THE

CONSTITUTIONAL CLASS BOOK:

BEING

A BRIEF EXPOSITION OF THE

CONSTITUTION

OF THE

UNITED STATES.

DESIGNED FOR THE USE OF THE HIGHER CLASSES IN COMMON SCHOOLS.

BY JOSEPH STORY, LL. D.

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'The unity of Government, which constitutes you one People, is also dear to you. It is justly so; for it is the main pillar in the edifice of your real Independence; the support of your tranquillity at home, and your peace abroad; of your safety; of your prosperity; of that very liberty which you so highly prize.'—*Washington's Farewell Address to the People of the United States.*

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TO THE

SCHOOLMASTERS

OF THE

UNITED STATES

WHOSE MERITORIOUS, THOUGH OFTEN ILL-REQUITED LABORS HAVE CONFERRED LASTING BENEFITS ON THEIR COUNTRY,

BY THE PROMOTION OF

SOUND LEARNING, PURE PATRIOTISM,

AND

CHRISTIAN PIETY,

THIS WORK IS RESPECTFULLY DEDICATED,

BY THEIR GRATEFUL FRIEND AND SERVANT,

THE AUTHOR.

Cambridge, Jan. 1, 1834.

PREFACE.

The present work is designed to be read and studied by the higher classes in our Common Schools. It has been prepared in compliance with a suggestion made to me, that such a work was a desideratum in the common course of the education of American youth. The deserved success of the excellent Class Books of Mr. William Sullivan, which do so much honor to him as a statesman, a scholar, and a moralist, have encouraged me to hope, that the task thus performed, may not be without some public utility. If it shall tend to awaken in the bosoms of American youth a more warm and devoted attachment to the National Union, and a more deep and firm love of the National Constitution, it will afford me a very sincere gratification, and be an ample compensation for the time, which has necessarily been withdrawn from other pressing avocations, in order to complete it.

The plan is the same, which I have adopted in my larger Commentaries. But it became indispensable to write nearly all the work anew, so much was required to give simplicity, and clearness, and brevity to the explanations, that they

might meet the minds of those, who cannot be presumed to possess much, if any, political knowledge. Indeed, except the concluding chapter, the whole has been printed from an original manuscript. The work properly forms a sequel to Mr. Sullivan's Political Class Book; but it is, at the same time, altogether independent of it in its structure and design.

I leave the work, such as it is, to the indulgent consideration of the public, trusting to their candor, and grateful for their past kindness —

> 'Content, if hence th' unlearn'd their wants may view,
> The learn'd reflect on what before they knew.'

JOSEPH STORY.

Cambridge, Jan. 1, 1834.

ERRATA.

Page 16, line 4 from the bottom, for *sparce*, read *sparse*; — p. 19, line 1, for *were*, read *was*; — p. 32, line 12, for *self-bearings*, read *sufferings*; line 12, strike out *of*; — p. 61, line 23, for *becomes*, read *become*; — p. 66, line 4, for *times*, read *time*; — p. 78, line 22, for *one*, read *power*; — p. 80, line 12, for *it*, read *them*; line 18, for *naebled*, read *enabled*; — p. 82, line 7, for *an dequal*, read *and equal*; line 14, for *his*, read *the*; line 15, for *indegeasible*, read *indefensible*; — p. 85, line 14, for *establish*, read *establishes*; — p. 95, line 14, for *is*, read *are*; line 15, for *has*, read *have*; — p. 99, line 1, for *the latter is*, read *the two latter are*; — p. 136, line 1, for *it*, read *they*; — p. 138, line 25, for *to torture*, read *tortured*.

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THE

CONSTITUTIONAL

CLASS BOOK.

CHAPTER I.

History of the Colonies.

§ 1. The Thirteen American Colonies which, on the fourth day of July, 1776, declared themselves free and independent States, were New-Hampshire, Massachusetts, Rhode-Island, Connecticut, New-York, New-Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, and Georgia. All these colonies were originally settled by British subjects, and under the authority of the Government of Great Britain, except New-York, which was originally settled by emigrants from Holland; and Delaware, which, though an appendage to the Government of New-York, was at first principally inhabited by the Dutch and Swedes. The British Government, however, claimed the territory of all these colonies, and at all times resisted the claim of the Dutch to make any settlement in America; and the colony of New-York became at an early period subject to British authority by conquest from the Dutch. The other eleven States, now belonging to the Union, had no existence at the time of the declaration of Independence; but have since been established within the territory, which was ceded to the United States by the Treaty of Peace with Great Britain in 1783, or within the territory which has been since acquired by the United States by purchase from other nations.

§ 2. There is no doubt, that the Indian Tribes, which in-

habited America at the time of its discovery, towards the close of the fifteenth century, (1492) maintained a claim to the exclusive possession and occupancy of the territory within their respective limits, as sovereign proprietors of the soil. They acknowledged no obedience, or allegiance, or subordination to any foreign nation whatsoever; and, as far as they have possessed the means, they have ever since constantly asserted this full right of dominion, and have yielded it up only when it has been purchased from them, or obtained by force of arms. In short, like all the civilized nations of the earth, the Indian Tribes deemed themselves rightfully possessed, as sovereigns, of all the territories, within which they were accustomed to hunt, or exercise other acts of ownership, upon the common principle, that exclusive use gave them an exclusive right to the soil, whether cultivated or not.

§ 3. It is difficult to perceive, why their title was not, in this respect, as well founded as the title of any other nation, to the soil within its boundaries. How, then, it may be asked, did the European nations acquire the general title, which they have always asserted to the whole soil of America, even to that in the occupancy of the Indians? The only answer which can be given, is, that it belonged to them, by what they asserted (whether satisfactorily or not, is quite a different question) to be the right of discovery. They established the doctrine, that discovery is a sufficient foundation for the right to territory. Between themselves, with a view to prevent contests, where the same land had been visited by different nations, each of which might claim it as its own, there was no inconvenience in allowing the first discoverer to have the priority of right, where the territory was at the time desert, and uninhabited. But as to nations, who had not acceded to the doctrine, and especially as to countries inhabited at the time of the discovery, it seems difficult to perceive, what ground of right any discovery could confer. It would seem strange to us, if in the present times the natives of the South Sea Isl-

ands, or of Cochin China, should, by making a discovery of the United States, on that account, set up a right to the soil within our boundaries.

§ 4. The truth is, that the European nations paid not the slightest regard to the rights of the natives. They treated them as mere barbarians and heathen, whom, if they were not at liberty to extirpate, they were entitled to deem mere temporary occupants of the soil, who might be converted by their aid to Christianity; and who, if they refused conversion, might be driven from the soil, as unworthy to inhabit it. They affected to be governed by the desire to promote the cause of Christianity; and were aided in this ostensible object by the whole influence of the Papal power. But their real object was to extend their own power, and increase their own wealth, by acquiring the treasures, as well as the territory of the New World. Avarice and ambition were at the bottom of all their enterprizes.

§ 5. The right of discovery thus asserted, has become the settled foundation, on which the European nations rest their title to territory in America; and it is a right, which, under our Governments, must now be deemed incontestible. The Indians, however, have not been treated as mere intruders, but as lawful occupants of the soil, entitled to a temporary possession thereof, subject to the superior sovereignty of the European nations, which might hold the title of discovery. They have not, indeed, been permitted to alienate their possessory right, except to the nation to whom they were thus bound by a qualified dependence. But in other respects they have been left to the free exercise of internal sovereignty; and their title to the soil by way of occupancy has been constantly respected, until it has been extinguished by purchase, or by conquest. A large portion of the territory in the United States, to which the Indian title is now extinguished, has been acquired by purchase; and a still larger portion by the irresistible power of arms over a brave, hardy, but declining

race, whose destiny seems to be, to perish, as fast as the white man advances upon their footsteps.

§ 6. The first permanent settlement made in America under the auspices of England, was under a charter granted by King James the First, in 1606. By this charter he granted all the lands lying on the sea-coast between the 34th and the 45th degrees of north latitude, not then possessed by any Christian prince or people. The associates were divided into two companies; one, the First, or Southern Colony, to which was granted all the lands between the 34th and 41st degrees of north latitude; and the other, the Second, or Northern Colony, to which was granted all the lands between the 38th and 45th degrees of north latitude, but not within 100 miles of the prior colony. The name of Virginia was generally confined exclusively to the Southern colony; and the name of the Plymouth Company (from the place of residence of the original grantees in England) was assumed by the Northern colony. From the former, the States south of the Potomac may be said to have had their origin; and from the latter, the States of New-England.

§ 7. The colony of Virginia is the earliest in its origin, being settled in 1606. The colony of Plymouth (which afterwards was united with Massachusetts in 1692) was settled in 1620; the colony of Massachusetts in 1628; the colony of New Hampshire in 1629; the colony of Maryland in 1632; the colony of Connecticut in 1635; the colony of Rhode-Island in 1636; the colony of New-York in 1662; the colonies of North and South Carolina in 1663; the colony of New-Jersey in 1664; the colony of Pennsylvania in 1681; the colony of Delaware in 1682; and the colony of Georgia in 1732. In using these dates, we refer not to sparce and disconnected settlements in these colonies, (which had been made at prior periods) but to the permanent settlements made under distinct and organized governments.

CHAPTER II.

Colonial Governments.

§ 8. The Governments formed in these different colonies may be divided into three sorts, viz. Provincial, Proprietary, and Charter Governments. First, Provincial Governments. These establishments existed under the direct and immediate authority of the King of England, without any fixed constitution of Government; the organization being dependent upon the respective commissions issued from time to time by the Crown to the Royal Governors, and the instructions, which usually accompanied those commissions. The Provincial Governments were, therefore, wholly under the control of the King, and subject to his pleasure. The form of Government, however, in the provinces was at all times practically the same, the commissions being issued in the same form. The commissions appointed a Governor, who was the King's representative, or deputy; and a Council, who, besides being a part of the Legislature, were to assist the Governor in the discharge of his official duties; and each of them held their offi e during the pleasure of the Crown. The commissions also contained authority to convene a general assembly of the representatives of the freeholders and planters; and under this authority, Provincial Assemblies, composed of the Governor, the Council and the Representatives, were constituted. The Representatives composed the lower house, as a distinct branch; the Council, the upper house; and the Governor had a negative upon all their proceedings, and the power to prorogue, and dissolve them. The Legislature, thus constituted, had power to make all local laws and ordinances not repugnant to the laws of England, but as near as might be, agreeable thereto, subject to the ratification or disapproval of the Crown. The Governors appointed the Judges, and Magistrates, and other officers of the province, and possessed other

general executive powers. Under this form of Government New-Hampshire, New-York, Virginia, the Carolinas and Georgia, were governed as Provinces at the commencement of the American Revolution; and some of them had been so governed from an early period of their settlement.

§ 9. Secondly, Proprietary Governments. These were grants by letters patent from the Crown to one or more persons as proprietary or proprietaries, conveying to them not only the rights of the soil, but also the general powers of Government within the territory so granted, in the nature of feudatory principalities, or dependent royalties. So that they possessed within their own domains nearly the same authority, which the Crown possessed in the Provincial Governments, subject however to the control of the Crown, as the paramount sovereign, to whom they owed allegiance. In the Proprietary Governments, the Governor was appointed by the proprietary or proprietaries; the Legislature was organized and convened according to their will; and the appointment of officers, and other executive functions, and prerogatives, were exercised by them, either personally, or by the Governors for the time being. Of these proprietary Governments three only existed at the time of the American Revolution, viz.: Maryland, held by Lord Baltimore, and Pennsylvania and Delaware, held by William Penn.

§ 10. Thirdly, Charter Governments. These were great political Corporations, created by letters patent, or grants of the Crown, which conferred on the grantees and their associates not only the soil within their territorial limits, but also all the high powers of legislation and Government. The Charters contained in fact a fundamental constitution for the colony, distributing the powers of government into three great departments, legislative, executive, and judicial; providing for the mode, in which these powers should be vested and exercised; and securing to the inhabitants certain political privileges and rights. The appointment of the Governor, of the

Legislature, and of Courts of Justice, were specially provided for; and generally the powers appropriate to each were defined. The only Charter Governments existing at the time of the American Revolution, were Massachusetts, Rhode-Island, and Connecticut.

§ 11. The Charter Governments differed from the Provincial, principally in this, that they were not immediately under the authority of the Crown, nor bound by any of its acts, which were inconsistent with their charters; whereas the Provincial Governments were entirely subjected to the authority of the Crown. They differed from the Proprietary Governments in this, that the latter were under the control and authority of the proprietaries, as substitutes of the Crown, in all matters, not secured from such control, and authority by the original grants; whereas, in the former, the powers were parcelled out among the various departments of Government, and permanent boundaries were assigned to each.

§ 12. Notwithstanding these differences in their original political organization, the Colonies, at the time of the American Revolution, in most respects, enjoyed the same general rights and privileges. In all of them there existed a Governor, a Council, and a Representative Assembly, composed of delegates chosen by the people, by whom the legislative and executive functions were exercised. In all of them the legislative power extended to all local subjects, and was subject only to this restriction, that the laws should not be repugnant, but as far as conveniently might be, agreeable to the laws and customs of England. In all of them express provision was made, that all subjects, and their children, inhabiting in the Colonies, should be deemed natural born subjects, and should enjoy all the privileges and immunities thereof. In all of them the common law of England, as far as it was applicable to their situation, was made the basis of their jurisprudence; and it was asserted at all times by them to be their birth-right and inheritance.

CHAPTER III.

Origin of the Revolution.

§ 13. The Colonies considered themselves, not as parcel of the realm of Great Britain, but as dependencies of the British Crown, and owing allegiance thereto, the King being their supreme and sovereign lord. In virtue of this supremacy the King exercised the right of hearing appeals from the decisions of the Courts of the last resort in the Colonies; of deciding controversies between the Colonies as to their respective jurisdictions and boundaries; and of requiring each Colony to conform to the fundamental laws and constitution of its establishment.

§ 14. Though the Colonies had a common right, and owed a common allegiance, and the inhabitants of all of them were British subjects, they had no direct political connexion with each other. Each was independent of the other; and there was no confederacy or alliance between them. The Legislature of one could not make laws for another, nor confer privileges to be enjoyed in another. They were also excluded from all political connexion with foreign nations; and they followed the fate and fortunes of the parent country in peace and in war. Still the Colonists were not wholly alien to each other. On the contrary, they were fellow subjects, and for many purposes one people. Every colonist had a right to inhabit, if he pleased, in any other colony; to trade therewith; and to inherit and hold lands there.

§ 15. The nature and extent of their dependency upon the parent country is not so easily stated; or, rather, it was left in mere uncertainty; the claims on either side not being always well defined, or clearly acquiesced in. The Colonies claimed exclusive authority to legislate on all subjects of local and internal interest and policy. But they did not deny the right of Parliament to regulate their commerce, and their other ex-

ternal concerns, or to legislate upon the common interests of the whole Empire. On the other hand, the Crown claimed a right to exercise many of its prerogatives in the Colonies; and Parliament, though it practically interfered little with their internal affairs, theoretically maintained the right to legislate over them in all cases whatsoever.

§ 16. As soon as any systematic effort was made by the British Parliament to exert practically over the Colonies the power of internal legislation and taxation, as was attempted by the Stamp Act, it was boldly resisted; and it brought on the memorable controversy, which terminated in their Independence, first asserted in 1776, and finally admitted by Great Britain by the Treaty of 1783. At an early period of that controversy the first Continental Congress, in 1774, drew up and unanimously adopted a declaration of the rights of the Colonies, the substance of which is as follows: (1.) That they are entitled to life, liberty, and property; and they have never ceded to any sovereign power, whatever, a right to dispose of either without their consent. (2.) That our ancestors, who first settled the Colonies, were, at the time of their emigration from the mother country, entitled to all the rights, liberties, and immunities of free and natural born subjects within the realm of England. (3.) That by such emigration they by no means forfeited, surrendered, or lost their rights; but that they were, and their descendants now are, entitled to the exercise and enjoyment of all of them. (4.) That the foundation of English liberty is a right in the people to participate in their legislative councils; and as the English Colonists are not, and cannot properly be represented in the British Parliament, they are entitled to a free and exclusive power of legislation in their several provincial assemblies in all cases of taxation and internal polity, subject only to the negative of their sovereign, in such manner as has been heretofore used and accustomed. But from the necessity of the case, and a regard to the mutual interests of both countries, we cheer-

fully consent to the operation of such acts of the British Parliament, as are bonâ fide restrained to the regulation of our external commerce, excluding every action of taxation, internal or external, for raising a revenue on the subjects in America without their consent. (5.) That the respective Colonies are entitled to the common law of England, and more especially, the great and inestimable privilege of being tried by their peers of the vicinage, according to the course of that law, (meaning the trial by jury). (6.) That the Colonies are entitled to the benefit of such of the English Statutes, as existed at the time of their colonization, and which they have by experience respectively found applicable to their several local and other circumstances. (7.) That they are likewise entitled to all the immunities and privileges granted and confirmed to them by royal charters, or secured to them by their several codes of provincial law.

§ 17. Such were the main grounds upon which the American Revolution was founded; and the grievances, under which the Colonies labored, being persisted in by the British Government, a resort to arms became unavoidable. The result of the contest has been already stated; and it belongs to the department of history, and not of constitutional law, to enumerate the interesting events of that period.

CHAPTER IV.

Revolutionary Government.

§ 18. But it may be asked, and it properly belongs to this work to declare, what was the political organization, under which the Revolution was carried on and accomplished? The Colonies being, as we have seen, separate and independent of each other in their original establishment, it became indispensable, in order to make their resistance to the British claims

either formidable or successful, that there should be harmony and unity of operations under some common head. Massachusetts, in 1774, recommended the assembling of a Continental Congress at Philadelphia, to be composed of delegates chosen in all the Colonies for the purpose of deliberating on the common good, and to provide a suitable scheme of future operations. Delegates were accordingly chosen in the various Colonies, some by the legislative body, some by the popular branch thereof, and some by conventions of the people, according to their several means, and local circumstances. This first great Continental Congress assembled on the 4th of September, 1774, chose their own officers, and adopted certain fundamental rules to regulate their proceedings. The most important was, that each Colony should have one vote only, whatever might be the number of its delegates; and this became the established course through the whole Revolution. They adopted such measures as the exigency of the occasion seemed to require; and proposed another Congress, to be assembled for the like purpose in May, 1775, which was accordingly held. The delegates of this Congress were chosen in the same manner as the preceding; but principally by conventions of the people in the several Colonies. It was this Congress, which, after voting other great measures, all leading to open war, finally made the Declaration of Independence, which was unanimously adopted by the American People. Under the recommendations of Congress, suitable arrangements were made to organize the State Governments, so as to supply the deficiencies in the former establishments; and henceforth the delegates to the Continental Congress were appointed by the State Legislatures.

§ 19. The Continental Congress, thus organized by a voluntary association of the States, and continued by the successive appointments of the State Legislatures, constituted in fact a National Government, and conducted the national affairs, until near the close of the Revolution, when, as we shall presently

see, the articles of confederation were adopted by all the States. Their powers were no where defined or limited. They assumed the power to declare war and make peace, to raise armies and equip navies, to form treaties and alliances with foreign nations, to contract public debts, and to do all other sovereign acts essential to the safety of the United Colonies. Whatever powers they assumed were deemed legitimate. They originated from necessity, and were only limited by events; or in other words, they were revolutionary. In the exercise of these powers they were supported by the people, and the exercise of them could not, therefore, be justly questioned by any inferior authority. In an exact sense, then, their powers might be said to be co-extensive with the exigencies and necessities of the public affairs; and the people, by their approbation and acquiescence, justified all their acts, having the most entire reliance on their patriotism, their integrity, and their political wisdom.

§ 20. But it was obvious upon the slightest consideration, that the union thus formed was but of a temporary nature, dependent upon the consent of all the Colonies, and capable of being dissolved by the secession of any one of them. It grew out of the exigencies and dangers of the times; and, extending only to the maintenance of the public liberties and independence of all the States during the contest with Great Britain, it would naturally terminate with the return of peace, and the accomplishment of the ends of the revolutionary contest. As little could it escape observation, how great would be the dangers of their separation into independent communities, acknowledging no common head, and acting upon no common system. Rivalries, jealousies, real or imaginary wrongs, would soon sever the ties of attachment, which bound them together, and bring on a state of hostile operations, dangerous to their peace, and subversive of their interests.

CHAPTER V.

History of the Confederation.

§ 21. One of the first objects, beyond that of immediate safety, which engaged the attention of the Continental Congress, was to provide the means of a permanent union of all the Colonies under a General Government. Their deliberations on this subject were coeval with the declaration of Independence, and after various debates and discussions, at different sessions, they finally agreed, in November, 1777, upon a frame of Government, contained in certain Articles of Confederation, which was immediately sent to all the States for their approval and adoption. Various delays and objections, however, on the part of the States took place; and as the Government was not to go into effect, until the consent of all the States should be obtained, the Confederation was not finally adopted until March, 1781; when Maryland (the last State) acceded to it. The principal objections taken to the Confederation were, to the mode prescribed by it for apportioning taxes among the States, and raising the quota or proportions of the public forces; to the power given to keep up a standing army in time of peace; and above all, to the omission of the reservation of all the public lands, owned by the Crown, within the boundaries of the United States, to the National Government, for national purposes. This latter subject was one of perpetual and increasing irritation; and the Confederation would never have been acceded to, if Virginia and New-York had not consented to make liberal cessions of the territory within their boundaries for national purposes.

§ 22. The Articles of Confederation had scarcely been adopted, before its defects, as a plan of national government, began to manifest themselves. The instrument, indeed, was framed under circumstances very little favorable to a just survey of the subject in all its proper bearings. The States, while

Colonies, had been under the controlling authority of a foreign sovereignty, whose restrictive legislation had been severely felt, and whose prerogatives, real or assumed, had been a source of incessant jealousy and alarm. Of course, they had nourished a spirit of resistance to all external authority; and having had no experience of the inconveniences of the want of some general Government to superintend their common affairs and interests, they reluctantly yielded any thing, and deemed the least practicable delegation of power quite sufficient for national purposes. Notwithstanding the Confederation purported on its face to contain articles of perpetual union, it was easy to see, that its principal powers respected the operations of war, and were dormant in times of peace; and that even these were shadowy and unsubstantial, since they were stripped of all coercive authority. It was remarked by an eminent statesman, that by this political compact the Continental Congress have exclusive power for the following purposes, without being able to execute one of them: They may make and conclude treaties; but can only recommend the observance of them. They may appoint ambassadors; but cannot defray even the expenses of their tables. They may borrow money in their own name, on the faith of the Union; but cannot pay a dollar. They may coin money; but they cannot import an ounce of bullion. They may make war, and determine what number of troops are necessary; but cannot raise a single soldier. In short, they may declare every thing, but do nothing. And, strong as this description may seem, it was literally true; for Congress had little more than the power of recommending their measures to the good will of the States.

