Convention at Philadel- / phia the 17th Day of September 1787. / To which is prefixed / The said Constitution. / Edenton: / Printed by Hodge & Wills, Printers to the State. / M,DCC,LXXXIX.

8vo. pp. 280. N., C., S., A. A. S. 137

Reported by David Robertson. 1000 copies printed at the expense of a few Federalists for distribution among the people. Reprinted in *Elliot*, iv, 1. The debates of the second Convention are only to be found, in fragmentary condition, in the North Carolina papers of that date.

Observations leading to. *See Nos.* 109–12.

Observations on the New Constitution. *See Nos.* 87–89.

Observations / on the / Proposed / Constitution / for the / United States of America. / Clearly Shewing it to be a complete System / of / Aristocracy and Tyranny, and / Destructive / of the / Rights and Liberties / of the / People. / Printed in the State of New-York, / M,DCC,LXXXVIII.

8vo. pp. 126. S., B., B. A. 138

An Anti-Federal compilation, containing:

Address and Reasons of Dissent of the Minority of the Convention of Pennsylvania. (No. 2 infra.)

Letter of Edmund Randolph (No. 146 infra.)

Letters of Centinel.

The Constitution.

Two hundred and twenty-five copies were distributed by the New York Anti-Federal committee to the local county committees of the State.

The "Letters of Centinel," were by Samuel Bryan, of Philadelphia, and appeared originally in *The Independent Gazetteer* of that city. The letters were exceedingly personal, and especially severe on Washington and Franklin; so it is rather amusing to find Bryan writing to George Clinton in 1790 and requesting that he use his influence with Washington to obtain for his father a judgeship in the new government, and using his authorship of the letters as the reason for Clinton's furthering his request.

Observations upon. *See No.* 125.

Ode, An. *See No.* 10.

"Officer of the late Continental Army." *See Nos.* 79–8.

"Old Whig, An." *See Nos.* 85–6.

Order of Procession, / In Honor of the Establishment of the Constitution of the United States. / To parade . . . Friday the 4th of July, 1788. / . . . . . / Philadelphia: / Printed by Hall and Sellers.

Fo. 1 l. 139

PENNSYLVANIA DEBATES.

Debates / of the / Convention, / of the / State of Pennsylvania, / on the / Constitution, / proposed / for the / Government / of the / United States. / In Two Volumes. / Vol. I / Taken accurately in Short-Hand, by / Thomas Lloyd, / . . . / . . . / Printed by Joseph James, / in Philadelphia, A.D. M.DCC.LXXXVIII.

8vo. pp. 147, (3). P. L. 140

All ever published, being only the speeches of M'Kean and Wilson, on the Federal side of the argument. It is reviewed in *The American Magazine*, 262. See Nos. 1–2, and 116.

PENNSYLVANIA JOURNAL.

Minutes / of the / Convention / of the / Commonwealth / of / Pennsylvania, / which commenced at Philadelphia, on Tuesday, the / Twentieth Day of November, One Thousand / Seven Hundred and Eighty-Seven, / for the purpose of / Taking into Consideration the Constitution framed by / the late Fœderal Convention

for the / United States of America. / Philadelphia: / Printed by Hall and Sellers, in Market-street. / M,DCC,LXXXVII.

Fo. pp. 28. P. H. S., II. 141

PENNSYLVANIA RESOLUTION.

[Resolution of the Pennsylvania General Assembly, September 29, 1787.] 142

The resolve for holding a Convention to discuss the Constitution. 3000 copies ordered to be printed, 1000 of which were to be in German.

PINCKNEY (CHARLES). *See No.* 84.

Observations / on the / Plan of Government / submitted to / Federal Convention, / In Philadelphia, on the 28th of May, 1787. / By the Hon. Charles Pinckney, Esq. L.L.D. / Delegate from the State of South-Carolina. / Delivered at different Times in the course of their Discussions. / New York:—Printed by Francis Childs [1787].

4to. pp. 27. B. A., N., M., A., 143

This is really the speech of Pinckney, introducing his draft of a constitution in the Convention, May 29, 1787, which for some reason was omitted by both Yates and Madison in their minutes. Though it does not include the proposed draft, it nevertheless enables one to form a clear idea of what it was, and proves that the draft furnished by Pinckney at the request of J. Q. Adams, for publication in the Journal, and from that generally copied into other places, to be fictitious in both form and substance. See *The Nation* for May 23, and June 13, 1895.

