CONSTITUTION

OF

THE UNITED STATES,

WITH

BRIEF COMMENTS;

AND

INCIDENTAL COMMENTS ON THE CONSTITUTIONS OF ENGLAND AND FRANCE.

BY

J. T. CHAMPLIN, D.D., LL.D.,

Late President of Colby University.

"The American Constitution is the most wonderful work ever struck off at a given time by the brain and purpose of man." — WILLIAM E. GLADSTONE.

BOSTON:

PUBLISHED BY JOHN ALLYN,

30 FRANKLIN STREET.

1880.

PREFATORY NOTE.

This brief treatise on the Constitution is the result of studies begun many years ago, and renewed at my leisure from time to time since. It has seemed to me that the relations between the national and state governments should be more clearly pointed out, and their respective spheres and duties more fully explained, than has been wont to be done in such treatises. I have hoped also, by greater directness, and the omission of unnecessary details, to set forth the essential doctrines of the Constitution, with not less distinctness, in somewhat less space than that usually devoted to them in manuals, and thus prepare a book on the subject that may be compassed in the necessarily short time which must be devoted to the study in a general course of education. Though brief, the treatise aims to be, and indeed claims to be, clear, discriminating, and comprehensive in its teachings.

Portland, 1879.

INTRODUCTION.

The present government of the United States is the successor of two preceding governments which had controlled the States for some fifteen years, — the former, called the Revolutionary Government, for seven years; and the latter, known as the Government of the Confederation, for eight years. The Constitutional Government, under which we now live, went into operation in the city of New York, March 4, 1789, under the Constitution, which had been formed about two years before by a convention of delegates assembled in the State House at Philadelphia, and had now been ratified by the required number of the thirteen States.

The Government of the Confederation went into operation March 1, 1781, — about six months before the surrender of Lord Cornwallis at Yorktown, which virtually closed the Revolution. The Articles of Confederation left each State independent, and conceded little more than advisory powers in certain national matters to the general government, which was con-

ducted by a Continental Congress, which sat continuously, either as a body or by a committee, in Independence Hall at Philadelphia, till January, 1785, when it removed to New York, and remained there four years, till the adoption of the present Constitution. There was no separate executive or judicial department provided for by the Articles; but Congress had the initiative in these departments, as far as they were surrendered at all by the States, as well as in legislation, — and little but the initiative, as it could carry through nothing of importance, whether in peace or in war, without the consent and co-operation of two-thirds of the States. It could recommend measures to the States, but of itself could execute nothing. It was a mere governmental league between independent States, the exertion of whose powers, at every important point, was to depend upon the consent of a two-thirds majority of the whole number. The eight years of its existence showed its utter inadequacy for the purposes of a general government, and prepared the public mind for accepting the more comprehensive and truly national government formed by the Constitution, which immediately followed it.

The Revolutionary Government, also, which carried through the seven-years' contest with the power of Great Britain, was conducted by a Continental Congress sitting in Independence Hall at Philadelphia,

whence it issued, in 1776, the Declaration of Independence. This Congress first assembled in March, 1774, and conducted the general military operations of the united colonies by making requisitions upon them for men and means, leaving them to take care of their own local affairs. The body was composed of delegates from the thirteen British colonies, which, from the pressure of a common danger and a common aspiration for liberty, acted together in the contest, and yielded to the Congress a voluntary, though not always a very energetic and prompt, obedience. Previous to this common struggle, the colonies — most of which had been in existence more than a hundred years — were politically distinct, and had never been able to form with each other any but the slightest and most temporary alliances: indeed, they were not allowed to do so by the mother-country. The Revolution was the first great step towards consolidating the States into a nation.

The system of government in the United States is one of grades, from the government of towns, counties, and States, to the government of the nation. The sum of governmental powers is distributed among these several divisions, each of them being allowed the share best fitted to its wants and most convenient for use. Each has a measure of legislative, executive, and judicial power, which it exercises within its sphere;

the higher embracing not only the wider field, but the more general and comprehensive governmental duties. While the towns govern their inhabitants in matters requiring immediate attention and of a local nature, the counties administer the higher and more comprehensive functions of government in the towns included in them. And as the States include, and govern in their more general interests, the towns and counties, so the United-States' government embraces and controls the States in their higher governmental relations, forming them into a harmonious Union, and making of them a common country.

The government of the Union is confessedly a limited government. It has merely those general public powers essential to a national government which are specified in the Constitution, and were surrendered to it by the people of the States in order to form under it a federal union. It does not direct the whole machinery of government through the entire mass of the people, as the States, retaining for themselves all powers not surrendered in the Constitution, consequently retain the vast field of common, every-day, local government. But, all the more for this, it is a national government. Its powers, by not being local and minute, become wholly national; the highest idea of a nation being that of a people directed in its public relations by a common government, and recognized

as such by other nations. Such a people may originate in tribal affinities, and grow up and become consolidated under a hereditary ruler, or may be formed from heterogeneous elements by the pressure of a strong and arbitrary government; but that is the highest type of a nation, which, like the United States, originally existing in separate, rival communities, from a consciousness of their separate insignificance in their fragmentary condition, and of their possibilities for a great future, has merged the separate sovereignties of the parts in the more exalted sovereignty of the whole.

TABLE OF CONTENTS.[1]

[1] As the titles of all the principal subjects treated of in this book are given in this table, and may be easily found, it will serve as an index as well as an analysis.

DIVISION II.

OF THE SENATE.

DIVISION III.

SENATE AND HOUSE OF REPRESENTATIVES CONJOINTLY.

DIVISION IV.

LEGISLATIVE POWERS OF CONGRESS.

DIVISION V.

RESTRICTIONS ON THE POWERS OF CONGRESS AND OF THE STATES.

DIVISION VI.

ELECTION AND INDUCTION OF THE PRESIDENT.

DIVISION VII.

POWERS AND DUTIES OF THE PRESIDENT.

DIVISION VIII.

JUDICIAL DEPARTMENT.

DIVISION IX.

MISCELLANEOUS PROVISIONS.

DIVISION X.

AMENDMENTS TO THE CONSTITUTION.

APPENDIX.

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 tranquillity, provide for the common defence, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.

ARTICLE I.

SECTION 1.

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

SECTION 2.

[1.] The House of Representatives shall be composed of members chosen every second year by the people of the several States; and the electors in each

State shall have the qualifications requisite for electors of the most numerous branch of the State Legislature.

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

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

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

[5.] The House of Representatives shall choose

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

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

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

SECTION 4.

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

[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, 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 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.

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

SECTION 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 in 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;

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

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

[4.] To establish a uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States;

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

[6.] To provide for the punishment of counterfeiting the securities and current coin of the United States;

[7.] To establish post-offices and post-roads;

[8.] To promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries;

[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 Union, 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 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;

[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, dockyards, 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 United States, or in any department or officer thereof.

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.

[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.

[3.] No bill of attainder or *ex post facto* law shall be passed.

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

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

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

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

SECTION 10.

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

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

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.

[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 United States, directed to the President of the Senate. The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted: the person having the greatest number of votes for President shall be the President, if such number be a majority of the whole number of Electors appointed; and, if no person have such majority, then from the persons having the highest numbers not exceeding three on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President the vote 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.

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

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

[6.] In case of the removal of the President from office, or of his death, resignation, or inability to discharge the powers and duties of said office, the same shall devolve on the Vice-President; and the Congress

may, by law, provide for the case of removal, death, resignation, or inability, both of the President and Vice-President, declaring what officer shall then act as President, and such officer shall act accordingly until the disability be removed, or a President shall be elected.

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

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

"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.

[2.] He shall have power, by and with the advice and consent of the Senate, to make treaties, provided

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

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

SECTION 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.

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.

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.

[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 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.

[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.

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 privileges and immunities of citizens in the several States.

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

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

SECTION 3.

[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.

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

SECTION 4.

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.

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.

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.

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

ARTICLE VII.

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

AMENDMENTS TO THE CONSTITUTION.

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

ARTICLE VI.

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

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.

ARTICLE XII.

[For this amendment see Art. II., 3.]

ARTICLE XIII.

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

[2.] Congress shall have power to enforce this article by appropriate legislation.

ARTICLE XIV.

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

[2.] Representatives shall be apportioned among the several States according to their respective num-

bers, 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.

[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.

[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.

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

ARTICLE XV.

[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.

[2.] The Congress shall have power to enforce this article by appropriate legislation.

CONSTITUTION.

WITH COMMENTS.

DIVISION I.

PREAMBLE. — HOUSE OF REPRESENTATIVES.

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

A constitution is an instrument which *constitutes* the form of a government, setting forth its powers, duties, and limitations, and the agencies and functionaries by which it is to be conducted. It is properly a written document, drawn out in form. But in England and other countries, where no such written form has been enacted, the constitution is merely a body of principles derived from ancient usages, charters, bills of rights, and the general current of antecedent legisla-

tion. Such a constitution is more or less changed by every legislative act which embodies a new principle, and may be wholly subverted by such an act. Our Constitution, on the contrary, can be legally changed only by a formal amendment, approved by the people or legislatures of at least three-fourths of the States of the Union (see Art. V.).

This introductory clause, which is commonly called the Preamble (and evidently is not an *enacting* clause), states the *motives* for establishing the new government; viz., to form a more perfect union, provide for the common defence, and secure justice, domestic tranquillity, and the general welfare, with the blessings of liberty, to themselves and their posterity. Under the Articles of Confederation, which had been in force some eight years, these ends had been very imperfectly attained, as each of the States retained its separate sovereignty and independence, and yielded little more than *advisory powers*, in settling difficulties between the States and providing for the common good, to the general government embodied in the Continental Congress at Philadelphia. On the contrary, the government established by this Constitution is one of positive and definite powers of control over certain general interests throughout the Union, which are named in the instrument, and were distinctly surrendered to it as its own by the States.

Experience has shown that it is dangerous to liberty to have all governmental powers intrusted to the same hands or body of men; and, as these powers are of three different kinds, — the legislative, the executive, and the judicial, — they are organized in this Constitu-

tion under three distinct articles, Article I. being devoted to the legislative department. These and the other articles describe how and within what limits the general government is to control and promote the general welfare, &c., of the people of the different States, leaving them to provide for their own interests in all other respects.

The thirteen States in existence at that time, and which finally ratified and adopted this Constitution, were Delaware, Pennsylvania, New Jersey, Georgia, Connecticut, Massachusetts. Maryland, North Carolina, South Carolina, New Hampshire, Virginia, New York, Rhode Island.

ARTICLE I. — THE LEGISLATIVE DEPARTMENT.

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."

"All legislative powers herein granted." These powers are all enumerated in the first seventeen clauses of the eighth section of this article, except what are plainly included in the eighteenth clause, which is very comprehensive, though definite, in its scope. These powers, as well as the powers of the other departments of this general government over the States, were "granted," or surrendered, to it by the States through their delegates in the convention in Philadelphia which formed the Constitution. They were granted without reservation for "themselves and their posterity," as stated in the preamble, and hence belong wholly and forever to the general government.

Under the Constitution, therefore, Congress must consist of two houses, and may never legislate as a single body, as had been done under the articles of confederation as well as in the legislatures of some of the States. In like manner the British Parliament consists of two houses, — the House of Lords and the House of Commons. Besides, the sovereign of England has a decided influence in the legislation through his prerogative as well as through his Cabinet, who are all members of Parliament, the legislative power being really that of King, Lords, and Commons (see Bagehot's "English Constitution").

The advantages of two houses over one for wise legislation are obvious. In the first place, there is less danger of unwise measures being rushed through; since a longer time is required to get them through two bodies than to get them through one, thus giving more time for considering them, and enforcing more attention to their details. The discussions in one house, as well as the discussions in the newspapers, enlighten the other house, and suggest amendments. Again: the houses being necessarily constituted on somewhat different principles, the same personal or party influences are not likely to prevail in both of them; so that unwise, unjust, or partisan measures in one are pretty sure to be checked and corrected in the other.

SECTION 2.

[Clause 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."

The representatives in Congress, then, from the different States, being national officers, are to be chosen by the *people* thereof, as national voters, for two years, and not by their legislatures (and hence not by the States in their political capacity), as was generally done under the Articles of Confederation, and that for but one year, or less, at the will of the legislature. The people, however, who are to vote for these representatives, are not necessarily all the inhabitants (the term being here used simply in distinction from the legislature), nor even the same classes of inhabitants, in the different States, but only such in each State as by the laws thereof are allowed to vote for the members of the popular branch of their own legislature, which is likely to embrace a considerable portion of the people.

There are, therefore, no uniform qualifications for the electors of representatives to the national legislature established in the Constitution; but these are left to be determined by the States, which elect not only the officers of their own governments, but the constituent members of the general government also, which latter, however, must have the qualifications prescribed by the Constitution. All "citizens," "inhabitants," "people," therefore, are not necessarily *voters*. Voting is a right which may be allowed or withheld by a State or nation, it being a political, not a natural or civil, right.

As the representatives are to be chosen every second year, and one-third of the senators go out every second year, the same Congress lasts but two years. And as the Constitution went into operation March 4, 1789, a new Congress commences in March *every odd* year.[1] In England the members of the House of Commons are elected for seven years; which is the duration of a Parliament, unless sooner dissolved by the sovereign. But neither our Congress nor the British Parliament generally sits continuously during their whole term.

The legislative department of the general government, it will be seen, by consisting of senators and representatives from the different States, embraces the whole country; and the same is true of the other departments. For *national* purposes, the States are mere districts of the general government, and their voters national voters.

[Clause 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."

A representative in Congress, then, must be at least twenty-five years old, an inhabitant of the State from which he is chosen, and have been seven years a citizen of the United States, thus requiring special

[1] As the presidential term of office is four years, a new President enters upon his office *every other odd year*, though chosen in the latter part of the year before; as representatives, also, are chosen in the latter part of the year before their term begins.

limitations in State voting for national representatives. A senator in Congress, it is subsequently provided (Sect. 3, 3), with the same qualifications in other respects, must be thirty years old; while no one can be President of the United States who is not thirty-five years old, a natural-born citizen, and has not resided at least fourteen years in the United States. (Art. II., Sect. 1, 5.)

The phrase "citizen of the United States" is found in the Constitution as it originally stood, only in the three places indicated above, where it obviously refers to citizenship acquired by naturalization. Foreigners who had proved their patriotism by sharing in the dangers and toils of the Revolution, if naturalized citizens (and many had become such by naturalization in the different States), were to be eligible to the honors and offices of the Republic after a certain number of years, as those having passed the like novitiate are still eligible under the Constitution to every office except the presidency.

A native or naturalized "inhabitant" of a State is of course a citizen of that State, and by the fourteenth amendment he is also a citizen of the United States. To be eligible as a representative in Congress, it is not required that the inhabitant of a State should reside in any particular district, or possess any other qualification whatever, except that of age, and, if a foreigner, citizenship by naturalization of at least seven years' standing. Practically, however, electors always vote for a candidate in their own election district. But in England, which is not divided off into special territorial election districts, one is often a candidate for election

to the House of Commons in places remote from his home.

In England the right of suffrage, or of voting for members of the House of Commons, after being characterized by the greatest illiberality and irregularity for centuries, finally, under the Reform Bill of the Disraeli ministry of 1867–1868, was allowed to the following classes: 1st, *In counties*, — to those holding in fee, or by possession, property of the annual value of forty shillings or more; to those holding by possession, or by lease, for not less than sixty years, property of the annual value of five pounds, or of fifty pounds for twenty years; to occupiers of lands rated at twelve pounds or more per year. 2d, *In boroughs* (i.e., villages and cities), — to the occupiers of dwelling-houses who have paid their poor rates; to the occupiers of rooms or tenements, other than dwelling-houses, of the annual value of ten pounds. Voting in the United States has regularly been by ballot; but in England the right to vote by ballot has been but recently acquired. In France suffrage is nominally as liberal as in the United States, — all male citizens of twenty-one years of age being allowed to vote.

[Clause 3.] "Representatives and direct taxes shall be apportioned among the several States which may be included within this Union, according to their respective numbers [which shall be determined by adding to the whole number of free persons], including those bound to service for a term of years, and excluding Indians not taxed [three-fifths of all other persons].

The actual enumeration shall be made within three years after the first meeting of the Congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of representatives shall not exceed one for every thirty thousand, but each State shall have at least one representative; and, until such enumeration shall be made, the State of New Hampshire shall be entitled to choose three; Massachusetts, eight; Rhode Island and Providence Plantations, one; Connecticut, five; New York, six; New Jersey, four; Pennsylvania, eight; Delaware, one; Maryland, six; Virginia, ten; North Carolina, five; South Carolina, five; and Georgia, three."

The portions of this clause included in brackets have been superseded by the abolition of slavery. Before this was abolished, three-fifths of the slaves (referred to here by "all other persons") were reckoned in the representative population of each State where slavery existed. Those "bound to service for a term of years" were not slaves, but minors "bound out," or indentured to some one, by parents or guardians, to learn some trade or business. Indians occupying reservations within the boundaries of any State are not to be taxed, nor to be included in the enumeration of the representative population. Since the abolition of slavery, all freedmen are reckoned in the representative population, if allowed to vote (see fourteenth amendment). This gives the former slave

States thirteen additional representatives in Congress, and the same additional number of presidential electors.

At the first census, in 1790, the whole population of the country (including slaves) was a little less than four millions, and the number of representatives in Congress, sixty-five; while, by the census of 1870, the population was a little less than thirty-eight and a half millions, and the present number of representatives is two hundred and ninety-two. In the first case, the ratio of apportionment was thirty thousand people for each representative, while at present it is something over a hundred and thirty thousand for each representative.

In England, since the Reform Act of Lord Grey in 1832, the House of Commons has consisted of six hundred and fifty-eight members; and in 1873 the House of Lords numbered four hundred and seventy-seven. Under the present French Republic, the Chamber of Deputies consists of five hundred and thirty-two members, chosen by the people of the Arrondissements; and the Senate, of three hundred members, seventy-five of them chosen for life by the Chamber of Deputies, and the remainder by the General Councils and the Communal Deputies of the Departments for the term of nine years, one-third of them retiring every third year.

The census is taken regularly every ten years by the United States' marshals (corresponding to *sheriffs* in the State courts), and their assistants, who visit every dwelling and every family, making such inquiries as are required by the law, which must be answered under

penalty for refusing. These inquiries pertain not only to the number of inhabitants, but to the various pursuits, industries, and resources of the country, making the census a most valuable statistical document.

Direct taxes are taxes assessed directly on any kind of property according to its supposed value, as money, land, and the like; while indirect taxes are collected in the form of *duties* on articles imported into the country from abroad, or as an *excise* on manufactures or business at home. Under the Articles of Confederation, the expenses of the general government for the common defence and the general welfare were paid in direct taxes by the several States, *according to the value of improved lands* within their borders. In like manner, it is provided in this clause of the Constitution, that all taxes assessed by the general government directly on property in any State shall be in proportion to its representative population. But taxes levied thus on the property of the different States, as such, are so inconvenient, that they have rarely been resorted to; the general government depending for its support, with the exception of an excise on the manufacture of spirits and tobacco, almost wholly upon taxes collected on imported articles from abroad.

Every Territory provided with a regularly organized territorial government (consisting of a governor, judges, and certain other officers, appointed by the President, with the consent of the Senate) is allowed to have a delegate in Congress, who may take part in the debates, but cannot vote. In 1871 the District of Columbia received from Congress a territorial government, but without the power of sending a delegate to Congress.

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

This clause provides for filling vacancies in the representation from any State, occasioned by death, resignation, or otherwise, by new elections. Members so chosen serve only for the residue of the term which has become vacant. The Constitution here, as well as in relation to filling vacancies in the Senate, and in many other places, acts directly upon State authorities, requiring some duty of them (they "shall" do so and so). To refuse to perform the duty enjoined would be incipient rebellion, and, if persisted in, would justify coercion.

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

The Speaker is the presiding officer of the house, and on many accounts is the most important member of the body, and particularly because he has the appointment of the various committees which prepare most of the bills to be acted upon by the house.[1] The other officers of the house are: a clerk (salary, four thousand five hundred dollars), who, with his assistants, keeps the records of its proceedings, and holds over

[1] There are forty-seven permanent committees, besides numerous special committees.

till the next house is organized, and presides at its organization; a sergeant-at-arms (salary, four thousand dollars), who executes the commands of the house; a doorkeeper (salary, two thousand five hundred dollars); and a postmaster, who has charge of the mail matter of the members. These subordinate officers are all sworn to keep the secrets of the house. The Constitution supposes the duties of the Speaker to be known from common law and English usage, as well as from earlier usage in our own country.

The sole power of impeachment, here given to the House of Representatives, is the sole power of preparing articles of impeachment against officers of the general government, and providing for presenting and defending them before the Senate: the actual *trial* of impeachments is reserved for the Senate (Sect. 3, 6).

DIVISION II.

OF THE SENATE.

SECTION 3.

[Clause 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."

As the senators represent the States as such, they are to be chosen by their legislatures. In the Senate, therefore, the States, without regard to their size, wealth, or population, are represented equally, though

each senator has a separate vote; while, under the Articles of Confederation (where there was no Senate), the delegates to Congress from each State could cast but one vote, which was that agreed upon by a majority of their number.

The Constitution does not prescribe the mode by which the legislatures are to choose senators. Till quite recently, therefore, they were chosen in some of the States by a separate vote in each house, both concurring in the election of the same individual; and in others by both houses meeting and voting as one body, called a joint vote. Now, however, by a law of Congress in 1866, they are to be nominated by a *viva voce* vote in each house; and, if not elected by this vote, they are to be chosen in joint session of the two houses by ballot, the voting to commence at noon on the day following the second Tuesday after the organization of the legislature, and to proceed day by day, till an election is effected. The election is to be made by the legislature last chosen before the expiration of the term of the outgoing senator. As the State legislatures elect the senators, they sometimes assume to "instruct" them how to vote on certain questions; but, as Burke says, "the representative owes to his constituents, not his industry only, but his judgment."

[Clause 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."