§ 23. The leading defects of the Confederation were the following: In the first place, there was an utter want of all coercive authority in the Continental Congress, to carry into effect their constitutional measures. They could not legislate directly upon persons; and, therefore, their measures were to

be carried into effect by the States; and of course, whether they were executed or not, depended upon the sole pleasure of the latter. And in point of fact, many of them were silently disregarded; many were slowly and reluctantly obeyed; and some of them were openly and boldly refused to be executed. In the next place, there was no power in the Continental Congress to punish individuals for any breaches of their enactments. Their laws, if laws they might be called, were without any penal sanction; Congress could not impose a fine, or imprisonment, or other punishment, upon refractory officers, or even suspend them from office. Under such circumstances it might naturally be supposed that men followed their own interests, rather than their duties. They obeyed, when it was convenient, and cared little for persuasions, and less for conscientious obligations. The wonder is, not that such a scheme of Government should fail; but, that it should have been capable even of a momentary existence.

§ 24. In the next place, Congress had no power to lay taxes, or to collect revenue, for the public service. All that they could do was, to ascertain the sums necessary to be raised for the public service, and to apportion the quota or proportion of each State. The power to lay and collect the taxes was reserved expressly to the States. The consequence was, that great delays took place in collecting the taxes; and the evils from this source were of incalculable extent, even during the revolutionary war. Congress were often wholly without funds to meet the exigencies of the public service; and if it had not been for their good fortune, in obtaining money by foreign loans, it is far from being certain, that this scheme of taxation would not have been fatal to the cause of the Revolution. But, after the peace of 1783, the States relapsed into utter indifference on this subject. The requisitions of Congress for funds, even to pay the interest of the public debt, were openly disregarded; and, notwithstanding the most affecting appeals, made from time to time by Con-

gress, to the patriotism, sense of duty, and justice of the States, the latter refused to raise the necessary supplies. The consequence was, that the national treasury was empty; the credit of the Confederacy was sunk to a low ebb; the public burthens were increasing; and the public faith was prostrate.

§ 25. In the next place, Congress had no power to regulate either foreign or domestic commerce. It was left exclusively to the management of each particular State, according to its own views of its interests, or its prejudices. The consequence was, that the most opposite regulations existed in the different States; and, in many cases, and especially between neighboring States, there was a perpetual course of retaliatory legislation, from their jealousies, and rivalries in commerce, in agriculture, or in manufactures. Foreign nations did not fail to avail themselves of all the advantages accruing to themselves from this suicidal policy, tending to the common ruin. And as the evils grew more pressing, the resentments of the States against each other, and the consciousness, that their local interests were placed in opposition to each other, were daily increasing the mass of disaffection, until it became obvious, that the dangers of immediate warfare between some of them were imminent; and thus, the peace and safety of the Union were made dependent upon measures, over which the General Government had not the slightest control.

§ 26. But the evil did not rest here. Our foreign commerce was not only crippled, but, almost destroyed by this want of uniform laws to regulate it. Foreign nations imposed upon our navigation and trade just such restrictions, as they deemed best for their own interest and policy. All of them had a common interest to stint our trade, and enlarge their own; and all of them were well satisfied, that they might, in the distracted state of our legislation, pass whatever acts they pleased on this subject, with impunity. They did not fail to avail themselves to the utmost of their advantages.

They pursued a system of the most rigorous exclusion of us from all the benefits of their own commerce; and endeavored to secure, with a bold and unhesitating confidence, a monopoly of ours. The effects of this system of operations, combined with our political weakness, were soon visible. Our navigation was ruined; our mechanics were in a state of inextricable poverty; our agriculture was withered; and the little money still in the country was generally finding its way abroad, to supply our immediate wants. In the rear of all this, there was a heavy Public Debt, which there was no means to pay; and a state of alarming embarrassment, in that most difficult and delicate of all relations, the relation of debtor and creditor, threatened daily an overthrow even of the administration of justice. Severe as were the calamities of the war, the pressure of them was far less mischievous than this slow but progressive destruction of all our resources, and our industry.

§ 27. There were many other defects in the Confederation, of a subordinate character and importance. But they were sufficient to establish its utter unfitness, as a frame of Government for a free, enterprizing, and industrious people. Great, however, and manifold as the evils were, and, indeed, so glaring and so universal, it was yet extremely difficult to induce the States to concur in adopting any adequate remedies to redress them. For several years, efforts were made by some of our wisest and best patriots to procure an enlargement of the powers of Congress; but, from the predominance of State jealousies, and the supposed incompatibility of State interests with each other, they all failed. At length, however, it became apparent that the Confederation, being left without resources and without powers, must soon expire of its own debility. It had not only lost all vigor, but, it had ceased even to be respected. It had approached the last stages of its decline; and the only question, which remained, was, whether it should be left to a silent dissolution, or, an

attempt should be made to form a more efficient Government, before the great interests of the Union were buried beneath its ruins.

CHAPTER VI.

Origin of the Constitution.

§ 28. In 1785, Commissioners were appointed by the Legislatures of Maryland and Virginia, to form a compact, relative to the navigation of the rivers Potomac and Roanoke, and the Chesapeake Bay. The Commissioners met accordingly; but, feeling the want of adequate powers, they recommended proceedings of a more enlarged nature. The Legislature of Virginia accordingly, in Jan. 1788, proposed a Convention of Commissioners from all the States, for the purpose of taking into consideration the state of trade, and the propriety of a uniform system of commercial relations, for their permanent harmony and common interest. Pursuant to this proposal, the Commissioners from five States met at Annapolis, in September, 1786. They framed a report, to be laid before Congress, advising the latter to call a general Convention of Commissioners from all the States, to meet in Philadelphia, in May, 1787, for a more effectual revision of the Articles of Confederation.

§ 29. Congress adopted the recommendation of the Report, and in February, 1787, passed a resolution for assembling a Convention accordingly. All the States, except Rhode-Island, appointed Delegates; and they met at Philadelphia; and, after very protracted deliberations, and great diversities of opinion, they finally, on the 17th of September, 1789, framed the present Constitution of the United States, and recommended it to be laid by Congress before the several

States, to be by them considered and ratified, in Conventions of the Representatives of the People, to be called for that purpose. Congress accordingly took measures for this purpose. Conventions were accordingly called in all the States, except Rhode-Island, and, after many warm discussions, the Constitution was ratified by all of them, except North Carolina.

§ 30. The assent of nine States only being required to put the Constitution into operation, measures were taken for this purpose by Congress, in September, 1788, as soon as the requisite ratifications were ascertained. Electors of President and Vice President were chosen, who subsequently assembled and gave their votes; and the necessary elections of Senators and Representatives being made, the first Congress under the Constitution assembled at New-York, (the then Seat of Government) on Wednesday, the fourth day of March, 1789, for commencing proceedings under the Constitution. A quorum, however, of both Houses, for the transaction of business generally, did not assemble until the 6th of April following, when, the votes of the Electors being counted, it was found, that George Washington was unanimously elected President, and John Adams was elected Vice President. On the 30th of April, President Washington was sworn into office; and the Government immediately went into full operation. North Carolina afterwards, in a new Convention, called in November, 1789, adopted the Constitution; and Rhode-Island, also, by a Convention, in May, 1790. So that all the thirteen States, by the authority of the people thereof, became parties under the new Government.

§ 31. Thus was achieved another, and still more glorious triumph in the cause of liberty, than even that by which we were separated from the parent country. It was not achieved, however, without great difficulties and sacrifices of opinion. It required all the wisdom, the patriotism, and the genius of our best statesmen, to overcome the objections, which, from

various causes, were arrayed against it. The history of those times is full of melancholy instruction, at once to admonish us of the dangers we have passed, and of the necessity of incessant vigilance, to guard and preserve, what has been hardly earned. The Constitution was adopted unanimously in New-Jersey, Delaware, and Georgia. It was supported by large majorities in Connecticut, Pennsylvania, Maryland, and South Carolina. In the remaining States, it was carried by small majorities; and especially, in Massachusetts, New-York, and Virginia, by little more than a preponderating vote. What a humiliating lesson is this, after all our self-bearings and sacrifices, of our experience of the evils of disunited councils, and the pernicious influence of State jealousies, and local interests! It teaches us, how slowly even adversity brings the mind to a due sense of what political wisdom requires. It teaches us, how liberty itself may be lost, when men are found ready to hazard its permanent blessings, rather than submit to the wholesome restraints, which its permanent security demands.

§ 32. To those great men, who thus framed the Constitution, and secured the adoption of it, we owe a debt of gratitude, which can scarcely be repaid. It was not then, as it is now, looked upon from the blessings, which, under the guidance of Divine Providence, it has bestowed, with general favor and affection. On the contrary, many of those pure and disinterested patriots, who stood forth, the firm advocates of its principles, did so at the expense of their existing popularity. They felt, that they had a higher duty to perform, than to flatter the prejudices of the people, or to subserve their own selfish interests. Many of them went to their graves, without the soothing consolation that their services, and their sacrifices were duly appreciated. They scorned every attempt to rise to power and influence, by the common arts of demagogues; and they were content to trust their characters, and their conduct, to the deliberate judgment of posterity.

§ 33. If, upon a close survey of their labors, as developed in the actual structure of the Constitution, we shall have reason to admire their wisdom and forecast, to observe their profound love of liberty, and to trace their deep sense of the value of political responsibility, and their anxiety, above all things, to give perpetuity, as well as energy, to the republican Institutions of their country; then, indeed, will our gratitude kindle into a holier reverence, and their memories be cherished among those of the noblest benefactors of mankind.

CHAPTER VII.

Exposition of the Constitution. — The Preamble.

§ 34. Having given this general sketch of the origin of the Colonies, of the rise and fall of the Confederation, and of the formation and adoption of the Constitution of the United States, we are now prepared to enter upon an examination of the actual structure and organization of that Constitution, and the powers belonging to it. We shall treat it, not as a mere compact, or league, or confederacy, existing at the mere will of any one or more of the States, during their good pleasure; but, (as it purports on its face to be) as a Constitution of Government, framed and adopted by the people of the United States, and obligatory upon all the States, until it is altered, amended, or abolished by the People, in the manner pointed out in the instrument itself. It is to be interpreted, as all other solemn instruments are, by endeavoring to ascertain the true sense and meaning of all the terms; and we are neither to narrow, nor enlarge them, by straining them from their just and natural import, for the purpose of adding to, or diminishing its powers, or bending them to any favorite theory or dogma of party. It is the language

of the People, to be judged of according to common sense, and not by mere theoretical reasoning. It is not of the mere private interpretation of any particular men. The People have spoken it; and their will is to be obeyed as the Supreme Law. Every department of the Government must, of course, in the first instance, in the exercise of its own powers and duties, necessarily construe the instrument. But, if the case admits of judicial cognizance, every citizen has a right to contest the validity of that construction before the proper judicial tribunal; and to bring it to the test of the Constitution. And, if the case is not capable of judicial redress, still the people may, through the acknowledged means of new elections, check any usurpation of authority, whether wanton, or unintentional, and relieve themselves from any grievances of a political nature.

§ 35. For a right understanding of the Constitution of the United States, it will be found most convenient to examine the provisions, generally, in the order, in which they are stated in the instrument itself; and thus, the different parts may be made mutually to illustrate each other. This order will, accordingly, be adopted in the ensuing commentaries.

§ 36. We shall begin then, with the Preamble, which is in the following words:—

'We, the People of the United States, in order to form a 'more perfect union, establish justice, ensure domestic tran-'quillity, provide for the common defence, promote the gene-'ral welfare, and secure the blessings of liberty to ourselves 'and our posterity, do ordain and establish this Constitution 'for the United States of America.'

§ 37. This preamble is very important, not only as explanatory of the motives and objects of framing the Constitution; but, as affording the best key to the true interpretation thereof. For it may well be presumed, that the language used will be in conformity to the motives, which govern, and the objects to be attained. Every provision in the instru-

ment may fairly be presumed to have reference to some or all of them. And consequently, if any provision is susceptible of two interpretations, that ought to be adopted, and adhered to, which best harmonizes with the avowed intentions of the authors, as gathered from their declarations in the instrument itself.

§ 38. The first object is, 'to form a more perfect union.' From what has been already stated, respecting the defects of the Confederation, it is obvious, that, a farther continuance of the Union was impracticable, unless a new Government was formed, possessing more powers and more energy. That the Union of the States is in the highest degree desirable, nay, that it is almost indispensable to the political existence of the States, is a proposition, which admits of the most complete moral demonstration, so far as human experience, and general reasoning can establish it. If the States were wholly separated from each other, the very inequality of their population, territory, resources, and means of protecting their local interests, would soon subject them to injurious rivalries, jealousies, and retaliatory measures. The weak would be wholly unable to contend successfully against the strong, and would be compelled to submit to the terms, which the policy of their more powerful neighbors should impose upon them. What could Rhode-Island, or New-Jersey, or Delaware, accomplish against the will, or the resentments of the formidable States, which surround them? But, in a more general view, the remark of the Abbe Mably may be appealed to, as containing the result of all human experience. 'Neighboring States, (says he) are naturally enemies of each other, unless their common weakness forces them to league in a confederative republic, and their Constitution prevents the differences, that neighborhood occasions, extinguishing that secret jealousy, which disposes all States to aggrandize themselves, at the expense of their neighbors.'

§ 39. On the other hand, if the States should separate into distinct confederacies, there could scarcely be less than three, and most probably, there would be four; an Eastern, a Middle, a Southern, and a Western Confederacy. The lines of division would be traced out by geographical boundaries between the slave-holding and the non-slave-holding States, a division, in itself, fraught with constant causes of irritation and alarm. There would also be marked distinctions between the commercial, manufacturing, and agricultural States; which would perpetually give rise to real, or supposed grievances and inequalities. But the most important consideration is, that in order to maintain such confederacies, it would be necessary to clothe each of them with summary and extensive powers, almost incompatible with liberty, and to keep up large and expensive establishments for defence and offence, in order to guard against the sudden inroads, and deliberate aggressions of their neighbors and rivals. The evils of faction, the tendencies to corrupt influence, the pressure of taxation, and the fluctuations of legislation, would thus be immeasurably increased. Foreign nations, too, would not fail to avail themselves, in pursuit of their own interests, of every opportunity to foster our intestine divisions, since they might thus, more easily command our trade, or monopolize our products, or keep us in a state of dependence upon their good will for our security.

§ 40. The Union of the States, 'the more perfect union' of them, under a National Government, is then, and forever must be invaluable to all, in respect to foreign and domestic concerns. It will diminish the causes of war, that scourge of the human race; it will enable the National Government to protect and secure the rights of all; it will diminish public expenditures; it will ensure respect abroad, and confidence at home; and, it will unite in one common bond the interests of agriculture, commerce, and manufactures.

§ 41. The next object is, 'to establish justice.' This, indeed, is the first object of all good and rational forms of Government. Without justice being fully, freely, and impartially administered, neither our persons, nor our rights, nor our property, can be protected. Call the form of Government whatever you may, if justice cannot be equally obtained by all the citizens, high and low, rich and poor, it is a mere despotism. Doubtless, the attainment of justice is the foundation, on which all our State Governments rest; and, therefore, the inquiry may naturally present itself, in what respects the formation of a National Government would better tend to establish justice.

§ 42. The answer may be given in a few words. In the administration of justice, citizens of the particular State are not alone interested. Foreign nations, and their subjects, as well as citizens of other States, may be deeply interested. They may have rights to be protected; wrongs to be redressed; contracts to be enforced; and equities to be acknowledged. It may be presumed, that the States will provide adequate means to redress the grievances, and secure the rights of their own citizens. But, it is far from being certain, that they will at all times, or even ordinarily, take the like measures to redress the grievances, and secure the rights of foreigners, and citizens of other States. On the contrary, one of the rarest occurrences in human legislation is, to find foreigners, and citizens of other States, put upon a footing of equality with the citizens of the legislating State. The natural tendency of every Government is, to favor its own citizens; and unjust preferences, not only in the administration, but in the very structure of the laws, may reasonably be presumed to arise. It could not be expected, that all the American States, left at full liberty, would legislate upon the subject of rights and remedies, preferences and contracts, exactly in the same manner. And every diversity would soon bring on some retaliatory legislation elsewhere. Popular prejudices

and passions, real or supposed injuries, the common attachment to domestic pursuits and interests, and the common indifference to strangers and remote objects, are often found to interfere with a liberal policy in legislation. Now, precisely, what this reasoning would lead us to presume as probable, actually occurred, not only while we were Colonies of Great Britain, but also under the Confederation. The legislation of several of the States gave a most unjust preference to the debts of their own citizens in cases of insolvency.

§ 43. But there were other evils of a much greater magnitude, which required a National Government, for the more effectual establishment of justice. There were territorial disputes among the States, as to their respective boundaries and jurisdiction, constantly exciting irritations, and introducing border warfare. Laws were perpetually made in the States, interfering with the sacred rights of private contracts, suspending the remedies in them, or discharging them in worthless paper money, or some depreciated, or valueless property. The debts due to foreigners were, notoriously, refused payment; and many obstructions were put in the way of their recovery. The Public Debt was left unprovided for; and a disregard of the public faith had become so common a reproach among us, that it almost ceased to attract observation. Indeed, in some of the States, the operation of private and public distresses was felt so severely, that the administration, even of domestic justice, was constantly interfered with; the necessity of suspending it was boldly vindicated; and in some cases, even a resort to arms was encouraged. Nothing but a National Government, capable, from its powers and resources, of overawing the spirit of rebellion, and of aiding in the establishment of a sound currency, just laws, and solid public credit, could remedy the existing evils.

§ 44. The next object is, 'to ensure domestic tranquillity.' From what has been already stated, it is apparent, how essential an efficient National Government is, to the se-

curity of the States against foreign influence, domestic dissensions, commercial rivalries, legislative retaliations, territorial disputes, and the perpetual irritations of a border warfare, for privileges, exemptions and smuggling. In addition to these considerations, it is well known, that factions are far more violent in small than in large communities; and that they are even more dangerous, and enfeebling; because success and defeat more rapidly succeed each other in the changes of their local affairs, and foreign influences can be more easily brought into play to corrupt and divide them. A National Government naturally tends to disarm the violence of domestic factions in small States, by its superior influence. It diminishes the exciting causes, and it leaves fewer chances of success to its operations.

§ 45. The next object is, 'to provide for the common defence.' One of the surest means of preserving peace is, always to be prepared for war. One of the safest reliances against foreign aggression is, the possession of numbers and resources, capable of repelling any attack. A nation of narrow territory, and small population, and moderate resources, can never be formidable; and must content itself with being feeble, and unenviable in its condition. On the contrary, a nation or confederacy, which possesses large territory, abundant resources, and a dense population, can always command respect, and is almost incapable, if true to itself, of being conquered. In proportion to the size and population of a nation, its general resources will be; and the same expenditures, which may be easily borne by a numerous and industrious people, would soon exhaust the means of a scanty population. What, for instance, would be more burthensome to a State like New-Jersey, than the necessity of keeping up a body of troops, to protect it against the encroachments of the neighboring States of Pennsylvania, and New-York? The same military force, which would hardly be felt in either of the latter States, would press heavily upon

the resources of a small State, as a permanent establishment. The ordinary expenditures, necessary for the protection of the whole Union with its present limits, are probably less than would be required for a single State, surrounded by jealous and hostile neighbors.

§ 46. But, in regard to foreign powers, the States separately would sink at once into the insignificance of the small European principalities. In the present situation of the world, a few great Powers possess the command of commerce, both on land and at sea. No effectual resistance could be offered by any of the States singly, against any monopoly these Powers might choose to establish, or any pretensions they might choose to assert. Each would be compelled to submit its commerce to all the burthens and inequalities, which they might impose; or purchase protection, by yielding up its dearest rights, and, perhaps, its independence. A National Government, containing as it does, the strength of all the States, affords to all of them a competent protection. A navy, or army, which could be maintained by a single State, would be scarcely formidable to any second rate power in Europe; and would be an intolerable public burthen. A navy, or army, for all the purposes of home defence, or protection on the ocean, is within the compass of the actual means of the General Government, without any severe exaction.

§ 47. The next object is, 'to promote the general welfare.' If it should be asked, why this may not be effectually accomplished by the States, it may be answered: first, that they do not possess the means; and secondly, if they did, they do not possess the power, necessary to carry the appropriate measures into execution. The means of the States will rarely be found to exceed their domestic wants, and appropriations to domestic improvements. Their resources in internal taxation must necessarily be limited; and their revenue from imports would, if they were separated, be small

and fluctuating. Their whole system would be defeated by the jealousy, or local interests of their neighbors. The want of uniformity of duties, as well as the facility of smuggling, would render any efficient collection of duties almost impracticable. It was so under the Confederation.

§ 48. But, if the means were completely within the reach of the States, the jurisdiction would be wanting, completely to carry into effect any great or comprehensive plan, for the welfare of the whole. The idea of a permanent and zealous co-operation of all the States, in any one scheme for the common welfare, is visionary. No scheme could be devised, which would not bear unequally upon some particular parts; and these inequalities could not be, as they are now, under a General Government, meliorated and corrected, by other correspondent benefits. Each State would legislate singly; and it is scarcely possible, that a change of councils should not take place, before any scheme could receive the sanction of all of them. Infinite delays would intervene; and various modifications of measures be proposed, to suit particular local interests, which would again require re-consideration. After one or two vain attempts, to accomplish any great system of improvements, there would be a general abandonment of all efforts; and each State would consult only its own peculiar convenience, and policy, in despair of any common concert.

§ 49. The concluding object, stated in the preamble, is, 'to secure the blessings of liberty to us, and our posterity.' And surely nothing, of mere earthly concern, is more worthy of the profound reflection of the wise and good, than to erect structures of Government, which shall sustain the interests of civil, political, and religious liberty, on solid foundations. The great problem in human government has hitherto been, how to combine durability with moderation in power, energy with equality of rights, responsibility with a sense of independence, steadiness in councils with popular elections, and

a lofty spirit of patriotism with the love of personal aggrandizement; in short, how to combine the greatest happiness of the whole with the least practicable restraints, so as to ensure permanence in the public institutions, intelligent legislation, and incorruptible private virtue. The Constitution of the United States aims at the attainment of these ends, by the arrangements and distributions of its powers, by the introduction of checks and balances in all its departments, by making the existence of the State Governments an essential part of its own organization; by leaving with them the ordinary powers of domestic legislation; and, at the same time, by drawing to itself those only, which are strictly national, or concern the general welfare. Its duties, and its powers, thus naturally combine to make it the common guardian and friend of all; and in return, the States, while they may exercise a salutary vigilance for self-protection, are persuasively taught, that the blessings of liberty, secured by the National Government, are far more certain and extensive, than they would be under their own distinct sovereignties.

§ 50. Let us now enter upon a more close survey of the structure and powers of this Constitution, that we may see, whether it is as wisely framed as its founders believed; so as to justify our confidence in its durability, and its adaptation to the great objects proposed in the preamble. If it be, then, indeed, it will be entitled to our most profound reverence; and we shall accustom ourselves to repel with indignation every attempt to weaken its powers, or obstruct its operations, as involving our own degradation, and, ultimately, our national ruin.

CHAPTER VIII.

Distribution of Powers.— The Legislative Department.