Plan of the New Constitution. *See Nos.* 22–3.

"Plain Dealer." *See No.* 84.

"Plebeian, A." *See Nos.* 150–1.

Proceedings of the Federal Convention. *See Nos.* 24–5.

[RAMSAY (DAVID).]

An / Address / to the / Freemen / of / South Carolina, / on the Subject of the / Federal Constitution, / Proposed by the Convention, which met in / Philadelphia, May, 1787. / Charleston, /Printed by Bowen and Co., No. 31, Bay.

16mo. pp. 12. C. 144

Signed Civis. Reprinted in Ford's *Pamphlets on the Constitution.*

RAMSAY (DAVID).

[An Address to the Freemen of South Carolina, on the subject of the Federal Constitution. Brooklyn, N. Y.: 1888.]

8vo. pp. 10. 145

A few copies separately printed from No. 82.

RANDOLPH (EDMUND).

A / Letter / of his Excellency / Edmund Randolph, Esquire, / on the / Federal Constitution. / Richmond, October 10, 1787.

16mo. pp. 16. P. L. 146

This is the caption of the third page. It is preceded by a letter "To the Printer," and two other letters.

Reprinted in Ford's *Pamphlets on the Constitution* and in No. 108.

RANDOLPH (EDMUND).

[Letter on the Federal Constitution, October 16, 1787. By Edmund Randolph. Brooklyn, N. Y.: 1888.]

8vo. pp. 18. 147

A few copies separately reprinted from No. 82.

The / Ratifications / of the / New Fœderal Constitution, / together with the / Amendments, / proposed by the / Several States. / . . . / Richmond: / Printed by Aug. Davis / M,DCC,LXXXVIII.

12mo. pp. (4), 32. A. A. S. 148

Remarks on the Address. *See No.* 163.

Remarks on the proposed Constitution. *See Nos.* 94–5.

Results of the Debates. *See No.* 26.

A Review of the Constitution Proposed by the late Convention, Held at Philadelphia, 1787. By a Federal Republican. . . . . Philadelphia: Printed by Robert Smith and James Prang. 1787.

8vo. pp. 39. 149

A copy was sold in the O'Callaghan sale (lot 668), and one is mentioned in the Bowdoin College Library Catalogue, which cannot now be found. Otherwise I have seen no mention of this pamphlet except in the original advertisements, from which the above title is taken.

Roane, S. *See No.* 84.

Robertson, David. *See Nos.* 137 *and* 157–8.

Russell, Benjamin. *See Nos.* 123–4.

Secret Proceedings. *See Nos.* 169–72.

Sherman, R. *See No.* 84.

[SMITH (MELANCTHON).]

An / Address / to the / People / of the / State of New-York: / Shewing the necessity of making / Amendments / to the / Constitution, proposed for the United States, / previous to its / Adoption. / By a Plebeian. / Printed [by Robert Hodge, in New York] in the State of New York, / M,DCC,LXXX,VIII.

8vo. pp. 26. B. A., A. A. S. 150

Reprinted in Ford's *Pamphlets on the Constitution.*

SMITH (MELANCTHON).

[An Address to the People of the State of New York: Shewing the Necessity of making Amendments to the Constitution. Brooklyn, N. Y., 1888.]

8vo. pp. 27. 151

A few copies separately printed from No. 82.

SOUTH CAROLINA LEGISLATURE.

Debates / which arose in the / House of Representatives / of South Carolina, / on the Constitution framed for the / United States, / by a Convention of Delegates, / Assembled at Philadelphia. / Charleston: / Collected by R. Haswell, and published at the City Gazette / Printing Office, No. 47, Bay. / M,DCC,LXXXVIII.

4to. pp. 55. B. A. 152

SOUTH CAROLINA LEGISLATURE.

Debates / which arose in the / House of Representatives / of / South-Carolina, / on the Constitution framed for the United States, / by a / Convention of Delegates assembled at Philadelphia. / Together with such / notices of the Convention / as could be procured. / . . . / . . . / . . . / . . . / Charleston: / Printed by A. E. Miller, / No. 4 Broad Street. / 1831.