The effect of this clause is to change one-third of the Senate every two years by the departure of old members, and the introduction of new ones in their places. At the first session the senators from the different States were distributed by lot into three classes, keeping the classes as nearly equal in number as might be; and the members of the first class were to go out at the end of two years, those of the second at the end of four years, and those of the third at the end of six years. And, when new States are admitted to the Union, their senators are distributed by lot between the two classes having the smallest numbers. In this way the majority of the senators are always experienced members, and but one of the senators from any State can at any time be a new member.

The temporary appointments of senators by the Executive of a State, here provided for, continue only till the meeting of the legislature, which is then required to fill such vacancies. An anticipated vacancy, of course, cannot be filled by an Executive till it actually occurs. That would be to fill a vacancy when there is none, and to anticipate a duty which would

belong to a successor, and one possibly of different politics.

[Clause 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."

The qualifications of a senator are precisely the same as those of a representative, except that he is required to be five years older (Sect. 2, 2). It will be observed that it is not required of either the senator or the representative that he shall continue to reside in the State during his term of service.

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

This is the only duty specifically enjoined upon the Vice-President while there is an actual incumbent of the presidency. And it is so arranged in order to preserve the exact equality of the States in the Senate; since, if a senator from any State was allowed to preside, appoint the committees, and vote in ordinary cases, it would give that State a preponderance over the others in that body. But, as the theory of equality among the States is not designed to be maintained in the House of Representatives, a member of that House is allowed to be its Speaker or presiding officer, and to

have a vote like other members. The Vice-President, owing his election to the country at large, it was thought he would be a perfectly impartial presiding officer in the Senate.

In England the Lord Chancellor is the regular presiding officer in the House of Lords, and furnished the model according to which it was supposed the presiding officer in our Senate would proceed in the discharge of his duties till these were specially prescribed by law. The English Chancellor, or Speaker of the House of Lords, receives a salary of $19,360 a year, in addition to $29,040 which he receives annually as Judge of Appeals in Chancery.

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

The "other officers" of the Senate are the same as those in the House of Representatives (Sect. 2, 5); and a "President *pro tempore*" is to be chosen, not only to preside in the Senate in the absence of the Vice-President, as here described, but also as, in case the Vice-President too should die or resign, he would become President of the United States for the time being, as is provided by an act of Congress March 1, 1792. Hence it is all important that the Senate should always be provided with a President *pro tempore* during the recess of Congress. And this is regularly done by the withdrawing of the Vice-President at some time

during the session, that the Senate may appoint a temporary President of its own. The President *pro tempore* does not lose his right to vote while he occupies the position of presiding officer. His salary is $8,000 a year, the same as that of the Vice-President, whose place he temporarily fills.

[Clause 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."

The articles of impeachment, as we have seen, are to be presented and defended before the Senate by the House of Representatives; and the Senate, as we see here, is to try the case as a court, being under oath or affirmation like jurymen; and a majority of two-thirds is required to convict. The "affirmation" is for such as have conscientious scruples about taking an oath. The President, Vice-President, and all civil officers of the United States, are subject to impeachment for treason, bribery, or other high crimes and misdemeanors (Art. II., Sect. 4). Senators and representatives, not being commissioned officers, are not subject to impeachment.

The Chief Justice is to preside in the Senate at the trial of an impeachment of the President of the United States, as the Vice-President, the regular presiding officer in that body, would be likely to be partial in

such a case, since, if the President should be convicted, he would himself become President. As the Chief Justice merely occupies the place of the Vice-President as presiding officer in this particular case, it would seem that he should have no extra authority in the trial in consequence of his judicial character, though Chief Justice Chase maintained the opposite doctrine at the trial of President Johnson.

In England, also, articles of impeachment are brought forward by the House of Commons, and are tried by the House of Lords. But the Lords give their verdict upon their honor, and a simple majority is required to convict. But two cases of impeachment under the Constitution (that of Judge John Pickering in 1803 and Judge W. H. Humphries in 1832) have been successful in this country, and but very few in recent times in England. In the United States only government officials are subject to impeachment, but in England all the King's subjects.

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

This clause limits the effect of conviction on an impeachment. Impeachment being for offences in civil office, its direct punishment by Congress is very prop-

erly confined to removal from and disqualification for such offices; though still leaving the offender liable to prosecution in the courts and punishment for his offences as far as they are of a legal nature, or offences against justice and good order. It thus removed the danger of inflicting excessive punishments for impeachment by Congress from party and political considerations, as was often done in former times in England, where the whole punishment on impeachments is left with Parliament.

DIVISION III.

OF THE SENATE AND HOUSE OF REPRESENTATIVES CONJOINTLY.

SECTION 4.

[Clause 1.] "The times, places, and manner of holding elections for senators and representatives shall be prescribed in each State by the legislature thereof; but the Congress may at any time by law make or alter such regulations, except as to the places of choosing senators."

It thus appears that not only are the qualifications of the electors of members of Congress left to the different States, but also the determination, in the first instance, of the times, places, and manner of their election. Congress, however, reserves the right of making or altering such regulations as the States may make on these points; and these regulations, when thus changed, must be conformed to by the States in their

voting. But the place of choosing the senators cannot be changed; since these are necessarily chosen by the legislature at the seat of government in each State, which is the place of their meeting.

As to the manner of choosing senators, Congress has enacted, as we have seen (Sect. 3, 1), that they shall be chosen by joint vote in each legislature. So, also, it has provided, by a series of acts from 1842 to 1876, that representatives shall be elected by districts in each State, one by the voters in each district, instead of all being elected on one ticket by the State at large, as was formerly done; and that the election shall be by ballot, and not by a *viva voce* vote, as was formerly the case in some of the States; and, unless the constitution of a State fixes a different time of electing the representatives, that they shall be chosen in each State on the Tuesday next after the first Monday in November. The States are still allowed to elect by a majority or a plurality vote; but the latter mode is the prevailing one.

The above changes in the mode of electing senators and representatives for Congress are instances of the exercise of the power here given to Congress to control the States in this matter. These officers of the general government are to be chosen by the States as constituent parts of the Union, but in such manner as Congress may prescribe. The voters, to be sure, are citizens of the different States, and vote under the laws of the State, *but only as those laws conform to the laws of Congress.* Their votes are really directed by the laws of Congress, and are of no avail unless they are cast in conformity to those laws; and, voting according

to national laws and for national officers, they are really national voters. Votes for national representatives, surely, are national votes, and as such should be subject to supervision by national authority, as is provided for in the law for national supervisors of such elections.

[Clause 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."

Congress, then, must assemble at least once every year, and may meet oftener if they so enact; and special sessions may be called by the President (Art. II., Sect. 3). The regular annual meeting must be on the first Monday of December, unless, by a legislative act, they appoint a different day, which they have often done. Since the establishment of the seat of government at Washington in the year 1800, the regularly appointed place for their meeting is at the National Capitol in Washington; but, in the case of an epidemic there, it is provided that the President may by proclamation convene Congress at another place.

In England Parliament assembles at the call of the King, and at such times as he designates; which, however, must be as often as once in three years after each dissolution of the body. Each Parliament continues in existence seven years, unless sooner dissolved by the sovereign, but does not usually sit continuously during this time.

SECTION 5.

[Clause 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."

While the senators and representatives for Congress are chosen by the States, each house determines who are actually elected and qualified to serve in it. Their election must be duly certified to by the Executive of their State, and be capable of being established as a *bona-fide* choice, uninfluenced by corrupt practices. As to other qualifications, they must be loyal citizens, qualified for the office according to the requirements of State and United States' Constitutions and laws. Their strictly personal qualifications, whether physical, intellectual, or moral, are left to the judgment of the constituencies which choose them, though they may be expelled from Congress, if unworthy of their place, after they become members (see next clause).

Contested elections usually turn on the number and legality of the votes thrown for the candidates proposed and voted for by the different parties; and Congress has provided a method for settling these contests when they occur in either house. In England contested elections in the House of Commons are now decided by jury courts, but till quite recently were decided and settled by an election committee of thirteen (see May's

"Constitutional History," vol. 1, p. 291). With us, also, the committee on elections investigate and report on such contests; but the house itself finally decides the case.

While no bill can be passed in either house of Congress, unless a majority of its members (i.e., a majority of those actually sworn in) are present, and respond yea or nay on the vote, a smaller number is authorized to adjourn from day to day, and compel the attendance of absentees till a quorum is obtained. When members are absent from either house at the calling of the roll, without leave or excuse on account of sickness or inability to attend, the rules authorize those present, if fifteen in number including the Speaker, to require the sergeant-at-arms to have them arrested and brought to the house.

[Clause 2.] "Each house may determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two-thirds, expel a member."

The rules of proceedings established by the houses of Congress may be found in Parliamentary Manuals in general use. The "disorderly" conduct here referred to would include, of course, disturbance of the order of the house, breach of its privileges, contempt, and the like. It has also been applied to seditious, disloyal, and disgraceful conduct in members, whether in actual attendance in Congress or away on excuse or during recess. Indeed, the power to expel is only limited by requiring a two-thirds majority.

Congress, of course, like all deliberative bodies, has, by the common law, power to punish persons *not members of their body* for disturbance, breach of privilege, and the like. And, when such punishment is imprisonment, it terminates with the session of Congress, or of the committee, when it is that alone to which the contempt is offered.

[Clause 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."

The journal of a deliberative body is a written account of all its acts and votes. This is kept in the House of Representatives by the clerk, and in the Senate by its secretary. These proceedings, except at "Executive sessions," in which treaties, appointments to office, or other confidential matters, are considered, are regularly published from year to year; while the proceedings at these secret sessions, from which the secrecy has not been removed, are retained in their manuscript form.

The yeas and nays are to be entered on the journal when called for, that it may be seen how each one voted on certain important or crucial questions. The importance of such record for wholesome legislation is fully established (see May's "Constitutional History of England," vol. 1, p. 406). But in a large body it takes considerable time to call and record the votes, and is

often resorted to as a "dilatory measure" by the minority in order to embarrass and delay action on a bill before the house: hence it is here provided that the yeas and nays shall not be *recorded*, except at the demand of at least one-fifth of the members present. When not thus called for, the presiding officer decides the result of the yeas and nays by the ear, or by the checked list of the clerk; or, in doubtful cases, the members may be counted on a rising vote, or in passing between tellers appointed for the purpose.

[Clause 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."

The design of this clause is obvious, which is to prevent delay and inconvenience in legislation. As no bill can be passed without the concurrence of both houses, it is essential that each house should be able to prevent any long absence of the other. They may not, therefore, adjourn permanently or for any considerable time by separate action. Congress can adjourn only by the concurrent action of both houses, although it is regularly dissolved by the expiration of its term, at the close of the third day of March in every odd year, or at noon of the fourth, as the practice now is. In England, however, the King can adjourn ("prorogue") or dissolve Parliament at his will; and in France the President of the Republic may dissolve the Chamber of Deputies with the assent of the Senate,

and order a new election, which must be within three months after the dissolution.

SECTION 6.

[Clause 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."

The present pay of members of both the Senate and House of Representatives is established by law ("ascertained by law") at five thousand dollars a year, and mileage at the rate of twenty cents a mile in going to and returning from the seat of government. The pay of the Speaker of the house is eight thousand dollars a year. Till 1856 the pay of members was by the day, — at first six dollars, and then eight dollars per day, while in attendance at Washington, with the same pay for each day's travel in going to and returning from the place. Under the Articles of Confederation, the States paid the expenses of their own delegates, — some States more, and some less, — whereas now all members are paid equally, and from the national treasury.

In England members of Parliament receive no compensation for their services, which has a tendency to exclude from Parliament all except men of means or the aristocratic classes. But the Speaker of the House of Commons receives a salary of twenty-four thousand two hundred dollars a year.

Payment for the salaries and mileage of members of the House of Representatives is made monthly through the sergeant-at-arms; and that for the members of the Senate, through the secretary of the Senate, — both of whom are required to give bonds for the faithful application of the money which passes through their hands.

That Congress may not be unnecessarily deprived of the services of its members, it is here provided that, except in cases of treason, disturbance of the public peace, and the capital or penitentiary crimes implied in felony, they shall not be subject to arrest and detention for trial whether actually present in Congress, or on their way to and from the same. And, that they may have perfect freedom and fearlessness in debate, they are secured against all liabilities and penalties for words uttered in their respective houses.

And, as the debates in Congress are reported and published at its expense and by its authority, this shields members also from liability for any thing which may be deemed libellous in their printed speeches. Indeed, as members of Congress are not commissioned officers under the general government, but the ultimate controlling power in that government, they cannot, *as members*, be punished under its laws, not even by impeachment (Art. II., Sect. 4). They may be expelled (Sect. 5, 2) by the action of the house to

which they belong, and their constituents may give them leave to stay at home.

[Clause 2.] "No senator or representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased during such time; and no person holding any office under the United States shall be a member of either house during his continuance in office."

The effect of the first part of this clause is to exclude senators and representatives from new offices created by them, or old offices whose emoluments have been increased by their action; and hence to discourage the multiplication of offices and the increase of their emoluments from personal considerations. A friend or relative, however, may be appointed to such an office, and the senator or representative himself may be appointed to it after the expiration of his term. It will be observed that the exclusion is confined to civil offices, since military offices often require to be filled immediately, and a senator or representative may be the best possible appointee to such an office.

By the last part of the clause, all officers of the United States are excluded from Congress while actually holding their office; so that, if elected to Congress during their incumbency, they must resign the office before taking their seat in that body. This is to prevent their being biassed as legislators by their office

under the government, just as senators and representatives, by an act of Congress (April 21, 1808), are prohibited from holding or enjoying any contract under the United States, or any agreement with an officer of the United States. In our own government the legislative department is carefully protected from undue influence by the other departments.

DIVISION IV.

LEGISLATIVE POWERS OF CONGRESS.

SECTION 7.

[Clause 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."

Bills for raising revenue include the deficiency bills, and the eleven regular appropriation bills annually passed by Congress, but not necessarily such as only incidentally increase the revenue. Such bills must originate in the House of Representatives, as this house more immediately represents the people, and better understands their wants and resources. Hence they are strenuous in maintaining the right of originating such bills, as the English House of Commons always have been, not allowing the House of Lords to change or amend them in the least. Our Senate, however, being an elective body, representing the States, and not, like the House of Lords, hereditary and aris-

tocratic in its constitution, is very properly allowed to propose and concur in amendments to such bills, though it may not originate them in the first instance.

[Clause 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."

This clause requires that every bill before Congress, before it becomes a law, shall be presented to the

President and signed by him, or returned within ten days, with his objections, to the house in which it originated. In which latter case it can become law only upon reconsideration and being repassed by a two-thirds vote in each house, expressed in yeas and nays, and entered upon their respective journals; the two-thirds vote required being evidently two-thirds of those present merely, provided there be a quorum.

By the rules, bills introduced into either house by a committee, as most bills are, are presented in printed form, and after two readings, at the second of which all discussions of their merits usually occur, may either be committed to some committee for further consideration, or at once be read the third time and passed to be engrossed; i.e., copied on paper in a fair round hand. So, also, bills introduced by individuals, on leave, are referred to a committee after the second reading, and reported back in a printed form, read a third time, and passed as in the previous case.

After a bill has passed both houses, it is enrolled on parchment, according to the engrossed form, and, before it is presented to the President, is signed by the Speaker of the House of Representatives and the President of the Senate, and an indorsement made on it (for the information of the President), stating whether it originated in the Senate or the House of Representatives.

In England the refusal of the King to sign a bill (called a *veto*) is absolute, preventing the passage of the law; while with us it merely delays its passage till it is further considered, and a two-thirds majority of both houses in its favor obtained. And, that the re-

consideration may be intelligent and deliberate, it is required that the objections of the President to the bill shall be entered in full upon their journals, and also the yeas and nays of the members. At the same time, the President must return the bill to the house in which it originated within ten days, or it becomes a law without his signature. The veto power has proved a very useful power, and has been used by nearly every President.

[Clause 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."

This clause is designed to prevent Congress from passing laws in the form of orders, resolutions, or votes, without the signature of the President. But resolutions proposing amendments of the Constitution to the legislatures of the States, or regulating proceedings between the two houses, or with the Executive, are not presented to the President, as they are not laws of the land, and concern the people or Congress alone. But a joint resolution, order, or vote, approved by the President, or passed by a two-thirds vote of both houses without his approval, has all the force of a law.

SECTION 8.

[Clause 1.] "The 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."

This eighth section, of which this is the first clause, enumerates the independent powers ("all legislative powers herein granted") of Congress as the legislative branch of the general government over the States. In the clause here quoted there seems to be but a single power granted, — viz., the taxing power, — and this in order to raise a revenue for paying the debts of the general government, and providing for the defence and welfare of the people of the different States in their general and national relations. This is the exclusive right and duty of Congress. The ordinary *local* defence and welfare of the people are to be provided for by the States, including the revenue necessary for these purposes, which must come from State resources, that are not covered by the grants to Congress.

The interpretation which makes the paying of the debts, &c., an independent power, and not the end or purpose for which the taxing power is granted, is plainly incorrect. In the first place, it is not properly a power, — a legislative power, — but a *duty*, and one naturally incident to the power of making provision for payment by taxation. And then, if the paying of debts, &c., do not express the *purpose* for which taxes

are to be laid and collected, the taxing power of the general government is left without a limit; and the power to provide for the common defence and general welfare also, instead of being confined to the use for these purposes of the means derived from taxation, may be exerted in all ways, and to any extent thought to be desirable; thus leaving the whole matter of taxation, and of providing for the general welfare of the people (which might be pursued to the extent of what is really *local*), in the power of the general government of the United States. This seems inconsistent with the general scope of the Constitution. It was evidently designed that local affairs should be left to the States, except such as are inconsistent with higher national interests.

"Taxes, duties, imposts, and excises" embrace every species of taxation, — direct and indirect, specific and ad valorem, taxes on polls, on property, on income, on manufactures, on business, on licenses, on imports, on tonnage, and every kind of levy for raising a revenue. The United States may resort to any species of taxation to maintain the national interests committed to them, but depends chiefly for revenue on duties on merchandise imported from abroad; for securing which, collection districts and ports of entry are established at various points, under the direction of the Secretary of the Treasury at Washington, and presided over each by a collector with subordinate officers, to determine and receive the duties.

The statement in the last part of the clause, that all duties, imposts, and excises shall be uniform throughout the United States, makes the whole country

the field for a uniform system of national taxation to sustain the general government in carrying out the purposes for which it was established. This national taxation, being thus distributed among all the States, leaves them resources enough untouched to meet their own government expenses.

Under the Confederation, the expenses incurred for the common defence and general welfare were to be supplied by the several States, and Congress could merely make requisitions upon them, each for its proportion, leaving it to their honor to pay it or not. This clause, however, gives Congress the power of imposing taxes directly upon the property, business, and imports of the citizens of the several States, for these expenses, and of collecting them in their own way. And here we see, again, that the object of the clause was, by granting an independent power of taxation to the general government, to furnish it with the means of providing for the common defence, and promoting the common welfare, which were wanting under the Confederation.

Direct taxes, however, by a previous clause (Sect. 2, 3), are to be levied on States according to their *representative population*, which was to favor the slave States, since only three-fifths of the slaves were to be counted in for representative purposes. But this is of no avail now that slavery is abolished.

[Clause 2.] "To borrow money on the credit of the United States."

As taxes might not be sufficient to pay all the ex-

penses in time of war, or at other important crises, it was necessary that Congress should possess this power. It should be exercised, however, only on such supreme occasions. A government having the power of raising money by taxation should generally pay as it goes. Congress had occasion to exercise this power largely during our late civil war, both by the indirect method of issuing greenbacks or treasury notes, and the direct method of selling bonds. The bonds of the United States (amounting March, 1878, to $1,741,782,500) cannot be taxed by State authority, as this would put them at the mercy of the States, and render the grant any thing but an independent one. The same is true of the greenbacks and the other securities of the general government.

[Clause 3.] "To regulate commerce with foreign nations, and among the several States, and with the Indian tribes."

Commerce includes not only trade and traffic, but every species of intercourse, whether in person or by navigation or other means of transportation. To regulate our commerce is to prescribe the rule or laws by which this traffic and intercourse are to be governed. And Congress has exercised the power in designating ports of entry and delivery; in passing laws in regard to embargoes, quarantine, pilotage, wrecks, light-houses, buoys, beacons, inroads of the ocean, obstructions in bays, sounds, rivers, creeks, and other internal improvements of national or inter-state importance; also in regard to the coasting trade, fisheries, navigation,

seamen, the protection of citizens in foreign countries, the privileges of American and foreign ships, and other kindred subjects.[1]

One important regulation of commerce is in relation to the *registry* of vessels in the office of the collector of the district to which they belong. This is essential to their enjoying the privileges and benefits of vessels of the United States, unless engaged in the coasting trade, when it is merely necessary for a vessel to be enrolled and licensed. A vessel entitled to registry or license must be home-built, owned by citizens of the United States, and commanded by an American citizen.

Under the Confederation commerce was in a deplorable condition from the want of power in Congress to enforce upon the States the observance of treaties with foreign nations, as well as common commercial regulations among themselves. Each State made its own commercial regulations, which naturally conflicted with each other, and were often retaliatory in their nature, so as almost wholly to destroy commerce and intercourse. This state of things was one of the chief motives for establishing the Union under the Constitution, which now has the exclusive regulation of the whole matter, as between the States and with foreign nations; so that all State regulations touching the subject are null and void beyond the bounds and the internal waters of their respective States. States cannot grant any special navigation privileges in waters accessible to vessels licensed or registered by the United States. In commerce, as in other general interests, the country under the Constitution is one, and Congress is to see

[1] See Farar's Manual, p. 328.

that there are no prohibitory or restrictive commercial laws between the States.

[Clause 4.]. "To establish an uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States."

The rule for naturalization established by Congress is, that a foreigner, in order to be admitted to citizenship by naturalization, must have resided at least five years in the United States and one year in the State or territory where he is naturalized, and must, at least two years before his naturalization, have made a *declaration* before some court of his purpose to become a citizen of the United States. The wives and minor children of naturalized citizens are regarded as naturalized. The rule, being required to be uniform, excludes all State action on the subject.