§ 51. The first thing, that strikes us, upon the slightest survey of the Constitution, is, that its structure contains a fundamental separation of the three great departments of Government, the Legislative, the Executive, and the Judicial. The existence of all these departments has always been found indispensable to due energy and stability in a Government. Their separation has always been found equally indispensable, for the preservation of public liberty and private rights. Whenever they are all vested in one person or body of men, the Government is in fact a despotism, by whatever name it may be called, whether a monarchy, an aristocracy, or a democracy. When, therefore, the Convention, which framed the Constitution, determined on a more efficient system, than the Confederation, the first resolution adopted by them was, that 'a National Government ought to be established, consisting of a supreme legislative, judiciary, and executive.'

§ 52. The first section, of the first article, begins with the structure of the Legislature. It is in these words : —

'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.' Under the Confederation, the whole legislative power of the Union was confided to a single branch; and limited as that power was, this concentration of it in a single body, was deemed a prominent defect. The Constitution, on the other hand, adopts as a fundamental rule, the exercise of the legislative power by two distinct and independent branches. The advantages of this division are, in the first place, that it interposes a great check upon undue, hasty, and oppressive legislation. In the next place, it interposes a barrier against the strong propensity of all public bodies to accumulate all power, patronage, and in-

fluence in its own hands. In the next place, it operates, indirectly, to prevent attempts by a few popular leaders, to carry their own personal, private or party objects into effect, unconnected with the public good. In the next place, it secures a deliberate review of the same measures, by independent minds, engaged in the same habits of legislation, but organized upon a different system. And, in the last place, it affords great securities to public liberty, by requiring the co-operation of different bodies, which can scarcely ever, if properly organized, embrace the same national interests, or influences, in the same proportions. And the value of such a separate organization will, of course, be greatly enhanced, the more the elements, of which each body is composed, differ from each other, in the mode of choice, in the qualifications, and in the duration of office, provided due intelligence and virtue are secured in each body. We shall presently see, how far these desirable modifications have been attained in the actual composition of the Senate, and House of Representatives.

CHAPTER IX.

The House of Representatives.

§ 53. The second section, of the first article, contains the structure and organization of the House of Representatives. The first clause is — '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.'

§ 54. First, the Principle of Representation. The Representatives are to be chosen by the People. No reasoning

was necessary, to satisfy Americans of the advantages of a House of Representatives, which should emanate directly from themselves, which should guard their interests, support their rights, express their opinions, make known their wants, redress their grievances, and introduce a pervading popular influence throughout all the operations of the Government. Their own experience as Colonies, as well as the experience of the parent country, and the general deductions of theory, had settled it, as a fundamental principle of a free Government, and especially, of a republican Government, that no laws ought to be passed, without the consent of the people, through representatives, immediately chosen by, and responsible to them.

§ 55. Secondly, the Qualifications of Electors. These were various in the different States. In some of them, none but freeholders were entitled to vote; in others, only persons admitted to the privileges of freemen; in others, a qualification of property was required; in others, a modified taxation; and in others again, the right of suffrage was almost universal. This consideration had great weight in the Convention; and the extreme difficulty of agreeing upon any uniform rule of voting, which should be acceptable to all the States, induced them to adopt the existing rule as to the choice of Representatives in the State Legislatures. Thus, the peculiar wishes of each State, in the formation of its own popular branch, were consulted; and some not unimportant diversities were introduced into the composition of the national House of Representatives. All the members would represent the people, but not exactly under influences precisely of the same character.

§ 56. Thirdly, the term of service of the Representatives. It is two years. This, with reference to the nature of the duties to be performed by the members, to the knowledge and experience essential to a right performance of them, and to the periods, for which the State Legislatures are chosen,

seems as short as an enlightened regard to the public good could require. A very short term of service would bring together a great many new members, with little or no experience in the national business; the very frequency of the elections would render the office of less importance to able men; and some of the duties to be performed would require more time, and more mature inquiries, than could be gathered, in the brief space of a single session, from the distant parts of so extensive a territory. What might be well begun by one set of men, could scarcely be carried on in the same spirit by another. So that there would be great danger of new and immature plans succeeding each other, without any well established system of operations.

§ 57. Fourthly, the Qualifications of Representatives. The Constitution declares — 'No person shall be a Repre-'sentative, 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.' These qualifications are few and simple. They respect only age, citizenship, and inhabitancy.

§ 58. First, in regard to age. That some qualification, as to age, is desirable, cannot well be doubted, if knowledge, or experience, or wisdom, is of any value in the administration of public affairs. And if any qualification is required, what can be more suitable than twenty-five years of age? The character and principles of young men can scarcely be understood at the moment of their majority. They are then new to the rights of legislative Government; warm in their passions; ardent in their expectations; and too eager in their favorite pursuits, to learn the lessons of caution, which riper years inculcate. Four years of probation, beyond this period, will scarcely suffice to furnish them with that thorough insight into the business of human life, which is indispensable, to a safe and enlightened exercise of public duties.

§ 59. Secondly, in regard to citizenship. No person will deny the propriety of excluding aliens, from any share in the administration of the affairs of the National Government. No persons, but citizens, can be presumed to feel that deep sense of the value of domestic institutions, and that permanent attachment to the soil, and interests of the country, which are the true sources of a healthy patriotism. The only practical question would seem to be, whether foreigners, even after they were naturalized, should be permitted to hold office. Most nations studiously exclude them, from policy or jealousy. But the peculiar circumstances of our country called for a less vigorous course; and the period of seven years was selected as one, which would enable naturalized citizens to acquire a reasonable familiarity with the principles, and interests of the People; and at the same time justify the latter in reposing confidence in their talents, virtues, and patriotism.

§ 60. Thirdly, in regard to inhabitancy. The Representative must be an inhabitant of the State, at the time when he is chosen. The object of this clause, doubtless, is to secure, on the part of the Representative, a familiar knowledge of the interests of the People, whom he represents, a just responsibility to them, and a personal share in all the local results of the measures, which he shall support. It is observable, that inhabitancy is required in the State only, and not in any particular election district; so that the Constitution leaves a wide field of choice open to the Electors. And if we consider, how various the interests, pursuits, employments, products, and local circumstances of the different States are, we can scarcely be surprised, that there should be a marked anxiety to secure a just representation of all of them in the national councils.

§ 61. Subject to these reasonable qualifications, the House of Representatives is open to merit of every description, whether native or adoptive, whether young or old, whether rich or poor, without any discrimination of rank, business, profession, or religious opinion.

§ 62. The next clause respects the apportionment of Representatives among the States. It declares — 'Repre-'sentatives, and direct taxes, shall be apportioned among the 'several States, which may be included within this Union, ac-'cording to their respective numbers, which shall be deter-'mined by adding to the whole number of free persons, includ-'ing 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, and in such 'manner, as they shall by law direct. The number of Rep-'resentatives 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; Con-'necticut, five; New-York, six; New-Jersey, four; Pennsyl-'vania, eight; Delaware, one; Maryland, six; Virginia, ten; 'North Carolina, five; South Carolina, five; and Georgia, 'three.'

§ 63. Under the Confederation, each State was entitled to one vote only, but might send as many delegates to Congress, as it should choose, not less than two, nor more than seven; and of course, the concurrence of a majority of its delegates was necessary to every vote of each State. In the House of Representatives, each member is entitled a vote, and therefore, the apportionment of Representatives became, among the States, a subject of deep interest, and of no inconsiderable diversity of opinion, in the Convention. The small States insisted upon an equality of representation; which was as strenuously resisted by the large States. The slave-holding States insisted on a representation strictly according to numbers; the non-slave-holding States contended for a representation according to the number of free persons

only. The controversy was full of excitement, and was maintained with so much obstinacy on each side, that the Convention was more than once on the eve of a dissolution. At length, the present system was adopted, by way of compromise. It was seen to be unequal in its operation, but was a necessary sacrifice to that spirit of conciliation, on which the Union was founded. The exception of Indians was of no permanent importance; and the persons bound to service for a term of years, were too few to produce any sensible effect in the enumeration. The real difficulty was, as to slaves, who were included under the mild appellation of 'all other persons.' Three fifths of the slaves are added to the number of free persons, as the basis of the apportionment.

§ 64. In order to reconcile the non-slave-holding States to this arrangement, it was agreed that *direct* taxes (the nature of which we shall hereafter consider) should be apportioned in the same manner as representatives. This provision is more specious than solid; for, in reality, it exempts the remaining two fifths of the slaves from direct taxation. But, in the practical operations of the Government, a far more striking inequality has been disclosed. The principle of representation is uniform and constant; whereas, the imposition of direct taxes is occasional and rare; and in fact, three direct taxes only have been laid since the adoption of the Constitution. The slave-holding States have, at the present time, in Congress, twenty-five representatives more, than they would have upon the basis of an enumeration of free persons only. Viewed, however, as a measure of compromise, it is entitled to great praise, for its moderation, its aim at practical utility, and its tendency to satisfy the people of every State in the Union, that the Constitution ought to be dear to all, by the privileges it confers, as well as the blessings it secures.

§ 65. In order to carry into effect this principle of apportionment, it was indispensable, that some provision should be

made for ascertaining, at stated times, the population of each State. Unless this should be done, it is obvious, that, as the growth of the different States would be in very unequal proportions, the representation would soon be marked by a corresponding inequality. To illustrate this, we need only to look at Delaware, which now sends only one representative, as it did in the first Congress, and to New-York, which then sent six, and now sends forty representatives. Similar, though not as great, diversities exist in the comparative representation of several other States. Some have remained nearly stationary, and others have had a very rapid increase of population. The Constitution has, therefore, wisely provided, that there shall be a new enumeration every ten years, which is commonly called the decennial census.

§ 66. There remained two important points to be settled in regard to representation. First, that each State should have at least one representative; for otherwise, it might be excluded from any share of the legislative power in one branch; and secondly, that there should be some limitation of the number of representatives; for otherwise, Congress might increase the House to an unreasonable size. If Congress were left free to apportion the representatives according to any basis of numbers they might select, half the States in the Union might be deprived of representatives, if the whole number of their inhabitants fell below that basis. On the other hand, if the number selected for the basis were small, the House might become too unwieldy for business. There is, therefore, great wisdom in restricting the representation to a greater number, than one for every thirty thousand, and in positively securing to each State a constitutional representation in the House. It is curious to remark, that it was originally thought a great objection to the Constitution, that the restriction of representatives, to one for every thirty thousand, would give too small a House to be a safe depository of power; and that, now, the fear is, that a restriction to double that number

will hardly, in the future, restrain the size of the House within sufficiently moderate limits, for the purposes of efficient and enlightened legislation. So much has the growth of the country, under the auspices of the Constitution, outstripped the most sanguine expectations of its friends.

§ 67. The next clause is, 'When vacancies happen in 'the representation of any State, the executive authority 'thereof shall issue writs of election to fill such vacancies.' It is obvious, that such a power ought to reside in some public functionary. The only question is, where it can, with most safety and convenience, be lodged. If vested in the General Government, or in any department of it, it might be thought, that there would not be as strong motives for an immediate exercise of the power, or as thorough a knowledge of local circumstances, to exercise it wisely, as if vested in the State Government. It is, therefore, left to the latter, and to that branch of it, the executive, which is best fitted to exercise it with promptitude and discretion. And thus, one source of State jealousy is dried up.

§ 68. The next clause is, 'The House of Represen- 'tatives shall choose their Speaker, and other officers; and 'shall have the sole power of impeachment.' Each of these privileges is of great practical importance. In Great Britain, the Speaker is elected by the House of Commons; but he must be approved by the King; and a similar power of approval belonged to some of the Governors in the Colonies, before the Revolution. An independent and unlimited choice by the House of Representatives of all their officers is every way desirable. It secures, on the part of their officers, a more efficient responsibility, and gives the House more complete authority over them; and at the same time, it avoids all the dangers and inconveniences, which may arise from differences of opinion between the House and the Executive, in periods of high party excitement.

§ 69. Next, the Power of Impeachment; that is, the right to present a written accusation against persons in high offices and trusts, for the purpose of bringing them to trial and punishment for gross misconduct. The power, and the mode of proceeding are borrowed from the practice of England. In that Kingdom, the House of Commons (which answers to our House of Representatives) has the right to present articles of impeachment against any person, for any gross misdemeanor, before the House of Lords, which is the Court of the highest criminal jurisdiction in the realm. The articles of impeachment are a sort of indictment; and the House, in presenting them, acts as a grand jury, and also as a public prosecutor. The great object of this power is, to bring persons to justice, who are so elevated in rank or influence, that there is danger, that they might escape punishment before the ordinary tribunals; and the exercise of the power is usually confined to political or official offences. These prosecutions are, therefore, conducted by the Representatives of the nation, in their public capacity, in the face of the nation, and upon a responsibility, which is felt and reverenced by the whole community. We shall have occasion, hereafter, to consider the subject of impeachment more at large, in another place; and this may suffice here, as an explanation of the nature, and objects of the power.

CHAPTER X.

The Senate.

§ 70. We come next to the organization and powers of the Senate, which are provided for in the third section of the first article of the Constitution.

§ 71. The first clause of the third section is — 'The 'Senate of the United States shall be composed of two Sena- 'tors from each State, chosen by the Legislature thereof for 'six years; and each Senator shall have one vote.'

§ 72. First, the nature of the representation and vote in the Senate. Each State is entitled to two Senators; and each Senator is entitled to one vote. Of course, there is a perfect equality of representation and vote of the States in the Senate. In this respect it forms a marked contrast to the House of Representatives. In the latter, the representation is in proportion to the population of each State, upon a given basis; in the former, each State, whether it be great or small, is, in its political capacity, represented upon the footing of equality with every other, as it would be in a Congress of Ambassadors, or an Assembly of Peers. The only important difference between the vote in the Senate, and that in the old Continental Congress under the Confederation, is, that in the latter, the vote was by States, each having but one vote; whereas, in the Senate, each Senator has one vote. So that, though the Senators represent States, they vote as individuals; thus combining the two elements of individual opinion, and State representation. A majority of the Senators must concur in every vote; but the vote need not be that of a majority of the States, since the Senators from the same State, may vote on different sides of the same question. The Senators from thirteen States may divide in their votes; and those from eleven, may concur in their votes, and thus give a decisive majority.

§ 73. It is obvious, that this arrangement could only arise from a compromise between the great and small States, founded upon a spirit of amity, and mutual deference and concession, which the peculiarity of situation of the United States rendered indispensable. There was, for a long time, a very animated struggle in the Convention, between the great and small States, on this subject; the latter contending for an equality of representation in each branch of the Legislature; the former for a representation in each, proportionate to its population and importance. In the discussions the States were so nearly balanced, that their union in any plan of Government, which should provide for a perfect equality, or an inequality of representation in both houses, became utterly hopeless. A compromise became indispensable. The small States yielded up an equality of representation in the House of Representatives, and the great States, in like manner, conceded an equality in the Senate. This arrangement, so vital to the peace of the Union, and to the preservation of the separate existence of the States, is, at the same time, full of wisdom, and sound political policy. It introduces, and perpetuates, in the different branches of the Legislature, different elements, which will make the theoretical check, contemplated by the division of the legislative power, more efficient and constant in its operation. The interests, passions, and prejudices of a representative district may thus be controlled by the influence of a whole State; the like interests, passions, and prejudices of a State, or of a majority of the States, may thus be controlled by the voice of a majority of the people of the Union.

§ 74. Secondly, the mode of choosing Senators. They are to be chosen by the Legislature of each State. This mode has a natural tendency to increase the just operation of the check, to which we have already alluded. The people of the States directly choose the Representatives; the Legislature, whose votes are variously compounded, and whose

mode of choice is different in different States, directly choose the Senators. So that it is impossible, that exactly the same influences, interests, and feelings should prevail in the same proportions in each branch. Three schemes were presented in the Convention; one was, a choice directly by the people of the States; another was, a choice by the national House of Representatives; and the third was, that which now exists. And, upon mature deliberation, the last will be found to possess a decided preference over either of the other two.

§ 75. Thirdly, the number of Senators. Each State is entitled to two Senators. To ensure competent knowledge, and ability to discharge all the functions entrusted to the Senate, and, at the same time, to give promptitude and efficiency to their acts, the number should not be unreasonably large or small. A very small body is more easily overawed, and intimidated by external influences, than one of a reasonable size, embracing weight of character, and dignity of talents. Numbers alone in many cases confer power, and encourage firmness. If the number of the Senate were confined to one for each State, there would be danger, that it might be too small for a comprehensive knowledge and diligence in all the business devolved upon the body. And besides; in such a case, the illness, or accidental absence of a Senator might deprive a State of its vote upon an important question, or its influence in an interesting debate. If, on the other hand, the number were very large, the Senate might become unwieldy, and want dispatch, and due responsibility. It could hardly exercise due deliberation in some functions connected with executive duties, which might, at the same time, require prompt action. If any number beyond one be proper, two seems as convenient a number as any which can be devised. The Senate will not be too large, or too small. The benefit is retained of consultation, and mutual interchange of opinion between the members from the same State; and the number is sufficient to guard against

any undue influence by the more popular branch of the Legislature.

§ 76. Fourthly, the term of service of the Senators. It is for six years, although, as we shall presently see, one third of the members is changed every two years. What is the proper duration of the office, is certainly a matter, upon which different minds may arrive at different conclusions. The term should have reference to the nature and extent of the duties to be performed, the experience to be required, the independence to be secured, and the objects to be attained. A very short duration of office diminishes responsibility, and energy, and public spirit, and firmness of action, by diminishing the motives to great efforts, and also, by diminishing the means of maturing, and carrying into effect wise measures. The Senate has various highly important functions to perform, besides its legislative duties. It partakes of the executive power of appointment to office, and the ratification of public treaties. To perform these functions worthily, the members should enjoy public confidence at home and abroad; and they should be beyond the reach of the sudden impulses of domestic factions, as well as of foreign influences. They should not be subject to intimidation by the mere seekers of office; nor be deemed by foreign nations, as having no permanent weight in the administration of the Government. They should be able, on the one hand, to guard the States against usurpations of authority on the part of the National Government; on the other hand, to guard the people against the unconstitutional projects of selfish demagogues. They should have the habits of business, and the large experience in the affairs of Government, derived from a practical concern in them. They should be chosen for a longer period, than the House of Representatives, to prevent sudden and total changes at the same period of all the functionaries of the Government, which necessarily encourage instability in the public councils, and political agitations and rivalries. In all these

respects, the term of office of the Senators seems admirably well adapted to the purposes of an efficient, and yet responsible body. It secures the requisite qualifications of skill, experience, information, and independence. It prevents any sudden changes in the public policy. It induces foreign nations to treat with the Government with more confidence, from the consciousness of the permanence of its councils. It commands a respect at home, which enables it to resist any undue inroads of the popular branch; and, at the same time, its duration is not so long, as to take away a pressing sense of responsibility to the People, and the States.

§ 77. But, in order to quiet the last lingering scruples of jealousy on this head, the next clause of the Constitution provides for a change of one third of the members every two years. It declares — 'Immediately after they (the Senators) '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 every second year; of the second class, 'at the expiration of every fourth year; and of the third 'class, at the expiration of every sixth year; so that one third 'may be chosen every second year.' So that the whole body is gradually changed in the course of the six years, always retaining a large portion of experience, and yet incapable of combining together for any sinister purposes. No person would probably propose a less duration of office for the Senators, than double the period of that of the members of the House. In effect, this provision, within the same period, changes the composition of two thirds of the body.

§ 78. As vacancies may occur in the Senate during the recess of the State Legislatures, it became indispensable to provide for that exigency, in order to preserve the full right of representation of each State in that body. Accordingly, the same clause declares — 'And if any vacancies happen 'by resignation, or otherwise, during the recess of the Legis-

'lature of any State, the executive thereof may make tem-'porary appointments, until the next meeting of the Legisla-'ture, which shall then fill such vacancies.' This mode seems as unexceptionable, as any which could be adopted. It enables the executive of the State to appoint a temporary Senator, when the State Legislature is not in session. One of three courses only seemed open; either to allow the vacancy to remain unfilled, which would deprive the State of its due vote; or to allow the State Legislature prospectively to provide for the vacancy, by a contingent appointment, which might be liable to some objections of a different character; or to confide a temporary appointment to the highest State functionary, who might well be presumed to enjoy the public confidence, and be devoted to the public interest.

§ 79. We next come to the qualifications of Senators. 'No person shall be a Senator, who shall not have attained 'the age of thirty years, and been nine years a citizen of the 'United States, and who shall not, when elected, be an in-'habitant of that State, for which he shall be chosen.' As the nature of the duties of a Senator require more experience, knowledge, and stability of character, than those of a Representative, the qualification of age is accordingly raised. A person may be a Representative at twenty-five years; but he cannot be a Senator until thirty years. Citizenship also is required, the propriety of which qualification cannot be doubted. The term of citizenship of a Representative is seven years; that of a Senator is nine years. The reason, for increasing the term in the latter case, is the direct connexion of the Senate with foreign nations in the appointment of ambassadors, and in the formation of treaties. This prolonged term may well be required of a foreigner, not only to give him a more thorough knowledge of the interests of his adopted country; but also to wean him more effectually from those of his native country. The next qualification is, inhabitancy in the State; and the propriety of this is almost self-

evident, since an inhabitant may not only be presumed to be better acquainted with the local interests, and wants and pursuits of the State; but may, also, well be deemed to feel a higher degree of responsibility to the State, than any stranger. He will, also, personally share more fully in the effects of all measures, touching the sovereignty, rights, and influence of the State.

§ 80. In concluding this topic, it is proper to remark, that no qualification whatever, as to property, is required in regard to Senators, any more than in regard to Representatives. Merit and talent have, therefore, the freest access open to them into each branch of the Legislature. Under such circumstances, if the choice of the people is but directed by a suitable sobriety of judgment, the Senate cannot fail of being distinguished for wisdom, for learning, for exalted patriotism, for incorruptible integrity, and for inflexible independence.

§ 81. The next clause respects the person who shall preside in the deliberations of the Senate.—'The Vice President of the United States shall be President of the Senate, 'but shall have no vote, unless they be equally divided.' '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.'

§ 82. The propriety of creating the office of Vice President will be reserved for future consideration, when the organization of the Executive Department shall come under review. The reasons, why he is authorized to preside in the Senate, belong appropriately to this place. The strong motive for this arrangement undoubtedly arose from State jealousy, and State equality in the Senate. If the presiding officer of the Senate were to be chosen exclusively from its own members, it was supposed, that the State, upon which the choice might fall, might possess more or less, than its due share of influence.

If he were not allowed to vote, except upon an equal division of the Senate, then the State would be deprived of his vote; if he were entitled to vote, and also, in such cases, to give a casting vote, then the State would, in effect, possess a double vote. If he could only vote as a member, then, in case of an equality of votes, much inconvenience might arise from the indecision of the Senate. It might give rise to dangerous feuds, or intrigues, and create State, or national agitations. It would be far better, in such an equality of votes, to refer the decision to a common arbiter, like the Vice President, chosen by all the States. The permanent appointment of one of the Senators, as President, during his official term, might give him an undue influence, and control over measures. An appointment for a single session only would subject the body to agitations, and intrigues, incompatible with its own dignity and convenience, and might introduce irregularities, unfavorable to an impartial course of proceedings, founded upon experience, and an accurate knowledge of the duties of the office.