8vo. pp. (4), 95. M. 153

The first edition of Elliot's *Debates* contained nothing relating to South Carolina, and this volume was prepared by some citizen of the State to piece out the omission. In the later editions of Elliot, he reprinted this volume entire.

State of North Carolina. *See No.* 136.

Stone, Frederick D. *See No.* 116.

Sullivan, James. *See No.* 84.

Supplement to the Independent Journal. *See No.* 27.

"*Sydney.*" *See No.* 84.

Thoughts upon the Politieal. *See No.* 104.

To the Citizens of Philadelphia. *See No.* 79.

TUCKER (JOHN RANDOLPH).

The History / of the / Federal Convention of 1787 and its Work. / An Address / delivered before the graduating classes / at the / Sixty-third Anniversary / of the / Yale Law School, / on / June 28th, 1887 / by / Hon. John Randolph Tucker, LL. D. / New Haven: / Published by the Law Department of Yale College. / 1887.

8vo. pp. 54. H. 154

United States. *See Nos.* 6–7.

Various / Extracts / on the / Fœderal Government, / proposed by the Convention / held at / Philadelphia. / Richmond: / Printed by Aug. Davis.

16mo. pp. 64. P. L. 155

Contains Tench Coxe's "Letters by an American Citizen," two of Samuel Bryan's "Letters of Centinel," Wilson's Speech, Lee's and Gerry's letters, Mason's Objections, and Franklin's speech.

A View of the Proposed Constitution. *See No.* 134.

VIRGINIA. ACT CALLING CONVENTION.

Virginia, to wit: / General Assembly begun and held at the Capitol in the city of / Richmond on Monday the fifth day of October, in the year / of our Lord, one thousand seven hundred and eighty-seven. / An Act / concerning the convention to be held / in June next. / Passed December 12th, 1787.

Fo. broadside. S. 156

VIRGINIA DEBATES. 1788–9.

Debates / and other / Proceedings / of the / Convention / of / Virginia, / Convened at Richmond, on Monday the 2d day of / June, 1788, for the purpose of deliberating on the / Constitution recommended by the Grand Federal / Convention. / To which is prefixed, / the / Federal Constitution. / Petersburg: / Printed by / Hunter and Prentis. / M,DCC,LXXXVIII.

3 vols. 8vo. pp. 194; 195; 228. N., C., B. A. 157

The imprints of volumes II. and III. vary slightly from the above, being + / Federal Constitution. / Volume II. [III]. Petersburg: / Printed by William Prentis, / M,DCC,LXXXIX. /

Printed without being proof-read. In 1805 it was already described as a rare book, and at present is only equalled in rarity in the state debates by those of North Carolina. Volumes two and three are of much greater rarity than the first.

VIRGINIA DEBATES. *Richmond.* 1805.

Debates / and / other Proceedings / of the / Convention of Virginia, [*sic*] convened at Richmond, on Monday the second day of June, / 1788, for the purpose of deliberating on the Con- / stitution recommended by the grand / Federal Convention. / To which is prefixed / the Federal Constitution. / Taken in short hand, / by David Robertson—of Petersburg. / Second Edition. / Richmond: / Printed at the Enquirer-Press / for Ritchie & Worsley and Augustine Davis. / 1805.

8vo. pp. viii, 477. N., C., A. A. S. 158

This edition was corrected, and compared with a portion of the original stenographic notes, by the reporter.

VIRGINIA JOURNAL.

Journal / of the / Convention / of / Virginia; / held in the / City of Richmond, / on the / First Monday in June, / in the Year of our Lord One thousand seven hundred and / Eighty-eight. / Richmond: / Printed by Thomas W. White, / Main-st. opposite the Bell Tavern. / 1827.

8vo. pp. 39. B. A., P. 159

WALKER (JOSEPH B.).

Birth of the Federal Constitution / A History / of the / New Hampshire Convention / for the investigation, discussion, and decision / of the / Federal Constitution: / and of the / Old South Meeting-House / of Concord, / In which it was Ratified by the Ninth State, and thus / Rendered Operative, at one o'clock p.m., on / Saturday the 21st day of June, / 1788 / By Joseph M. Walker / . . . . / Boston: Cupples & Hurd, Publishers. / 1888.