But Congress, by resolutions or by treaty, has often incorporated foreign territory with its inhabitants, declaring such to be citizens of the United States without the formalities of individual naturalization. Aliens naturalized in our country are absolved from allegiance to their former governments, and, even when not naturalized, have in most of the States the common rights of citizens, except the right to vote and hold office.

Bankruptcy being admitted and declared insolvency, bankrupt laws declare when and on what conditions the insolvent debtor shall be released by his creditors. And, as all the laws of Congress are supreme throughout the country, they become *exclusive* when enforced,

as any of them will be where State laws necessarily conflict with them. State bankrupt or insolvent laws, however, of a limited character are allowable as rules for settling debts between citizens of the same State, or such as are due in that State. They do not affect debts due out of the State, nor those contracted before their passage; since States cannot pass laws which will operate in other States, nor those impairing the obligation of contracts, which bankrupt laws, acting upon debts contracted before their passage, necessarily do. Our late national bankrupt law required, that, unless the debtor could pay fifty per cent of his debts, he should not be discharged without the consent of a majority in number and value of his creditors.

[Clause 5.] "To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures."

To "coin money" is to fashion and stamp pieces of metal in convenient form for use in trade; and, being the standard money for the nation, it can be issued only by the general government. The value of different designations of coined money, whether our own or foreign, is fixed by act of Congress from time to time, and, in case of our own, is stamped on the pieces. Most of our metallic money is coined at the mints in Philadelphia and San Francisco.

It does not follow, however, that Congress cannot prepare and stamp paper money as of a certain nominal value, thus borrowing money indirectly (Clause 2); for the Constitution, in prohibiting States (Sect. 10, 1)

from making any thing but gold and silver coin a legal tender for debts, implies (though the Constitutional Convention wisely declined *expressly* to give them the power) that Congress may do so. The very existence of the government may depend upon this being done, as is generally thought to have been the case in our late civil war; and this alone, in the opinion of the Supreme Court, justified the issue of the greenbacks, which, now that the war has closed, should be redeemed and retired. The amount of greenbacks now out (August, 1878) is $346,681,016; and of national currency, $322,000,000.

Congress has not legislated upon the subject of weights and measures, but allowed them to remain as they were at the time of the Revolution, or as they have been regulated by the different States: they are generally the same with us as in England. By an act of Congress in 1866, however, the use of the metric system of weights and measures is authorized, but not established.

[Clause 6.] "To provide for the punishment of counterfeiting the securities and current coin of the United States."

"Securities and current coin of the United States" include every form of pecuniary obligation issued by the general government. These being issued solely by Congress, Congress can provide for punishing the counterfeiting of them, but not of such securities as may be lawfully issued on the authority of the different States. These are under the protection of the State issuing them. But no State can issue current coin;

and all are required to use those coined, or at least sanctioned, by the United States for paying debts (Sect. 10, 1).

[Clause 7.] "To establish post-offices and post-roads."

Under this clause Congress has not only created the vast system of post-offices and post-roads throughout the country, but taken charge of the whole business of transporting the mails, providing a vast army of officers, agents, contractors, and employees, from the postmaster-general down to the deputy-postmaster of the smallest country village; involving an annual expense of twenty or thirty millions of dollars. As Congress is to establish post-offices and post-roads, it has assumed the whole responsibility and control of the business, inflicting punishments for robberies of the mail, excluding States from all participation in the matter, and permitting individuals or private companies to carry over mail routes only such unimportant and less risky portions of mail matter as books, newspapers, magazines, periodicals, and the like.

Postal matters being of a national nature, and transcending all State limits, properly belong wholly to the general government. Under the Confederation, Congress could merely determine the connecting points in mail routes at the line between States.

Of the forty thousand or more deputy-postmasters in the United States, those in the more important places are appointed by the President (i.e., about one in thirty) with the advice and consent of the Senate,

while the less important ones (those receiving less than a thousand dollars a year) are appointed by the postmaster-general. By a law of 1864 they are divided into five classes: those of the first class receiving from three thousand to four thousand dollars a year (except the postmaster in the city of New York, who now receives eight thousand dollars); those of the second, from two thousand to three thousand dollars; those of the third, from one thousand to two thousand dollars; those of the fourth, from a hundred to a thousand dollars; and those of the fifth, less than a hundred dollars. Letters are delivered by carriers free of charge in cities with over twenty thousand inhabitants, and *postal money-orders* are issued in offices where there is any considerable business.

Congress has not actually made post-roads, except in a very few instances in the early history of the country, but has generally designated and established as post-roads certain roads or routes already in existence and use, including canals, railroads, and steamboat routes.

[Clause 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."

It is under this clause that copyrights for books, maps, charts, engravings, &c., are issued in the United States, which secure to their authors the exclusive right to print, publish, and sell their works for twenty-eight years, with the privilege of renewing the copy-

right for fourteen years. And, in like manner, letters patent are issued under this clause to inventors, which give them, for the term of seventeen years, the exclusive right of making, using, and selling the invention or discovery made. And at the end of the seventeen years, if the invention be a useful one, and has not proved reasonably remunerative, it may be renewed for seven years longer. To be effective, such copy and patent rights must be good throughout the country, and hence are to be issued by the general government alone.

To secure a copyright, it is necessary for the author, before the publication of his work, to deposit a printed copy of its title in the office of the Librarian of Congress at Washington, and also to deposit with him two copies of the book itself within three months after it is published. And an inventor, to obtain a patent, must submit a description and model of his invention to the scrutiny of the Commissioner and his examiners at the Patent Office, and obtain their confirmation of its originality. He must also pay the fee required for the letters patent, which are signed by the Commissioner of Patents and the Secretary of the Interior, with whose department the Patent Office is connected.

[Clause 9.] "To constitute tribunals inferior to the Supreme Court."

The Supreme Court is established by the Constitution (Art. III., 1); and this clause gives Congress the power to establish such inferior courts as the judicial department of the general government may require.

This it has done by establishing a system of circuit courts, and district courts, and a court of claims, and defining the jurisdiction of each (see Art. III., Sect. 1).

[Clause 10.] "To define and punish piracies and felonies committed on the high seas, and offences against the law of nations."

Piracy, by the common law, or the law of nations, which is a part of the common law, is robbery on the waters of the ocean, or of the sea-coast outside of low-water mark. But Congress, having the power of defining it for itself as applicable to citizens of the United States, is not necessarily restricted to this definition; and in the various acts passed on the subject, while it has in general conformed to it, it has, on the whole, considerably enlarged the scope of the offence. If, however, any acts are made piracy by the laws of Congress which do not amount to that crime by the law of nations, they can be punished as such only by our courts, and when committed by a citizen of the United States. So, also, a piratical act committed on board a vessel belonging to another nation, or within its municipal jurisdiction, can be punished only by the laws of that nation. But pirates, within the scope of the law of nations, being regarded as enemies of the human race, may be attacked and destroyed by any one, wherever met on the high seas.

"Felony," says Blackstone, "is an offence which occasions a total forfeiture of lands or goods, or both, at the common law, and to which capital or other

punishment may be superadded, according to the degree of guilt." In general, felony embraces all crimes below treason. Congress has not, as far as I am aware, undertaken to define felony; but, as forfeiture is not recognized with us as a punishment for crime, felony may be defined as a crime punishable with death or imprisonment. Such an offence, of course, may be committed on the land or on the sea; but Congress is authorized to fix a specific meaning to it only in the latter case.

"The law of nations," says Wheaton, "may be defined as consisting of those rules of conduct which reason deduces as consonant to justice from the nature of the society existing among independent nations, with such modifications and deviations as may be established by common consent." It thus embraces the principles of justice and usage commonly recognized and approved by nations in their intercourse with each other, whether in peace or in war. Offences against these laws are such as infringements by one nation on the territory or the rights of the citizens of another nation at peace with them, violations of passports, disregard of treaties, piracy, and the like.

[Clause 11.] "To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water."

This and the five following clauses (11–16) describe what have been called the "war powers of Congress." It is not necessary to a state of war with another people that Congress should formally make a declara-

tion of war with them: it is enough if they recognize a state of war, or authorize warlike acts, which may be done by resisting hostile demonstrations and encroachments, as in the case of the war with Mexico in 1846, and also in our late civil war.

A state of war dissolves all amicable, business, and commercial relations between the parties to it, and authorizes all hostile measures to cripple the resources, thwart the plans, and subdue the power, of each other. The law of nations, however, does not tolerate unnecessary interference with private, peaceable pursuits, much less cruelty and barbarities in warfare. And that "free ships make free goods," if not contraband of war, and even when enemies' goods, is becoming established as a principle of international law.

"A declaration of war is essentially a declaration of martial law, — a substitution of war, the rights of war, and the laws of war, for peace, the rights and laws of peace; the one co-extensive with the other. It is not intended to be less a system of right and justice, or to exclude or supersede the ordinary administration of it, except so far as that may fail or be inadequate, or its processes come in competition with, or impede the successful accomplishment of, the paramount objects of the war." — FARRAR.

Under the Confederation, Congress, with the consent of nine States, could declare war. In England the sovereign declares war, and makes peace.

Issuing "letters of marque and reprisal" is a hostile act somewhat less formal and belligerent in its nature than a declaration of war. Such letters authorize private citizens to whom they are granted to

proceed to the territory of a foreign State, and seize public or private property by way of reprisal for injuries done by such State or its citizens, for which satisfaction has been refused. Such a summary act may bring a nation to its senses, so that it may make the reparation required, without the necessity of a regular war.

By the law of nations all the property of the two countries at war with each other, whether on land or sea, is subject to capture and confiscation by the adverse party as enemies' property; but a vessel captured at sea, before the captors are entitled to it as a prize, must be brought into some port of the nation claiming it, and be judicially condemned as such by a prize court, which with us is any one of the United States' district courts. The rules which Congress have made concerning captures relate to the process of securing and condemning them as legal prizes, and the proportion of the prize which is to go to those making the capture, and that which is to go to the government.

[Clause 12.] "To raise and support armies; but no appropriation of money to that use shall be for a longer term than two years."

This clause gives the Congress of the United States power to raise armies directly from the people at large, or otherwise, instead of merely making requisitions upon the several States for their quota, to be furnished in their own way and at their own discretion, as was required by the Articles of Confederation. Such a power is absolutely necessary in every independent gov-

ernment. War requires armies; and armies can be raised only by authority, not by moral suasion, as was so often found out by the government, to its sorrow, during the revolutionary contest, and under the Confederation.

There is nothing in the Constitution which limits Congress to any particular mode of raising armies, whether by draft, conscription, or voluntary enlistment, though the latter has been the method pursued, except during our late civil war. But, however raised, appropriations for their pay and support cannot be made by Congress for a longer period than two years; so that no permanent standing army can be maintained against the will of the people as represented in Congress. In fact, appropriations for the army, as for other expenses of the government, are voted every year.

[Clause 13.] "To provide and maintain a navy."

Navies, especially in commercial nations like ours, are as necessary for protection and defence as armies. Our navy, beginning in 1798 with the three frigates (of national fame) "The Constitution," "The United States," and "The Constellation," has grown, especially during our late civil war, so as to become a formidable power (consisting of nearly a hundred vessels). Appropriations, of course, are made annually for the support of the navy, as well as for that of the army; and from time to time special appropriations are made for its benefit, from which — in connection with the percentage of the wages of all seamen employed in both the naval and the merchant service, which the masters of vessels are required, by the laws of Congress, to reserve and

pay over to the collectors of the districts to which they belong — marine hospitals and asylums have been established for the comfort and support of disabled officers and seamen of both kinds of service.

[Clause 14.] "To make rules for the government and regulation of the land and naval forces."

Such rules and regulations are necessary in order to secure the obedience, the order, and the efficiency of these forces. The rules and regulations established by Congress are administered under the direction of the President as commander-in-chief, and the Secretaries of War and of the Navy, in the ordering and governing of the army and navy.

[Clause 15.] "To provide for calling forth the militia to execute the laws of the Union, suppress insurrections, and repel invasions."

In accordance with this clause, Congress has authorized the President to call forth the militia (i.e., the military forces organized and supported by the several States) for the purposes here named, leaving him to judge, in each case, of the necessity for such action. And it has been more usual for him to call upon the several States for their proportions of the soldiers in an unorganized condition; the organization into regiments, brigades, divisions, &c., being effected as they are mustered into the United States' service, in which service, according to the next clause, the militia are to be under the government of Congress, with officers, of course, appointed or approved by them.

Resistance to the laws of the Union, insurrections, and invasions are all acts of disobedience or hostility to the government, and may either of them lead to open war, as in the case of our late Rebellion. But, as generally this is not likely to be the case, provision is here made only for calling out the militia in the first instance. And, being much relied upon at the time of the establishment of our government, it was supposed that the militia would always be ready enrolled in each State, and hence easily mustered into the general service. This species of force, however, has gradually come to be less relied upon; and, since the war with Mexico in 1846, the President has been authorized by Congress to employ volunteers for the purposes referred to, in addition to the militia, and also such portions of the regular army and navy as he may deem necessary. By the prohibitory act of 1878, the army is not allowed to be employed as a *posse comitatus* in enforcing the laws of the United States within a State or Territory.

[Clause 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."

According to this clause Congress is to provide the scheme or plan for organizing, arming, disciplining, and training the militia of the several States, and to

have the actual government of them when in the service of the general government, leaving to the States the right of organizing, officering, and training them according to that scheme *when they are not in that service.* This is to secure uniformity in the organization and discipline of this species of force, and to bring it into harmony in these respects with the regular army. The arms, the plan of organization into companies, regiments, brigades, &c., as well as the rules and regulations for their training and discipline, are the same for both kinds of service.

[Clause 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, dockyards, and other needful buildings."

This clause gives the general government an actual territorial establishment in all parts of the Union, by securing for it a central governmental district, and sites for forts, dockyards, &c., wherever needed, which shall be wholly independent of State influence, and allow the undisturbed exercise of the powers granted to it by the Constitution: hence Congress is to have *exclusive* legislation in the places described, admitting the interference of no other legislative authority in

"any case whatever." To secure this exclusive control the governmental district was to be formally ceded to the United States by the State or States to which it belonged (and the District of Columbia was thus ceded by Maryland and Virginia), while the other places referred to must be purchased of their owners, with the sanction of the legislature of the State. This gives the general government absolute authority, and no State law or authority whatever can be exercised in such places, except on fugitives from justice, when reserved by the State at the time of the sale to the United States.

The general government took possession of the governmental district at Washington in 1800, and has purchased sites in different States for the other purposes, from time to time, as they have been needed. For the last ten years prior to 1800, Congress had met at Philadelphia, having remained in New York, where the government under the Constitution was first organized, only two sessions, and where the government of the Confederation had been previously located only about four years.

[Clause 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."

To make all the laws which are necessary and proper to carry into execution the preceding powers which are granted to Congress, is merely to make those powers

effective by appropriate legislation on the subjects expressly committed to their power. The preceding clauses specify the subjects on which Congress is authorized to exert its power, and this the means by which that power is to be exerted; viz., by passing laws on those subjects. A power of Congress is simply a power to pass laws, and hence this part of the clause really adds nothing to the preceding clauses, though embracing a very wide scope of action. The laws passed by Congress are to be adjudicated by the United States' courts, and executed under the authority of the President.

So, if any power vested in the government, or in any department or officer thereof, requires legislation to render it effective, as most of them do, who but Congress should pass the laws required in the case? No other department of the government has any legislative power. The whole of this clause, therefore, is but the natural and necessary complement to the general legislative powers of Congress, and is just as specific and definitely guarded as they are. But its general terms were looked upon with distrust by the States, and with the indefinite power of providing for the general good, which seemed to be granted in the first clause of this section, was the chief reason for enacting the first ten amendments.

All the laws of Congress — the whole vast body of our national legislation — have been passed in exerting its legislative powers as authorized in this clause. The national laws on taxation have been passed in exercising the power "to lay and collect taxes;" the commercial laws, in exercising the power "to regulate com-

merce ;" and thus through the list of the general powers granted to Congress. And, in like manner, numerous laws have been passed by Congress in regard to the executive department of the government and its officers, as in regard to the election of the President and the duties assigned him in the Constitution; in regard to the heads of departments, the duties and privileges of ambassadors and consuls, &c.; and so, also, in regard to the judicial department of the government and its judges.

The Constitution is the organic law from which the whole body of our national statute-law has arisen, and to which it is necessarily confined. While the three general departments of the government — the legislative, the executive, and the judicial — are mutually independent and of equal authority within their sphere, it is obvious that the two latter require the legislative aid of the former, as authorized in the latter part of the above clause, to establish and maintain them in that sphere. The legislative department is necessarily the most comprehensive and fundamental of all the departments of the government. Very little governmental action in any department is authorized and prescribed in detail by the Constitution itself, this being left to Congress. The powers granted are to be put in action through legislation.

DIVISION V.

RESTRICTIONS ON THE POWERS OF CONGRESS AND OF THE STATES.

SECTION 9.

[Clause 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."

The restrictions in this section are special limitations of the general powers granted to Congress in the preceding section. This clause was introduced into the Constitution in the interest of slavery. Although the language is general, the migration or importation which was not to be prohibited by Congress before a certain date, was that of slaves. The prohibition to prevent such migration, however, it will be observed, extended only to the States then existing, not to new States. It might, therefore, have been prohibited in all new States. Soon after the expiration of the time here specified, the slave-trade was prohibited under heavy penalties, and finally declared to be piracy, and punishable with death. Without this restriction upon Congress, it might have legislated in this matter under the power to legislate on commerce between the States.

[Clause 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."

The "privilege" of the writ of *habeas corpus* is the right by common law which in time of peace every one has, whose personal liberty is unjustly restrained by imprisonment, to be brought before a competent tribunal, and have his case judicially inquired into, and a discharge from such custody granted him, if the detention and restraint are shown to be unjust. The "writ" is a writing or order from a judge delivered to a public officer, authorizing him to take and bring before him the *body* of such a person, that an examination into his case may be had. Our courts issue the writ freely in all such cases where there is a reasonable probability of unjust restraint. It is an old English remedy, of inestimable value, for encroachments upon personal liberty, which, Blackstone says, was often considered as another *Magna Charta* in that kingdom.

The privilege or right which all enjoy to this protection against the violation of their personal liberty, it is here provided, shall not be suspended except when the public safety requires it in cases of rebellion or invasion. In such cases (as in the late Rebellion of the Southern States), which are incipient war, it is left in the discretion of the government to suspend it if they deem it necessary for the public safety. The declaration of martial law, which is the regular law of war, at once suspends this writ, and may even suspend the judge who presumes to issue it, as in the case of the Louisiana judge who was suspended by Gen. Jackson in the war of 1812.

And as martial law, under the pressure of necessity, may be temporarily declared by the President or by the general in command, as well as by an act of Congress, the suspending authority is here left wholly indefinite; but no State authority, of course, can suspend it, as the right to make war is reserved wholly to the general government. In other cases the general government is not to suspend it, nor allow it to be suspended by any other authority. This limits, in this particular, the war power of legislation granted to Congress: it must not be exercised in restraining personal liberty beyond war necessities.

[Clause 3.] "No bill of attainder or *ex post facto* law shall be passed."

A "bill of attainder" is of the same nature as an *ex post facto* law. Both alike enact punishments for past acts which were unauthorized, either wholly or in kind or in degree, by the laws of the land at the time of the transaction. A bill of attainder is an act of the legislature passed specifically to condemn or attaint some one for a past act or conduct, and inflicting upon him the punishment of death or confiscation of his property, or both, without a trial according to law. Such high-handed and summary acts of condemnation against political rivals or offenders were often passed in former times by the British Parliament and by our colonial legislatures. By this clause of the Constitution they are wholly forbidden under our present general government. Congress may provide for punishing government officials, or those violating its laws or rights, but not by laws of this kind.

Ex post facto laws are regarded as laws pertaining only to criminal and penal matters, and which make an act punishable that was not so by the laws when it was committed, or punishable more severely, or in a more ignominious way, or admit less evidence, or a less favorable mode of trial for conviction. Such laws, as well as bills of attainder, are forbidden in the Constitution to both the national and State legislatures (Sect. 10, 1).

But "retrospective" or "retro-active laws" pertaining to *civil matters*, and affecting merely past suits, controversies, &c., as abolishing imprisonment for debt, making deeds valid which have been found to be defective, are not prohibited to the general government, nor, indeed, to the State governments, unless they violate the obligation of contracts. What in England are called "bills of pains and penalties" are of the nature of bills of attainder, but inflict less severe punishment than that of death and confiscation of property.

[Clause 4.] "No capitation or other direct tax shall be laid, unless in proportion to the census or enumeration hereinbefore directed to be taken."

For the reason for the provision in this clause, see Comments on Sect. 2, 3, and Sect. 8, 1.

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

Congress, it is generally thought, is prohibited from laying a duty on exports from any State, lest some States, raising chiefly certain exportable articles, might be injuriously affected by the burden; having in view, most probably, the cotton-crop of the Southern States. The last part of the clause requires that impartiality shall be maintained by the general government in the regulations of commerce in regard to the different ports of the Union, and that commerce shall not be obstructed by a port in any State being authorized to demand duties or entrance and clearance papers and fees of any vessel bound to or from another port in any part of the Union, — in short, that commerce shall move freely from port to port in the different States as in a common country.

[Clause 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."

In accordance with the provisions of this clause, appropriations are made annually by Congress for meeting the expenses of the different departments of the public service, and paying the public functionaries. The payments are made through the Treasurer of the United States, who causes to be kept an account of these and all other expenditures, as well as of all receipts from taxes, duties, and other sources, which are embodied in an annual report to Congress, and published by them as here provided.

If there are any claims against the government which are not provided for in the annual appropriation bills, they can be paid only in consequence of special acts of Congress making appropriations to meet them. As Congress cannot be sued, the only redress of the claimant is, to obtain from the Court of Claims a bill making the necessary appropriation, and have it passed by Congress.

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

Titles of nobility are inconsistent with the spirit of our republican institutions, and hence are not to be granted by the general government, nor indeed by the State governments (Sect. 10, 1). The prohibition in regard to receiving presents, emoluments, titles, &c., from foreign kings or states, by functionaries of our government, is to prevent them from being influenced by such temptations of foreign governments to swerve from fidelity to their own. Such presents, therefore, can be received only by the consent of Congress; and when presented, and their reception is not consented to by Congress, they are deposited in the public offices, or sold by order of Congress.