CHAPTER XI.

Impeachments.

§ 83. The next clause respects the judicial power of the Senate to try impeachments. '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 great objects to be attained in the selection of a tribunal for the trial of impeachments, are impartiality, integrity,

intelligence, and independence. If either of these is wanting, the trial is essentially defective. To ensure impartiality, the body must be, in some degree, removed from popular power and passions, from the influences of sectional prejudice, and from the still more dangerous influence of party spirit. To secure integrity, there must be a lofty sense of duty, and a deep responsibility to God, as well as to future ages. To secure intelligence, there must be age, experience, and high intellectual powers and attainments. To secure independence, there must be numbers, as well as talents, and a confidence, resulting from permanency of place, dignity of station, and consciousness of patriotism. The Senate, from its very organization, must be presumed to possess all these qualities in a high degree, and, certainly, in a degree not surpassed by any other political body. If it should be asked, why the power to try impeachments might not have been confided to a Court of Law of the highest grade, it may be answered, that such a tribunal is not, on various accounts, so fit for the purpose. In the first place, the offences to be tried are generally of a political character, such as a Court of Law is not ordinarily accustomed to examine, and such as its common functions exclude. The Senate, on the contrary, necessarily becomes familiar with such subjects. In the next place, the strict course of proceedings in Courts of Law is ill adapted to the searching out of political delinquencies. In the next place, political functions are incompatible with the due discharge of other judicial duties. They have a tendency to involve the Judges in party interests and contests, and thereby to withdraw their minds from those studies and habits, which are most important, in the ordinary administration of justice, to secure independence and impartiality. In the next place, the Judges are themselves appointed by the Executive, and may be called upon to try cases, in which he is the party impeached, or some officer enjoying his confidence, and acting under his orders. In the last place, a Judge may be

the very party impeached; and, under such circumstances, a Court may be presumed to labor under as strong feelings and sympathies for the accused, as any other body. It could never be desirable to call upon the Supreme Court to try an impeachment of one of its own members for an official misdemeanor. So that, to say the least, the tribunal selected by the Constitution is as unobjectionable, as any which could be pointed out.

§ 84. The mode of trial is also provided for. The Senate, when sitting as a Court of Impeachment, 'shall be on 'oath or affirmation.' This is required in all cases of trials in the common Courts of Law. Jurymen, as well as Judges, are always under oath or affirmation, in the discharge of their respective duties. It is a sanction, appealing to their consciences, and calling upon them to reflect well upon their duties. The provision was deemed the more necessary, because in trials of Impeachment in England, the House of Lords (which is the High Court of Impeachment) is not under oath; but each Peer makes a declaration simply upon his honor; though if he be a witness in any common trial, he must give his testimony on oath.

§ 85. The next provision is, 'When the President of the 'United States is tried, the Chief Justice shall preside.' The reason of this clause is, to exclude the Vice President, who might be supposed to have a natural desire to succeed to the office, from being instrumental, or having any influence, in procuring a conviction of the Chief Magistrate. It is added, 'And no person shall be convicted, without the con-'currence of two thirds of the members present.' The reason for this restriction doubtless is, that if a bare majority only were sufficient to convict of political offences, there would be danger, in times of high popular commotion, or party spirit, that the influence of the House of Representatives would be found irresistible. In cases of trials by Jury, absolute unanimity is required to the conviction of a crimi-

nal; in cases of legislation, a majority only is required for a decision; and, here, an intermediate number, between unanimity and a majority, is adopted. If any thing short of unanimity ought to be allowed, two thirds seems a reasonable limitation.

§ 86. The next clause respects the judgment to be rendered in cases of impeachment. — '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.' As the principal object of the power of impeachment is to punish political crimes, the restriction of the punishment to mere removal and disqualification from office seems appropriate, and sufficient. Probably the abuses, to which an unlimited power of punishment might lead in times of popular excitement, and party strife, introduced this restriction. And the experience of the parent country had demonstrated, that it could be applied against a particular victim with a cruelty and harshness, wholly incompatible with national justice, and public honor. Yet persons, who are guilty of public offences, ought not wholly to escape the proper punishment, affixed by law in other cases. And, therefore, they are made amenable, like their fellow-citizens, to the common course of trial and punishment in the Courts of Law. This provision was the more necessary, because it might otherwise be contended that they could not, according to a known maxim of law, be twice tried and punished for the same offence. And here, again, the wisdom of the Constitution, in excluding the Courts of law from the trial of impeachments, is shown. For, if the same Court should re-try the cause, they would already have decided upon the party's guilt; and, if an inferior Court should try it, the influence of the superior Court would be apt to have an undue predominance over it.

§ 87. In order to complete our review of the subject of impeachments, it is necessary to cite a clause in a subsequent part of the Constitution, (Art. 2, Sect. 4,) declaring, who shall be liable to impeachment, and for what offences. '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.'

§ 88. From this clause it appears, that the power of impeachment does not extend to any, but civil officers of the United States, including the President, and Vice President. In England, it extends to all persons, whether peers or commoners, and whether officers or not. There seems a peculiar propriety, in a republican Government, in confining the impeaching power to persons holding office. In such a Government all the citizens are equal, and ought to have the same security of a trial by jury, for all crimes and offences laid to their charge, when not holding any official character. They might, otherwise, be subject to gross political oppressions, and prosecutions, which might ruin their fortune, or subject them to unjustifiable odiums. When a person accepts office, he may fairly be held to consent to a waiver of this privilege; and there can be no reasonable objection on his part to a trial by impeachment, since it can go no further than a removal from office, and a disqualification to hold office.

§ 89. The offences to which impeachments extend, are, 'treason, bribery, and other high crimes, and misdemeanors.' No person can reasonably doubt the propriety of the removal, and disqualification from office, of a person, who is guilty of treason, which aims at the overthrow of the Government, or of bribery, which corrupts its due administration. And there, doubtless, are other high crimes and misdemeanors, to which the power of impeachment may properly apply, since

they may be utterly incompatible with the public safety, and interests, or may bring the Government itself into disgrace and obloquy.

CHAPTER XII.

Elections and Meetings of Congress.

§ 90. We next come to the fourth section of the first article, which treats of the elections and meetings of Congress. The first clause is — 'The time, 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 Sen-'ators.' There is great propriety in leaving to the State Legislatures the right, in the first instance, of regulating the time and place of choosing the members of Congress, as every State is thus enabled to consult its own local convenience in the choice; and it would be difficult to prescribe any uniform time or place of elections, which would, in all possible changes in the situation of the States, be found convenient for all of them. On the other hand, as the ability of the General Government to carry on its operations depends upon these elections being duly had, it is plain, that it ought not to be left to the State Governments exclusively to decide, whether such elections should be had, or not. The maxim of sound political wisdom is, that every Government ought to contain in itself the means of its own preservation. And, therefore, an ulterior power is reserved to Congress, to make or alter the regulations of such elections, so as to preserve the efficiency of the General Government. But, inasmuch as the State Legislatures are to

elect Senators, the places of their meetings are left to their own discretion, as most fit to be decided by themselves, with reference to their ordinary duties and convenience. But Congress may still prescribe the times.

§ 91. The next clause is — 'The Congress shall assemble at least once in every year; and such meeting shall be 'on the first Monday of December, unless they shall, by law, 'appoint a different day.' The importance of this provision can scarcely be overrated by a free people, accustomed to know their rights, and jealous in the maintenance of them. Unless some time were prescribed for the regular meetings of Congress, they would depend upon the good will and pleasure of Congress itself, or of some other department of the Government. In times of violent factions, or military usurpations, attempts might be made to postpone such meetings for an unreasonable length of time, in order to prevent the redress of grievances, or secure the violators of the laws from condign punishment. Annual Parliaments have long been deemed, both in England and America, a great security to liberty and justice; and it was true wisdom, to establish the duty by a political provision in the Constitution, which could not be evaded, or disobeyed.

CHAPTER XIII.

Powers and Privileges of both Houses.

§ 92. The fifth section of the first article contains an enumeration of the powers, rights, and duties of each branch of the Legislature, in its distinct organic character. The first clause is — 'Each House shall be the judge of the elec-'tions, returns, and qualifications of its own members; and 'a majority of each shall constitute a quorum to do busi-

'ness; 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.'

§ 93. These powers are common to all the legislative bodies of the States; and indeed, to those of other free Governments. They seem indispensable to the due independence and efficiency of the body. The power to judge of the elections, returns, and qualifications of the members of each House, must be lodged somewhere; for otherwise, any intruder, or usurper, might assume to be a member. It can be safely lodged in no other body, but that, in which the party claims a seat; for otherwise, its independence, its purity, and even its existence, might be under the control of a foreign authority. It is equally important, that a proper quorum for the despatch of business should be fixed, otherwise, a cunning, or industrious minority might by stratagem usurp the functions of the majority, and pass laws at their pleasure. On the other hand, if a smaller number were not authorized to adjourn from day to day, or to compel the attendance of other members, all legislation might be suspended at the pleasure of the absentees, and the Legislature itself be virtually dissolved.

§ 94. The next clause is — 'Each House may determine 'the rules of its proceedings, punish its members for disor-'derly behavior, and, with the concurrence of two thirds, 'expel a member.' These powers also are usually granted to legislative bodies. If they did not exist, it would be utterly impracticable to transact the business of the nation at all, or at least, with decency, deliberation, and order. Without rules no public body can suitably perform its functions. If rules are made, they are mere nullities, unless the persons, on whom they are to operate, can be compelled to obey them. But, if an unlimited power to punish, even to the extent of expulsion, existed, it might, in factious times, be applied

by a domineering majority, to get rid of the most intelligent, virtuous, and efficient of its opponents. There is, therefore, a check interposed, which requires a concurrence of two thirds to expel; and this can hardly be presumed to exist, except in cases of flagrant breaches of the rights of the House.

§ 95. The next clause is — 'Each House shall keep a 'journal of its proceedings, and from time to time publish the 'same, except such parts as may, in their judgment, require 'secrecy. 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.' Each of these provisions has the same object, to ensure publicity, and responsibility, in all the proceedings of Congress, so that the public mind may be enlightened, as to the acts of the members. But cases may exist, where secrecy may be indispensable to the complete operation of the intended acts, either at home or abroad. And, on the other hand, an unlimited power to call the yeas and nays on every question, at the mere will of a single member, would interrupt and retard, and, in many cases, wholly defeat the public business. In each case, therefore, a reasonable limitation is interposed.

§ 96. The next clause is — '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.' Here, again, the object of the clause is manifest, to prevent either House from suspending at its pleasure the regular course of legislation, and even of carrying the power to the extent of a dissolution of the session. The duration of the sessions of Congress, subject only to the constitutional expiration of the term of office of the members, thus depends upon their own pleasure, with the single exception (as we shall hereafter see) of the case where the two Houses disagree, in respect to the time of adjournment, when it is given to the President. So that their independence is effectually guarded, against any

encroachment on the part of the Executive. In England, the King may prorogue or dissolve Parliament at his pleasure; and, before the Revolution, the same power was generally exercised by the Governors in most of the American Colonies.

§ 97. These are all the powers and privileges expressly enumerated, as belonging to the two Houses. But other incidental powers may well be presumed to exist. Among these, the power to punish contempts, committed against either House, by strangers, has been generally admitted, and insisted upon in practice, as indispensable to their freedom, their deliberative functions, and their personal safety.

§ 98. The sixth section of the first article contains an enumeration of the personal rights, privileges, and disabilities of the members, as contra-distinguished from those of the Houses, of which they are members. The first clause is — 'The Senators and Representatives shall receive a compensa-'tion 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, or 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.'

§ 99. First, Compensation. It has been greatly questioned, whether, on the whole, it is best to allow compensation to members of Congress, or not. On the one hand, it has been said, that it tempts unworthy and avaricious men to intrigue for office, and to defeat candidates of higher talents and virtues. On the other hand, it has been said, that unless compensation be allowed, merit of the highest order may be excluded by poverty from the national councils; and in a republican Government nothing can be more impolitic than to give to wealth a superior claim, and facility in obtaining office.' This latter reasoning had its due force, and prevailed in the Convention, and with the people.

§ 100. Next, the privilege from arrest. This is given in all cases, (except of crimes,) in going to, attending upon, and returning from, any session of Congress. It would be a great mistake to consider it, as in reality a personal privilege, for the benefit of the member. It is rather a privilege for the benefit of his constituents, that they may not be deprived of the presence, services, and influence of their own Representative in the national councils. It might otherwise happen, that he might be arrested from mere malice, or political persecution, and thus they be deprived of his aid and talents during the whole session.

§ 101. Thirdly, the liberty of speech and debate. This, too, is less to be regarded as a personal privilege, than as a public right, to secure independence, firmness, and fearlessness on the part of the members, so that, in discharging their high trusts, they may not be overawed by wealth, or power, or dread of prosecution. The same privilege is enjoyed in the British Parliament, and also in the several State Legislatures of the Union, founded upon the same reasoning.

§ 102. The next clause regards the disqualifications of members of Congress. 'No Senator or Representative shall, 'during the time for which he is 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 per-'son, holding any office under the United States, shall be a 'member of either House of Congress during his continu-'ance in office.' The object of these provisions is sufficiently manifest. It is, to secure the Legislature against undue influence, and indirect corruption, on the part of the Executive. Whether much reliance can be placed upon guards of this disqualifying nature, has been greatly doubted. Patronage may be quite as effective under a different form. It may confer office on a friend, a relative, or a dependant. The hope of office in future may seduce a man from his duty,

as much as its present possession. And, after all, the chief guards against venality, in all Governments, must be placed in the high virtue, the unspotted honor, and the pure patriotism of public men. And it has been doubted, whether the exclusion of the Heads of Department from Congress has not led to the use of indirect, and irresponsible influence, on the part of the Executive, over the measures of Congress, far more than could exist, if the Heads of Departments held seats in Congress, and might be there compelled to avow and defend their own opinions. The provision, however, as it stands, has hitherto been found acceptable to the American People, and ought not lightly to be surrendered.

CHAPTER XIV.

Mode of Passing Laws.

§ 103. The seventh section of the first article declares the mode of passing laws. The first clause is—'All bills 'for raising revenue shall originate in the House of Repre-'sentatives; but the Senate may propose, or concur with 'amendments, as in other bills.' This clause had its origin in the known rule of the British Parliament, that all money bills shall originate in the House of Commons. The general reason assigned for this privilege in that kingdom is, that all taxes and supplies, raised upon the people, should originate with their immediate representatives. But in truth, it was intended by the popular branch of the Legislature, by this course, to acquire a permanent importance in the Government; and to be able to counterpoise the influence of the House of Peers, a body having hereditary rights and dignity. The same reason does not apply with the same force to our republican forms of Government. But still,

as the same power was exercised under some of the State Governments, and as the House of Representatives may be deemed peculiarly well fitted to bring to such subjects a full knowledge of the local interests, as well as the wishes of the people, there is no inconvenience in pursuing this habit of legislation. But as taxes and revenue laws may bear with great inequality upon some of the States, a power to amend such laws is properly reserved to the Senate, where all the States possess an equal voice.

§ 104. The next clause respects the power of the President, to approve and negative laws. It is as follows — 'Every bill, which shall have passed the House of Repre-'sentatives, and the Senate, shall, before it becomes 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 objec-'tions, 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 pre-'sented to him, the same shall be a law, in like manner, 'as if he had signed it, unless the Congress, by their ad-'journment, prevent its return, in which case it shall not be 'a law.'

§ 105. The reasons, why the President should possess a qualified negative, (for an absolute negative would be highly objectionable) are, if not quite obvious, at least, when fairly

expounded entirely satisfactory. In the first place, there is a natural tendency in the legislative department, to intrude upon the rights, and to absorb the powers of the other departments of the Government. If the executive did not possess this authority, he could gradually be stripped of all his authority, and become, what the governors of some States now are, a mere pageant and shadow of magistracy.

§ 106. In the next place, the power is important, as an additional security against the enactment of rash, immature, and improper laws. In the third place, it embodies a different modification of interests and opinions from that which belongs to either branch, to that representing the people, or that representing the States; and being a combination of the interests and opinions of the aggregate of both, introduces a useful element, to check any preponderating interest of any section, in a particular measure. It does not, like an absolute negative, suspend legislation, but merely refer the subject back for a more deliberate review of the Senate and House. If two thirds of each branch still concur in its favor, it becomes a law. Thus a thorough revision of the measure is guaranteed; and, at the same time, the deliberate wishes of the people cannot be disobeyed. If two thirds of each branch do not dissent from the President's opinion, the natural inference is, that the measure is not so far beyond all reasonable objections, that it ought ordinarily to prevail. And, if the President should abuse his power, (as certainly he sometimes may,) the people have the proper remedies in their own hands, and can compel him to relinquish office at no distant period.

§ 107. But the qualified negative is not left wholly without restraint. The President must promptly exercise it within ten days, excluding Sunday; otherwise the bill becomes a law. And, on the other hand, Congress are deprived of the power of preventing its due exercise by a hasty adjournment within the ten days. If a qualified negative is to be allowed

at all, it would seem thus to be as much restrained as the public good can require.

§ 108. The remaining clause provides a like regulation in regard to orders, resolutions, and votes, to which the concurrence of both Houses is necessary. It is, '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.' If this provision had not been made, Congress, by adopting the form of an order, or resolution, instead of a bill, might have effectually defeated the President's negative in many important portions of legislation. The reason of the exception as to adjournments, is, that this power is peculiarly fit to be acted upon by Congress, according to their own discretion; and, therefore it is, (as we have seen,) by a preceding clause, vested in both Houses, and devolves on the President, only in cases of their disagreement.

§ 109. We have now completed the review of the structure and organization of the legislative department; and, it has been shown, that it is admirably adapted for a wholesome and upright exercise of the powers confided to it. All the checks, which human ingenuity has been able to devise, or at least all, which, with reference to our habits, institutions, and diversities of local interests, seem practicable, to give perfect operation to the machinery, to adjust its movements, to prevent its eccentricities, and to balance its forces; all these have been introduced with singular skill, ingenuity, and wisdom, into the arrangements. Yet after all, the fabric may fall, for the work of man is perishable. Nay, it must fall, if there be not that vital spirit in the people, which can alone nourish, sustain, and direct all its movements. If ever the

day shall arrive, in which the best talents, and the best virtues shall be driven from office, by intrigue, or corruption, by the denunciations of the press, or the persecutions of party factions, legislation will cease to be national. It will be wise by accident, and bad by system.

CHAPTER XV.

Powers of Congress. — Taxation.

§ 110. We next come to the consideration of the legislative powers conferred on Congress, which are contained in the eighth section of the first article. The first clause is, '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 through-'out the United States.' What is the true interpretation of this clause, has been matter of considerable controversy; that is to say, whether the words, 'to pay the debts, and provide for 'the common defence, and general welfare,' are to be read as an independent clause, or as a dependent clause, qualifying the preceding, and thus to be read, as though the words were, '*in order* to pay the debts, and provide for the common defence, and general welfare.' The latter seems the more just and solid interpretation.

§ 111. The necessity of the power of taxation to the vigorous action of the national Government, would seem to be self-evident. The want of it was one of the principal defects under the Confederation. A national Government without the power of providing for its own expenditures, charged with public burthens, and duties, and yet deprived of adequate means to sustain and perform them, would soon become whol-

ly inert, and imbecile. It would be like a man in a state of suspended animation. The power is, therefore, given in general terms, because, if limited to particular sources, or objects, these might, from accidental circumstances, or the change of pursuits, become inadequate, or totally fail; and, because the widest choice will enable the Government to select those, from time to time, which shall be least oppressive, and most productive.

§ 112. The words used, are, 'taxes, duties, imposts, and 'excises.' In a general sense all contributions, imposed by the Government upon individuals for the service of the State, are taxes, by whatever name they may be called. In this sense they are usually divided into two classes; direct taxes, under which are included taxes on land, and other real estate, and poll, or capitation taxes, or taxes on the polls or persons of individuals; indirect taxes, or those which are levied only upon articles of consumption; and of course, of which every person pays only so much, as he consumes of the articles. The word 'duties,' is often used as synonymous with taxes; but is more often used as synonymous with 'customs,' which are taxes, which are levied upon goods and merchandize, which are exported or imported; in this sense it is equivalent to 'imposts,' though the latter is often restrained to duties on goods and merchandize, which are imported from abroad. 'Excises,' is a word, generally used in contradistinction to 'imposts,' in its restricted sense; and is applied to internal or inland impositions, levied sometimes upon the consumption of a commodity, sometimes upon the retail sale of it, and sometimes upon the manufacture of it. Thus a tax, levied upon goods imported from a foreign country, is generally called an 'impost' duty; and a tax, levied upon goods manufactured or sold in a country, is called an 'excise' duty. The meanings of these words, therefore, often run into each other; and all of them are used in the Constitution, to avoid any ambiguity, arising from their various senses.

§ 113. The power of taxation is not, however, unlimited in its character. The taxes levied must be either to pay the public debts, or to provide for the common defence, and general welfare of the United States. They cannot be levied solely for foreign purposes, or in aid of foreign nations. In the next place, all direct taxes (as are seen,) are to be apportioned among the several States, in the same manner as Representatives, that is, according to the numbers of the population, to be ascertained in a particular mode. There is another clause of the Constitution, on the same subject, which declares, 'that no capitation, or other direct tax, shall 'be laid, unless in proportion to the census, or enumeration, 'herein before directed to be taken.' All other taxes, that is, 'duties, imposts, and excises,' are required to be uniform throughout the United States. The reason of the latter rule is, to prevent Congress from giving any undue preference to the pursuits or interests of one State over those of any other. It might otherwise happen, that the agriculture, commerce, or manufactures of one State might be built upon the ruins of those of another; and, the combination of a few States in Congress might secure a monopoly of certain branches of trade and business to themselves. And further, to enforce this uniformity, and preserve the equal rights of all the States, it is declared, in a subsequent clause of the Constitution, that '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.'

§ 114. But, as the power of taxation is concurrent in the State Governments, it became essential, in order fully to effectuate the same purpose, and to prevent any State from securing undue preferences and monopolies in its own favor, to lay some restraints upon the exercise of this power by the States. Accordingly another clause in the Constitution de-

clares, 'no State shall, *without the consent of Congress*, lay 'any imposts or duties on imports or exports, except what 'may be absolutely necessary for executing its inspection 'laws. And the net produce of all duties and imposts, laid 'by any State on imports and exports, shall be for the use of 'the treasury of the United States; and all such laws shall be 'subject to the revision of Congress. No State shall, with-'out the consent of Congress, lay any tonnage duty.' A petty warfare of regulation among the States is thus prevented, which might otherwise rouse resentments, and create dissensions, dangerous to the peace and harmony of the Union. The exception in favor of inspection laws to a limited extent is for the purpose of enabling the States to improve the quality of articles, produced by the labor of the country, and thus to fit them better for exportation, as well as for domestic use. Yet, even here, the superintending power of Congress is reserved, lest, under color of such laws, attempts should be made to injure the interests of other States. Having thus brought together all the various, but scattered articles of the Constitution on the subject of taxation, the subject may be dismissed with the single remark, that as no one was more likely in its abuse to be more detrimental to the public welfare, so no one is guarded with more care, and adjusted with more anxious deference to local interests.