12mo. pp. x, (2), 128, plate. 160

Weakness of Brutus. *See Nos.* 164–5.

[WEBSTER (NOAH).]

An / Examination / into the / leading principles / of the / Federal Constitution / proposed by the late / Convention / held at Philadelphia. / With / Answers to the principal objections / that have been raised against the system. / By a Citizen of America. / . . . / . . . / Philadelphia: / Printed and sold by Pritchard & Hall, in Market Street, / the second door above Lætitia Court. / M.DCC.LXXXVII.

8vo. pp. 55. C., B. A., P., H. 161

Reprinted, from the Author's annotated copy, in Ford's *Pamphlets on the Constitution.*

WEBSTER, NOAH.

[An Examination into the leading principles of the Federal Constitution. Brooklyn, N. Y.: 1887.]

8vo. pp. 41. 162

A few copies separately printed from No. 82.

[WEBSTER (PELATIAH).]

Remarks / on the / Address of Sixteen Members / of the / Assembly of Pennsylvania, / to their / Constituents, / Dated September 29, 1787. / With some Strictures on the Objections to the / Constitution, / Recommended by the late Federal Convention, / Humbly offered to the Public / By a Citizen of Philadelphia. / Philadelphia: / Printed by Eleazer Oswald, at the Coffee-House. / M,DCC,LXXXVII.

8vo. pp. 28. B. A., M. 163

Also (abridged) in Webster's *Political Essays*, and (entire) in No. 116.

[WEBSTER (PELATIAH).]

The Weaknesses of Brutus exposed: / or some / Remarks / in / Vindication of the Constitution / proposed by the late / Federal Convention, / against the / Objections and gloomy Fears of that Writer / Humbly offered to the Public / By / A Citizen of Philadelphia. / Philadelphia / Printed for, and to be had of John Sparhawk, Market-Street, / near the Court House / M.DCC.LXXXVII.

8vo. pp. 23. B. A., A. A. S., M. 164

Reprinted in Webster's *Political Essays*, and in Ford's *Pamphlets on the Constitution.* In reprinting this pamphlet the compiler suggested, with a question mark, that Brutus was written by Thomas Tredwell, having found that he used that signature to a newspaper essay published in 1789. He has since found that they were from the pen of Robert Yates, member of the Federal Convention from New York.

WEBSTER (PELATIAH).

[The Weakness of Brutus exposed: or some Remarks in Vindication of the Constitution proposed by the late Federal Convention. Brooklyn [N. Y.: 1888].

8vo. pp. 15. 165

A few copies separately printed from No. 82.

We the People. *See Nos.* 8–11, 28.

Williams, W. *See No.* 84.

WILLIAMSON (HUGH).

Address to the Freemen of Edenton and the County of Chowan, etc. on the New Plan of Government.

8vo. 166

Title from the *N. Y. Historical Society Catalogue*, but an examination shows it to be merely a newspaper clipping mounted on sheets of writing-paper. See No. 84.

WILSON (JAMES). *See also Nos.* 3, 115, 155.

Substance of an Address / to a / meeting of the Citizens of Philadelphia, / delivered, October sixth, MDCCLXXXVII, / by the honorable / James Wilson, Esquire, one of the delegates from the State of Pennsylvania to the / late Continental Convention. [Brooklyn, N. Y.: 1888.]

8vo. pp. 7. 167

A few copies separately printed from No. 82.

"Mr. Wilson's speech is read with much approbation here by *one party;* the other party see nothing but nonsense in it."

"It has varnished an iron trap."

WILSON (JAMES).

The Substance / of a / Speech / delivered by / James Wilson, Esq. / Explanatory of the general Principles of the proposed / Federal Constitution; / Upon a Motion made by the / Honorable Thomas McKean, / in the Convention of the State of Pennsylvania. / On Saturday the 24th of November, 1787. / Philadelphia: / Printed and Sold by Thomas Bradford, in Front-Street, / four Doors below the Coffee-House, MDCCLXXXVII.

8vo. pp. 10. 168

Reported by Alexander J. Dallas, editor of *The Pennsylvania Herald.* Thomas Lloyd charged Dallas, in a communication to the papers, with misrepresenting what Wilson had said.