SECTION 10.

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

The restrictions upon the States in this tenth section prohibit them from exercising the essential powers of a nation, which belong alone to the general government. The prohibitions in this clause are: 1st, From doing certain things which the general government is expressly authorized to do; as entering into a treaty, confederation, or alliance (which only the President, with the consent of the Senate, can do: Art. II., Sect. 2, 2), granting letters of marque and reprisal, and coining money. 2d, From doing certain things which are impliedly granted to the general government by being forbidden to the States alone; as emitting bills of credit, making any thing but gold and silver coin a legal tender for debts, and passing laws impairing the obligation of contracts. 3d, From doing certain things forbidden also to the general government; as passing bills of attainder or *ex post facto* laws, and granting titles of nobility.

Entering into a confederation or alliance is of the same nature as making a treaty, and, if to be done by any one, must be done by the treaty-making power. It

is a sovereign act, requiring the highest authority in the nation. Necessary governmental powers which are prohibited to the States — as those of the second class — are, of course, allowed to the United States. The very existence of the nation may depend upon their being exercised; as, for instance, the issuing bills of credit in the form of paper money, and making them a legal tender instead of gold and silver, during our late civil war. This act also impaired the obligation of contracts, since contracts made when gold and silver alone were a legal tender, might, under the legal-tender act, be discharged by paying paper money, which was of less value.

"Bills of credit" are simply *paper money*, and not bonds or other pecuniary obligations issued by States, which no one is required to accept in payment of debts. And States, it is generally thought, are not even prevented by this prohibition from issuing paper bills for money, provided they are not made a legal tender, but are redeemable at sight in gold and silver coin. The object of the prohibition was to prevent the issuing by the States of irredeemable paper money, with which the country had been flooded before the adoption of the Constitution, especially by the paper known as the "old tenor" and "new tenor" bills.

The passing of laws impairing the obligation of contracts — the other restriction imposed upon States in this second class of prohibitions — is weakening the binding force or efficacy of contracts in any way by legislative acts. The language is general, and applies to contracts of every description, and between whatever parties, — as well between States as between indi-

viduals, and also between States and individuals or private corporations. A railroad charter granted by a State to a railroad company is a contract between the State and the company, and cannot be altered by the State, unless the right to do so was reserved in the charter at the time it was granted. So the charter-powers of a college, or other literary or benevolent institution, cannot be altered or annulled by the State, unless it is so provided in the charter. But the charters of cities and other corporations, created wholly for public use and at the public expense, may be changed or repealed by the legislature of the State, reasonable compensation being made for any incidental loss which any one may suffer in consequence of the change.

[Clause 2.] "No State shall, without the consent of the Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws; and the net produce of all duties and imposts, laid by any State on imports or exports, shall be for the use of the treasury of the United States; and all such laws shall be subject to the revision and control of the Congress."

Congress also is prohibited from laying duties on exports out of the country (Art. I., Sect. 9, 5); but in all other respects the power of Congress to lay and collect taxes for the national purposes committed to their care is without restriction. The States, on the contrary, are wholly confined to direct taxation on the persons

and property of their own citizens; since, all articles being liable to exportation either to other States or to foreign countries, none of them are allowed to be burdened by State taxation for their manufacture or preparation for the market, beyond simple inspection duties. Any thing assessed beyond this must go to the treasury of the general government.

As to imports, it has been decided that States cannot impose a tax on importers at any of their ports, or on the articles imported while in the importer's hands and in their original packages. To tax importers would be to tax imports; much more would it be taxing imports to tax the imported articles while in the hands of the importer, and in their original packages, before they become distributed among dealers, and thus mixed up with the general property of the State. After they are so distributed, the power of taxing them for its own purposes passes to the State, as in other local matters. But no State taxation can be allowed to interfere with United States' taxation or with external and inter-State commerce, which are wholly under the control of Congress.

[Clause 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."

The preceding restrictions on the States relate to civil or political affairs; those here enumerated, chiefly

to warlike affairs. A duty of tonnage is a customs' duty on vessels according to their registered capacity in tons. Vessels being neither exports nor imports, it was thought necessary, in order to prevent the States from all interference with commerce, and to limit their power of taxation wholly to property within their borders, to expressly prohibit their taxing ships, except as private property.

Ships, too, — even merchant vessels, — are a most important instrumentality in war, and for this reason also should not be subject to a customs' duty by the States, as the general government alone can declare and make war. Hence, also, the States are not allowed to keep troops or ships of war in time of peace, or to engage in war, except when actually invaded or in imminent danger of it: they may repel or ward off for the time being (i.e., till the United States' forces can be mustered) actual or inevitable violence, but cannot declare or carry on a formal war.

The States are prohibited from entering into a compact or agreement with each other, or with a foreign power, in order to prevent factious political combinations designed to embarrass or overthrow the general government. The compacts here referred to are not open, formal confederations or alliances, which are forbidden in a preceding clause, but less formal, and even secret agreements, utterly inconsistent with and subversive of a general government over the whole. The consent of Congress to the performance of an act by a State, as required here and in a few other cases, would only be an indirect way of authorizing them to do it themselves.

From the preceding account of the legislative powers granted the general government, and the restrictions upon the same, and upon those of the States, it is obvious that the former government is national, and the latter local. While the latter is definitely and specifically prohibited from interfering with the former in matters of a general and national interest, the action of the former is definitely restricted to matters which are of a general and national nature. They are both equally independent, and sovereign, if you please, within their spheres; but the sovereignty of the general government is higher and more comprehensive than that of a State, as embracing the whole people in their general interests, and binding them together as a nation.

State sovereignty at most is but local and subordinate. A State, not being allowed to enter into a treaty, alliance, or confederation, or lay duties on imports or exports, or keep troops or ships of war, &c., evidently is not a nation, being devoid of the most essential and characteristic powers of a nation; but the United States, being specially endowed with national powers, as evidently is a nation, able to treat with and maintain itself among other nations.

DIVISION VI.

ELECTION AND INDUCTION OF THE PRESIDENT.

ARTICLE II. — EXECUTIVE DEPARTMENT.

SECTION 1.

[Clause 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."

As the Constitution went into operation on the 4th of March, 1789, the term of four years, for which each President and Vice-President are to be chosen, begins on this day *in every second odd year* after the beginning of the term of the preceding President, and ends on the 3d of March (or practically on the 4th at noon), in the fourth year after that. There is nothing in the Constitution which renders the President ineligible for a second or more terms; but, as a presidential election occasions great strife and commotion throughout the land, many have thought it would be better if he were wholly ineligible, and the term of office were lengthened to six or eight years.

It is admitted that there are evils in the present arrangement: would there not be in the one proposed as a substitute? If a comparatively short term of the presidential office occasions too much agitation in the community by frequent elections, would not a longer term be likely to make the President too independent of the popular will and wants? And, if it be said that the re-eligibility of the President tends to make his first term little more than an electioneering season for a second term, might not his ineligibility induce him to devote his energies with scarcely less zeal to the candidacy of some personal or political friend to succeed him? And might there not be particular crises, as at the second election of Mr. Lincoln in our late civil war, when it would be a great calamity if the President

were not re-eligible? On the whole, is it not better as it is, leaving the people to decide by a new election, at the end of four years, whether the President shall be continued in office four years more, or not? Besides, the excitement and discussions of a presidential election are great educators of the people.

There is another argument in favor of a comparatively short presidential term of office. It is by a change of Presidents that we change our administration; while in England the administration is changed with every change of the ministry, and usage requires the ministry to resign whenever they lose an important measure in the House of Commons, or else submit to a dissolution of Parliament and a new election. On this ground it has been contended[1] that the English Government is superior to ours, since it is more sensitive to the popular will, and is determined in its action more by present vital questions. And if this objection is made to our government now, while our presidential term is scarcely longer than the average ministerial term in England, how much more might it be made against us, if the length of our presidential term were increased?

In fact, not only does the shortness of the presidential term make the administration more sensitive to the demands of pressing public questions, but its policy may be very considerably changed during its term of power, in consequence of the introduction of new members into Congress by fresh elections by the people, which are much more frequent and more popular in character here than in England. On the whole, we

[1] See Bagehot's English Constitution; also International Review, March, 1877.

have nothing to fear from a comparison of our system with what has been called government through a "responsible ministry," as practised in England and some other European countries.

The President of the French Republic is chosen by a joint vote of the Senate and Chamber of Deputies for seven years, and is re-eligible. His cabinet, which is responsible, as in England, consists, besides the President of the Council, or prime minister, of the heads of the eight departments: of War, of Foreign Affairs, of the Interior, of Finance, of Public Instruction, of Public Works, of Marine, and of Commerce. They are all members, either of the Senate or the Chamber of Deputies. The election of the President by the legislature seems an unwise arrangement, as such a body, from being long together, and wholly engaged in political affairs, must be peculiarly open to the arts of bargaining, intrigue, bribery, and corruption.

[Clause 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."

The Constitution here fixes the number of electors to be chosen, but leaves the manner of their election wholly to the States; simply prescribing that no senator or representative or other functionary of the United

States' Government shall be chosen an elector. This is to prevent the introduction into the electoral college of persons whose office would naturally predispose them to vote for the President in office for another term, or for one of like politics.

The manner of choosing the electors has varied in different States, and at different periods in our history. Formerly they were chosen, in several of the Southern States especially, by the legislatures. Where chosen by the people, they have commonly been voted for by general ticket, though a few States formerly chose them by districts. By this last method the elector in one district might be chosen by one political party, and the elector in another by another party; while by the general-ticket system they are all elected by that party which has the majority in the whole State, thus securing the entire electoral vote for their candidate: hence the latter system has generally prevailed, being especially favored by the larger States, though the former gives the fairest expression of the will of the people.

South Carolina, up to the time of the late civil war, continued to choose her electors by the legislature, which gives but the remotest expression to the popular will, and will hardly be resorted to hereafter by any State. At any rate, by the fourteenth amendment, the basis of representation in any State is to be reduced according to the number of mature male inhabitants not allowed to *vote for electors*. Is, then, the choice of electors by legislatures constitutional?

As the electors choose the President, when the electors are chosen the President is virtually chosen,

as they are sure to vote for the candidate of the party by which they are chosen. The real presidential struggle, therefore, is in the choice of the electors in the separate States, and it is all the safer by being thus broken up and distributed through numerous widely separate fields of action.

[Clause 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 United States, directed to the President of the Senate. The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes for President shall be the President, if such number be a majority of the whole number of electors appointed; and, if no person have such majority, then from the persons having the highest numbers not exceeding three on the list of those voted for as

President the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President the vote 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."

This clause, on the mode of voting for the President and Vice-President, is a substitute for the original clause in the Constitution on that subject, adopted in

1804 as the twelfth amendment. It requires the electors to cast their ballots separately for President and for Vice-President, instead of voting indefinitely for two persons for those offices, as the old clause required; and, if no person voted for for President shall have a majority of the votes of all the electors appointed, the House of Representatives shall choose immediately a President from those in the list, not exceeding *three*, who shall have the highest number of votes, instead of the *five* highest, as allowed in the old clause. In like manner, in the clause as it now stands, the person having the greatest number of votes, and a majority of the whole, for Vice-President is to be the Vice-President; and, if no one has such majority, the Senate is to choose a Vice-President from the two having the highest number of votes, instead of leaving, as by the former clause, the person to be declared Vice-President who had the highest number of electoral votes after the person declared President, or else to be chosen by the Senate from those having an equal number of votes if there were any such.

The advantages of the substitute are these: no one of *three* candidates would be likely to have so small a number of electoral votes as some one of *five* might have; and, what is still more important, the old method did not provide for a Vice-President till the election of the President was determined, which might not be till after the 4th of March. Indeed, this came very near being the case in the memorable and protracted struggle in the House of Representatives at the election of Jefferson and Burr in 1800. It was in consequence of this struggle that the amendment was adopted, which,

it will be perceived, provides that the Vice-President shall act as President in case a President is not chosen by the 4th of March ensuing, presuming that *both* the Senate and the House of Representatives would not fail of a choice.

The clause requires, it will be perceived, that the electors in each State shall make distinct lists of their ballots for President and for Vice-President, and sign and certify these lists, and transmit them sealed to the seat of the government, directed to the President of the Senate. And Congress has enacted that this requirement shall be fulfilled by sending, before a certain date, one such certified list by a special messenger to the President of the Senate at Washington, and another to him by mail, and depositing a third list with the judge of the district where the electors meet.

The President of the Senate is to open these certificates in the presence of the Senate and House of Representatives, and the votes are to be counted. It is not said who shall count them, and declare the vote; but, in the case of Washington and several succeeding Presidents, this was done by the President of the Senate, and the count continued to be made by tellers appointed by him till the election of the last President, in 1876. Up to that time, indeed, this course was very generally thought to be plainly implied by the language of this clause. At this election, however, the double and conflicting returns of the electoral colleges of several States made it apparent that a broader interpretation should be put upon the language, and that the Senate and House of Representatives were not required to meet simply as spectators of the opening and declar-

ing of the votes, but to have a voice also in determining their character and validity.

The right of participation in the count by the two houses being conceded, it was inevitable that they would disagree on all doubtful returns of electoral votes, as the Senate was Republican and the House of Representatives Democratic. They did disagree most obstinately; and after violent and protracted discussion of their differences, during which society was thrown into the greatest agitation, — and the worst of consequences were feared, — the houses agreed to submit their differences, with regard to the conflicting returns from different States, for decision to an Electoral Commission, consisting of five members of each house with five justices of the Supreme Court.

This terminated the conflict for the time being; but it may recur again at another presidential election, unless some better provisions are made for preventing it. Various plans for effecting this have been suggested and discussed, but no one has as yet been adopted. The plan of Senator Edmunds provided that *a single return* of the electoral votes from any State should always be counted, unless rejected by a separate vote of each house of Congress, and that neither of *two or more* differing returns from a State should be counted without an affirmative vote by each house. This, with some other collateral provisions, was embodied by him in a bill, which passed the Senate of the Forty-fifth Congress, but was not acted upon by the house. It is probable that some such provision as this will finally be adopted.

When the votes cast by the electors fail to choose a

President, the election, it will be observed, devolves upon the House of Representatives, where each State is entitled to but a single vote. This gives the smaller States the same weight in the election as the larger ones have, and hence operates as a wholesome stimulus with the latter, to so concentrate their votes as to determine the election by the popular vote.

[Clause 4.] "The Congress may determine the time of choosing the electors, and the day on which they shall give their votes; which day shall be the same throughout the United States."

Congress has exercised the authority here granted it; and, by its present enactments, the electors in each State are to be chosen every fourth year on the Tuesday next following the first Monday in November (which is the day in most States for choosing representatives to Congress also), and to meet and cast their votes for President and Vice-President on the first Wednesday in December; while the votes are to be counted in Congress on the second Wednesday in February, and the presidential term of four years to begin on the 4th of March. It is also provided that States may make provision for filling vacancies which may occur in their electoral colleges.

At this most vital point in our system, the choice of presidential electors by the States (which is virtually the choice of the President), Congress, it will be seen, can exert no control beyond fixing the day of their choice and of their casting their votes. It is not entitled, as in the choice of members of Congress by the States,

to make regulations as to the *manner* of these elections. It cannot, therefore, exercise any supervision over them. Its remedy is, to refuse to count the votes when reported, if satisfied that they are fraudulent. But, by the fourteenth amendment, it would seem that they can no longer be elected by the legislature, but must be voted for directly by the people of the State, or the State loses its representation in Congress.

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

To be eligible as President, then, it is necessary that one should be born in the country, be thirty-five years of age, and have had a residence in the country of at least fourteen years: the requirement that he should be a citizen of the United States at the adoption of the Constitution refers to citizenship by naturalization, and is now obsolete. This last qualification, and that in relation to a previous residence of fourteen years in the country, were designed to secure loyalty to the government, and acquaintance with the wants and ways of the people in the incumbent of the office.

[Clause 6.] "In case of the removal of the President from office, or of his death, resignation, or inability to

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

The Vice-President, then, is to succeed to the office of the President in case of his death, removal, or inability to discharge the duties of the office. If the disability of the President is temporary, the holding of the office by the Vice-President will be but temporary; but in case of his death, removal, or permanent disability, the Vice-President retains the office to the end of the presidential term.

It is here provided, also, that, in case of the death or other disability of both the President and the Vice-President, Congress may declare what officer shall act as President till the disability is removed, or a President elected. Accordingly Congress has provided, that, in such a case, the President *pro tempore* of the Senate (see Art. I., Sect. 3, 4,) shall act as President of the United States, and, if there be no such officer, then the Speaker of the House of Representatives. But, in case five months or more remain before the expiration of the presidential term of office, the Secretary of State is required to notify the Executive of every State of the vacancy, and call upon them to make provision for choosing electors of President and Vice-President for the remainder of the term.

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

The President's salary is now $50,000 a year (until 1873 it was $25,000), and the Vice-President's is $8,000. This is very moderate compared with the salaries of the chief executive officer in other governments: that of the President of the French Republic being $150,000 a year; while the Civil List, or personal salary of Queen Victoria, is $1,720,000. And not only is the pay of our President moderate, but he is prohibited from receiving any further compensation from any State or United States' office.

[Clause 8.] "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.'"

This oath of office is administered to the President by the Chief Justice of the United States. The oath invests him with his office, and, at the same time, indi-

cates the general scope and sphere of his duties, — "to preserve, protect, and defend the Constitution of the United States."

DIVISION VII.

POWERS AND DUTIES OF THE PRESIDENT.

SECTION 2.

[Clause 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."

The rights and duties of commander-in-chief of the army and navy were understood in general from English usage, as well as from earlier usage in our own country; but they required to be more fully defined and regulated by Congress, which has been done by various enactments. The laws and rules of our military service, and other special acts, prescribe his rights and duties both in peace and in war. The military functions of the President clearly belong to him as the Chief Executive of the nation. In Art. VI., 3, executive officers evidently include military officers.

We have in this and the next clause the only allusion in the Constitution to the executive departments, which occupy so important a place in our government. Their functions were sufficiently understood from their use and operation under the Confederation, as well as in England and other countries. Their organization was left wholly to Congress, except that, according to another provision of the Constitution (Art. I., Sect. 6, 2), all officers of the government, including, of course, cabinet officers, are excluded from Congress. In this respect our usage is directly opposite to that of England, where the consulting ministers, or Cabinet, are all members of one or the other house of Parliament; thus fusing, as it were, the executive and legislative departments, — while with us they are wholly independent of each other (See Bagehot's "English Constitution.")

In aid of the President, as the general executive officer of the government, Congress has established seven executive departments, each of the first five being presided over by a secretary, so called; viz., the Department of State, the Department of the Treasury, the Department of the Interior, the Department of War, the Department of the Navy, the Department of Justice, and the Post-Office Department, — the two latter being presided over, respectively, by the Attorney-General and the Postmaster-General. Each of these chief officers receives a yearly salary of eight thousand dollars; and they have under them assistants, commissioners, heads of bureaus, &c., as the duties of their departments require.

The heads of these departments are the President's

advisers, and correspond to what is called the Cabinet in England. Being appointed on the nomination of the President, they are supposed to be in substantial agreement with him in policy. The President may require their opinion in writing, but is not bound to adopt it. These seven departments cover the whole sphere of the action of the government, over which the President presides, and for which Congress legislates; though the Department of Justice is not strictly executive.

The Cabinet in England at present consists of sixteen members; viz., the First Lord of the Treasury (regularly the Prime Minister), Chancellor of the Exchequer, the Lord Chancellor, President of the Council, Lord Privy Seal, the Secretaries of State for the Home Department, for Foreign Affairs, for the Colonies, for War, and for India, First Lord of the Admiralty, First Commissioner of Works, Chief Secretary for Ireland, President of the Local Government Board, Vice-President of the Education Committee of the Privy Council, and the Chancellor of the Duchy of Lancaster. These alone — i.e., the Cabinet proper — are the consulting members of the ministry, which, as a whole, consists of thirty-one persons. Their salaries are all large, varying from ten thousand to twenty-five thousand dollars a year. The English Cabinet are under the direction of the Prime Minister, and, as with us, are all of the same party in politics.

The President, being the chief executive officer of the national government, is very naturally intrusted with the pardoning power, which extends to both civil and criminal offences against any of the laws of the United States, as distinct from those of the States.

But the President cannot pardon impeachable offences; since, as political considerations, often of the highest moment, enter into such cases, their prosecution and trial have been wholly committed to Congress. If, therefore, the President could pardon such offences, he might rescue the most dangerous political offender from a just condemnation; and he would often be under a strong temptation to do so, as all persons liable to impeachment, being civil officers of the United States (Sect. 4, 1), are necessarily his appointees either directly or indirectly.

[Clause 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."

This clause gives the President power to make treaties, with the advice and consent of two-thirds of the Senate, and, with the advice and consent of a majority of the Senate, to appoint all officers, both civil and

military, under the general government, whose appointment is not provided for in the Constitution itself, and which shall be established by law, — whether these officers be for foreign or home service. Congress may, however, in its discretion, vest the appointment of the inferior officers of the government in the President alone, in the courts of law, or in the heads of departments.

When it is considered that there are, as enumerated in the "Blue Book," some eighty-six thousand office-holders of all grades and degrees under the general government to be appointed, and that the number is every year increasing, it will be seen what an immense power is here granted the President. The minor appointments, it is true, have been, as here allowed, intrusted to the heads of departments or superior officers. Even these, however, are but indirect appointments by the President. Such an army of officials, in a country of so vast extent as ours, cannot, of course, be intelligently appointed without local information as to the character of the appointees. Whatever may be the need of "civil reform," the senators and representatives cannot be wholly overlooked in this matter.

A treaty is an international statute affecting the interests of two nations, and, when ratified, is of binding authority upon them both according to its terms. The Constitution (Art. III., Sect. 2, 2) considers treaties as of the nature of laws, by making questions arising under them subjects of adjudication by the Supreme Court of the United States. The preliminary negotiations for treaties are usually conducted by the President through

some diplomatic agent at the court of the nation with which the treaty is to be made.