CHAPTER XVI.

Power to Borrow Money, and Regulate Commerce.

§ 115. The next power of Congress is, 'to borrow money 'on the credit of the United States.' This power, also, seems indispensable to the sovereignty and existence of the National Government; for otherwise, in times of great dan-

ger, or severe public calamities, it might be impossible to provide, adequately, for the public exigencies. In times of peace, it may not, ordinarily, be necessary for the expenditures of a nation to exceed its revenues. But the experience of all nations must convince us that, in times of war, the burthens and expenses of a single year may more than equal the ordinary revenue of ten years. And, even in times of peace, there are occasions, in which loans may be the most facile, convenient, and economical means of supplying any extraordinary expenditure. The experience of the United States has already shown the importance of the power, both in peace and in war. Without this resource, neither the war of Independence, nor the more recent war with Great Britain, could have been successfully terminated. And the purchase of Louisiana was by the same means promptly provided for, without being felt by the nation in its fiscal concerns.

§ 116. The next power of Congress is, 'to regulate commerce with foreign nations, and among the several States, 'and with the Indian Tribes.' The want of this power was, as we have seen, a leading defect of the Confederation. In the different States, the most opposite and conflicting regulations existed; each pursued its own real or supposed local interests; each was jealous of the rivalry of its neighbors; and each was successively driven to retaliatory measures, in order to satisfy public clamor, or private distress. In the end, however, all their measures became utterly nugatory, or mischievous, engendering mutual hostilities, and prostrating all their commerce at the feet of foreign nations. It is hardly possible to exaggerate the oppressed and degraded state of domestic commerce, manufactures, and agriculture, at the time of the adoption of the Constitution. Our ships were almost driven from the ocean; our work-shops were almost deserted; our mechanics were in a starving condition; and our agriculture was sunk to the lowest ebb. These were the natural results of the inability of the General Government to

regulate commerce, so as to prevent the injurious monopolies, and exclusions of foreign nations, and the conflicting, and often ruinous regulations of the different States. If duties were laid by one State, they were rendered ineffectual by the opposite policy of another. If one gave a preference to its own ships or commerce, it was counteracted by another. If one endeavored to foster its own manufactures by any measures of protection, that made it an object of jealousy to others; and brought upon it the severe retaliation of foreign Governments. If one was peculiarly favored in its agricultural products, that constituted an inducement with others to load it with some restrictions, which should redress the inequality. And it was easy to foresee, that this state of things could not long exist, without bringing on a border warfare, and a deep-rooted hatred among neighboring States, fatal to the Union, and, of course, fatal also to the liberty of every member of it.

§ 117. The power, 'to regulate foreign commerce,' enabled the Government at once to place the whole country upon an equality with foreign nations; to compel them to abandon their narrow and selfish policy towards us; and to protect our own commercial interests against their injurious competitions. The power to regulate commerce 'among the several States,' in like manner, annihilated the causes of domestic feuds and rivalries. It compelled every State to regard the interest of each, as the interest of all; and thus diffused over all the blessings of a free, active, and rapid exchange of commodities, upon the footing of perfect equality. The power to regulate commerce 'with the Indian Tribes' was equally necessary to the peace and safety of the frontier States. Experience had shown the utter impracticability of escaping from sudden wars, and invasions, on the part of these Tribes; and the dangers were immeasurably increased, by the want of uniformity of regulations and control, in the intercourse with them. Indeed, in nothing has the profound

wisdom of the framers of the Constitution been more displayed, than in the exclusive grant of this power to the Union. By means of it the country has risen from poverty to opulence; from a state of narrow and scanty resources to an ample national revenue; from a feeble, and disheartening intercourse and competition with foreign nations in agriculture, commerce, manufactures, and population, to a proud, and conscious independence in arts, in numbers, in skill, and in civil polity.

CHAPTER XVII.

Naturalization, Bankruptcy, and Coinage of Money.

§ 118. The next power of Congress is, 'to establish a 'uniform rule of naturalization, and uniform laws on the 'subject of bankruptcies throughout the States.' The power of naturalization is, with great propriety, confided to Congress, since, if left to the States, they might naturalize foreigners upon very different, and even opposite systems; and, as the citizens of all the States have common privileges in all, it would be in the power of any one State to defeat the wholesome policy of all the others in regard to this most important subject. Congress alone can have power to pass uniform laws, obligatory on all the States; and thus to adopt a system, which shall secure all of them against any dangerous results, from the indiscriminate admission of foreigners to the right of citizenship upon their first landing on our shores. And, accordingly, this power is exclusive in Congress.

§ 119. The power to pass bankrupt laws is equally important, and proper to be entrusted to Congress, though it is greatly to be regretted, that it has not, except in a very brief

period, been acted upon. Bankrupt and insolvent laws, when properly framed, have two great objects in view; first, to secure to honest but unfortunate debtors a discharge from debts, which they are unable to pay, and thus to enable them to begin anew in the career of industry, without the discouraging fear, that it will be wholly useless; secondly, to secure to creditors a full surrender, an dequal participation, of and in the effects of their debtors, when they have become bankrupt, or failed in business. On the one hand, such laws relieve the debtor from perpetual bondage to his creditors, in the shape, either of an unlimited imprisonment for his debts, or of an absolute right to appropriate all his future earnings. The latter course obviously destroys all encouragement to future enterprize and industry, on the part of his debtor; the former is, if possible, more harsh, severe, and indefeasible; for it makes poverty, in itself sufficiently oppressive, the cause or occasion of penalties, and punishments.

§ 120. It is obvious, that no single State is competent to pass a uniform system of bankruptcy, which shall operate throughout all of them. It can have no power to discharge debts, contracted in other States; or to bind creditors in other States. And it is hardly within the range of probability, that the same system should be universally adopted, and persevered in permanently, by all the States. In fact, before, as well as since the adoption of the Constitution, the States have had very different systems on the subject, exhibiting a policy as opposite as could well be imagined. The future will, in all human probability, be, as the past. And the utter inability of any State to discharge contracts made before the passage of its own laws, or to discharge any debts, contracted in other States, or due to the citizens thereof, must perpetually embarrass commercial dealings, discourage industry, and diminish private credit and confidence. The remedy is in the hands of Congress. It has been given for wise ends, and has hitherto been strangely left without any efficient operation.

§ 121. The next power of Congress is, 'to coin money, 'regulate the value thereof, and of foreign coins, and fix 'the standard of weights and measures.' The object of the power over the coinage and currency is, to produce uniformity in the value of money throughout the Union, and thus to save us from the embarrassments of a perpetually fluctuating and variable currency. If each State might coin money, as it pleased, there would be no security for any uniform coinage, or standard of value; and a great deal of base and false coin would be constantly thrown into the market. The evils from this cause are abundantly felt among the small principalities of continental Europe. The power to fix the standard of weights and measures is a matter of great public convenience, though it has hitherto remained dormant. The introduction of the decimal mode of calculation, in dollars and cents, instead of the old and awkward system of pounds, shillings and pence, has been found of great public convenience, although it was at first somewhat unpopular. A similar system in weights and measures has been thought by many statesmen to have advantages equally great and universal. At all events, the power is safe in the hands of Congress, and may hereafter be acted upon, whenever either our foreign, or our domestic intercourse, shall imperiously require a new system.

§ 122. The next power of Congress is, 'to provide for 'the punishment of counterfeiting the securities, and current 'coin of the United States.' This is a natural, and, in a just view, an indispensable appendage to the power to borrow money, and coin money. Without it, there would be no adequate means for the General Government to punish frauds or forgeries, detrimental to its own interests, and subversive of private confidence.

CHAPTER XVIII.

Post Office and Post Roads. — Patents for Inventions.

§ 123. The next power of Congress, is 'to establish post 'offices, and post roads.' This power is peculiarly appropriate to the National Government, and would be at once unwieldy, dilatory, and irregular in the hands of the States, from the utter impracticability of adopting any uniform system of regulations for the whole continent, and from the inequality of the burthens, and benefits of any local system, among the several States, in proportion to their own expenditures. Under the auspices of the General Government, the post-office has already become one of the most beneficent, and useful of our national establishments. It circulates intelligence of a commercial, political, literary, and private nature, with incredible speed and regularity. It thus administers in a very high degree to the comfort, the interests, and the necessities of persons in every rank and station of life. It is not less effective, as an instrument of the Government; enabling it, in times of peace and war, to send its orders, execute its measures, transmit its funds, and regulate its operations, with a promptitude and certainty, which are of incalculable importance, in point of economy, as well as of energy. The rapidity of its movements has been, in a general view, doubled within the last twenty years; and there are now more than eight thousand five hundred post-offices in the United States; and mails travel in various directions more than one hundred and twenty thousand miles. It seems wholly unnecessary to vindicate the grant of a power, which has been thus demonstrated to be of the highest value to all the people of the Union.

§ 124. The next power of Congress is, 'to promote the 'progress of science, and the useful arts, by securing, for 'limited times, to authors, and inventors, the exclusive right

'to their respective writings, and discoveries.' The utility of this power has never been questioned. Indeed, if authors, or inventers, are to have any real property or interest in their writings, or discoveries, it is manifest, that the power of protection must be given to, and administered by, the General Government. A copy-right, or patent, granted by a single State, might be violated with impunity by every other; and, indeed, adverse titles might at the same time be set up in different States to the same thing, each of which, according to the laws of the State in which it originated, might be equally valid. No class of men are more meritorious, or better entitled to public patronage, than authors and inventers. They have rarely obtained, as the history of their lives sufficiently establish, any due encouragement and reward for their ingenuity and public spirit. They have often languished in poverty, and died in neglect, while the world has derived immense wealth from their labors, and science and the arts have reaped unbounded advantages from their discoveries. They have but too often possessed a barren fame, and seen the fruits of their genius gathered by those, who have not blushed to purloin, what they have been unable to create. It is, indeed, but a poor reward, to secure to authors and inventers for a limited period only an exclusive title to that which is, in the noblest sense, their own property; and to require it ever afterwards to be dedicated to the public. But such as it is, it is impossible to doubt its justice, or its policy, so far as it aims at their protection and encouragement.

§ 125. The next power of Congress is, 'to constitute tri-'bunals inferior to the Supreme Court.' But this will properly come under review, in considering the structure and powers of the Judicial Department.

CHAPTER XIX.

Punishment of Piracies and Felonies. — Declaration of War.

§ 126. The next power of Congress is, 'to define, and 'punish piracies and felonies, committed on the high seas, 'and offences against the law of nations.' Piracy is commonly defined to be robbery, or forcible depredation upon the high seas with intent to steal. But 'felony' is a term, not so exactly understood, or defined. It is usually applied to designate capital offences, that is, offences punishable with death; but its true meaning seems to be, to designate such offences as are by the common law punished by forfeiture of goods and lands. 'Offences against the law of nations' are still less clearly defined; and therefore, as to these, as well as felonies, the power to define, as well as to punish, is very properly given. As the United States are responsible to foreign Governments for the conduct of their citizens on the high seas, and as the power to punish offences committed there is also indispensable to the due protection and support of our navigation and commerce, and the States, separately, are incapable of affording adequate redress in such cases, the power is appropriately vested in the General Government.

§ 127. The next power of Congress is, 'to declare war, 'grant letters of marque and reprisal, and make rules con-'cerning captures on land and water.' That the power to declare war should belong exclusively to the National Government, would hardly seem matter of controversy. If it belonged to the States severally, it would be in the power of any one of them, at any time, to involve the whole Union in hostilities with a foreign country, not only against their interests, but against their judgment. Their very existence might thus be jeoparded without their consent, and their liberties sacrificed to private resentment, or popular prejudice. The power cannot, therefore, be safely deposited, except in the

General Government; and, if in the General Government, it ought to belong to Congress, where all the States and all the people of the States are represented; and where a majority of both must concur, to authorize the declaration. War, indeed, is, in its mildest form, so dreadful a calamity; it destroys so many lives, wastes so much property, and introduces so much moral desolation; that nothing but the strongest state of necessity can justify, or excuse it. In a republican Government, it should never be resorted to, except as a last expedient to vindicate its rights; for military power and military ambition have but too often triumphed over the liberties of the people.

§ 128. 'Letters of marque and reprisal' are commissions, granted to private persons and ships, to make captures; and are usually granted in times of general war. But they are also sometimes granted by nations, having no intention to enter into a general war, to redress a grievance to a private citizen, which the offending nation refuses to redress. In such a case, a commission is sometimes granted to the injured individual, to make a reprisal upon the property of the subject of that nation to the extent of his injury. But this is a dangerous experiment; and the more usual, and wise course is, to resort to negotiations, and to wait until a favorable moment occurs to press the claim.

§ 129. If captures are to be made, as they necessarily must be, to give efficiency to a declaration of war, it follows that the General Government ought to possess the power to make rules and regulations concerning them, thereby to restrain personal violence, intemperate cupidity, and degrading cruelty.

CHAPTER XX.

Power as to Army and Navy.

§ 130. The next power of Congress is 'to raise and support armies; but no appropriation of money to that use shall 'be for a longer term than two years.' The power to raise armies would seem to be an indispensable incident to the power to declare war, if the latter is not to be a mere idle sound, or instrument of mischief. Under the Confederation, however, the two powers were separated; Congress were authorized to declare war; but they could not raise troops. They could only make requisitions upon the States to raise them. The consequence was (as is well known) general inefficiency, want of economy, mischievous delays, and great inequality of burthens. This is, doubtless, the reason, why the power is expressly given to Congress. It ensures promptitude and unity of action, and, at the same time, promotes economy and harmony of operations. Nor is it in war only, that the power to raise armies may be usefully applied. It is important to suppress domestic rebellions, and insurrections; and to prevent foreign aggressions and invasions. A nation, which is prepared for war in times of peace, will, thereby, often escape the necessity of engaging in war. Its rights will be respected, and its wrongs redressed. Imbecility and want of preparation invite aggression, and protract controversy.

§ 131. But, inasmuch as the power to raise armies may be perverted in times of peace to improper purposes, a restriction is imposed upon the grant of appropriations for the maintenance of them. So that every two years the propriety of retaining an existing army must regularly come before the Representatives of the People in Congress for consideration; and if no appropriation is made, the army is necessarily disbanded. Thus, a majority of Congress may at any time

within two years be in effect dissolved, without the consent of the President, by a simple refusal to grant supplies. The power, therefore, is surrounded by all reasonable restrictions, as to its exercise; and it has hitherto been used in a manner, which has conferred lasting benefits on the country.

§ 132. The next power of Congress is, 'to provide, and 'maintain a Navy.' This power has the same general object, as that to raise armies. But, in its own nature, it is far more safe, and, for a maritime nation, quite as indispensable. No nation was ever deprived of its liberty by its Navy. The same cannot be said of its Army. And a commercial nation would be utterly without its due weight upon the ocean, its means of self-protection at home, and its power of efficient action abroad, without the possession of a Navy. Yet this power, until a comparatively recent period, found little favor with some of our statesmen of no mean celebrity. It was not, until the brilliant achievements of our little Navy during the late war had shed a glory, as well as a protection, over our national flag in every sea, that the country became alive to its vast importance and efficiency. At present, it enjoys an extensive public favor, which, having been earned by the most gallant deeds, can scarcely fail of permanently engrafting it into the solid establishments of our national strength.

§ 133. The next power of Congress is, 'to make rules, 'for the government and regulation of the land and naval 'forces.' Upon the propriety of this power, as an incident to the preceding, it is unnecessary to enlarge. It is equally beyond the reach of cavil and complaint.

CHAPTER XXI.

Power over Militia.

§ 134. The next power of Congress is, 'to provide for 'calling forth the Militia to execute the laws of the Union, 'suppress insurrections, and repel invasions.' This is a natural incident to the duty, devolved on the General Government, of superintending the common defence, and general welfare. There is but one of two alternatives, which can be resorted to in cases of insurrections, invasions, or violent oppositions to the execution of the laws; either to employ regular troops, or to employ the militia. In ordinary cases of riots and public disturbances, the magistracy of the country, with the assistance of the civil officers, and private individuals, may be sufficient to restore the public peace. But when force is contemplated by a discontented and lawless faction, it is manifest, that it must be met, and overthrown by force. Among a free people there is a strong objection to the keeping up of a large standing army. But this will be indispensable, unless the power is delegated to command the sevices of the militia in such exigencies. The latter is, therefore, conferred on Congress, because it is the most safe, and the least obnoxious to popular jealousy. The employment of the militia is economical, and will generally be found to be efficient, in suppressing sudden and transitory insurrections, and invasions, and resistances of the laws.

§ 135. The next power of Congress, is to provide for 'or-'ganizing, arming, and disciplining the militia, and for gov-'erning such part of them, as may be employed in the ser-'vice of the United States; reserving to the States, respec-'tively, the appointment of the officers, and the authority of 'training the militia, according to the discipline prescribed 'by Congress.' And here, again, we have another instance of the distribution of powers, between the National and State

Governments over the same subject matter. Unless there is uniformity in the organization, arming, and disciplining of the militia, there can be little chance of any energy, or harmony of action, between the corps of militia of different States, when called into the public service. Uniformity can alone be prescribed by the General Government, and the power is accordingly given to it. On the other hand, as a complete control of the militia by the General Government would deprive the States of their natural means of military defence, even upon the most urgent occasions, and would leave them absolutely dependent upon the General Government, the power of the latter is limited to a few cases; and the former retain the appointment of all the officers, and also the authority to train the militia, according to the discipline prescribed by Congress. With these limitations, the authority of Congress would seem above all reasonable objections.

CHAPTER XXII.

Seat of Government, and other Ceded Places.

§ 136. The next power of Congress is, 'to exercise exclusive legislation, in all cases whatsoever, over such District, not exceeding ten miles square, as may, by cession of particular States, and the acceptance of Congress, become the Seat of the Government of the United States; and, to exercise like authority over all places purchased by the consent of the Legislature of the State, in which the same shall be, for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings.'

§ 137. A moment's consideration will establish the importance and necessity of this power. Without it, the National Government would have no adequate means to enforce its authority in the place in which its public functionaries should

be convened. They might be insulted, and their proceedings interrupted with impunity. And if the State should array itself in hostility to the proceedings of the National Government, the latter might be driven to seek another asylum, or be compelled to an humiliating submission. It never could be safe, to leave in the possession of any one State the exclusive power to decide, whether the functionaries of the National Government should have the moral or physical power to perform their duties. Nor let it be thought, that the evil is wholly imaginary. It actually occurred to the Continental Congress, at the very close of the Revolution, who were compelled to quit Philadelphia, and adjourn to Princeton, to escape from the violence of some insolent mutineers.

§ 138. It is under this clause, that the cession of the present District of Columbia was made by the States of Maryland and Virginia; and, the present Seat of the National Government was established at the city of Washington. That convenient spot was selected by the exalted patriot, whose name it bears, for this very purpose. And who, that loves his country, does not desire, that it may forever remain a monument of his wisdom, and the eternal Capitol of the Republic?

§ 139. The other clause, as to cessions for forts, magazines, arsenals, dock-yards, and other needful buildings, is dictated by a like policy. The public money expended on such places, the public property deposited there, the military, and other duties to be executed there, all require, that the sovereignty of the United States should have exclusive jurisdiction and control over them. It would be wholly improper, that such places, on which the security of the Union may materially depend, should be subjected to the authority of any single member of it. In order to guard against any possible abuse, the consent of the State Legislature is necessary to divest its own territorial jurisdiction; and, of course, that consent will never be given, unless the public good will be manifestly promoted by the cession.

CHAPTER XXIII.

General Power to make Necessary and Proper Laws.

§ 140. The next power of Congress is, 'to make all laws, 'which shall be necessary and proper for carrying into execu- 'tion 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.'

§ 141. This clause is merely declaratory of a truth, which would have resulted by necessary implication from the act of establishing a National Government, and investing it with certain powers. If a power to do a thing is given, it includes the use of the means, necessary and proper to execute it. If it includes any such means, it includes all such means; for none can more correctly, than others, be said to appertain to the power; and the choice must depend upon circumstances, to be judged of by Congress. If it should be asked, why, then, it was inserted in the Constitution; the answer is, that it is peculiarly useful, in order to avoid any doubt, which ingenuity or jealousy might raise upon the subject. There was also a clause in the articles of confederation, which restrained the authority of Congress to powers *expressly* granted; and, therefore, it was highly expedient to make an explicit declaration, that that rule of interpretation, which had been the source of endless embarrassments, should no longer prevail. The Continental Congress had been compelled in numerous instances to disregard that limitation, in order to escape from the most absurd and distressing consequences. They had been driven to the dangerous experiment of violating the confederation, in order to preserve it.

§ 142. The plain import of the present clause is, that Congress shall have all the incidental and instrumental powers, necessary and proper to carry into execution the other express powers; not merely such as are indispensably neces-

sary in the strictest sense, (for then the word 'proper' ought to have been omitted) but such also as are appropriate to the end required. Indeed, it would otherwise be difficult to give any rational interpretation to the clause; for it can scarcely be affirmed, that one means only exists to carry into effect any of the given powers; and if more than one should exist, then neither could be adopted, because neither could be shown to be indispensably necessary. The clause in its just sense, then, does not enlarge any other power specifically granted; nor is it the grant of any new power. It is merely a declaration to remove all uncertainty, that every power is to be so interpreted, as to include suitable means to carry it into execution. The very controversies, which have since arisen, and the efforts, which have since been made, to narrow down the just interpretation of the clause, demonstrate its wisdom and propriety. The practice of the Government, too, has been in conformity to this view of the matter. There is scarcely a law of Congress, which does not include the exercise of implied powers and means. This might be illustrated by abundant examples. Under the power 'to establish post offices and post roads,' Congress have proceeded to make contracts for the carriage of the mail, have punished offences against the establishment, and have made an infinite variety of subordinate provisions, not one of which is expressly found authorized in the Constitution. A still more striking case of implied power is, that the United States, as a Government, have no express authority to make contracts; and yet it is plain, that the Government could not go on for an hour without it.

§ 143. And here terminates the eighth section of the Constitution professing to enumerate the powers of Congress. But there are other clauses, delegating express powers, which, though detached from their natural connexion in that instrument, should be here brought under review, in order to complete the enumeration.

CHAPTER XXIV.

Punishment of Treason. — State Records.