Winthrop, J. *See No.* 84.

YATES (ROBERT). *Secret Proceedings. Albany.* 1821.

Secret / Proceedings and Debates / of the / Convention / assembled at Philadelphia, in the Year 1787, for the purpose / of forming the / Constitution / of / the United States of America. / From the Notes taken by the late Robert Yates, Esq. Chief / Justice of New-York, and copied by John Lansing, Jun. / Esq. late Chancellor of that State, Members / of that Convention. / Including / "The Genuine Information," laid before the Legislature of / Maryland, by Luther Martin, Esq. then Attorney Gen- / eral of that State, and a member of the same / Convention. / Also, / other Historical Documents relative to the Federal Compact / of the North American Union. / Albany: / Printed by Websters and Skinners, / At their Book-store, in the White House, corner of State and Pearl Streets. / 1821.

8vo. pp. 308. 169

An outline of Yates' Minutes appeared in Hall's *American Law Journal*, iv, 563, 1813.

Yates was a member of the Federal Convention, and though his memorandum only is to July 5, at which time he left the Convention, it is only second to Madison's *Debates* in importance. It is noticed in Taylor's *New Views of the Constitution.*

This first edition is by no means a common volume. See also No. 84.

YATES (ROBERT). *Secret Proceedings. Washington.* 1836.

Secret / Proceedings and Debates / + / Washington: / Printed for G. Templeman, / Bookseller and Stationer, Pennsylvania Avenue. / 1836.

8vo. pp. 308. 170

YATES (ROBERT). *Secret Proceedings. Richmond.* 1839.

Secret / Proceedings and Debates / + / Richmond, Va. / Published by Wilbur Curtiss. / 1839.

8vo. pp. xi, 335.

YATES (ROBERT). *Secret Proceedings. Louisville.* 1844.

Secret / Proceedings and Debates / + / Louisville, Ky. / Published by Alston Mygatt. / 1844.

8vo. pp. xi, 335. 171

Also copies dated 1845.

YATES (ROBERT). *Secret Proceedings. Cincinnati.*

Secret / Proceedings and Debates, / + / Cincinnati. / Published by Alston Mygatt. / [184—?]

8vo. pp. xi, 335. 172

REFERENCE LIST.

General Works—Histories.

Allen (T.) Facts . . . in the origination of the American Union (new Series). Boston: 1870.

Bancroft (G.) History of the Constitution.

Cocke (W. A.) Constitutional History of the U. S. Phila.: 1858.

Coffin (C. C.) Building the Nation. N. Y.: 1883.

Curtis (G. T.) History of the Constitution. No. 23.

Elliot (J.) Debates in the several State Conventions. No. 30.

Fiske (T.) Critical Period. Boston: 1888.

Frothingham (R.) Rise of the Republic of the United States. Boston: 1872.

Hildreth (R.) History of the U. S. (1st series, iii). N. Y.: 1852.

McMaster (J. B.) History of the People of the U. S. (i). N. Y.: 1883.

McMaster (J. B.) Making a Government, in *The* [Philadelphia] *Press.* Sept. 15, 1887.

Miller (S. F.) Oration at the 100th Anniversary of the Constitution. Phila.: 1887.

Patton (J. H.) Concise History of the American People. N. Y.: 1882.
Porter (L. H.) Outlines of the Constitutional History of the U. S. N. Y.: 1883.
Schouler (J.) History of the U. S. (i). N. Y.: 1881.
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ERRATA

Page 59, fifteenth line, for "branch," read *breach.*
" 66, twelfth line from bottom, after "have" insert *no.*
" 84, sixteenth line, for "ten," read *nine.*
" 85, twentieth line, for "the irrespective," read *their respective.*
" 221, sixth and twenty-fifth lines, for "fifteen," read *twenty-five.*
" 224, third line, for "27," read 29.
" 227, fourth and seventh lines from bottom, for "penalty," read *plenary.*
" 308, eighth line, for "judicial," read *judiciary.*
" 319, fifteenth line, for "judicial," read *political.*
" 327, sixteenth line, for "eight," read *seven.*
Twenty-fifth line, for "*un*willingness," read *willingness.*
" 332, nineteenth line, for "three," read *ten.*
" 366, sixth line, for "thirteen," read *fifteen.*

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