The treaty, as agreed upon in these preliminary negotiations, is submitted by the President to the Senate, and may be by them approved, amended, or rejected. If amended by them, the amendments must be concurred in by the other nation before it becomes law; and, if approved by the Senate, it usually requires the concurrence of the House of Representatives also, in the passage of a law to meet the expenses of the negotiations, or some other expenditure of money required in carrying out its provisions, as to pay for territory acquired by the treaty, as in the cases of Louisiana, Florida, California, and Alaska.

"Ambassadors, public ministers, and consuls" are appointed for service in foreign countries. Ambassadors and other public ministers, as envoys extraordinary, ministers plenipotentiary, ministers resident, *chargés d'affaires*, are diplomatic agents at different foreign courts for important national and political objects (salaries from $5,000 to $17,500); while consuls are but a higher class of commercial agents, appointed to attend to questions connected with the commerce, business, and travel of Americans in foreign countries.

Our consular corps in different countries consists of seventeen consuls-general, with salaries amounting to $70,500; one hundred and sixty-eight consuls (including six commercial agents), with salaries amounting to $327,000; thirteen consular clerks, with salaries amounting to $14,000; also fifty-nine consuls and fourteen commercial agents, who receive no salaries, but are allowed to retain the fees received by them in

the exercise of their office, and are not prohibited from engaging in business. (See "North-American Review," April, 1876). Consuls are amenable to the laws of the country where they are resident; but ambassadors and other public ministers are not thus amenable, but may be dismissed or expelled from the country for offences, or, if not acceptable, their recall may be demanded.

As we have seen, the President can appoint to office only as the Senate assents to the appointment. May he, then, dismiss without their consent? This question was warmly discussed in the First Congress, in 1789, and decided in the affirmative; and the decision was followed in the practice of all the Presidents down to the time of the presidency of Andrew Johnson in 1867, when Congress passed the Tenure of Office Act. This act merely allows the President to *suspend* an officer for cause, and to make a temporary appointment in his place till the meeting of Congress, and to report to them his reasons for so doing.

According to the act, it will be seen, the officer is not permanently superseded till another person is appointed in his stead by the President, with the consent of the Senate. Hence, if the Senate adjourn without acting upon nominations which the President may have made to fill the places of such suspended officers, it would seem that this would restore the suspended officers to their former places, till other nominations are made in their places and confirmed by the Senate at a subsequent session.

The appointment of the President and the members of Congress is provided for in the Constitution itself,

it being required that they shall be elected by the people of the different States. They are not, therefore, commissioned officers, but original, constituent officers of the government, through whom the whole machinery of the government is originated and kept going.

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

The vacancies here referred to are vacancies in any of the numerous United States' offices alluded to in the previous clause. When such vacancies occur during a recess of the Senate, whether from death, resignation, or any other cause, the President, without the concurrence of the Senate, may fill them by granting temporary commissions, which expire at the end of the next session of the Senate. But, in case the Senate adjourns again without filling the vacancy, the President may grant a new commission to the same person, or another one, till the end of the following session, since their adjournment terminates the former commission and makes a new recess.

These officials are assigned to national duties all over the Union, as in the forts, arsenals, military posts, court-houses, custom-houses, post-offices, &c.; thus, in accordance with the Constitution, establishing the national government for general purposes in every State and Territory. These officers and employees, the general government directs and protects in their special duties against State interference, though in other re-

spects they are mere citizens of the place where they reside.

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."

The President discharges the duty enjoined upon him by the first part of this clause in his annual message to Congress at the beginning of their session, and such other special messages as may be deemed necessary from time to time. It is often necessary, or highly important, that there should be extra sessions of Congress or of the Senate (as for executive business at the end of a session), which the President is here authorized to call. It is scarcely less important, that he should have power to put an end to a useless and unseemly contest between the houses of Congress as to the time of adjournment, by adjourning them to a certain day; otherwise we might possibly have a "Long Parliament," or something worse.

All ambassadors and other public ministers from

foreign countries must present their credentials to the President, be formally received by him, and receive his allowance, or *exequatur*, to enter upon the duties of their office. As commander-in-chief of the army and navy, the President has ample means at his command to execute the laws of the United States (though somewhat hampered in the use of them by the *posse comitatus* law of 1878) ; and, as the chief executive of the nation, he is very properly required to "see that the laws are faithfully executed." The signing of the commission of an officer of the United States completes his appointment, and this must be done by the President.

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."

The general government of the United States, as it exercises control over common citizens only in certain very general relations, or as they are in its immediate service, has the power to impeach merely its own public officers, and, of these, only civil officers (i.e., executive and judicial officers), since military officers are subject, in the like cases to those here enumerated for impeachment, to trial by court-martial and dismission from the service. The members of the Senate and House of Representatives are the only members of the government who are not subject to impeachment, since they are not commissioned officers of the government,

but its organizing and ultimate controlling power (see Art. I., Sect. 6, 1).

In the view of the law, the sovereign of England can do no wrong, and in his official capacity is supposed in all cases to act by the advice of his ministers, who are held responsible for all the faults and failures of the administration. But under our government, as we see, the President is liable to impeachment for official misconduct; while, in other than his official relations, he is subject to all legal processes and requirements, like a private citizen, such as being sued, being summoned into court, giving testimony, &c.

DIVISION VIII.

ARTICLE III. — JUDICIAL DEPARTMENT.

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."

We come now to the judicial department of the general government, which is here established in outline by vesting its power in one supreme court and such

other inferior courts as Congress may ordain. At the same time, that the judges may be independent, it fixes their tenure of office so that they can be removed only on impeachment for ill behavior. Each State, of course, has a separate judicial system of its own, subordinate to that of the United States, for attending to local controversies, offences, and crimes. Under the Confederation there was really no national judicature distinct from that of the States.

The Supreme Court, which holds its sessions at Washington, as far as organized by Congress, consists of a chief justice (with a salary of $10,500) and eight associate justices (with a salary of $10,000 each). Congress has also provided for a Circuit Court (at the same time defining its jurisdiction, both original and appellate) by dividing the United States into nine circuits, and appointing a circuit-judge in each (salary, $6,000), who is to hold the court in his circuit, either in conjunction with the visiting justice of the Supreme Court for that circuit, or in conjunction with the judge of the District Court (which also has its jurisdiction defined) of the district where the court is held; of which district-judges (salaries from $3,500 to $5,000) there are fifty-seven in the United States, —one for each of the fifty-seven judicial districts into which the United States are divided. The clerk of a District Court serves also in the Circuit Court when held in his district, and the district-attorney is the prosecuting officer in both courts.

Congress has also established a Court of Claims, consisting of a chief justice and four associate justices. Its duties are to attend to all claims brought against

the general government. It holds its sessions at Washington, and reports its decisions on claims brought before it to Congress, to be ultimately decided by them. While all United States' judges hold their office for good behavior, State judges are generally either appointed by the governor, or chosen by the people or by the legislature, for a term of years.

Till very recently the general judicial system of England embraced four superior courts, — the Court of King's Bench, the highest common-law court, which took cognizance of both civil and criminal cases, and received appeals from the other courts; the Court of Common Pleas, which confined itself to civil cases between subjects; the Court of Exchequer, both a law and equity court, trying all revenue cases, and many others; the Court of Chancery, confining itself to equity cases. In 1874 these four courts were consolidated into one supreme court of judicature, divided into two parts, — a high court of justice, and a court of appeals. At the same time the forms of administering justice were simplified, and the distinction between law and equity disregarded. There is also a system of county courts for the prompt and inexpensive collection of debts, and for the trial of trespasses and petty felonies; the quarterly sessions of the justices of the peace; and a sort of circuit court of the judges of the supreme court, called the Court of Assize, for trying the more important cases in the counties.

SECTION 2.

[Clause 1.] "The judicial power shall extend to all cases in law and equity arising under this Constitu-

tion, 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."

"All cases in law and equity" are all suits of whatever kind instituted in legal form for trial. A case in law is such a case as in England was tried by a common-law court, and according to common-law rules; while a case in equity is such a case as in England was tried in a chancery court on equity principles, which take into account intentions, accidental or providential circumstances, and the like, in determining the guilt or liability of a party.

The strictly legal system of England is the common-law system, characterized especially by trial by jury, and distinguished from what is called the civil or Roman law system, which prevails in other countries of Europe. In other words, English law is of native growth, having grown up from common usages and principles, supplemented by parliamentary statutes and decisions of courts in accordance with such principles. Our system

of jurisprudence, also, is based on the common law; which, however, in both this country and England, has now become so modified and extended as to supersede the necessity of any special equity courts, since it admits, in practice, the introduction of equity principles.

"Arising under" (i.e., cases *involving any question under*) the Constitution, laws, or treaties of the United States; and not only so in general, but cases involving any such question in regard to certain particular subjects of a national nature which immediately follow. In trying such questions, the court may decide that the law determines it so and so; or possibly it may find it necessary to go further, and decide that the law which determines the case is itself unconstitutional, which is the only way in which the courts pass upon the constitutionality of the laws: they never pronounce upon them beforehand, but test them in applying them to particular cases which come before them. In England, where there is no written constitution, all acts of Parliament are constitutional, and must be enforced by the courts. With us, however, only constitutional laws can be enforced. The judiciary is thus a check upon Congress.

As ambassadors, public ministers, and consuls all owe their appointment to the provisions of the Constitution, and are regular employees of the general government, of course all cases affecting them would come before the United States' courts; and, as Congress alone can legislate on commerce, admiralty and maritime cases, which in England were tried by admiralty courts, would here be tried by our national courts.

The other cases enumerated in this clause (i.e., the

"controversies," so called) are those to which the United States are a party; those to which a State is a party in litigation with another State or a foreign State, or with the citizens of another State or of a foreign State; and those between citizens of different States; or of the same State in trying land-claims granted by different States; and those between citizens of the United States and of foreign States. Hence, of all cases to which individuals are a party, only such are entitled to come before a United States' court as are of more than local importance by the parties to the controversy; and even of these it has been arranged that certain minor cases may be tried also in the State courts. Hence the great mass of common, private litigation must be conducted in the State courts.

That the controversies, so called, enumerated in the latter part of the preceding clause are to be tried in United States' courts, is a sufficient warrant for Congress to make "all laws necessary and proper to carry into effect" the power here granted to these courts; and pertaining as they do to the relations of the different States as such, and to the general extra State relations of their citizens, as well as to foreign States, citizens, or subjects, their adjudication naturally belongs to the national courts.

But, as States in their corporate capacity were unwilling to be sued by individuals, the eleventh amendment was proposed by the Third Congress, and ratified by the States, prohibiting the national courts from entertaining a suit against a State, brought by any citizen of another State or of a foreign State. (See Amendment XI.)

[Clause 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."

This clause enumerates those of the preceding cases which are to come originally, or in the first instance, before the Supreme Court of the United States, and to be decided by it without appeal. The other cases may come before the Supreme Court on an appeal from an inferior court, under such regulations, however, and with such exceptions as Congress may make. Accordingly Congress has enacted, among other regulations, that in civil cases there can be no appeal to the Supreme Court from a decision in the Circuit Court, when less than two thousand dollars are at stake. It has also provided, that an appeal may be made to the Supreme Court from a decision in the highest court of a State adverse to the United States, in a case of conflict between State and United States' laws or authority.

"Both as to law and fact;" i.e., without a jury. In a jury trial, the judge lays down the law, and the jury determine the facts and give the verdict, which, in our country, must be unanimous. But the Supreme Court regularly has no jury except in criminal cases (as required by the next clause), and by this clause is allowed, in its appellate jurisdiction, to *review* cases

without a jury, which may have been tried in a lower court by a jury (as both the District and Circuit Courts are required by law to try *facts* by jury). It was this that led to the adoption of the seventh amendment (which see).

[Clause 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."

Crimes under the laws of the United States are to be tried by jury in the State where they are committed, lest the general government, by an abuse of power, might take the accused far from his home for trial, and thus subject him to inconvenience and expense, and deprive him of a jury and witnesses of his vicinage. Crimes not committed within a State—as, for instance, on the high seas, or in a Territory, fort, or arsenal—are required by act of Congress to be tried, according to the nature of the crime, by the Circuit or District Courts, and in the judicial district where the criminal is arrested or brought into port. Crimes, then, against the United States, except by national functionaries (Clause 2), in States and Territories and on the high seas, must first be tried by the District or Circuit Courts, and can be tried in the Supreme Court at Washington only on an appeal.

SECTION 3.

[Clause 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."

Treason against the United States is here defined to be either actual levying war against them (i.e., not merely conspiring for treasonable purposes, but actually collecting forces for carrying them out), or giving aid and support to their enemies. In the same merciful spirit, also, the clause requires, for the conviction of a person on trial for treason, the testimony of at least two witnesses to the same overt act, or a confession of the accused in open court. The crime being of the highest nature, the strongest evidence is required to convict one of it.

[Clause 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."

By this clause, whatever punishment Congress may affix to treason, it must terminate with the life of the traitor. It must not attach any judicial disability or taint to his posterity; it must not make them incapable of inheriting any of the traitor's property which may remain after the punishment is met, and much

less make them incapable of inheriting property from his ancestors, all which was the consequence of the attainder of treason in England. It does not prohibit the confiscation of the real estate of the traitor as a penalty, although it must necessarily remain confiscated after his death. At the beginning of our late civil war, President Lincoln was evidently over-scrupulous on this point. Besides, the treason in this case, being that of a formidable combination of States engaged in seizing the property and defying the authority of the general government, became open war upon that government, and required the application of the laws of war, as soon became evident.

DIVISION IX.

MISCELLANEOUS PROVISIONS.

ARTICLE IV.

SECTION 1.

[Clause 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."

"The public acts, records, and judicial proceedings" of a State are its legislative and judicial acts as recorded. These acts in each State are to have "full

faith and credit" in every other State in the Union, the whole country being viewed in this respect as one. Such records are to have in every State the same force and efficacy in establishing or determining the fact or subject-matter to which they relate. It is here also further provided that Congress may prescribe the manner of proving these records, and the effect of such proof. The mode of proof required is prescribed in an act of Congress passed May 26, 1790, which adds that the effect of such proof shall be to entitle them to "the same faith and credit in every court within the United States as they have in the courts of the States from which they were taken."

SECTION 2.

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

This clause also views the whole country as one under the general government. Hence the citizens of one State are to have the common privileges and immunities of citizenship in all the States. Wherever they go to travel, trade, or sojourn in any part of the Union, they are to enjoy the full protection of the local laws, to be treated as citizens of a free country, and not be subjected to the annoyances and disabilities of aliens. At least no State can constitutionally deny the citizens of another State the privileges and immunities which they grant their own citizens. Privileges and immunities, however, do not include political rights; as the right to vote, to hold offices, &c. These

are not mere privileges, but rights or franchises, which, till the recent amendments of the Constitution, depended wholly upon the State governments.

The Constitution here commits to the general government the protection of only the common privileges and immunities of citizens. The law passed by Congress April 9, 1866, known as the Civil-Rights Bill, and the fourteenth amendment proposed in June of the same year, further define and enforce the rights, privileges, immunities, and indirectly the right to vote, of citizens in the different States; while the fifteenth amendment positively forbids the denial of the right to vote to the freedmen.

[Clause 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."

In a statute passed by Congress in 1793, regulating the form in which the demand is to be made for such a fugitive as is here described, the phrase "charged with" is regarded as having a technical, legal meaning, and hence that the agent through whom the demand is made by the governor must produce a duly authenticated copy of the indictment, or of an affidavit before a magistrate making the charge.

On the presentation of such a document to the governor of the State whither the fugitive has fled, he is

required to arrest and deliver him to such agent for trial in the State from which he fled. But, as petty offences or misdemeanors are not "crimes," the offender need not be surrendered for such. So, also, there would seem to be no obligation to surrender the fugitive where the demand is made in order to force from him the payment of a private claim rather than for public justice, or to secure his person for a different purpose from that alleged in the demand of the governor (see Judge Cooley's article, "Princeton Review," January, 1879).

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

This clause, like the system which it was designed to protect, — for long years a bone of contention between the North and the South, — has lost its importance, and well-nigh its meaning, by the abolition of slavery.

SECTION 3.

[Clause 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."

The power here granted Congress for admitting new States to the Union is unlimited, except as to States formed from or within States already existing, which are not to be formed or admitted without their consent; and the practice has been as unlimited as the grant. New States have been admitted into the Union, not only from the territory originally acquired by our treaty with Great Britain at the close of the Revolution, but from that acquired since, whether by purchase, as by the Louisiana purchase; by conquest and purchase, as in the case of California; or by treaty, as in the case of Texas. The power to admit new States has been considered as implying the power to acquire them, or the territory for them. And although States formed from other States are not to be admitted, yet the State of West Virginia, formed from the original State of Virginia, was admitted to the Union in 1863, without the consent of the original State; since that State, having rebelled against the general government, had lost all its rights under the Constitution.

The only conditions precedent to the admission of a new State have generally been, that it should at least have a number of inhabitants sufficient to entitle it to a representative in Congress, and have formed and submitted to Congress a Constitution republican in form. When a territory is admitted to the Union as a State, it acquires at once the usual powers of local government belonging to the other States.

[Clause 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."

The territory of the United States is here placed under the immediate care and supervision of the general government; and Congress is authorized to make all needful rules and regulations in regard to it, or any other property of the United States. Under this clause Congress, from time to time, establishes new Territories, and erects territorial governments in them, consisting of a governor, judges, and other officers, appointed by the President; and authorizes them to elect legislatures of their own, and send each a delegate to Congress, who may take part in the debates, but cannot vote. The "other property" of the United States is chiefly in the District of Columbia, or in docks, arsenals, light-houses, custom-houses, &c., and is provided for in Art. I., Sect. 8, 17. The "claims" spoken of were supposed rights to territory or other public property.

The whole extent of our domain is now formed into States or Territories; there being thirty-eight of the former and ten of the latter, of which eight are organized. All these States and Territories, except the thirteen States which originally formed the Union, have been formed from territory almost entirely unoccupied at the time of the Revolution. A part of this

territory — claimed by New York, Virginia, Massachusetts, and Connecticut, but ceded by them to the United States — was within the treaty boundaries of the country, and known as the North-western Territory; and the rest has been acquired since that time chiefly by the Louisiana purchase, by the cession of Florida by Spain, and by the conquest of California from Mexico. These States and Territories cover a surface of about 3,700,000 square miles.

Under this clause Congress has provided for the survey and sale of the public lands in the Territories of the United States. They are laid out in ranges of townships six miles square, and these are divided for the convenience of purchasers into sections down to sixteenths, or forty-acre lots, and at first are offered for sale at public auction at not less than a dollar and twenty-five cents per acre. If not sold within ten years, they are offered to actual settlers at a less price, regularly diminishing every five years. Under the same authority, also, Congress, from time to time, has made grants of land for railroads, as bounties for military service, and for other purposes.

SECTION 4.

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

The essential characteristics of a republican government are: 1st, That every office in the gift of the nation is open to the competition of every loyal citizen of mature age. This is not the case in a monarchy, where the chief office in the nation is confined to a single family, and a large proportion of the other offices to a privileged class; while, in an aristocracy, the more important offices are all confined to a privileged class. 2d, That, while it is not necessary that every citizen should be allowed to vote for public officers, none should be denied the right, except for reasons which apply to all classes of society; and that such as are allowed the right should be permitted to cast their votes for such candidates as they choose. 3d, That the officials thus chosen should be regarded as the servants and representatives of the people, and hence should be elected with sufficient frequency to keep up the sense of responsibility to their constituents; so that the government shall be that of the people, conducted by representatives expressing their will.

With some deviations and inconsistencies, our national government answers to this description. As Judge Story says (Com. 269), "The Constitution is strictly republican; for all its powers are derived directly or indirectly from the people, and are administered by functionaries holding their offices during pleasure, or for a limited period, or during good behavior." Now, it is such a government as this, in substance, that the United States are required to secure to every State. And of course Congress is authorized to pass "all the laws which are necessary and proper" to secure this end.

In order to insure the permanence of a republican government in the States, it is here further provided, that the general government shall protect each of them from invasion, and, on application of the legislature or of the executive, from domestic violence; as from that of a mob, for instance, as in the late railroad riots in several of the States.

ARTICLE V.

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

Congress has no direct power to alter the Constitution of the United States, as the Parliament of Great Britain has to alter the Constitution of England, by a

legislative act. But, whenever two-thirds of the members of each house deem it necessary, Congress is required to propose amendments to the States for their approval, or, on the application of the legislatures of two-thirds of the States, to call a general convention of the people for proposing amendments; which amendments are to become valid as parts of the Constitution, and of course binding upon all the States, when ratified by the legislatures of three-fourths of the States, or by conventions in three-fourths of them. The second of these methods of proposing and ratifying amendments is so inconvenient, that only the first method has been followed in practice. Fifteen amendments have been thus adopted; twelve of them in the early history of the country, and the last three during our late civil war. Acts of Congress proposing amendments of the Constitution to the States, not being enactments of laws, do not require the approval of the President.

Of the two restrictions here imposed upon the power of Congress to alter the Constitution, the first has been removed by the lapse of time; but the latter is permanent in its nature. The smaller States insisted upon having an equal representation in the Senate with the larger ones, as a condition for ratifying the Constitution; otherwise they would have been wholly at the mercy of the larger States.

ARTICLE VI.

[Clause 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."

By well-established principles of law, every corporation or government which legally succeeds to another assumes all its duties and obligations. The *debts* of the Confederation, therefore, would have been assumed of course; but how about the debts of the revolutionary struggle, when there could hardly be said to have been even the elements of an established government? And then, too, the *engagements* were intended, doubtless, to include all preceding treaty stipulations with foreign nations, and especially, as is generally supposed, the stipulations contained in the ordinance of 1787 in regard to the North-west Territory, securing religious liberty and exemption from slavery in all that region. The binding force of some of these might possibly have been disputed. By this clause, however, the government fully assumes all these obligations, and undertakes to see that they are fulfilled.

[Clause 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."