§ 144. The third clause of the third article contains a constitutional definition of the crime of treason, (which will be reserved for a separate examination) and then proceeds in the same section to provide, ' The Congress shall have power ' to declare the punishment of treason. But no attainder shall ' work corruption of blood, or forfeiture, except during the ' life of the person attainted.' The punishment of treason by the common law partakes in a high degree of those savage and malignant refinements in cruelty, which in former ages were the ordinary penalties attached to State offences. The offender is to be drawn to the gallows on a hurdle ; hanged by the neck, and cut down alive ; his entrails taken out, and burned, while he is yet alive ; his head cut off; and his body quartered. Congress is entrusted with the power to fix the punishment, and has, with great wisdom and humanity, abolished these horrible accompaniments, and confined the punishment to simple death by hanging.

§ 145. The other clause may require some explanation, to those, who are not bred to the profession of the law. By the common law, one of the regular incidents to an *attainder* for treason, (that is, to a conviction and judgment in court, against the offender) is, that he forfeits all his estate, real and personal. His blood is also corrupted, that is, it loses all inheritable qualities, so that he can neither inherit any real estate himself, nor can his heirs inherit any from or through him. So that if the father should commit treason, and be attainted of it in the life time of the grand-father, and the latter should then die, the grand-son could not inherit any real estate from the grand-father, although both were perfectly innocent of the offence ; for the father could communicate no inheritable blood to the grand-son. Thus, innocent per-

sons are made the victims of the misdeeds of their ancestors; and are punished, even to the remotest generations, by incapacities derived through them. The Constitution has abolished this corruption of blood, and general forfeiture; and confined the punishment exclusively to the offenders; thus adopting a rule, founded in sound policy, and as humane as it is just.

§ 146. The first section of the fourth article declares, 'Full faith and credit shall be given in each State to the pub-'lic 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.'

§ 147. It is well known, that the acts, records, and judicial proceedings of foreign nations are not judicially taken notice of by our courts; but they must be proved, like other facts, whenever they are brought into controversy in any suit. The nature and modes of such proof are different in different countries; and being wholly governed by the municipal law of each particular State, must present many embarrassing questions. Independent of the *proof*, another not less serious difficulty is, as to the *effect* to be given to such acts, records, and proceedings, after they are duly authenticated. For example, what effect is to be given to the judgment of a court in one country, when it is sought to be enforced in another country? Is it to be held conclusive upon the parties, without further inquiry? Or, is to be treated like common suits, and its justice and equity to be open to new proof and new litigation? These are very serious questions, upon which different nations hold very different doctrines. Even in the American Colonies before the Revolution no uniform rules were adopted in regard to judgments in other colonies. In some, they were held conclusive; in others, not.

§ 148. We may readily perceive, upon a slight examination, how inconvenient it would be, to hold all such judgments

open, to be controverted anew. Suppose a judgment in one State, after a trial and verdict by a jury upon a contract or for a trespass, in the place where all the witnesses lived; and, afterwards, the defendant should remove into another State; and some of the material witnesses should die, or remove, so that their testimony could not be had; if the defendant were then called upon to satisfy the judgment in a new suit, and might controvert it anew, there could be no certainty of any just redress to the plaintiff. The Constitution, therefore, has wisely suppressed this source of heart-burning and mischief between the inhabitants of different States, by declaring that *full faith* and *credit* shall be given to the acts, records, and judicial proceedings of every other State; and by authorizing Congress to prescribe the mode of authentication, and the effect of such authentication.

CHAPTER XXV.

Admission of New States. — Government of Territories.

§ 149. The first clause of the third section of the fourth article declares: '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.' It was early foreseen, that, from the extent of the territory of some States, a division thereof into several States might become important and convenient to the inhabitants thereof, as well as to the security of the Union. And it was also obvious, that new States would spring up in the vacant western territory ceded to the Union, which could not be long retained

in a state of dependence upon the latter. It was indispensable, therefore, to make some suitable provisions for both these emergencies. On the one hand, the integrity of the States ought not to be severed without their own consent; for their sovereignty would, otherwise, be at the mere will of Congress. On the other hand, it was equally clear, that no State ought to be admitted into the Union without the consent of Congress; otherwise, the balance, equality, and harmony of the existing States might be destroyed. Both of these objects are, therefore, united in the present clause. To admit a new State into the Union, the consent of Congress is necessary; to form a new State within the boundaries of an old one, the consent of the latter is also necessary. Under this clause, besides Vermont, three new States formed within the boundaries of the old, viz. Kentucky, Tennessee, and Maine; and seven others, viz. Ohio, Indiana, Illinois, Mississippi, Alabama, Louisiana, and Missouri, formed within the territories ceded to the United States, have been already admitted into the Union. Thus far, indeed, the power has been most propitious to the general welfare of the Union, and has realized the patriotic anticipation, that the parents would exult in the glory and prosperity of their children.

§ 150. The second clause of the same section is, 'The 'Congress shall have power to dispose of, and make all need-'ful 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.' As the General Government possesses the right to acquire territory by cession and conquest, it would seem to follow, as a natural incident, that it should possess the power to govern and protect, what it had acquired. At the time of the adoption of the Constitution, it had acquired the vast region included in the North-Western Territory; and its acquisitions have been, since, greatly enlarged by the purchase of Louisi-

ana and Florida. The latter is subject to treaty stipulations; the former has been peopled under the admirable Ordinance of 1787, which we owe to the wise forecast and political wisdom of a man, whom New-England can never fail to reverence.*

§ 151. The proviso, reserving the claims of the Union, as well as of the several States, was adopted from abundant caution, to quiet public jealousies upon the subject of the contested titles, which were asserted to some parts of the Western Territory. Happily, these sources of alarm and irritation have been long since dried up.

§ 152. And here is closed our Review of the express powers conferred upon Congress. There are other incidental and implied powers, resulting from other provisions of the Constitution, which will naturally present themselves to the mind in our future examination of those provisions. At present, it may suffice to say, that with reference to due energy in the General Government, due protection of the national interests, and due security to the Union, fewer powers could scarcely be granted, without jeoparding the existence of the whole system. Without the power of the purse, the power to declare war, or to provide for the common defence, or promote the general welfare, would have been vain and illusory. Without the power exclusively to regulate commerce, the intercourse between the States would have been liable to constant jealousies, rivalries, and dissensions; and the intercourse with foreign nations would have been liable to mischievous interruptions, from secret hostilities, or open retaliatory restrictions. The other powers are principally auxiliary to these; and are dictated by an enlightened policy, a devotion to justice, and a regard to the permanence (May it ripen into a perpetuity!) of the Union.

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* The Hon. Nathan Dane, of Beverly, Massachusetts.

CHAPTER XXVI.

Prohibitions on the United States.

§ 153. We next come to the consideration of the prohibitions, and limitations upon the powers of Congress, which are contained in the ninth section of the first article, passing by such, as have been already discussed.

§ 154. The first clause is — 'The migration or importa-'tion 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 upon such impor-'tation, not exceeding ten dollars for each person.'

§ 155. This clause, as is manifest from its language, is designed solely to reserve to the Southern States, for a limited period, the right to import slaves. It is to the honor of America, that she should have set the first example of interdicting and abolishing the slave trade in modern times. It is well known, that it constituted a grievance, of which some of the Colonies complained before the Revolution, that the introduction of slaves was encouraged by the parent country, and prohibitory laws, passed by the Colonies, were negatived by the Crown. It was, doubtless, desirable, that the importation of slaves should have been at once interdicted throughout the Union. But it was indispensable to yield something to the prejudices, wishes, and supposed interests of the South. And it ought to be considered as a great point gained, in favor of humanity, that a period of twenty years should terminate in America, (as it in fact has terminated) a traffic, which has so long and so loudly upbraided the morals, and justice of modern nations.

§ 156. The next clause is — '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.' In order to understand the exact meaning of the terms here used, recourse must be had to the common law. The writ of habeas corpus, here spoken of, is a writ known to that law, and used in all cases of confinement, or imprisonment of any party, in order to ascertain, whether it is lawful or not. The writ commands the person, who detains the party, to produce his body, with the day and cause of his detention, before the Court or Judge, who issues the writ, to do, submit to, and receive, whatever the Court or Judge shall direct at the hearing. It is hence called the writ of habeas corpus ad subjiciendum; and if the cause of detention is found to be insufficient, or illegal, the party is immediately set at liberty. It is justly, therefore, esteemed the great bulwark of personal liberty, and grantable, as a matter of right, to the party imprisoned. But as it had often, for frivolous reasons of State, been suspended or denied in the parent country to the grievous oppression of the subject, it is made a matter of constitutional right in all cases, except when the public safety may, in cases of rebellion or invasion, require it. The exception is reasonable, since cases of great urgency may arise, in which the suspension may be indispensable for the preservation of the liberties of the country against traitors and rebels.

§ 157. The next clause is — 'No bill of attainder, or ex 'post facto law, shall be passed.' A bill of attainder, in its technical sense, is an act of the Legislature, convicting a person of some crime, for which it inflicts upon him, without any trial, the punishment of death. If it inflicts a milder punishment, it is usually called a bill of pains and penalties. Such acts are in the highest degree objectionable, and tyrannical, since they deprive the party of any regular trial by jury, and deprive him of his life, liberty, and property, without any legal proof of his guilt. In a republican Government such a proceeding is utterly inconsistent with first principles.

It would be despotism in its worst form, by arming a popular Legislature with the power to destroy at its will its most valuable citizens.

§ 158. To the same class belong ex post facto laws, that is, (in a literal interpretation of the phrase,) laws made after the act is done. In a general sense, all retrospective laws are ex post facto; but the phrase is here used to designate laws to punish, as public offences, acts, which at the time, when they were done, were lawful, or not public crimes, or if crimes, not liable to so severe a punishment. It requires no reasoning to establish the wisdom of a prohibition, which puts a fixed restraint upon such harsh legislation.

§ 159. The next clause (not already commented on) is — 'No money shall be drawn from the treasury, but in conse-'quence 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.' The object of this clause is, to secure regularity, punctuality, fidelity, and responsibility, in the keeping and disbursement of the public money. No money can be drawn from the treasury by any officer, unless under appropriations made by some act of Congress. And a due account of all receipts and expenditures is to be published, that the people may have the means of knowing the nature, extent, and authority of every expenditure.

§ 160. The next clause is — '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 con-'sent of the Congress, accept of any present, emolument, 'office, or title of any kind whatever, from any King, Prince, 'or foreign State.' A perfect equality of rights, privileges and rank, being contemplated by the Constitution among all citizens, there is a manifest propriety in prohibiting Congress from creating any titles of nobility. The other prohibition, as to presents, emoluments, offices, and titles from foreign

Governments has, besides the same general object, an important policy, founded on the just jealousy of foreign corruption and undue influence of national officers. It seeks to destroy, in their origin, all the blandishments from foreign favors, and foreign titles, and all the temptations to a departure from official duty from foreign rewards and emoluments. No officer of the United States can without guilt wear honors borrowed from foreign sovereigns, or touch for personal profit foreign treasure.

CHAPTER XXVII.

Prohibitions on the States.

§ 161. Such are the prohibitions upon the Government of the United States. And we next proceed to the prohibitions upon the States, which are not less important in themselves, or less necessary to the security of the Union. They are contained in the tenth section of the first article.

§ 162. The first clause is — 'No State shall enter into 'any treaty, alliance, or confederation; grant letters of marque 'or reprisal; coin money; emit bills of credit; make any 'thing but gold or silver coin a tender in payment of debts; 'pass any bill of attainder, ex post facto law, or law impair-'ing the obligation of contracts; or grant any title of no-'bility.'

§ 163. The prohibition against a State's entering into any treaty, alliance, or confederation, is indispensable to the preservation of the rights and powers of the National Government. A State might otherwise enter into engagements with foreign Governments, utterly subversive of the policy of the national Government, or injurious to the rights and interests of the other States. One State might enter into a

treaty or alliance with France, and another with England, and another with Spain, and another with Russia; each in its general objects inconsistent with the other; and, thus, the seeds of discord be spread over the whole Union.

§ 164. The prohibition to 'grant letters of marque and 'reprisal' stands on the same ground. This power would hazard the peace of the Union upon the passions, resentments, or policy of a single State.

§ 165. The prohibition 'to coin money' is necessary to our domestic interests. The existence of the power in the States would defeat the salutary objects intended by the like power confided to the National Government. It would have a tendency to introduce a base and variable currency, perpetually liable to frauds, and embarrassing to the commercial intercourse of the States.

§ 166. The prohibition to 'emit bills of credit.' Bills of credit are a well known denomination of paper money, issued by the Colonies before the Revolution, and afterwards by the States in a most profuse degree. These bills of credit had no adequate funds appropriated to redeem them; and though on their face they were often declared payable in gold and silver, they were in fact never so paid. The consequence was, that they became the common currency of the country, in a constantly depreciating state, ruinous to the commerce and credit, and disgraceful to the good faith of the country. The evils of the system were of a most aggravated nature, and could not be cured, except by an entire prohibition of any future issues of paper money. And, indeed, the prohibition to coin money would be utterly nugatory, if the States might still issue a paper currency for the same purpose.

§ 167. Connected with this, is the prohibition to 'make 'any thing but gold and silver coin a tender in payment of 'debts.' The history of the State laws on this subject, during our colonial existence, as well as since that period, is startling at once to our morals, to our patriotism, and to our

sense of justice. In the intermediate period between the commencement of the Revolutionary War, and the adoption of the Constitution, the system had attained its most appalling character. Not only was paper money declared to be a tender in payment of debts; but other laws, having the same general object, and to interfering with private debts, under the name of appraisement laws, instalment laws, and suspension laws, thickened upon the Statute Book of many States in the Union, until all public confidence was lost, and all private credit and morals were prostrated. The details of the evils, resulting from this source, can scarcely be comprehended in our day. But they were so enormous, that the whole country seemed involved in a general bankruptcy; and fraud and chicanery obtained an undisputed mastery. Nothing but an absolute prohibition, like that contained in the Constitution, could arrest the overwhelming flood; and it was accordingly hailed with the most sincere joy by all good citizens. It has given us that healthy and sound currency, and that solid private credit, which constitute the foundation of our present prosperity, industry, and enterprize.

§ 168. The prohibition, to 'pass any bill of attainder, ex 'post facto law, or law impairing the obligation of contracts,' requires scarcely any vindication or explanation, beyond what has been already given. The power to pass bills of attainder, and ex post facto laws, is quite as unfit to be entrusted to the States, as to the General Government. It was exercised by them during the Revolutionary War in the shape of confiscation laws, to an extent, which, upon cool reflection, every sincere patriot must regret. Laws impairing the obligation of contracts are still more objectionable. They interfere with and disturb, and destroy private rights, solemnly secured by the plighted faith of the parties. They bring on the same ruinous effects, as paper tender laws, instalment laws, and appraisement laws, which are but varieties of the same general noxious policy. And they have been truly de-

scribed, as contrary to the first principles of the social compact, and to every principle of sound legislation.

§ 169. The remaining prohibition is, to 'grant any title of nobility,' which is supported by the same reasoning as that already suggested, in considering the like prohibition upon the National Government.

§ 170. The next clause, omitting the prohibition, (already cited) to lay any imposts or duties on imports or exports, is — 'No State shall, without the consent of Congress, lay any 'duty on tonnage; keep troops, or ships of war, in time of 'peace; enter into any agreement or compact with another 'State, or with a foreign power; or engage in war unless ac- 'tually invaded, or in such imminent danger as will not 'admit of delay.' That part, which respects tonnage duties, has been already considered. The other parts have the same general policy in view, which dictated the preceding restraints upon State power. To allow the States to keep troops, or ships of war, in time of peace, might be hazardous to the public peace or safety, or compel the national Government to keep up an expensive corresponding force. To allow the States to enter into agreements with each other, or with foreign nations, might lead to mischievous combinations, injurious to the general interests, and bind them into confederacies of a geographical or sectional character. To allow the States to engage in war, unless compelled so to do in self-defence and upon sudden emergencies, would be, (as has been already stated) to put the peace and safety of all the States in the power and discretion of any one of them. But an absolute prohibition of all these powers might, in certain exigencies, be inexpedient, and even mischievous; and, therefore, Congress may by their consent authorize the exercise of any of them, whenever, in their judgment, the public good shall require it.

CHAPTER XXVIII.

Executive Department.

§ 171. We next come to the second article of the Constitution, which prescribes the structure, organization, and powers of the Executive Department.

§ 172. The first clause of the first section is — '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.'

§ 173. In considering this clause, three practical questions may arise: (1) whether there should be any executive department; (2) whether it should be composed of more than one person; (3) and what should be the duration of the term of office. Upon the first question little need now be said, to establish the propriety of an executive department. It is founded upon a maxim admitted in all our State Constitutions, that the legislative, executive, and judicial departments ought to be kept separate, and the power of one ought not to be exercised by either of the others. The want of an executive department was felt as a great defect under the Confederation.

§ 174. In the next place, in what manner should it be organized? It may in general terms be answered, in such a manner as best to secure energy in the executive, and safety to the people. A feeble executive implies a feeble execution of the Government; and a feeble execution is but another phrase for a bad execution. Unity in the executive is favorable to energy, promptitude, and responsibility. A division of the power among several, impairs each of these qualities; and introduces discord, intrigue, dilatoriness, and not unfrequently, personal rivalries, incompatible with the public good. On the other hand, a single executive is quite as safe for the

people. His responsibility is more direct and efficient, as his measures cannot be disguised, or shifted upon others; and any abuse of authority can be more clearly seen, and carefully watched, than when it is shared by numbers.

§ 175. In the next place, the duration of office. It should be long enough to enable a chief magistrate to carry fairly through a system of Government, according to the laws; and to stimulate him to personal firmness in the execution of his duties. If the term is very short, he will feel very little of the just pride of office, from the precariousness of its tenure. He will will act more with reference to immediate and temporary popularity, than to permanent fame. His measures will tend to ensure his re-election, (if he desires it) rather than to promote the good of the country. He will bestow office upon mean dependants, or fawning courtiers, rather than upon persons of solid honor and distinction. He will fear to encounter opposition by a lofty course; and his wishes for office, equally with his fears, will debase his fortitude, weaken his integrity, and enhance his irresolution.

§ 176. On the other hand, the period should not be so long, as to impair the proper dependence of the executive upon the people for encouragement and support; or to enable him to persist in a course of measures, deeply injurious to the public interests, or subversive of the public faith. His administration should be known to come under the review of the people at short periods; so that its merits may be decided, and its errors be corrected by the sober exercise of the electoral vote.

§ 177. For all of these purposes, the period, actually assigned for the duration of office of the President by the Constitution, seems adequate and satisfactory. It is four years, a period intermediate between the term of office of the Representatives, and that of the Senators. By this arrangement, too, the whole organization of the legislative depart-

ments is not dissolved at the same moment. A part of the functionaries are constantly going out of office, and as constantly renewed, while a sufficient number remain, to carry on the same general system with intelligence and steadiness. The President is not precluded from being re-eligible to office; and thus, with a just estimate of the true dignity and true duties of his office, he may confer lasting benefits on his country, as well as acquire for himself the enviable fame of a statesman and patriot.

§ 178. The like term of office is fixed for the Vice President; and in case of the vacancy of the office of President, he is to succeed to the same duties and powers. In the original scheme of the Government he was (as we shall presently see) an equal candidate for the same high office. And, as President of the Senate, it seemed desirable, that he should have the experience of at least four years' service, to perfect him in the forms of business, and secure to him due distinction.

§ 179. The next clause provides for the mode of choice of the President and Vice President — 'Each State shall appoint, in such manner as the Legislature thereof may direct, 'a number of Electors equal to the whole number of Sena-'tors and Representatives, to which the State may be enti-'tled 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.'

§ 180. Various modes were suggested as to the choice of these high officers; first, by the National Legislature; secondly, by the State Legislatures; thirdly, by the people at large; fourthly, by the people in districts; and lastly, by Electors. Upon consideration of the whole subject, the latter was deemed the most eligible course, as it might secure the united action and wisdom of a select body of distinguished citizens in the choice, and would be attended with less excitement, and more deliberation, than a mere popular election.

Such a body would also have this preference over any mere legislature, that it would not be chosen for the ordinary functions of legislation, but singly and solely for this duty. It was supposed from these circumstances, that the choice would be more free and independent, more wise and cautious, more satisfactory, and more unbiassed by party spirit. The State Legislatures would still have an agency in the choice, by prescribing the mode, in which the Electors should be chosen, whether by the people at large, or in districts, or by the Legislature itself. For the purpose of excluding all undue influence in the electoral colleges, the Senators and Representatives, and officers under the National Government, are disqualified from being Electors.

§ 181. The remaining clause regulates the conduct of the Electors, in giving and certifying their votes; the manner of ascertaining and counting the votes in Congress; and the mode of choice, in case there is none by the Electors. This clause is now repealed, (whether wisely or not, has been a matter of grave question among statesmen) and the following substituted in its stead — '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 inhab- 'itant of the same State with themselves. They shall name 'in their ballots the persons 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 Govern- 'ment of the United States, directed to the President of the 'Senate. The President of the Senate shall, in the pres- 'ence of the Senate and House of Representatives, open all 'the certificates; and the votes shall then be counted. The 'person, having the greatest number of votes for President 'shall be the President, if such number be a majority of the

'whole number of Electors appointed; and if no person have 'such majority, then from the persons having the highest 'numbers, not exceeding three, on the list of those voted for 'as President, the House of Representatives shall choose 'immediately, by ballot, the President. But in choosing the 'President the votes shall be taken by States, the Represen- 'tation 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 Represen- 'tatives 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.'

§ 182. 'The person, having the greatest number of votes 'as Vice President, shall be the Vice President, if such num- 'ber 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 Presi- 'dent; 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 per- 'son, constitutionally ineligible to the office of President, 'shall be eligible to that of Vice President of the United 'States.'

§ 183. The principal differences between the original plan, and this amendment to the Constitution, are the following: First, by the original plan, two persons were voted for as President; and after the President was chosen, the person having the greatest number of votes of the Electors was to be Vice President; but if two or more had equal votes, the Senate were to choose the Vice President from them by ballot. By the present plan, the votes for President and Vice President are distinct. Secondly, by the original plan, in case

of no choice of President by the Electors, the choice was to be made by the House of Representatives, from the five highest on the list. It is now reduced to three. Thirdly, by the original plan, the Vice President need not have a majority of all the electoral votes, but only a greater number than any other person. It is now necessary, that he should have a majority of all the votes. Fourthly, by the original plan, the choice of Vice President could not be made until after a choice of President. It can now be made by the Senate, as soon as it is ascertained, that there is no choice by the Electors. Fifthly, no provision was made for the case of no choice of President by the House of Representatives, before the fourth day of March next. It is now provided that the Vice President in such case shall act as President.

§ 184. A few words only will be necessary, to explain the main provisions, respecting the choice of these high functionaries, since this amendment, as an elaborate examination of the subject would occupy too much space. In the first place, the Electors, as well as the House of Representatives, are to vote by ballot, and not by *viva voce*, or oral declaration. The object of this provision is to secure the Electors from all undue influence, and undue odium for their vote, as it was supposed, that perfect secrecy could be maintained. In the next place, both candidates cannot be an inhabitant of the same State, as the Electors. The object of this clause is to suppress local partialities and combinations. In the next place, the votes are to be certified by the Electors themselves, in order to ensure the genuineness of the vouchers. In the next place, they are to be sealed, and opened and counted only in presence of the Senate and House of Representatives, in order to prevent any frauds or alterations in their transmission. In the next place, a majority of all the Electoral votes is, in the first instance, required for a choice, and not a mere plurality; thus enabling the people, in case there is no choice, to exercise through their Representatives a sound

discretion, in selecting from the three highest candidates. It might otherwise happen, if there were many candidates, that a person, having a very small number of votes over any one of the others, might succeed against the wishes of a great majority of the people. In the next place, the House of Representatives are to vote by States, each having one vote in the choice. The choice is, as we have seen, in the first instance to be by the people of each State, according to the number of their Senators and Representatives. But if no choice is thus made, then there is to be an equality of votes of all the States in the House of Representatives. Thus, the primary election is in effect surrendered to the large States; and if that fails, then it is surrendered to the small States. So that an important motive is thus suggested for Union among the large States in the first instance; and for Union among the small States in the last resort.

§ 185. There probably is no part of the plan of the framers of the Constitution, which has, practically speaking, so little realized the expectations of its friends, as that which regards the choice of President. The Electors are now commonly pledged to support a particular candidate, before they receive their own appointment; and they do no more than register the previous decrees, made by public and private meetings of citizens. The President is in no just sense the unbiassed choice of the people, or of the States. He is commonly the representative of a party, and not of the Union; and the danger, therefore, is, that the office will hereafter be filled by those, who will gratify the private resentments, or prejudices, or selfish objects of their particular partizans, rather than by those who will study to fulfil the high destiny contemplated by the Constitution, and be the impartial patrons, supporters and friends of the great interests of the whole country.

§ 186. It is observable, that the mode, in which the electoral vote of each State is to be given is confided to the State Legislature. The mode of choice has never been uniform

since the Constitution was adopted. In some States, the choice is by the people by a general ticket; in others, by the people in electoral districts; and in others, by the immediate choice of the State Legislature. This want of uniformity has been deemed a serious defect by many statesmen; but, hitherto, it has remained unredressed by any constitutional amendment.

§ 187. The next clause is — '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.' This measure is undoubtedly the result of sound policy. A fixed period, at which all the electoral votes shall be given on the same day, has a tendency to repress political intrigues and speculations, by rendering a combination among the electoral colleges, as to their votes, more difficult, if not unavailing. This object would be still more certainly obtained, by fixing the choice of the electors themselves on the same day, and at so short a period, before they gave their votes, as to render general negotiations and arrangements nearly impracticable.

§ 188. The next clause respects the qualifications of the President; and the qualifications of the Vice President are (as we have seen) to be the same. '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 the office, who shall not have attained to the age of 'thirty-five years, and been fourteen years a resident within 'the United States.'

§ 189. Considering the nature of the duties, the extent of the information, and the solid wisdom and experience, required in the executive department, no one can reasonably doubt the propriety of some qualification of age. That, which is selected is the middle of life, by which period the character and talents of individuals are generally known,

and fairly developed; the passions of youth have become moderated; and the faculties are fast advancing to their highest state of maturity. An earlier period could scarcely have afforded sufficient pledges of talents, wisdom, and virtue, adequate to the dignity and importance of the office.

§ 190. The other qualifications respect citizenship and inhabitancy. It is not too much to say, that no one, but a native citizen, ought ordinarily to be entrusted with an office so vital to the safety and liberties of the people. But an exception was, from a deep sense of gratitude, made in favor of those distinguished men, who, though not natives, had with such exalted patriotism, and such personal sacrifices, united their lives and fortunes with ours during the revolution. But even a native citizen might, from long absence, and voluntary residence abroad, become alienated from, or indifferent to his country; and, therefore, a residence for fourteen years within the United States is made indispensable, as a qualification to the office. This, of course, does not exclude persons, who are temporarily abroad in the public service, or on their private affairs, and who have not intentionally given up their domicile here.

§ 191. The next clause is — 'In case of the removal of 'the President from office, or of his death, resignation or ina- 'bility 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, resigna- 'tion or inability of the President and Vice President; de- 'claring what officer shall then act as President; and such 'officer shall act accordingly, until the disability be removed, 'or a President chosen.' The propriety of this power is manifest. It provides for cases, which may occur in the progress of the Government; and it prevents in such cases a total suspension of the executive functions, which would be injurious, and might be fatal to the interests of the country.

§ 192. The next clause provides for the compensation of the President — 'The President shall, at stated times, re- 'ceive 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.'

§ 193. The propriety of granting to the President a suitable compensation cannot well be doubted. The Constitution would, otherwise, exclude all persons of moderate fortune from the office; or expose them to gross temptations, to sacrifices of duty, and perhaps to direct corruption. The compensation should be adequate to the just expenditures of the office. If the Legislature should possess a discretionary authority to increase or diminish it at their pleasure, the President would become a humble dependant upon their bounty, or a mean suppliant for their favor. It would give them a complete command of his independence, and perhaps of his integrity. And on the other hand, if the actual incumbent could procure an augmentation of it during his official term, to any extent he might desire, he might be induced from mere avarice to seek this as his highest reward, and undermine the virtue of Congress, in order to accomplish it. The prohibition equally forbids any increase or diminution. And, to exclude all exterior influences, it equally denies to him all emoluments arising from any other sources, State or National. He is thus secured in a great measure against all sinister foreign influences. And he must be lost to all just sense of the high duties of his station, if he does not conduct himself with an exclusive devotion to the good of the whole people, unmindful at once of the blandishments of courtiers, who seek to deceive him, and of partizans, who aim to govern him.

§ 194. The next clause is — 'Before he enters on the 'execution of his office, he shall take the following oath or

'affirmation: I do solemnly swear (or affirm) that I will 'faithfully execute the office of President of the United 'States, and will, to the best of my ability, preserve, protect 'and defend the Constitution of the United States.' There is little need of commentary here. No man can doubt the propriety of placing the President under the sanction of an oath of office, to preserve, protect and defend the Constitution, who would require an oath or solemn affirmation on any other occasion. If a judge, a juryman, or a witness, ought to take a solemn oath or affirmation, to bind his conscience, surely a President, holding in his hands the destiny of the nation, ought so to do. Let it not be deemed a vain or idle form. In all these things God will bring us into judgment. A President, who shall dare to violate the obligations of his solemn oath or affirmation of office, may escape human censure, nay, may receive applause from the giddy multitude. But he will be compelled to learn, that there is a watchful Providence, that cannot be deceived; and a righteous Being, the searcher of all hearts, who will render unto all men according to their deserts. Considerations of this sort will necessarily make a conscientious man more scrupulous in the discharge of his duty; and will even make a man of looser principles pause, when he is about to enter upon a deliberate violation of his official oath.

CHAPTER XXIX.

Powers and Duties of the President.

§ 195. We next come to the consideration of the powers and duties of the President. The first clause of the second section is — '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 writ- 'ing of the principal officer in each of the executive depart- 'ments, upon any subject relating to the duties of their re- 'spective offices; and he shall have power to grant reprieves 'and pardons for offences against the United States, except 'in cases of impeachment.'

§ 196. The command and application of the public forces, to execute the laws, maintain peace, resist invasion, and carry on war, are powers obviously belonging to the executive department, and require the exercise of qualifications, which cannot properly be presumed to exist in any other. Promptitude of action, unity of design, and harmony of operations, are in such cases indispensable to success. Timidity, indecision, obstinacy, pride, and sluggishness, must mingle, in a greater or less degree, in all numerous bodies, and render their councils inert and imbecile, and their military operations slow and uncertain. There is, then, true wisdom and policy in confiding the command of the Army and Navy to the President, since it will ensure activity, responsibility, and firmness in public emergencies.

§ 197. The President is also authorized to require the opinions of the Heads of Departments in writing, on subjects relative to their official duties. This might have been deemed an incidental right to his general authority. But it was desirable to make it a matter of constitutional right, so as to enforce responsibility in critical times.

§ 198. To the President, also, is confided the power 'to 'grant reprieves and pardons.' Without this power, no Government could be deemed to be suitably organized for the purposes of administering human justice. The criminal Code of every country must necessarily partake of a high degree of severity; and it is not possible to fix the exact degree of punishment, for every kind of offence, under every variety of circumstances. There are so many things, which may ex-

tenuate, as well as inflame the atrocity of crimes, and so many infirmities, which belong to human nature in general, which may furnish excuses, or mitigations for the commission of them, that any Code, which did not provide for any pardoning or mitigating power, would be universally deemed cruel, unjust, and indefeasible. It would introduce the very evils, which it would seek to avoid, by inducing the community to connive at an escape from punishment, in all cases, where the latter would be disproportionate to the offence. The power of pardon and reprieve is better vested in a single person, than in a numerous body. It brings home a closer responsibility; it can be more promptly applied; and, by cutting off delays, it will, on the one hand, conduce to certainty of punishment, and on the other hand, enable the Executive at critical moments to apply it as a means of detecting, or suppressing gross offences. But if the power of pardon extended to impeachments, it is obvious, that the latter might become wholly inefficient, as a protection against political offences. The party accused might be acting under the authority of the President, or be one of his corrupt favorites. It is, therefore, wisely excepted from his general authority.

§ 199. The next clause respects the power of appointment. — 'He (the President) 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 min-'isters 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 estab-'lished by law. But the Congress may by law vest the ap-'pointment of such inferior officers, as they think proper in 'the President alone, in the Courts of Law, or in the Heads 'of Departments.'

§ 200. The power to make treaties is general, and, of course, it embraces treaties for peace, or war; for commerce, or cessions of territory; for alliance, or succors; for indemnity for injuries, or payment of debts; for the recognition or establishment of principles of public law; and for any other purposes, which the policy, necessities, or interests of independent nations may dictate. Such a power is so large, and so capable of abuse, that it ought not to be confided to any one man, nor even to a mere majority of any public body, in a republican Government. There should be some higher pledge of the policy or necessity of a treaty. It should receive the sanction of such a number of public functionaries as would furnish a sufficient guaranty of its policy or necessity. Two-thirds of the Senate, therefore, is required to give validity to a treaty. It would seem to be perfectly safe in such a body, under such circumstances, representing, as it does, all the States. The House of Representatives would not have been so eligible a body, because it is more numerous, more popular in its structure, more short in its duration, more unfit to act upon sudden emergencies, more under the control of a few States; and, from its organization, it may fairly be presumed to have less experience in public affairs, and less knowledge of foreign relations, than the Senate.

§ 201. The power of appointment, one of the most important and delicate in a Republican Government, is next provided for. Upon its fair and honest exercise must, in a great measure, depend the vigor, the public virtue, and even the safety of the Government. If it shall ever be wielded by any Executive, exclusively to gratify his own ambition or resentments, to satisfy his personal favorites, or to carry his own political measures, it will become one of the most dangerous and corrupt engines to destroy private independence and public liberty. It should, therefore, be watched in every free Government with uncommon vigilance, as it may, otherwise, soon become as secret, as it will be irresistible in its

mischievous operations. If the time shall ever arrive, when no one can obtain any appointment to office, unless he submits to sacrifice all personal independence and opinion, and to become the mere slave of those, who can confer it, it is not difficult to foresee, that the power of appointment will then become the fittest instrument of artful men, to accomplish the worst purposes. The framers of the Constitution were aware of this danger, and have sedulously interposed certain guards to check, if not wholly to prevent, the abuse of the power. The advice and consent of the Senate is required to the appointment of ambassadors, other public ministers, consuls, judges of the Supreme Court, and other high officers.

§ 202. The mode of appointment of inferior officers is left in a good measure to the discretion of Congress, and the power may be vested in the President, in the Courts of Law, or in the Heads of Department. The propriety of this grant of discretionary power in certain cases cannot well be doubted. But it is very questionable, if Congress have not permitted its exercise in some Departments to an extent, which may be highly alarming, and even incompatible with the sound policy and interests of the Government. Some Departments possess only the unenviable power of appointing their own clerks; whilst the Postmaster General possesses a power of patronage, which almost rivals that of the President himself, and is, up to this very time, wholly without check by the constitutional advice or consent of any other person.

§ 203. It is observable, that the Constitution makes no mention of any power of removal of any officer by the President, or any other Body. As, however, the tenure of office is not provided for in the Constitution, except in the judicial department, (where it is during good behavior) the natural inference is, that all other officers are to hold their offices during pleasure, or during such period as Congress shall prescribe. But if the power of removal exists, in cases not

thus limited by Congress, the question is, in whom does it reside? Does it reside in the President alone? Or in the Body entrusted with the particular appointment? It was maintained with great earnestness and ability by some of the ablest statesmen, who assisted in framing the Constitution, * that it belonged to the latter; and that in all cases, where the advice and consent of the Senate are necessary to an appointment, they are also necessary to a removal from office. It is singular enough, that in the first Congress, jealous, as it was, of executive power, a different doctrine was maintained, viz. that it is an incident to the executive department. This doctrine arose (it has been said) partly from a just deference to the great man (Washington) then in the office of President, and partly from a belief, that a removal from office without just cause would be an impeachable offence in the President; and, therefore, that there could be no danger of its exercise, except in flagrant cases of malversation, or incapacity in office. This latter doctrine has ever since prevailed; and the President is accordingly now permitted to exercise the power of removal, without any restraint from the Senate, although the Constitution, in the enumeration of his powers, is wholly silent on the subject. If we connect this power of removal, thus practically expounded, with another power, which is given in the succeeding clause, to fill up vacancies in the recess of the Senate, the chief guards intended by the Constitution, over the power of appointment, may become utterly nugatory. A President of high ambition and feeble principles may remove all officers, and make new appointments in the recess of the Senate; and if his choice should not be confirmed by the Senate, he may re-appoint the same party in the recess, and thus set at defiance the salutary check of the Senate in all such cases.

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* In the Federalist.

§ 204. The clause to which we have alluded is — 'The 'President shall have power to fill up all vacancies, that may 'happen during the recess of the Senate, by granting com- 'missions, which shall expire at the end of their next ses- 'sion.' This is a provision almost indispensable to secure a due performance of public duties during the recess of the Senate; and as the appointments are but temporary, the temptation to any abuse of the power would seem to be sufficiently guarded, if it might not draw in its train the dangerous consequences, which have been before stated.

§ 205. The third section of the second article enumerates the duties of the President. '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 ex- 'traordinary occasions convene both Houses, or either of 'them; and in case of disagreement between them, 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.'

§ 206. The duty of giving information by the President to Congress, of the state of the Union, and of recommending measures, would seem almost too clear to require any express provision. But it is not without its use. It fixes the responsibility on the President; and, on the other hand, it disables Congress from taking any objection, that he is impertinently interfering with their appropriate duties. His knowledge of public affairs may be important to them; and they ought consequently to have a right to demand it. His recommendation of measures may give them the benefit of his large experience; and at all events may compel them to a just discharge of their legislative powers. So that, in this way, each department may be brought more fully before the public, both as to what each does, and what each omits to do.

§ 207. The power to convene Congress on extraordinary occasions is founded on the wisest policy. Sudden emergencies may arise in the recess of Congress, wholly beyond any previous foresight, yet indispensable to be met with promptitude and vigor. The power to adjourn Congress, in cases of disagreement between the two Houses, is a quiet way of disposing of a practical difficulty in cases of irritation or obstinate differences of opinion.

§ 208. The power to receive ambassadors and other public ministers is a very important and delicate function; and far more so, than it seems to have been deemed even by the framers of the Constitution. In times of profound tranquillity throughout the world, it may properly be confided to the Executive alone. But it is not so clear, that the Senate ought not, in cases of revolutions in foreign Governments, to partake of the functions, by their advice and consent. The refusal to receive an ambassador or minister is sometimes a source of discontent to foreign nations, and may even provoke hostilities. But in cases of revolution, or the separation of a kingdom into two or more distinct Governments, the acknowledgment of an ambassador or minister of either party is often treated as an interference in the contest, and may lead to an open rupture. There would seem a peculiar propriety in all such cases to require greater caution on the part of the Executive, by interposing some check upon his own unlimited discretion. Our own times have furnished abundant examples of the critical nature of the trust; but it has hitherto been exercised with such sound judgment, that the power has been felt to be safe, and eminently useful.

§ 209. Another duty of the President is 'to take care, 'that the laws be *faithfully executed*.' And by the laws we are here to understand, not merely the acts of Congress, but all the obligations of treaties, and all the requisitions of the Constitution, as the latter are equally with the former the 'supreme law of the land.' The great object of the

establishment of the executive department is to accomplish, in this enlarged sense, a faithful execution of the laws. Without it, be the form of Government whatever it may, it will be utterly worthless for confidence, or defence, for the redress of grievances, or the protection of rights, for the happiness and good order of citizens, or for the public and political liberties of the people.

§ 210. The remaining duty is 'to commission all the offi-'cers of the United States.' The President cannot lawfully refuse, or neglect it in any case, where it is required by law. It is not designed, as some have incorrectly supposed, to give him a control over all appointments; but to give to the officers a perfect voucher of their right to office. In this view it is highly important, as it introduces uniformity and regularity into all the departments of Government, and furnishes an indisputable evidence of a rightful appointment.

§ 211. The remaining section of this article contains an enumeration of the persons, who shall be liable to be removed from office by impeachment, and for what offences; and it has been already sufficiently considered.

CHAPTER XXX.

The Judicial Department.

§ 212. Having finished our examination of the structure and organization of the Legislative and Executive, we next come to an examination of the remaining co-ordinate department, the Judiciary. No one, who has duly reflected, can doubt, that the existence of such a department, with powers co-extensive with those of the legislative and executive departments, is indispensable to the safety of a free Government. Where there is no judiciary department to interpret,

pronounce, and execute the laws, to decide controversies, to punish offences, and to enforce rights, the Government must either perish from its own weakness, or the other departments of Government must usurp powers for the purpose of commanding obedience, to the utter extinction of liberty. The will of those, who govern, must, under such circumstances, become absolute and despotic; and it is wholly immaterial, whether absolute power be vested in a single tyrant, or in an assembly of tyrants. No remark is better founded in human experience than that of Montesquieu, that 'there 'is no liberty, if the judiciary be not separated from the leg- 'islative and executive powers.' It is no less true, that personal security and private property depend entirely upon the wisdom, integrity, and stability of courts of justice. How, otherwise, are the innocent to be protected against unjust accusations, or the injured to obtain redress for their wrongs?

§ 213. In the National Government, the judicial power is equally as important, as it is in the States. The want of it was a vital defect in the Confederation; and led to the most serious embarrassments during the brief existence of that ill-adjusted instrument. Without it, the laws of the Union would be perpetually in danger of being contravened by the laws of the States. The National Government would be reduced to a servile dependence upon the latter for the due execution of its powers; and we should have re-acted over the same solemn mockery, which began in the neglect, and ended in the ruin of the Confederation. Power without adequate means to enforce it, is like a body in a state of suspended animation. For all practical purposes, it is, as if its faculties were extinguished. A single State might, under such circumstances, at its pleasure suspend the whole operations of the Union.

§ 214. Two ends, of paramount importance, and fundamental to a free Government, are to be attained by a National Judiciary. The first is, a due execution of the powers of the

Government; and the second is, a uniformity of interpretation and operation of those powers, and of the laws made in pursuance of them. The power of interpreting the laws, necessarily involves the power to decide, whether they are conformable to the Constitution, or not; and in a conflict between the laws, State, or National, and the Constitution, no one can doubt, that the latter is of paramount obligation and force. And accordingly, it has always been deemed a function indispensable to the safety and liberty of the people, that courts of justice should have a right to declare void such laws, as violate the Constitution. The framers of the Constitution, having these great principles in view, unanimously adopted two fundamental resolutions on this subject; first, that a National Judiciary ought to be established; and secondly, that it ought to possess powers co-extensive with those of the legislative department.

§ 215. The third article of the Constitution shows the manner in which these great principles are carried into effect. The first section is—'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 infe-'rior courts, shall hold their offices during good behavior; 'and shall at stated times receive for their services a com-'pensation, which shall not be diminished during their con-'tinuance in office.' The establishment of a Supreme Court is positively required; the establishment of inferior courts is left to the discretion of Congress. Unless a Supreme Court were established, there would be no adequate means to ensure uniformity in the interpretation and operations of the Constitution and laws. Inferior tribunals, whether State, or national, might construe them in a very different manner; and thus, their obligation might be admitted in one, and denied in another State. The existence of a Supreme Court is, therefore, at all times indispensable for the purposes of pub-

lic justice; and it is accordingly imperative and absolute. But the establishment of inferior courts might not in all cases be as indispensable; and at all events, the nature and extent of their organization and jurisdiction may properly vary, at different times, to suit the public convenience and exigencies. The power is, therefore, confided to the discretion of Congress.

§ 216. The next consideration is the mode of appointment, and tenure of office of the judges. We have already seen, that the judges of the Supreme Court are to be appointed by the President, by and with the advice and consent of the Senate. The appointment of inferior judges is not expressly provided for. But has either been left to the discretion of Congress, or silently belongs to the President, by and with the advice and consent of the Senate, under the clause already considered, authorizing him to appoint all other officers, whose appointments are not otherwise, in the Constitution, provided for.

§ 217. The tenure of office of the judges, both of the supreme and inferior Courts, is during good behavior. This tenure of office seems indispensable to a due degree of independence and firmness on their part in the discharge of the duties of their office; and a due security to the people for their fidelity and impartiality, in administering private rights, and preserving the public liberties. Such was the opinion of the framers of the Constitution, who unanimously agreed to this tenure of office. Let us briefly consider some of the reasoning, by which it is supported.

§ 218. In the first place, factions and parties are quite as common in republics, as in monarchies; and the same safeguards are as indispensable in the former, as in the latter, against the encroachments of party spirit, and the tyranny of faction. Laws, however wholesome or necessary, are sometimes the objects of temporary aversion, of popular odium, and even of popular resistance. Nothing is more easy in

republics, than for demagogues under artful pretences to stir up combinations against the regular exercise of authority, in order to advance their own selfish projects. The independence and impartiality of upright magistrates often interposes barriers to the success of their schemes, which make them the secret enemies of any regular and independent administration of justice. If, under such circumstances, the tenure of office of the judges were for a short period, they could easily intimidate them in the discharge of their duties, or by rendering them odious, easily displace them. And thus the minority in the State, whose sole reliance for protection in all free Governments must be upon the Judiciary, would be deprived of their natural protectors.

§ 219. In the next place, the independence of the Judiciary is indispensable, to secure the people against the unintentional, as well as the intentional usurpations of authority, in the executive and legislative departments. It has been observed with great sagacity, that power is perpetually stealing from the many to the few; and that there is a perpetual tendency in the legislative and executive departments to absorb all power. If the judges are appointed at short intervals, either by the legislative or executive authority, they will naturally, and almost necessarily, become mere dependants upon the appointing power. If they have a desire to obtain, or to hold office, they will at all times evince a desire to follow, and obey the will of the predominant power in the State. Public justice will be administered with a faltering and feeble hand. It will secure little but its own place, and the approbation of those who value, because they can control it. It will be apt to decree, what best suits the opinions of the day; and to forget, that the precepts of the law rest on eternal foundations. The rulers and the citizens will not stand upon an equal ground in litigations. The favori es of the day will overcome by their power, or seduce by their influence. And

thus the fundamental maxim of a republic, that it is a Government of laws, and not of men, will be silently disproved, or openly abandoned.