By Article III., Sect. 2, Clause 1, all cases arising under the laws of the United States are to be tried by the United States' courts. The ultimate authority according to which such cases are to be decided by these courts is that of the Constitution. The case may be

decided to come under the law; but the law itself may be decided to be inconsistent with the provisions of the Constitution, and hence not to have been "made in pursuance thereof." Such a law, therefore, at least under the application in question, is unconstitutional; for the United States' courts decide the constitutionality of laws only as far as tested by actual cases adjudicated by them. Their function is not monitory or advisory, but strictly judicial.

The Constitution, therefore, and the constitutional laws and treaties of the United States, are the supreme law of the land, and annul all State constitutions and laws as far as they conflict with them. And not only so, but the State judges are required to sustain the United States' Constitution, laws, or authority, as against any State, constitution, law, or authority. Accordingly, Congress has provided for an appeal to the Supreme Court of the United States in the case of an adverse decision in the highest court of a State on a supposed conflict between a State and a United States' law or authority (see Art. III., Sect. 2, 3), and makes that court the final arbitrator. There can be no doubt that the Constitution makes the general government entirely independent and supreme in every State within the compass of its powers, and all State governments and laws subordinate to it within that compass. What language could make this point clearer?

[Clause 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."

Executive officers here must include military officers, which, in strictness, are executive. This clause is an additional proof, if any were required, to show the entire independence and supremacy of the United States' government under the Constitution, — all functionaries, whether state or national, are required to swear fidelity to it. The form of the oath, of course, is to be prescribed by Congress, while that for the President is prescribed in the Constitution. What has been called the "iron-clad oath" was passed in 1862, and required a denial of all participation in or sympathy with the rebellion.

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."

There were thirteen States which had been united under the Confederation, and which had acted together through the revolutionary struggle, all of which finally ratified the Constitution, though North Carolina and Rhode Island did so very tardily, — the former about a year and a half, the latter about two years, after more than the required number to establish the Union had ratified it; the former in November, 1789, and the

latter in May, 1790. Even New York and Virginia held off from ratifying it till it became evident that New Hampshire would do so, and thus secure the Union. After this was secured, a natural pressure brought in the reluctant States, that they might not find themselves "left out in the cold." If they had not joined the Union by ratifying the Constitution, they must have been regarded and treated as foreign and inferior nations.

"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."

This is the attestation of the Convention to the Constitution as it stood originally. It was signed by George Washington, President of the Convention, and by one or more delegates (thirty-eight in all) from each of the thirteen States, except Rhode Island, which had not even appointed a delegate to attend the Convention for forming the Constitution. The Convention had accomplished its work, considering the difficulty and excellence of the performance, in a wonderfully short period of time; viz., in a little more than four months (from May 14 to Sept. 17, 1787). Sept. 17, 1788, just one year from this time, the Union was declared complete by the ratifications of eleven States; and the first Congress under the Constitution assembled in New-

York City on the following 4th of March, 1789, where it continued for two sessions, and then returned to Philadelphia, where all the previous Congresses had been held, except those of the last four years of the Confederation, which were held in New York.

DIVISION X.

AMENDMENTS TO THE CONSTITUTION.

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."

This and the next nine amendments are of the nature of a Bill of Rights, taken partly from the English Bill of Rights[1] adopted at the accession of William and Mary, and partly from such rights as the colonies had had occasion to assert in their complaints of the oppressions of England while they were in a colonial condition.[2] They were proposed in 1789, at the first meeting of Congress in New York, in order to meet objections and quiet fears expressed in several of the States at the adoption of the Constitution. The fears were, that Congress, by a too liberal interpretation of certain

[1] See Hallam, Const. Hist. England, vol. iii. p. 105.
[2] See the Declaration of Independence.

powers granted them, or at least implied in the Constitution (particularly in Clauses 1 and 18 of Section 8 of Article I.), might claim too wide a field for legislation, and interfere with private and local affairs in the States.

A candid consideration of the distrusted clauses, however, shows these fears to have been comparatively groundless. They certainly do not authorize legislation by Congress to any thing like the dangerous extent implied in the restrictions embodied in the amendments. The general government, as established in the Constitution, without the amendments, is evidently a limited, and a definitely limited, government, — a bill of rights in itself, — and touched at very few points the private rights and privileges of the people. On the contrary, in the election of the President and members of Congress, as well as in other respects, the people of the different States have important national rights, which are wholly unprotected against State abuse in the Constitution, except by the more recently added fourteenth and fifteenth amendments.

We have already seen (Art. VI., 3) that no religious test can be required as a qualification for office under the United States' Government; and here it is further required that Congress shall not by law establish (i.e., recognize and provide for the support of) any particular form of religion, nor prohibit the free exercise of any. Here we have the precise doctrine of Roger Williams, — a complete separation of Church and State, and prohibition of persecution for religious opinions and their exercise. Their free exercise is not to be interfered with by the government, "unless," in the

words of Williams, "they disturb the civil peace." Religion must not be privileged to violate in practice the laws of the land, or of morality and social order.

As to freedom of speech and of the press, as well as the right of petitioning the government for the redress of grievances, these were old English rights established in the Bill of Rights; and they are here secured to citizens of the United States as far as the general government is concerned, but not against the action of the State governments, which, as far as these amendments are concerned, may violate either of them, and even establish a religion in their States.

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."

The militia being a citizen-soldiery, enrolled only for occasional military drill and home service, naturally retain their patriotic feelings, and are much more likely to remain true to the rights and liberties of the country than a standing army. And a militia system, of course, is possible only where the people are allowed to bear arms. These truths had been well established both in English history, and in the colonial history of the States.

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."

Of the arbitrary and compulsory quartering of troops upon citizens, some of the colonies had had bitter experience; and there had been like experience in the history of England. It was one of the articles in the impeachment of Stafford, that he had quartered troops on the people of Ireland, in order to compel their obedience to his unlawful requisitions. It was also an important point in the "Petition of Rights," so reluctantly assented to by Charles the First.

As by the Constitution the general government is intrusted with the entire control of troops and armies, the restrictions in this and the preceding amendment upon the action of that government are highly proper and important.

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.

The allusion here is to what is known in English history as "general search warrants," and which were so justly assailed and reprobated by James Otis under the royal government of Massachusetts before the Revolution. Such warrants authorized the officer to search any suspected place, and seize any suspected person, without naming any particular place or person, or stat-

ing any ground for the suspicion on which he was to act. All such warrants are here prohibited, and none are allowed to be issued by a United States' magistrate without setting forth a probable cause for the search and seizure, sworn to by the person demanding them, and particularly describing the place to be searched, and the person or things to be seized. This leaves every one reasonably secure in his person, papers, and effects, and makes his "house his castle, as well for defence against injury as for repose."

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."

The rights which the general government are here prohibited from infringing are: (1) The right of one, unless in the army or navy, or militia in actual service in time of war, to be tried for infamous crime only on presentment or indictment by a grand jury; (2) To be exempt from more than one trial for the same offence;

(3) To be exempt from being a witness against himself in a criminal case; (4) To life, liberty, and property, till deprived of them by due process of law (by the fourteenth amendment the States also are prohibited from infringing this right); (5) To just compensation for property taken for public use.

An "indictment" is a bill of accusation against a supposed criminal, presented to the grand jury by a prosecuting officer, and, after examination of witnesses, allowed by them. It is only when the bill is thus allowed by the jury that the criminal can be brought to trial. A "presentment" is the presenting of a case for trial by a grand jury from their own knowledge, and of their own accord, where no bill of indictment has been submitted to them by a prosecuting officer. In the army and navy, and in the militia when in service in time of war, trials are by court-martial, without the form of indictment.

When a criminal is tried a second time, on a motion for a new trial or on a writ of error, there is always a new element in the case, and he is not considered as again put in jeopardy for the same offence. But in no case can the criminal, by torture or other forcible means, be compelled to testify against himself.

As one, by this article, is protected from being convicted of crime, except by the regular application of the laws to his case, so he cannot, except by a like application of the laws through the courts, be deprived of life, liberty, or property. And, while private property can in no case be taken for private use without the consent of the owner, it cannot be taken for public use, as for roads and the like, without just compensation;

which compensation is usually determined by a jury who have examined the property, and given each party an opportunity to be fully heard in the case.

ARTICLE VI.

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

This article provides against such dilatory, irregular, arbitrary, inconvenient, and expensive trials — often attended by transportation to distant scenes, away from interested witnesses and defenders — as were so bitterly and justly complained of in the colonial history of the States under the government of Great Britain. The amendment was designed as supplementary to the third clause of the second section of Article III. of the Constitution.

The trial is to be speedy; public (that it may be more likely to be fair); by an impartial jury; as near home as may be (viz., either in the State or the established judicial district in which the crime is committed); to be for a crime definitely made known to the accused (that he may know what charge he is to meet); to be

supported on the side of the prosecution by witnesses in the presence of the accused, and which therefore he may hear and challenge by his scrutiny; and on his side to be supported by such witnesses as he may demand, as well as by the assistance of counsel in 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."

In suits at common law, facts can be re-examined only on a motion for a new trial, or on a writ of error, and always by a jury. It is here provided that even civil cases, where the amount in controversy exceeds twenty dollars, shall be re-tried in a United States' court only in this way. For the reason for this requirement, see Art. III., Sect. 2, 2.

ARTICLE VIII.

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

These prohibitions are just as they stand in the English Bill of Rights.

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."

These two amendments summarily closed the original list of restrictions on the general government: the first claiming that the rights protected by the foregoing amendments, and the others enumerated in the Constitution, are not to be taken as all the rights belonging to the people; and the second, that all powers not granted to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States, or the people, i.e., — all *governmental* powers, not surely the power *to destroy* the government by denying and nullifying the rights just granted it in the Constitution. This is a *revolutionary* power, to be carried out only by force.

While it is very clear from these amendments, and other parts of the Constitution, that the government here constituted is one of limited rights and powers, it is equally certain that it is established as a general government over the States, and has the right to exist as such, and to the unimpeded exercise of the powers granted it. Thus much is necessarily involved in its

having been created with independent powers of action in national affairs: that sphere is its own, and it must keep out all intruders. The States cannot be allowed to usurp the powers granted to the United States, any more than the latter can be allowed to usurp those reserved by the States.

And, further, if all powers not granted the general government, nor prohibited to the States, belong to the States, so all *necessary* governmental powers *prohibited to the States* belong to the general government, though not expressly granted to it; as, for instance, the right to make paper money temporarily a legal tender, if necessary in order to preserve the government from destruction. This, and some other essential governmental powers, not expressly delegated to the United States, are prohibited to the States, and hence must vest, *as implied powers*, in the national government which has charge of the national interests, to be exercised in extreme cases. And why may not certain other sovereign powers essential for the general good, and which from the nature of the case the States cannot exercise, though not expressly prohibited to them nor delegated to the United States, be exercised by the general government; such, for instance, as acquiring for the general good territory by treaty or purchase?

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."

For the reason for passing this eleventh amendment, see Art. III., Sect. 2, 1.

The twelfth amendment, stating the method of electing the President, is transferred to Article II.

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.

"SECT. 2. Congress shall have power to enforce this article by appropriate legislation."

This thirteenth amendment, embodied in a few simple words, has a mighty import. It set at liberty some four millions of slaves, and effectually excludes all involuntary service from our territory, whether embraced within the boundaries of the several States, or under the direct control of the general government. To secure this result, the national government is expressly empowered to enforce it. It was the fruit of the civil war, and was proposed and adopted in 1865. While the original amendments (i.e., the first ten) were intended as a bill of rights to protect the people of the States against the general government, this and the two following amendments are a bill of rights to be enforced by the general government, in order to protect, in a few important points, the people of the States against their own governments.

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.

"SECT. 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.

"SECT. 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.

"SECT. 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.

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

This fourteenth amendment is a very important one, and consists of several sections. It acts directly upon

the States, and imposes upon them the most important restrictions. The sections originally proposed were in the form of resolutions, known as the "Reconstruction Resolutions." After protracted discussion and numerous amendments, they were finally passed in the form of this article, in 1866, by the Thirty-ninth Congress; and their ratification by the revolted States was rigidly insisted on as a condition of their return to the Union. Having forfeited their rights under the Union, they were to regain them only on certain conditions.

The first section defines citizenship, and prohibits any State from making or enforcing any law abridging the privileges or immunities of any citizen; or depriving any one of life, liberty, or property, without due process of law; or denying any one the equal protection of the laws. This section is designed to supplement and enforce the first clause of the second section of the fourth article of the original Constitution. And in April, 1866, two months before the passage of this amendment, a comprehensive statute, known as the Civil-Rights Bill, was passed to secure the same end.

There was need that citizenship should receive an authoritative definition on account of the somewhat loose use of the term "citizen" in the Constitution, and especially as there had been an attempt in the Dred Scot case to establish a distinction between citizenship of a State and citizenship of the United States. They are here asserted to be one and the same, and that all persons born or naturalized in the United States, and subject to its jurisdiction, are citizens of the United States, and of the States wherein they reside.

The second section has reference to the basis of

representation in Congress in the different States, with special reference to the reconstructed States, which is briefly this: States are entitled to representatives in Congress according to the number of their inhabitants; but, if in any State male citizens of twenty-one years of age are denied the right to vote for certain State or United States' officers which are named, the basis of representation in the same shall be reduced in the proportion which such citizens bear to the whole number of male citizens of twenty-one years of age in the State.

This rule of apportionment, it is obvious, can be applied and enforced only when a certain class or classes (as colored people for instance) are disfranchised by a law of the State. In no other way can it be known beforehand what reduction should be made in the basis of representation. No account evidently can be taken of individuals excluded from voting on account of non-residence, non-payment of taxes, or real or fictitious crimes, or, what is more important, by intimidation or violence.

The third section ordains, that no person having taken an official oath to support the Constitution of the United States, as required in Art. VI., 3, who afterwards engaged in rebellion, shall again hold such office, or be an elector of the President of the United States, unless pardoned by a two-thirds vote of each house of Congress.

The fourth section secures the public debt of the United States, including that incurred in suppressing rebellion, from repudiation, and prohibits the payment, either by the United States or any State, of all debts,

and claims for losses in slaves, incurred in support of rebellion against the United States. To which, it is now seen, should have been added, "*or claims for losses of any other property by disloyal persons in the States in rebellion.*"

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.

"SECT. 2. The Congress shall have power to enforce this article by appropriate legislation."

This is the only absolute restriction in the Constitution on the power of the States to control the franchise among their citizens. While the second section of the fourteenth amendment implies that some may be denied the privilege of voting on a certain condition, this amendment absolutely forbids, whether by State or United States' government, the disfranchisement of colored citizens as a class. If any such are disfranchised, it must be for other cause than their color or former condition of servitude. This privilege may not avail the freedmen much for the present; but I am quite sure it will, though through much tribulation, in the end. Ignorant and liable as they now are to be intimidated and deceived, they will ultimately learn the power which the ballot gives them, and how to use it. In time leaders are sure to arise to defend their rights, and avail themselves of their votes.

APPENDIX.

I.

THE DECLARATION OF INDEPENDENCE, ADOPTED BY CONGRESS, JULY 4, 1776.

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

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

We hold these truths to be self-evident, that all men are created equal; that they are endowed by their Creator with certain unalienable rights; that among these are life, liberty, and the pursuit of happiness; that, to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed; that, whenever any form of government becomes destructive of these ends, it is the right of the people to alter or to abolish it, and to institute a new government, laying its foundation on such principles, and organizing its powers in such form, as to them shall seem most likely to effect their safety and happiness. Prudence, indeed, will dictate that governments long established should

not be changed for light and transient causes; and, accordingly, all experience hath shown that mankind are more disposed to suffer, while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed. But, when a long train of abuses and usurpations, pursuing invariably the same object, evinces a design to reduce them under absolute despotism, it is their right, it is their duty, to throw off such government, and to provide new guards for their future security. Such has been the patient sufferance of these colonies, and such is now the necessity which constrains them to alter their former systems of government. The history of the present King of Great Britain is a history of repeated injuries and usurpations, all having, 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 mean time exposed to all the danger of invasion from without, and convulsions within.

He has endeavored to prevent the population of these

States; for that purpose, obstructing the laws for naturalization of foreigners, refusing to pass others to encourage their migration hither, and raising the conditions of new appropriations of lands.

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

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

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

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

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

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

For quartering large bodies of armed troops among us;

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

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

For imposing taxes on us without our consent;

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

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

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

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

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

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

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

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

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

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

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

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

We have warned them, from time to time, of attempts made by their legislature to extend an unwarrantable jurisdiction over us. We have reminded them of the circumstances of our emigration and settlement here. We have appealed to their native justice and magnaminity, and we have conjured them, by the ties of our common kindred, to disavow these usurpations, which would inevitably interrupt our connections and correspondence. They, too, have been deaf to the voice of justice and consanguinity. We must, therefore, acquiesce in the necessity which denounces our separation, and hold them as we hold the rest of mankind, — enemies in war, in peace, friends.

We, therefore, the representatives of the UNITED STATES OF AMERICA in GENERAL CONGRESS assembled, appealing to the Supreme Judge of the world for the rectitude of our

intentions, do, in the name and by the authority of the good people of these colonies, solemnly publish and declare, That 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, William Whipple, Matthew Thornton.

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

RHODE ISLAND. — Stephen Hopkins, William Ellery.

CONNECTICUT. — Roger Sherman, Samuel Huntington, William Williams, Oliver Wolcott.

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

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

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

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

MARYLAND. — Samuel Chase, William Paca, Thomas Stone, Charles Carroll, of Carrollton.

VIRGINIA. — George Wythe, Richard Henry Lee, Thomas Jefferson, Benjamin Harrison, Thomas Nelson, jun., Francis Lightfoot Lee, Carter Braxton.

North Carolina. — William Hooper, Joseph Hewes, John Penn.

South Carolina. — Edward Rutledge, Thomas Heyward, jun., Thomas Lynch, jun., Arthur Middleton.

Georgia. — Button Gwinnett, Lyman Hall, George Walton.

[Copies of the foregoing Declaration were, by a resolution of Congress, sent to the several assemblies, conventions, and committees, or councils of safety, and to the several commanding officers of the continental troops; and it was also proclaimed in each of the United States, and at the head of the army.]

II.

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

ARTICLES OF CONFEDERATION AND PERPETUAL UNION BETWEEN THE STATES OF NEW HAMPSHIRE, MASSACHUSETTS BAY, RHODE ISLAND AND PROVIDENCE PLANTATIONS, CONNECTICUT, NEW YORK, NEW JERSEY, PENNSYLVANIA, DELAWARE, MARYLAND, VIRGINIA, NORTH CAROLINA, SOUTH CAROLINA, AND GEORGIA.

ARTICLE I. The style of this confederacy shall be "The United States of America."

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

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 restriction shall not extend so far as to prevent the removal of property imported into any State to any other State of which the owner is an inhabitant; provided also that no imposition, duties, or restriction shall be laid by any State on the property of the United States, or either of them.

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

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 recall its delegates, or any of them, at any time within the year, and to send others in their stead for the remainder of the year.

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

Each State shall maintain its own delegates in any meeting

of the States, and while they act as members of the committee of the States.

In determining questions in the United Sates 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 defence of such State or its trade; nor shall any body of forces be kept up by any State in time of peace, except such number only, as in the judgment of the United States in Congress assembled, shall be deemed requisite to garrison the forts necessary for the defence of such State; but every State shall always keep up a 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 defence, 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 defence or general welfare, and allowed by the United States in Congress assembled, shall be defrayed out of a common treasury, which shall be supplied by the several States in proportion to the value of all land within each State, granted to or surveyed for any person, as such land and the buildings and improvements thereon shall be estimated according to such mode as the United States in Congress assembled shall from time to time direct and appoint. The taxes for paying that proportion shall be laid and levied by the authority and direction of the legislatures of the several States within the time agreed upon by the United States in Congress assembled.

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 cases mentioned in the sixth article; of sending and receiving ambassadors; entering into treaties and alliances, provided that no treaty of commerce shall be made whereby the legislative power of the respective States shall be restrained from imposing such imposts and duties on foreigners as their own people are subjected to, or from prohibiting the exportation or importation of any species of goods or commodities whatsoever; of establishing rules for deciding, in all cases, what captures on land or water shall be legal, and in what manner prizes taken by land or naval forces in the service of the United States shall be divided or appropriated; of granting letters of marque and reprisal in times of peace; appointing courts for the trial of piracies and felonies committed on the high seas; and establishing courts for receiving and determining finally appeals in all cases of captures, provided that no member of Congress shall be appointed a judge of any of the said courts.

The United States in Congress assembled shall also be the last resort on appeal in all disputes and 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 through the same as may be requisite to defray the expenses of the said office ; appointing all officers of the land-forces in the service of the United States, excepting regimental officers ; appointing all the officers of the naval forces, and commissioning all officers whatever in the service of the United States ; making rules for the government and regulation of the said land and naval forces, and directing their operations.

The United States in Congress assembled shall have authority to appoint a committee to sit in the recess of Congress, to be denominated "a committee of the States," and to consist of one delegate from each State ; and to appoint such other committees and civil officers as may be necessary for managing the general affairs of the United States under their direction ; to appoint one of their number to preside, provided that no person be allowed to serve in the office of president more than one year in any term of three years ; to ascertain the necessary sums of money to be raised for the service of the United States, and to appropriate and apply the same for defraying the public expenses ; to borrow money or emit bills on the credit of the United States, transmitting every half-year to the respective States an account of the sums of money so borrowed or emitted ; to build and equip a navy ; to agree upon the number of land-forces, and to make requisitions from each State for its quota in proportion to the number of white inhabitants in such State, which requisition shall be binding ; and thereupon the legislature of each State shall appoint the regimental officers, raise the men, and clothe, arm, and equip them in a soldier-like manner, at the expense of the United States ; and the officers and men so clothed, armed, and equipped shall march to the place appointed, and within the

time agreed on, by the United States in Congress assembled: but if the United States in Congress assembled shall, on consideration of circumstances, judge proper that any State should not raise men, or should raise a smaller number than its quota, and that any other State should raise a greater number of men than the quota thereof, such extra number shall be raised, officered, clothed, armed, and equipped in the same manner as the quota of such State, unless the legislature of such State shall judge that such extra number cannot be safely spared out of the same, in which case they shall raise, officer, clothe, arm, and equip as many of such extra number as they judge can be safely spared; and the officers and men so clothed, armed, and equipped shall march to the place appointed, and within the time agreed on by the United States in Congress assembled.

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

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 jour-

nal, 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 satisfactron 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 ninth day of July in the year of our Lord 1778, and in the third year of the Independence of America.

III.

FAREWELL ADDRESS OF GEORGE WASHINGTON, PRESIDENT, TO THE PEOPLE OF THE UNITED STATES, SEPT. 17, 1796.

FRIENDS AND FELLOW-CITIZENS, — The period for a new election of a citizen to administer the executive government of the United States being not far distant, and the time actually arrived when your thoughts must be employed in designating the person who is to be clothed with that important trust, it appears to me proper, especially as it may conduce to a more distinct expression of the public voice, that I should now apprize you of the resolution I have formed to decline being considered among the number of those out of whom a choice is to be made.

I beg you at the same time to do me the justice to be assured that this resolution has not been taken without a strict regard to all the considerations appertaining to the relation which binds a dutiful citizen to his country; and that, in withdrawing the tender of service, which silence, in my situation, might imply, I am influenced by no diminution of zeal for your future interest, no deficiency of grateful respect for your past kindness, but am supported by a full conviction that the step is compatible with both.

The acceptance of, and continuance hitherto in, the office to which your suffrages have twice called me, have been a uniform sacrifice of inclination to the opinion of duty, and to a deference for what appeared to be your desire. I constantly hoped that it would have been much earlier in my power, consistently with motives which I was not at liberty to disregard, to return to that retirement from which I have been reluctantly drawn. The strength of my inclination to do this, previous to the last election, had even led to the preparation of an address to declare it to you; but mature reflection

on the then perplexed and critical posture of our affairs with foreign nations, and the unanimous advice of persons entitled to my confidence, impelled me to abandon the idea.

I rejoice that the state of your concerns, external as well as internal, no longer renders the pursuit of inclination incompatible with the sentiment of duty or propriety; and am persuaded, whatever partiality may be retained for my services, that, in the present circumstances of our country, you will not disapprove my determination to retire.

The impressions with which I undertook the arduous trust were explained on the proper occasion. In the discharge of this trust, I will only say, that I have with good intentions contributed towards the organization and administration of the government the best exertions of which a very fallible judgment was capable. Not unconscious in the outset of the inferiority of my qualifications, experience, in my own eyes, — perhaps still more in the eyes of others, — has strengthened the motives to diffidence of myself; and every day the increasing weight of years admonishes me more and more that the shade of retirement is as necessary to me as it will be welcome. Satisfied that, if any circumstances have given peculiar value to my services, they were temporary, I have the consolation to believe, that, while choice and prudence invite me to quit the political scene, patriotism does not forbid it.

In looking forward to the moment which is intended to terminate the career of my public life, my feelings do not permit me to suspend the deep acknowledgment of that debt of gratitude which I owe to my beloved country for the many honors it has conferred upon me; still more for the steadfast confidence with which it has supported me, and for the opportunities I have thence enjoyed of manifesting my inviolable attachment by services faithful and persevering, though in usefulness unequal to my zeal. If benefits have resulted to our country from these services, let it always be remembered to your praise, and as an instructive example in our annals, that, under circumstances in which the passions, agitated in every direction, were liable to mislead; amidst appearances sometimes dubious, vicissitudes of fortune often discouraging; in situations in which, not unfrequently, want of success

has countenanced the spirit of criticism, — the constancy of your support was the essential prop of the efforts, and a guaranty of the plans, by which they were effected. Profoundly penetrated with this idea, I shall carry it with me to my grave, as a strong incitement to unceasing vows, that Heaven may continue to you the choicest tokens of its beneficence; that your union and brotherly affection may be perpetual; that the free Constitution, which is the work of your hands, may be sacredly maintained; that its administration in every department may be stamped with wisdom and virtue; that, in fine, the happiness of the people of these States, under the auspices of liberty, may be made complete by so careful a preservation and so prudent a use of this blessing as will acquire to them the glory of recommending it to the applause, the affection, and the adoption of every nation which is yet a stranger to it.

Here, perhaps, I ought to stop; but a solicitude for your welfare, which cannot end but with my life, and the apprehension of danger natural to that solicitude, urge me, on an occasion like the present, to offer to your solemn contemplation, and to recommend to your frequent review, some sentiments, which are the result of much reflection, of no inconsiderable observation, and which appear to me all-important to the permanency of your felicity as a people. These will be afforded to you with the more freedom, as you can only see in them the disinterested warnings of a parting friend, who can possibly have no personal motive to bias his counsel; nor can I forget, as an encouragement to it, your indulgent reception of my sentiments on a former and not dissimilar occasion.

Interwoven as is the love of liberty with every ligament of your hearts, no recommendation of mine is necessary to fortify or confirm the attachment.

The unity of government, which constitutes you one people, is also now dear to you. It is justly so; for it is a main pillar in the edifice of your real independence, — the support of your tranquillity at home, your peace abroad, of your safety, of your prosperity, of that very liberty which you so highly prize. But as it is easy to foresee that, from different causes and from different quarters, much pains will be taken, many artifices

employed, to weaken in your minds the conviction of this truth; as this is the point in your political fortress against which the batteries of internal and external enemies will be most constantly and actively (though often covertly and insidiously) directed, — it is of infinite moment that you should properly estimate the immense value of your national union to your collective and individual happiness; that you should cherish a cordial, habitual, and immovable attachment to it; accustoming yourselves to think and speak of it as of the palladium of your political safety and prosperity; watching for its preservation with jealous anxiety; discountenancing whatever may suggest even a suspicion that it can, in any event, be abandoned; and indignantly frowning upon the first dawning of every attempt to alienate any portion of our country from the rest, or to enfeeble the sacred ties which now link together the various parts.

For this you have every inducement of sympathy and interest. Citizens, by birth or choice, of a common country, that country has a right to concentrate your affections. The name of *American*, which belongs to you in your national capacity, must always exalt the just pride of patriotism more than any appellation derived from local discriminations. With slight shades of difference, you have the same religion, manners, habits, and political principles. You have, in a common cause, fought and triumphed together. The independence and liberty you possess are the work of joint counsels and joint efforts, of common dangers, sufferings, and successes.

But these considerations, however powerfully they address themselves to your sensibility, are greatly outweighed by those which apply more immediately to your interest. Here every portion of our country finds the most commanding motives for carefully guarding and preserving the union of the whole.

The North, in an unrestrained intercourse with the South, protected by the equal laws of a common government, finds, in the productions of the latter, great additional resources of maritime and commercial enterprise, and precious materials of manufacturing industry. The South, in the same intercourse, benefiting by the agency of the North, sees its agriculture grow, and its commerce expand. Turning partly into its own

channels the seamen of the North, it finds its particular navigation invigorated; and, while it contributes in different ways to nourish and increase the general mass of the national navigation, it looks forward to the protection of a maritime strength to which itself is unequally adapted. The East, in like intercourse with the West, already finds, and, in the progressive improvement of interior communication by land and water, will more and more find, a valuable vent for the commodities which it brings from abroad, or manufactures at home. The West derives from the East supplies requisite to its growth and comfort; and, what is perhaps of still greater consequence, it must, of necessity, owe the secure enjoyment of indispensable outlets for its own productions to the weight, influence, and the future maritime strength of the Atlantic side of the Union, directed by an indissoluble community of interest as one nation. Any other tenure by which the West can hold this essential advantage, whether derived from its own separate strength or from an apostate and unnatural connection with any foreign power, must be intrinsically precarious.

While, then, every part of our country thus feels an immediate and particular interest in union, all the parts combined cannot fail to find, in the united mass of means and efforts, greater strength, greater resource, proportionably greater security from external danger, a less frequent interruption of their peace by foreign nations; and, what is of inestimable value, they must derive from union an exemption from those broils and wars between themselves which so frequently afflict neighboring countries not tied together by the same government, which their own rivalships alone would be sufficient to produce, but which opposite foreign alliances, attachments, and intrigues would stimulate and embitter. Hence, likewise, they will avoid the necessity of those overgrown military establishments, which, under any form of government, are inauspicious to liberty, and which are to be regarded as particularly hostile to republican liberty; in this sense it is that your union ought to be considered as a main prop of your liberty, and that the love of the one ought to endear to you the preservation of the other.

These considerations speak a persuasive language to every reflecting and virtuous mind, and exhibit the continuance of the Union as a primary object of patriotic desire. Is there a doubt whether a common government can embrace so large a sphere? Let experience solve it. To listen to mere speculation in such a case were criminal. We are authorized to hope that a proper organization of the whole, with the auxiliary agency of governments for the respective subdivisions, will afford a happy issue to the experiment. It is well worth a fair and full experiment. With such powerful and obvious motives to union affecting all parts of our country, while experience shall not have demonstrated its impracticability, there will always be reason to distrust the patriotism of those who, in any quarter, may endeavor to weaken its bands.

In contemplating the causes which may disturb our Union, it occurs, as a matter of serious concern, that any ground should have been furnished for characterizing parties by geographical discriminations, — Northern and Southern, Atlantic and Western; whence designing men may endeavor to excite a belief that there is a real difference of local interests and views. One of the expedients of party to acquire influence within particular districts is to misrepresent the opinions and aims of other districts. You cannot shield yourselves too much against the jealousies and heartburnings which spring from these misrepresentations: they tend to render alien to each other those who ought to be bound together by fraternal affection. The inhabitants of our western country have lately had a useful lesson on this head : they have seen in the negotiation by the Executive, and in the unanimous ratification by the Senate of the treaty with Spain, and in the universal satisfaction at that event throughout the United States, a decisive proof how unfounded were the suspicions propagated among them of a policy in the general government and in the Atlantic States unfriendly to their interests in regard to the Mississippi; they have been witnesses to the formation of two treaties, — that with Great Britain and that with Spain, which secure to them every thing they could desire in respect to our foreign relations towards confirming their prosperity.

Will it not be their wisdom to rely for the preservation of these advantages on the Union by which they were procured? Will they not henceforth be deaf to those advisers, if such there are, who would sever them from their brethren, and connect them with aliens?

To the efficacy and permanency of your Union, a governernment for the whole is indispensable. No alliance, however strict between the parts, can be an adequate substitute: they must inevitably experience the infractions and interruptions which all alliances in all time have experienced. Sensible of this momentous truth, you have improved upon your first essay by the adoption of a Constitution of government better calculated than your former for an intimate union, and for the efficacious management of your common concerns. This government, the offspring of our own choice, uninfluenced and unawed, adopted upon full investigation and mature deliberation, completely free in its principles, in the distribution of its powers, uniting security with energy, and containing within itself a provision for its own amendment, has a just claim to your confidence and your support. Respect for its authority, compliance with its laws, acquiescence in its measures, are duties enjoined by the fundamental maxims of true liberty. The basis of our political systems is the right of the people to make and to alter their constitutions of government; but the Constitution which at any time exists, till changed by an explicit and authentic act of the whole people, is sacredly obligatory upon all. The very idea of the power and the right of the people to establish government presupposes the duty of every individual to obey the established government.

All obstructions to the execution of the laws, all combinations and associations, under whatever plausible character, with the real design to direct, control, counteract, or awe the regular deliberation and action of the constituted authorities, are destructive to this fundamental principle, and of fatal tendency. They serve to organize faction; to give it an artificial and extraordinary force; to put in the place of the delegated will of the nation the will of a party, often a small but artful and enterprising minority of the community; and, according to the alternate triumphs of different parties, to make the pub-

lic administration the mirror of the ill-concerted and incongruous projects of faction, rather than the organ of consistent and wholesome plans, digested by common counsels, and modified by mutual interests.

However combinations or associations of the above description may now and then answer popular ends, they are likely, in the course of time and things, to become potent engines, by which cunning, ambitious, and unprincipled men will be enabled to subvert the power of the people, and to usurp for themselves the reins of government; destroying afterwards the very engines which had lifted them to unjust dominion.

Towards the preservation of your government, and the permanency of your present happy state, it is requisite, not only that you steadily discountenance irregular oppositions to its acknowledged authority, but also that you resist with care the spirit of innovation upon its principles, however specious the pretexts. One method of assault may be to effect in the forms of the Constitution alterations which will impair the energy of the system, and thus to undermine what cannot be directly overthrown. In all the changes to which you may be invited, remember that time and habit are at least as necessary to fix the true character of governments as of other human institutions; that experience is the surest standard by which to test the real tendency of the existing constitution of a country; that facility in changes, upon the credit of mere hypothesis and opinion, exposes to perpetual change, from the endless variety of hypothesis and opinion; and remember especially, that for the efficient management of your common interests, in a country so extensive as ours, a government of as much vigor as is consistent with the perfect security of liberty is indispensable. Liberty itself will find in such a government, with powers properly distributed and adjusted, its surest guardian. It is, indeed, little else than a name where the government is too feeble to withstand the enterprises of faction, to confine each member of the society within the limits prescribed by the laws, and to maintain all in the secure and tranquil enjoyment of the rights of person and property.

I have already intimated to you the danger of parties in the State, with particular reference to the founding of them on

geographical discriminations. Let me now take a more comprehensive view, and warn you, in the most solemn manner, against the baneful effects of the spirit of party generally.

This spirit, unfortunately, is inseparable from our nature, having its root in the strongest passions of the human mind. It exists under different shapes in all governments, more or less stifled, controlled, or repressed; but in those of the popular form it is seen in its greatest rankness, and is truly their worst enemy.

The alternate domination of one faction over another, sharpened by the spirit of revenge, natural to party dissension, which, in different ages and countries, has perpetrated the most horrid enormities, is itself a frightful despotism. But this leads at length to a more formal and permanent despotism. The disorders and miseries which result gradually incline the minds of men to seek security and repose in the absolute power of an individual; and, sooner or later, the chief of some prevailing faction, more able or more fortunate than his competitors, turns this disposition to the purposes of his own elevation on the ruins of public liberty.

Without looking forward to an extremity of this kind (which, nevertheless, ought not to be entirely out of sight), the common and continual mischiefs of the spirit of party are sufficient to make it the interest and duty of a wise people to discourage and restrain it.

It serves always to distract the public councils, and enfeeble the public administration. It agitates the community with ill-founded jealousies and false alarms; kindles the animosity of one part against another; foments, occasionally, riot and insurrection. It opens the door to foreign influence and corruption, which find a facilitated access to the government itself through the channels of party passions. Thus the policy and the will of one country are subjected to the policy and will of another.

There is an opinion that parties in free countries are useful checks upon the administration of the government, and serve to keep alive the spirit of liberty. This, within certain limits, is probably true; and, in governments of a monarchical cast, patriotism may look with indulgence, if not with favor,

upon the spirit of party. But in those of the popular character, in governments purely elective, it is a spirit not to be encouraged. From their natural tendency, it is certain there will always be enough of that spirit for every salutary purpose. And, there being constant danger of excess, the effort ought to be, by force of public opinion, to mitigate and assuage it. A fire not to be quenched, it demands a uniform vigilance to prevent its bursting into a flame, lest, instead of warming, it should consume.

It is important, likewise, that the habits of thinking, in a free country, should inspire caution in those intrusted with its administration, to confine themselves within their respective constitutional spheres, avoiding, in the exercise of the powers of one department, to encroach upon another. The spirit of encroachment tends to consolidate the powers of all the departments in one, and thus to create, whatever the form of government, a real despotism. A just estimate of that love of power, and proneness to abuse it which predominates in the human heart, is sufficient to satisfy us of the truth of this position. The necessity of reciprocal checks in the exercise of political power, by dividing and distributing it into different depositories, and constituting each the guardian of the public weal, against invasions by the others, has been evinced by experiments, ancient and modern, — some of them in our own country, and under our own eyes. To preserve them must be as necessary as to institute them. If, in the opinion of the people, the distribution or modification of the constitutional powers be in any particular wrong, let it be corrected by an amendment in the way which the Constitution designates. But let there be no change by usurpation ; for, though this in one instance may be the instrument of good, it is the customary weapon by which free governments are destroyed. The precedent must always greatly overbalance, in permanent evil, any partial or transient benefit which the use can at any time yield.

Of all the dispositions and habits which lead to political prosperity, religion and morality are indispensable supports. In vain would that man claim the tribute of patriotism who should labor to subvert these great pillars of human happiness,

these firmest props of the duties of men and citizens. The mere politician, equally with the pious man, ought to respect and to cherish them. A volume could not trace all their connections with private and public felicity. Let it simply be asked, where is the security for property, for reputation, for life, if the sense of religious obligation *desert* the oaths which are the instruments of investigation in courts of justice? And let us with caution indulge the supposition, that morality can be maintained without religion. Whatever may be conceded to the influence of refined education on minds of peculiar structure, reason and experience both forbid us to expect that national morality can prevail in exclusion of religious principles.

It is substantially true, that virtue or morality is a necessary spring of popular government. The rule, indeed, extends with more or less force to every species of free government. Who that is a sincere friend to it can look with indifference upon attempts to shake the foundation of the fabric?

Promote, then, as an object of primary importance, institutions for the general diffusion of knowledge. In proportion as the structure of a government gives force to public opinion, it is essential that public opinion should be enlightened.

As a very important source of strength and security, cherish public credit. One method of preserving it is to use it as sparingly as possible; avoiding occasions of expense by cultivating peace, but remembering also that timely disbursements to prepare for danger frequently prevent much greater disbursements to repel it; avoiding, likewise, the accumulation of debt, not only by shunning occasions of expense, but by vigorous exertions in time of peace to discharge the debts which unavoidable wars may have occasioned; not ungenerously throwing upon posterity the burden which we ourselves ought to bear. The execution of these maxims belongs to your representatives; but it is necessary that public opinion should co-operate. To facilitate to them the performance of their duty, it is essential that you should practically bear in mind, that towards the payment of debts there must be revenue; that to have revenue there must be taxes; that no taxes can be devised which are not more or less inconvenient and unpleas-

ant; that the intrinsic embarrassment inseparable from the selection of the proper objects (which is always a choice of difficulties) ought to be a decisive motive for a candid construction of the conduct of the government in making it, and for a spirit of acquiescence in the measures for obtaining revenue, which the public exigencies may at any time dictate.

Observe good faith and justice towards all nations; cultivate peace and harmony with all. Religion and morality enjoin this conduct; and can it be that good policy does not equally enjoin it? It will be worthy of a free, enlightened, and, at no distant period, a great nation, to give to mankind the magnanimous and too novel example of a people always guided by an exalted justice and benevolence. Who can doubt that, in the course of time and things, the fruits of such a plan would richly repay any temporary advantages which might be lost by a steady adherence to it? Can it be that Providence has not connected the permanent felicity of a nation with its virtue? The experiment, at least, is recommended by every sentiment which ennobles human nature. Alas! is it rendered impossible by its vices?

In the execution of such a plan, nothing is more essential than that permanent inveterate antipathies against particular nations, and passionate attachments for others, should be excluded; and that, in place of them, just and amicable feelings towards all should be cultivated. The nation which indulges towards another an habitual hatred, or an habitual fondness, is, in some degree, a slave. It is a slave to its animosity or to its affection, either of which is sufficient to lead it astray from its duty and its interest. Antipathy in one nation against another disposes each more readily to offer insult and injury, to lay hold of slight causes of umbrage, and to be haughty and intractable when accidental or trifling occasions of dispute occur. Hence frequent collisions, obstinate, envenomed, and bloody contests. The nation, prompted by ill will and resentment, sometimes impels to war the government, contrary to the best calculations of policy. The government sometimes participates in the national propensity, and adopts, through passion, what reason would reject; at other times it makes the animosity of the nation subservient to projects of hostility,

instigated by pride, ambition, and other sinister and pernicious motives. The peace often, sometimes perhaps the liberty, of nations has been the victim.

So, likewise, a passionate attachment of one nation to another produces a variety of evils. Sympathy for the favorite nation, facilitating the illusion of an imaginary common interest, in cases where no real common interest exists, and infusing into one the enmities of the other, betrays the former into a participation in the quarrels and wars of the latter, without adequate inducement or justification. It leads also to concessions to the favorite nation of privileges denied to others, which is apt doubly to injure the nation making the concessions, by unnecessarily parting with what ought to have been retained, and by exciting jealousy, ill will, and a disposition to retaliate, in the parties from whom equal privileges are withheld ; and it gives to ambitious, corrupted, or deluded citizens (who devote themselves to the favorite nation) facility to betray, or sacrifice the interest of, their own country, without odium, sometimes even with popularity ; gilding with the appearance of a virtuous sense of obligation, a commendable deference for public opinion, or a laudable zeal for public good, the base or foolish compliances of ambition, corruption, or infatuation.

As avenues to foreign influence in innumerable ways, such attachments are particularly alarming to the truly enlightened and independent patriot. How many opportunities do they afford to tamper with domestic factions, to practise the art of seduction, to mislead public opinion, to influence or awe the public councils! Such an attachment of a small or weak towards a great and powerful nation dooms the former to be the satellite of the latter.

Against the insidious wiles of foreign influence (I conjure you to believe me, fellow-citizens) the jealousy of a free people ought to be *constantly* awake, since history and experience prove that foreign influence is one of the most baneful foes of republican government. But that jealousy, to be useful, must be impartial, else it becomes the instrument of the very influence to be avoided, instead of a defence against it. Excessive partiality for one foreign nation, and excessive dislike for another, cause those whom they actuate to see danger only on

one side, and serve to veil, and even second, the arts of influence on the other. Real patriots, who may resist the intrigues of the favorite, are liable to become suspected and odious; while its tools and dupes usurp the applause and confidence of the people, to surrender their interests.

The great rule of conduct for us, in regard to foreign nations, is, in extending our commercial relations, to have with them as little political connection as possible. So far as we have already formed engagements, let them be fulfilled with perfect good faith. Here let us stop.

Europe has a set of primary interests, which to us have none or a very remote relation. Hence she must be engaged in frequent controversies, the causes of which are essentially foreign to our concerns. Hence, therefore, it must be unwise in us to implicate ourselves by artificial ties in the ordinary vicissitudes of her politics, or the ordinary combinations and collisions of her friendships or enmities.

Our detached and distant situation invites and enables us to pursue a different course. If we remain one people under an efficient government, the period is not far off when we may defy material injury from external annoyance; when we may take such an attitude as will cause the neutrality we may at any time resolve upon to be scrupulously respected; when belligerent nations, under the impossibility of making acquisitions upon us, will not lightly hazard the giving us provocation; when we may choose peace or war as our interest, guided by justice, shall counsel.

Why forego the advantages of so peculiar a situation? Why quit our own to stand upon foreign ground? Why, by interweaving our destiny with that of any part of Europe, entangle our peace and prosperity in the toils of European ambition, rivalship, interest, humor, or caprice?

It is our true policy to steer clear of permanent alliances with any portion of the foreign world, — so far, I mean, as we are now at liberty to do it; for let me not be misunderstood as capable of patronizing infidelity to existing engagements. I hold the maxim no less applicable to public than to private affairs, that honesty is always the best policy. I repeat it, therefore, let those engagements be observed in their genuine

sense. But, in my opinion, it is unnecessary, and would be unwise, to extend them.

Taking care always to keep ourselves, by suitable establishments, on a respectable defensive posture, we may safely trust to temporary alliances for extraordinary emergencies.

Harmony and a liberal intercourse with all nations are recommended by policy, humanity, and interest. But even our commercial policy should hold an equal and impartial hand, neither seeking nor granting exclusive favors or preferences; consulting the natural course of things; diffusing and diversifying, by gentle means, the streams of commerce, but forcing nothing; establishing — with powers so disposed, in order to give trade a stable course, to define the rights of our merchants, and to enable the government to support them — conventional rules of intercourse, the best that present circumstances and mutual opinions will permit, but temporary, and liable to be from time to time abandoned or varied as experience and circumstances shall dictate; constantly keeping in view that it is folly in one nation to look for disinterested favors from another; that it must pay with a portion of its independence for whatever it may accept under that character; that by such acceptance it may place itself in the condition of having given equivalents for nominal favors, and yet of being reproached with ingratitude for not giving more. There can be no greater error than to expect or calculate upon real favors from nation to nation. It is an illusion which experience must cure, which a just pride ought to discard.

In offering to you, my countrymen, these counsels of an old and affectionate friend, I dare not hope they will make the strong and lasting impression I could wish; that they will control the usual current of the passions, or prevent our nation from running the course which has hitherto marked the destiny of nations: but, if I may even flatter myself that they may be productive of some partial benefit, some occasional good; that they may now and then recur to moderate the fury of party spirit, to warn against the mischiefs of foreign intrigues, to guard against the impostures of pretended patriotism, — this hope will be a full recompense for the solicitude for your welfare by which they have been dictated.

How far, in the discharge of my official duties, I have been guided by the principles which have been delineated, the public records, and other evidences of my conduct, must witness to you and the world. To myself the assurance of my own conscience is, that I have at least believed myself to be guided by them.

In relation to the still subsisting war in Europe, my proclamation of the 22d of April, 1793, is the index to my plan. Sanctioned by your approving voice, and by that of your representatives in both houses of Congress, the spirit of that measure has continually governed me, uninfluenced by any attempts to deter or divert me from it.

After deliberate examination, with the aid of the best lights I could obtain, I was well satisfied that our country, under all the circumstances of the case, had a right to take, and was bound in duty and interest to take, a neutral position. Having taken it, I determined, as far as should depend upon me, to maintain it with moderation, perseverance, and firmness.

The considerations which respect the right to hold this conduct, it is not necessary on this occasion to detail. I will only observe, that, according to my understanding of the matter, that right, so far from being denied by any of the belligerent powers, has been virtually admitted by all.

The duty of holding a neutral conduct may be inferred, without any thing more, from the obligation which justice and humanity impose on every nation, in cases in which it is free to act, to maintain inviolate the relations of peace and amity towards other nations.

The inducements of interest for observing that conduct will best be referred to your own reflections and experience. With me a predominant motive has been to endeavor to gain time to our country to settle, and mature its yet recent institutions, and to progress, without interruption, to that degree of strength and consistency which is necessary to give it, humanly speaking, the command of its own fortunes.

Though, in reviewing the incidents of my administration, I am unconscious of intentional error, I am, nevertheless, too sensible of my defects not to think it probable that I may have committed many errors. Whatever they may be, I fervently

beseech the Almighty to avert or mitigate the evils to which they may tend. I shall also carry with me the hope that my country will never cease to view them with indulgence; and that, after forty-five years of my life dedicated to its service with an upright zeal, the faults of incompetent abilities will be consigned to oblivion, as myself must soon be to the mansions of rest.

Relying on its kindness in this as in other things, and actuated by that fervent love towards it which is so natural to a man who views in it the native soil of himself and his progenitors for several generations, I anticipate, with pleasing expectation, that retreat in which I promise myself to realize, without alloy, the sweet enjoyment of partaking, in the midst of my fellow-citizens, the benign influence of good laws under a free government, — the ever-favorite object of my heart, — and the happy reward, as I trust, of our mutual cares, labors, and dangers.

GEORGE WASHINGTON.

UNITED STATES, 17th September, 1796.

LIST OF BOOKS

PUBLISHED BY JOHN ALLYN,

30, FRANKLIN STREET, BOSTON.

ABBOTT. Latin Prose through English Idiom. Rules and Exercises on Latin Prose Composition. By Rev. E. A. Abbott, D.D. 18mo, 205 pages $1.00

ARISTOPHANES. The Acharnians and Knights. Edited by W. C. Green. (*Catena Classicorum.*) 12mo, 210 pages 1.35

——— **The Birds.** Edited by C. C. Felton, LL.D. New Edition, revised by Prof. W. W. Goodwin. 16mo, 250 pages 1.25

——— **The Clouds.** Edited by C. C. Felton, LL.D. New Edition, revised by Prof. W. W. Goodwin. 16mo, 250 pages 1.25

BENNETT. Easy Latin Stories for Beginners. 16mo . . 1.00

——— **First Latin Writer.** 16mo 1.25

BOWEN. A Treatise on Logic, or the Laws of Pure Thought. By Francis Bowen, Professor of Moral Philosophy in Harvard University. 12mo, 460 pages 1.75

——— **Hamilton's Metaphysics,** arranged and abridged for the use of Colleges and Students. By Prof. F. Bowen. 12mo, 570 pages 1.75

CHARDENAL. First French Course, or Rules and Exercises for Beginners. By C. A. Chardenal. 16mo, 220 pages . .75

——— **Second French Course,** or French Syntax and Reader. 16mo, 250 pages 90

——— **French Exercises for Advanced Pupils,** containing Rules of French Syntax, Exercises on Rules and Idioms, and a Dictionary of Idiomatical Verbs, Sentences, Phrases, and Proverbs. 16mo, 332 pages 1.25

CICERO. Oratio pro Cluentio. Edited by Austin Stickney, Professor in Trinity College. 16mo, 155 pages 90

COOKE. First Principles of Chemical Philosophy. By J. P. Cooke, Jr., Professor of Chemistry and Mineralogy in Harvard University. 12mo, 600 pages 3.00

——— **Elements of Chemical Physics.** By Professor J. P. Cooke, Jr. 8vo, 750 pages 5.00

DEMOSTHENES. Olynthiacs and Philippics. Edited by W. S. TYLER, Professor of Greek in Amherst College. 16mo, 253 pages $1.25

Separately. **The Olynthiacs.** 98 pages 75

The Philippics. 155 pages 90

——— **On the Crown.** Edited by ARTHUR HOLMES. New Edition, revised by Prof. W. S. TYLER. 16mo, 304 pages . 1.50

DE TOCQUEVILLE. Democracy in America. Translated by REEVE. Revised and edited, with Notes, by FRANCIS BOWEN, Professor of Moral Philosophy in Harvard University. Sixth Edition. 2 vols. 8vo 5.00

——— **American Institutions.** Being a cheaper edition of Vol. I. of the preceding work, and designed for use as a College Text-Book. 12mo, 560 pages 1.60

FELTON'S Selections from Greek Historians. Entirely new Edition. Edited, with maps, by O. M. FERNALD, Professor of Greek in Williams College. 12mo 1.75

FELTON. Selections from Modern Greek Writers. Edited by C. C. FELTON, LL.D. 12mo, 230 pages 1.25

HERODOTUS AND THUCYDIDES. Selections. Edited by R. M. MATHER, Professor of Greek and German in Amherst College. 16mo, 150 pages 90

HOMER'S ILIAD, Books I. to III. Edited by ARTHUR SIDGWICK, M.A., Assistant-Master at Rugby, and ROBT. P. KEEP, Ph.D., Williston Seminary, Easthampton. 16mo . 1.00

HORACE. With Notes by MACLEANE, revised and edited by R. H. CHASE. 12mo, 580 pages 1.60

ISOCRATES. The Panegyricus. Edited by C. C. FELTON, LL.D.; new Edition, revised and corrected by Prof. W. W. GOODWIN. 16mo, 155 pages 90

JUVENAL. Thirteen Satires. With Notes by MACLEANE, revised and edited by SAMUEL HART, Professor in Trinity College. 16mo, 262 pages 1.25

——— Edited by G. A. SIMCOX, Queen's College, Oxford. (*Catena Classicorum.*) 12mo, 225 pages 1.50

PENNELL. History of Ancient Greece to 146 B.C. With Map and Plans. By R. F. PENNELL, Professor in Phillips Exeter Academy. 16mo, 130 pages 75

——— **History of Ancient Rome to 476 A.D.** 16mo, 206 pages 75

——— **The Latin Subjunctive.** A Manual for Preparatory Schools. 16mo, sewed, 56 pages 25

PERSIUS. Edited by SAMUEL HART, Professor in Trinity College. 16mo, 91 pages 90

PLATO. The Apology and Crito. Edited by W. WAGNER, Ph.D. Revised. 16mo, 145 pages $1.00

——— **The Phædo.** Edited by W. WAGNER, Ph.D. 16mo, 200 pages 1.35

SHARPLES. Chemical Tables, arranged for Laboratory Use, by S. P. SHARPLES, S.B. 12mo, 200 pages 2.25

SOPHOCLES. The Ajax. Edited by R. C. JEBB, Trinity College, Cambridge. 12mo, 200 pages 1.25

——— **The Electra.** Edited by R. C. JEBB. New Edition, revised by Prof. R. H. MATHER. 16mo, 230 pages . . . 1.25

STORER. Dictionary of the Solubilities of Chemical Substances. By Prof. F. H. STORER. 8vo. Cloth, $7.50; half Russia 9.00

——— **Cyclopædia of Quantitative Chemical Analysis.** By Prof. F. H. STORER. Parts I., II. ready. 8vo. Paper, each 1.65

TACITUS. Selections. Edited by Dr. J. T. CHAMPLIN. 16mo, 272 pages 1.25

THUCYDIDES. Books I., II. Edited by CHAS. BIGG, Christ Church, Oxford. (*Catena Classicorum.*) 12mo, 360 pages . 2.00

TIMAYENIS. The Language of the Greeks, by T. T. TIMAYENIS, Ph.D. 12mo 1.50

——— **Talks with Aesop.** 16mo 1.50

WEALE'S CLASSICAL SERIES.

16MO. UNIFORMLY BOUND IN FLEXIBLE CLOTH. ANY VOLUME SOLD SEPARATELY.

☞ *By an arrangement with the English publishers,* MR. ALLYN *has become the sole agent for the sale of this series in the United States. A full supply is constantly on hand.*

GREEK-ENGLISH DICTIONARY. By H. R. HAMILTON. 300 pages $0.80

ENGLISH-GREEK DICTIONARY. By H. R. HAMILTON. 250 pages 80

ÆSCHYLUS. Prometheus Vinctus. Edited by J. DAVIES 40

——— Septem contra Thebas. Edited by J. DAVIES 40

ARISTOPHANES. Acharnians. Edited by C. S. D. TOWNSHEND .60

EURIPIDES. Alcestis. Edited by J. MILNER 40

——— Hecuba and Medea. Edited by W. B. SMITH 60

GREEK DELECTUS. Edited by H. Young $0.60

HERODOTUS. Edited by T. H. L. Leary. Vol. I. (Books 1–2) 80 cts.; Vol. II. (Books 3–4) 80 cts.; Vol. III. (Books 5–7) 80 cts.; Vol. IV. (Books 8–9) 60

HOMER. The Iliad. Edited by T. H. L. Leary. 4 vols., each . .60

——— The Odyssey. Ed. by Leary. Vols. I.–III., each 60 cts.; Vol. IV. .80

LUCIAN. Select Dialogues. Edited by H. Young 40

PLATO. Apology, Crito, and Phædo. Edited by J. Davies 80

SOPHOCLES. Antigone. Edited by J. Milner 80

——— Œdipus Tyrannus. Edited by H. Young 40

THUCYDIDES. The Peloponnesian War. Book I. By H. Young .40

XENOPHON. The Anabasis. Ed. by H. Young. Vol. I. (Books I.–III.) .40
Vol. II. (Books IV.–VII.) .40

——— Panegyric on Agesilaus. Edited by F. W. Jewitt 60

LATIN-ENGLISH DICTIONARY. By T. Goodwin. 246 pages .80

ENGLISH-LATIN DICTIONARY. By T. Goodwin. 166 pages .60

CÆSAR DE BELLO GALLICO. Edited by H. Young 80

CATULLUS, TIBULLUS, PROPERTIUS, AND OVID. Edited by W. B. Donne 80

CICERO DE AMICITIA, DE SENECTUTE, AND BRUTUS. Edited by W. B. Smith 80

——— In Catilinam, Verrem, et pro Archia. Edited by Leary . . .60

——— Pro S. Roscio Amerino. Edited by J. Davies 40

CORNELIUS NEPOS. Edited by H. Young 40

HORACE. Odes, Epodes, and Car. Sæc. Edited by H. Young . .60

——— Satires, Epistles, and Ars Poet. Edited by W. B. Smith . .60

JUVENAL, Expurgated. Edited by T. H. S. Escott 80

LATIN DELECTUS. Edited by H. Young 40

LATIN PROSE SELECTIONS: from Varro, Seneca, Quintilian, Suetonius, &c. Edited by W. B. Donne 80

LIVY. Edited by H. Young and W. B. Smith. Vol. I. (Books 1–2) 60 cts.; Vol. II. (Books 3–5) 60 cts.; Vol. III. (Books 21–22) . . .60

SALLUST. Catiline and Jugurtha. Edited by W. B. Donne . . .60

TERENCE. Adelphi, Hecyra, Phormio. Edited by J. Davies . .80

——— Andria, and Heautontimoroumenos. Edited by J. Davies . .60

——— Eunuchus. Edited by J. Davies 60

VIRGIL. Æneid. Edited by H. Young and T. H. L. Leary . . 1.20

——— —— Vol. I. (Books 1–6) 60 cts.; Vol. II. (Books 7–12) 80

——— Bucolics and Georgics. Edited by W. Rushton and H. Young .60

ENGLISH TEXT BOOKS.

BOWEN'S HAMILTON'S METAPHYSICS. The Metaphysics of Sir William Hamilton, collected, arranged, and abridged by FRANCIS BOWEN, Alford Professor of Moral Philosophy in Harvard College. 12mo, 570 pages. $1.75.

The editor has endeavored to prepare a text-book which should contain, in Hamilton's own language, the substance of all that he wrote upon the subject of metaphysics.

I cannot refrain from congratulating you on your success. You have given the Metaphysics of Sir Wm. Hamilton in his own words, and yet in a form admirably adapted to the recitation room, and also to private students. — *James Walker, D.D., LL.D, late President of Harvard University.*

The students of our colleges are to be congratulated that the labors of the great master of metaphysical science are now rendered much more availing for their benefit, than they were made, perhaps than they could have been made, by his own hand. — *North American Review.*

BOWEN'S LOGIC. A Treatise on Logic, or the Laws of Pure Thought; comprising both the Aristotelic and Hamiltonian Analyses of Logical Forms, and some chapters on Applied Logic. By Prof. F. BOWEN. 12mo, 476 pages. $1.75.

Throughout the work the author has kept constantly in view the wants of learners, much of it having been first suggested by the experience of his own class room.

I have found it the most thorough and systematic text-book on the subject with which I am acquainted. It fully supplies the purpose for which it was written, and, in the hands of a good teacher, it furnishes all the aid that he or his class will need. — *E. O. Haven, LL.D., late President of University of Michigan.*

As an English text-book in this department of philosophy, I have seen nothing to be compared with it. — *James Walker, D.D., LL.D., late President of Harvard University.*

COOKE'S CHEMICAL PHILOSOPHY. Principles of Chemical Philosophy, by JOSIAH P. COOKE, Jr., Erving Professor of Chemistry and Mineralogy in Harvard College. Third Edition, revised and corrected. 12mo, 600 pages. $3.00.

The object of this book is to present the philosophy of chemistry in such a form that it can be made with profit the subject of college recitations. The author has found, by long experience, that a recitation on mere descriptions of apparatus and experiments is all but worthless, while the study of the philosophy of chemistry may be made highly profitable both for instruction and discipline. Part I. of the book contains a statement of the general laws and theories of chemistry, together with so much of the principles of molecular physics as are constantly applied to chemical investigations. It might be called a Grammar of the science.

Part II. presents the scheme of the chemical elements, and should only be studied in connection with experimental lectures or laboratory work. In the new edition, the text has been altered wherever corrections have been made necessary by the recent progress of the science.

I consider it one of the very best works on the subject in the English language. It is concise, compact, philosophical, capital. — *Professor J. S. Schanck, College of New Jersey, Princeton.*

As far as our recollection goes, we do not think there exists in any language a book on so difficult a subject as this so carefully, clearly, and lucidly written. — *London Chemical News.*

COOKE'S CHEMICAL PHYSICS. Elements of Chemical Physics. By Professor JOSIAH P. COOKE, Jr. Third Edition. 8vo, 750 pages. $5.00.

This volume is intended to furnish a full development of the principles involved in the investigation of chemical phenomena. In order to adapt it to the purposes of instruction, it has been prepared on a strictly inductive method throughout; and any student with an elementary knowledge of mathematics will be able to follow the course of reasoning without difficulty. Each chapter is followed by a large number of problems, which are calculated, not only to test the knowledge of the student, but also to extend and apply the principles discussed in the work.

PENNELL'S ANCIENT HISTORIES.

ANCIENT GREECE, from the Earliest Times down to 146 B. C. By R. F. PENNELL, Professor of Latin in Phillips Exeter Academy. With Map and Plans. 16mo, 130 pages. 75 cents.

ROME, from the Earliest Times down to 476 A.D. 16mo, 206 pages. 75 cents.

These books are compiled respectively from the works of Curtius and Rawlinson, and from Mommsen and Niebuhr. They contain amply sufficient matter to prepare a pupil for any of our colleges. All minor details are, however, omitted, thus avoiding a confused mass of matter so perplexing to every beginner. Important events, names, and dates are printed in **heavy type,** strongly impressing them upon the student's memory.

I know of no other compend of Roman Geography and History so well fitted for students in the early stages of a classical education. In addition to its worth as a school book, it is of no little value as a reference book for the leading names, dates, and facts of Roman history. — *A. P. Peabody, D.D., Harvard University.*

It is a most judicious epitome of Greek history, containing just those salient points about which all the minor events naturally group themselves. Teachers and pupils will rejoice to be free from Smith's maze of petty names and events. — *Professor W. M. Jefferis, Delaware College.*

I am very much pleased with the Greek history, and believe it will meet the wants of classes fitting for college, better than any thing of the kind that has been published. — *Professor Charles Dole, Northfield, Vermont.*

PENNELL'S LATIN SUBJUNCTIVE. The Latin Subjunctive, a Manual for Preparatory Schools. By Professor R. F. PENNELL. 16mo, sewed, 56 pages. 25 cents.

FRENCH TEXT BOOKS.

CHARDENAL'S FRENCH SERIES.

FIRST FRENCH COURSE, or Rules and Exercises for Beginners. By C. A. CHARDENAL. 16mo, 220 pages. 75 cents

SECOND FRENCH COURSE, or French Syntax and Reader. 16mo, 250 pages. 90 cents.

FRENCH EXERCISES FOR ADVANCED PUPILS, containing Rules of French Syntax, Exercises on Rules and Idioms, and a Dictionary of nearly Four Thousand Idiomatical Verbs, Sentences, Phrases, and Proverbs. 16mo, 332 pages. $1.25.

These books have been carefully graded to meet the wants alike of the beginner and of the advanced pupil. Taken together, they furnish a complete course of French grammar, with exercises for translation into French and English. The first two volumes contain, in addition, a French Reader, with complete vocabularies; and the last book contains also a long list of French idioms, arranged in sections, with exercises for translation and retranslation on each section.

I have examined very carefully the book of Chardenal you had the kindness to send me. I shall most certainly use it in some of my classes, and introduce it next year at the Massachusetts Institute of Technology. — *Professor J. Lévy, Boston.*

Monsieur Chardenal's system of teaching French, unlike that of some modern professors, is based upon a sound and thorough comprehension of the rules of the language. He does not profess to teach French in a fortnight, or, may be, in a week; but tells his pupils at the outset that the knowledge of French, like any other knowledge worth acquiring, can only be got at by hard and persevering labor, extended over a considerable space of time. We cordially recommend his volumes. — *London Spectator.*

They are certainly the best books for the teaching of French I have ever seen, and I have no hesitation in making them the text-books here. — *Professor M. B. Anderson, Butler University, Indiana.*

Le recueil d'exercices publié par M. Chardenal répond parfaitement, selon moi, au but que l'auteur se propose. . . . En un mot, ces exercices apprendront aux élèves à parler français, au lieu de se servir de phrases littéralement traduites de l'anglais. — *Professor Karcher, Royal Military Academy, Woolwich.*

Je puis vous dire, en toute sincérité, que vous avez fait un travail bon et utile. Le recueil d'expressions idiomatiques est excellent et ferait à lui seul le succés de votre livre. — *Professor Ch. Cassal, LL.D., University College, London.*

Les règles sont si brèves et si claires, les thèmes si bien gradués, et les idiotismes si bien rendus en anglais, que l'utilité du livre pour les maîtres aussi bien que pour les élèves n'admet aucun doute. — *Professor Schaffer, St. Andrews University*