§ 220. In the next place, all these considerations acquire still more cogency and force, when applied to constitutional questions. These questions may arise, not merely between citizen and citizen, but between State and State, and between the United States and the States. Can it be supposed for a moment, that men, who hold their offices for two, or four, or even six years, would be generally found firm enough to resist the will of those, who have appointed them, and can so soon displace them? If they are to administer the Constitution according to its true spirit and principles, to support the weak against the strong, the humble against the powerful, the few against the many; how can they be expected to possess the requisite independence and impartiality, unless they hold their offices by a tenure beyond the reach of the power of the Legislature and Executive? He is ill-read in the history of human experience, who does not foresee, as well as provide for, such exigencies. In republics, the other departments of the Government may sometimes, if not frequently, be found combined in hostility against the Judiciary; and even the people for a while, under the influence of party spirit and turbulent factions, may be ready to abandon them to their fate. Few men possess the firmness to resist the torrent of popular opinion, or popular prejudice. Still fewer are content to sacrifice present ease and popular favor, in order to earn the slow rewards of a conscientious discharge of their duty. If we would preserve the Constitution from internal, as well as external perils, from the influences of the great, and the corruptions of the selfish, we must place around it every guard, which experience has shown will encourage good men in their integrity, and will awe bad men in their intrigues. If the Constitution perishes, the first step, taken to accomplish the purpose, will be to undermine the stability of the Judiciary,

§ 221. But the tenure of office during good behavior would be of little consequence, if Congress possessed an unlimited power over the compensation of the judges. It has been well remarked, that, in the course of human affairs, a power over a man's subsistence is a power over his will. If Congress could diminish at pleasure the salaries of the judges, they could reduce it to a mere pittance, and thus reduce them into an abject dependence. The Constitution has, therefore, wisely provided, that the compensation of the judges shall not be diminished during their continuance in office, and shall be paid at stated times.

§ 222. It is almost unnecessary to add, that though the Constitution has thus sedulously endeavored, from motives of public good, to place the independence of the Judiciary upon a solid basis; yet, the judges are not beyond the reach of law. They hold their offices during good behavior only; and for misconduct may be removed from office upon impeachment. Thus, personal responsibility is brought home to them; and, like all other public functionaries, they are bound by an oath to obey the laws, and support the Constitution.

CHAPTER XXXI.

Powers and Jurisdiction of the Judiciary.

§ 223. The next section contains an exposition of the jurisdiction appertaining to the National Judiciary. '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 the citizens of another 'State; between citizens of different States; between citi- 'zens of the same State, claiming lands under grants of dif- 'ferent States; and between a State or the citizens thereof, 'and foreign States, citizens, or subjects.'

§ 224. In a work, like the present, it is impossible to present any full exposition of the reasons for conferring the different portions of this jurisdiction, all having the same general object, the promotion of harmony, good order, and justice at home, and the preservation of peace and commercial intercourse abroad. In a general summary it may be said, that the jurisdiction extends to cases arising under the Constitution, laws and treaties of the United States, because the judicial power ought to be co-extensive with the legislative and executive powers, in order to ensure uniformity of interpretation, and operation of the Constitution, laws and treaties, and the means of enforcing rights, duties and remedies, arising under them. It extends to cases affecting ambassadors, public ministers, and consuls, because they are officers of foreign nations, entitled by the law of nations to the protection of our Government; and any misconduct towards them might lead to private retaliations, or open hostilities, on the part of the offended Government. It extends to cases of admiralty and maritime jurisdiction, because such cases grow out of, and are intimately connected with foreign commerce and navigation, with offences committed on the ocean, and with the right of making captures, and carrying on the operations of war. It extends to controversies, to which the United States are a party, because the Government ought to possess a right to resort to national courts, to decide all controversies and contracts, to which it is a party. It extends to controversies between two or more States, in order to furnish a peaceable and impartial tribunal, to decide cases, where different States claim conflicting rights, in order to

prevents gross irritations, and border warfare. It extends to controversies between a State and the citizens of another State; because a State ought not to be the sole judge of its own rights, as against the citizens of other States. It extends to controversies between citizens of different States; because those controversies may embrace questions, upon which the tribunals of neither State could be presumed to be perfectly impartial, from the peculiar public interests involved in them. It extends to controversies between citizens of the same State, claiming lands under grants of different States; because a similar doubt of impartiality may arise. It extends to controversies between a State, or its citizens, and foreign States, citizens, or subjects; because foreign States and citizens have a right to demand an impartial tribunal for the decision of cases, to which they are a party; and want of confidence in the tribunals of one party may be fatal to the public tranquillity, or at least, may create a discouraging sense of injustice. Even this cursory view cannot fail to satisfy reasonable minds of the importance of the powers of the National Judiciary to the tranquillity and sovereignty of the States, and to the preservation of the rights and liberties of the people.

§ 225. Let us next see the mode in which this jurisdiction is to be exercised. It is as follows: — '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 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.'

§ 226. By *original* jurisdiction is here meant, that the party may commence his suit directly, and in the first instance, in the Supreme Court; by *appellate* jurisdiction is meant, a right to revise the decision or judgment, made by some other Court, in which the suit has been instituted. For reasons of the highest public policy, original jurisdiction is

given to the Supreme Court in cases, in which foreign nations and the States are concerned, as more appropriate to their dignity, and, under all circumstances, more fit to receive the decision of the highest tribunals. Other cases may conveniently be left to the inferior tribunals, and brought by appeal for revision before the Supreme Court, if either party should require it, leaving to Congress the authority to regulate the right of appeal, in the exercise of a sound discretion.

§ 227. Two amendments have been since incorporated into the Constitution, in regard to the jurisdiction of the National Judiciary. The object of one is to prevent a State from being sueable in an original suit by a private person. It is in these words — 'The judicial power of the United 'States shall not be construed to extend to any suit in law 'or equity, commenced or prosecuted *against* one of the 'States *by* citizens of another State, or *by* citizens or sub-'jects of any foreign State.' The other has regard to the trial by jury in civil cases; and is intended to prevent the Supreme Court, in the exercise of its appellate jurisdiction as to law and fact, from re-examining the facts tried by a jury in any other manner, than according to the course of the common law; that is to say, by a new trial by a jury. It is in these words — 'In suits at common law, where the value 'in controversy shall exceed twenty dollars, the right of a '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.' So that the trial by jury is now as clearly established in civil cases by this amendment, as it is in criminal cases in the next succeeding clause, in the original Constitution.

CHAPTER XXXII.

Trial by Jury, and its Incidents. — Definition of Treason.

§ 228. That clause is — '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.' The great object of a trial by Jury in criminal cases is to guard against a spirit of oppression and tyranny on the part of rulers, and against a spirit of violence and vindictiveness on the part of the people. Indeed, it is often more important to guard against the latter, than the former. The sympathies of all mankind are enlisted against the revenge and fury of a single despot; and every attempt will be made to screen his victims from punishment. But it is difficult to escape from the vengeance of an indignant people, roused into hatred by unfounded calumnies, or stimulated to cruelty by political enmity, and party jealousy. The appeal for safety under such circumstances can scarcely be made by the innocent in any other manner, than by the strict control of a Court of Justice, and the firm and impartial verdict of a Jury, sworn to do right, and guided solely by legal evidence, and a sense of duty.

§ 229. The trial, also, is to be in the State, where the crime has been committed; so that the party accused may not be dragged to remote places, at a distance from his friends and witnesses, and tried by those, who are utter strangers, and who may not feel a common interest or sympathy for his fate. But as crimes may be committed in places out of the limits of a State, as upon the high seas, it became necessary to give authority to Congress to provide for the trial in such cases. But even here we may perceive, from the language used, that the trial is to be in the place, which Congress may

have directed; not in one, which it shall direct after the commission of the offence.

§ 230. In order to secure this great palladium of liberty, the trial by Jury in criminal cases, from all possibility of abuse, certain amendments have been made to the Constitution which add greatly to the original constitutional barriers against persecution and oppression. They are as follows: 'No person shall be held to answer for a capital, or other in-'famous crime, unless on a presentment or indictment by 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.'

'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 com-'mitted; which District shall have been previously ascertain-'ed 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 de-'fence.'

§ 231. The utility and importance of most of these provisions are self-evident. They guard the party against false accusations, by requiring the interposition of a Grand Jury, before he can be put upon his defence. He is not to be harassed by more than one trial; he is not to be compelled to self-accusation; he is not to be deprived of life, liberty, or property, but by the regular process of law. His trial is to be public, and speedy, so as to ensure a prompt acquittal, if he is innocent, and impartiality and responsibility on the

part of those engaged in the trial. The accusation is to be by indictment, or written accusation, so that he may be informed of the nature and cause of his accusation. He is to be tried in the presence of the witnesses, that he may hear their evidence, and confront them. He is to have process to compel the attendance of witnesses in his favor; and he is to have counsel to assist him in his defence. In despotic governments, many, and sometimes all, of these privileges are withheld from the accused. In England, in former arbitrary reigns, many of them were denied or evaded; and even now, the accused is not allowed to have counsel to assist him in his defence in any capital offence, except treason.

§ 232. Another provision, that private property shall not be taken for public use without just compensation, is not less valuable, as it furnishes an important security against private persons being stripped of their property, under the fraudulent pretence, that it is necessary for public uses; or, if really for public uses, to an extent ruinous to their private fortune and support.

§ 233. We may bring also into view in this place two other amendments of the Constitution, connected with the subject of crimes. One is designed to guard the citizens from unreasonable and illegal searches of their persons, houses, papers and effects, without probable cause of the commission of any offence; the other is to prevent Congress, as well as the Courts, from inflicting excessive and cruel punishments. The first is — 'The right of the people to be secure in their 'persons, houses, and effects, against unreasonable searches 'and seizures, shall not be violated. And no warrants shall 'issue, but upon probable cause, supported by oath or affirma-'tion, and particularly describing the place to be searched, 'and the person or things to be seized.' Formerly, search warrants in a general form were issued from the State Department in England, authorizing officers to search houses and persons, without naming any persons or places in par-

ticular, so that, under color of such warrants, every man's house in the kingdom might at the mere discretion of such officers be searched, without any ground of accusation. Such warrants were, however, held illegal by the Courts of Justice in England. And this amendment not only pronounces them illegal; but prevents Congress from passing any laws to give them effect.

§ 234. The second is — 'Excessive bail shall not be required; nor excessive fines imposed; nor cruel and unusual 'punishments inflicted.' A barrier is thus interposed against the use of those vindictive and atrocious punishments, which in former ages have disgraced the annals of many nations.

§ 235. The next section contains the definition of treason, a crime, which is very apt to rouse public resentment, and in party times to be extended by construction to embrace acts of very slight misconduct, and even of an innocent character. Free Governments, as well as despotic Governments, have too often been guilty of the most outrageous injustice to their own citizens and subjects upon accusations of this sort. They have been ready to accuse upon the most unsatisfactory evidence, and to convict upon the most slender proofs, some of their most distinguished and virtuous statesmen, as well as persons of inferior character. They have inflamed into the criminality of treason acts of just resistance to tyranny; and to torture a manly freedom of opinion into designs subversive of the Government. To guard against the recurrence of these evils the Constitution has declared — '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.' The punishment of treason has been already under our notice in another place.

§ 236. We have thus passed in review all those provisions of the Constitution, which concern the establishment,

jurisdiction, and duties, of the Judicial Department; and the rights and privileges of the citizens, connected with the administration of public justice.

CHAPTER XXXIII.

Privileges of Citizens. — Fugitive Criminals and Slaves.

§ 237. The fourth article of the Constitution contains several important subjects, some of which have been already considered. Among those which remain for consideration, the first is, 'The citizens of each State shall be entitled to all 'privileges and immunities of citizens in the several States.' It is obvious, that if the citizens of the different States were to be deemed aliens to each other, they could not inherit, or hold, or purchase real estate, or possess any political or municipal privileges in any other State, than that, in which they were born. And the States would be at liberty to make laws, giving preferences of rights and offices, and even privileges in trade and business, to those, who were natives, over all other persons, who belonged to other States; or they might make invidious discriminations between the citizens of different States. Such a power would have a tendency to generate jealousies and discontents, injurious to the harmony of all the States. And, therefore, the Constitution has wisely created, as it were, a general citizenship, communicating to the citizens of each State, resident in another, all the privileges and immunities enjoyed by the citizens of the latter.

§ 238. The next clause is — '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 de- 'mand 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.' As doubts have existed, whether by the law of nations a surrender of fugitives from justice can be lawfully demanded from the Government of the country, where they seek an asylum, there is great propriety in making this a positive right in regard to the United States. It is for their mutual benefit and convenience. It will promote harmony and good feeling between them. It will also add strength to a great moral duty, and operate indirectly to the suppression of crimes; and finally, it will thus increase the public sense of the blessings of the National Government.

§ 239. The next clause is — '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 the claim of the party, to whom 'such service or labor may be due.' This clause was introduced into the Constitution solely for the benefit of the slaveholding States, to enable them to reclaim their fugitive slaves, who should escape into other States, where slavery is not tolerated. It is well known, that, at the common law, a slave escaping into a State, where slavery is not allowed, would immediately become free, and could not be reclaimed. Before the Constitution was adopted, the Southern States felt the want of some protecting provision against such an occurrence to be a grievous injury to them. And we here see, that the Eastern and Middle States have sacrificed their own opinions and feelings, in order to take away every source of jealousy on a subject so delicate to Southern interests; a circumstance, sufficient of itself, to repel the delusive notion, that the South has not at all times had its full share in the blessings resulting from the Union.

CHAPTER XXXIV.

Guaranty of Republican Government. — Mode of making Amendments.

§ 240. The fourth section of the fourth article declares: 'The United States shall guarantee to every State in this 'Union a republican form of Government; and shall protect 'each of them against invasion; and on application of the 'Legislature, or of the Executive, when the Legislature can-'not be convened, against domestic violence.' The propriety of this provision will scarcely be doubted. If any of the States were to be at liberty to adopt any other form of Government, than a republican form, it would necessarily endanger, and might destroy the safety of the Union. Suppose for instance, a great State, like New-York, should adopt a monarchical form of Government, it might, under an enterprising and ambitious King, become formidable to, if not destructive of, the Constitution. And the PEOPLE of each State have a right to protection against the tyranny of a domestic faction, and to have a firm guaranty, that their political liberties shall not be overturned by a successful demagogue, who shall arrive at power by corrupt arts, and then plan a scheme for permanent possession of it. On the other hand, domestic violence by popular insurrection is equally repugnant to the good order and safety of the Union; and one of the blessings arising from a National Government is the security, which it affords against a recurrence of evils of this sort. Accordingly, it is made an imperative duty of the General Government, on the application of the Legislature or Executive of a State, to aid in the suppression of such domestic insurrections; as well as to protect the State from foreign invasion.

§ 241. The next (the fifth) article provides for the mode of making amendments to the Constitution. — 'The Con-'gress, whenever two-thirds of both Houses shall deem it

'necessary, shall propose amendments to this Constitution; 'or, on application of the Legislatures of two-thirds of the 'several States, shall call a Convention for proposing amend- 'ments; which, in either case, shall be valid to all intents and 'purposes, as a 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 sec- 'tion of the first article; and that no State without its con- 'sent shall be deprived of its equal suffrage in the Senate.'

§ 242. The importance of this power can scarcely be over-estimated. It is obvious, that no human Government can ever be perfect; and it is impossible to foresee, or guard against all the exigencies, which may in different ages require changes in the powers and modes of operation of a Government, to suit the necessities and interests of the people. A Government, which has no mode prescribed for any changes, will in the lapse of time become utterly unfit for the nation. It will either degenerate into a despotism, or lead to a revolution, by its oppressive inequalities. It is wise, therefore, in every Government, and especially in a republic, to provide peaceable means for altering and improving the structure, as time and experience shall show it to be necessary for the public safety and happiness. But at the same time, it is equally important to guard against too easy and frequent changes; to secure due deliberation and caution in making them; and to follow experience, rather than speculation and theory. A Government, which is always changing and changeable, is in a perpetual state of internal agitation, and incapable of any steady and permanent operations. It has a constant tendency to confusion and anarchy.

§ 243. The Constitution has adopted a middle course. It has provided for amendments being made; the mode is easy; and at the same time, it secures due deliberation, and caution. Congress may propose amendments, or a Convention of the States. But in any amendment proposed by Congress, two-thirds of both Houses must concur; and no Convention can be called, except upon the application of two thirds of the States. And, when amendments are proposed in either way, the assent of three-fourths of all the States is necessary to their ratification. And, certainly, it may be said with confidence, that if three-fourths of the States are not satisfied with the necessity of any particular amendment, the evils, which it proposes to remedy, cannot be of any general or pressing nature. That the power of amendment is not in its present form impracticable, is proved by the fact, that twelve amendments have been already proposed and ratified.

§ 244. The proviso excludes the power of amendment, until the year 1808, of the clauses in the Constitution, which respect the importation and migration of slaves, and the apportionment of direct taxes. And as the equality of the States in the Senate might be destroyed by an amendment, it is expressly declared, that no amendment shall deprive any State without its consent of its equal suffrage in that body.

CHAPTER XXXV.

Public Debt. — Supremacy of the Constitution, and Laws.

§ 245. The first clause of the sixth article is — '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 Con-

'federation.' This can scarcely be deemed more than a solemn declaration of what the public law of nations recognizes as a moral obligation, binding on all nations, notwithstanding any changes in their forms of Government. It was important, however, to clear away all possible doubts, and to satisfy and quiet the public creditors, who might fear, that their just claims upon the Confederation might be disregarded or denied.

§ 246. The next clause is — 'This Constitution, and the 'Laws of the United States, which shall be made in pursu- 'ance thereof, and all treaties made, or which shall be made 'under the authority of the United States, shall be the su- 'preme 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.' The propriety of this power results from the very nature of the Constitution. To establish a National Government, and to affirm, that it shall have certain powers; and yet, that in the exercise of those powers it shall not be supreme, but controllable by any State in the Union, would be a solecism, so mischievous, and so indefensible, that the scheme could never be attributed to the framers of the Constitution, without manifestly impeaching their wisdom, as well as their good faith. The want of such an effective practical supremacy was a vital defect in the Confederation; and furnished the most solid reason for abolishing it. It would be an idle mockery to give powers to Congress, and yet at the same time to declare, that those powers might be suspended or annihilated, at the will of a single State; that the will of twenty-three States should be surrendered to the will of one. A Government of such a nature would be as unworthy of public confidence, as it would be incapable of affording public protection, or private happiness.

§ 247. From this clause results the duty of all judges, State, as well as National, to disregard all laws of the States,

as well as of Congress, which are inconsistent with the Constitution. Such laws are usurpations, and in no just sense obligatory; for there never can be two supreme laws existing at the same time on the same subject, which are inconsistent with each other.

CHAPTER XXXVI.

Oath of Office. — Religious Test. — Ratification of the Constitution.

§ 248. The next clause is — 'The Senators and Representatives before mentioned, (that is, in Congress) 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.'

§ 249. No one will doubt the utility of an oath, or solemn affirmation, on the part of all public officers in the legislative, executive, and judicial departments of the State and National Governments, who will admit the sanctity of an oath or affirmation on any occasion whatsoever. It surely cannot be too much, for the people to require from all persons in authority a solemn guaranty of their fidelity to the Constitution. And every one, who believes in this responsibility to the Supreme Being for his actions, cannot but feel a more lively sensibility in the discharge of his duties, from this deep and affecting appeal to his conscience, made in the presence of God. While oaths and affirmations ought not to be unnecessarily multiplied, there is a peculiar propriety in thus bringing religious obligation in support of the

laws on such solemn occasions, as the discharge of constitutional duties.

§ 250. The remaining part of the clause prohibits any religious TEST from being imposed, as a qualification to any office, or trust under the United States. This clause is recommended by its tendency to satisfy many delicate and scrupulous minds, which entertain great repugnance to religious Tests, as a qualification for civil power, or honor. But it has a higher aim in the Constitution. It is designed to cut off every pretence of an alliance between the Church and the State in the administration of the National Government. The American People were too well read in the history of other countries, and had suffered too much in their colonial state, not to dread the abuses of authority resulting from religious bigotry, intolerance, and persecution. They knew but too well, that no sect could be safely trusted with power on such a subject; for all had in turns wielded it to the injury, and sometimes to the destruction of their inoffensive, but in their judgment, erring neighbors. And we shall presently see, that, by an amendment to the Constitution, evils of this sort in the National Government are still more effectually guarded against.

§ 251. The seventh and last article of the Constitution is — 'The ratification of the Conventions of nine States 'shall be sufficient for the establishment of this Constitution 'between the States so ratifying the same.' It is unnecessary now to comment upon this article, as all the States have ratified the Constitution. But we know, that if an unanimous ratification of it by all the States had been required, it would have been rejected; for North Carolina and Rhode-Island did not at first accede to it.

§ 252. And here closes our Review of the Constitution in the original form, in which it was adopted by the people of the United States. The concluding passage of it is valuable as an historical reminiscence. 'Done in Convention by the

'unanimous consent of all the States present, the seven-'teenth day of September in the year of our Lord one thou-'sand seven hundred and eighty-seven, and of the Independ-'ence of the United States the twelfth.' At the head of the illustrious men, who framed and signed it, stands the name of 'George Washington, President, and Deputy from Vir-'ginia,' a name at the utterance of which it is impossible not to feel the liveliest sense of gratitude to a gracious Providence, for a life of so much glory, such spotless integrity, and such exalted patriotism.

CHAPTER XXXVII.

Amendments to the Constitution.

§ 253. When the Constitution was before the People for adoption several of the State Conventions suggested amendments for the consideration of Congress, some of the most important of which were afterwards acted upon by that body at its first organization; and having been since ratified, are now incorporated into the Constitution. They are mainly clauses, in the nature of a Bill of Rights, which more effectually guard certain rights already provided for in the Constitution, or prohibit certain exercises of authority supposed to be dangerous to the public interests. We have already had occasion to consider several of them in the preceding pages; and the remainder will now be presented.

§ 254. The first amendment is — 'Congress shall make 'no law respecting an establishment of religion, or prohibit-'ing the free exercise thereof; or abridging the freedom of 'speech, or of the press; or the right of the people peace-'bly to assemble, and to petition the Government for a re-'dress of grievances.'

§ 255. The same policy, which introduced into the Constitution the prohibition of any religious Test, led to this more extended prohibition of the interference of Congress in religious concerns. We are not to attribute this prohibition of a national religious establishment to an indifference to Religion in general, and especially to Christianity, (which none could hold in more reverence, than the framers of the Constitution) but to a dread by the People of the influence of ecclesiastical power in matters of Government; a dread, which their ancestors brought with them from the Mother Country, and which, unhappily for human infirmity, their own conduct after their emigration had not in any just degree tended to diminish. It was also obvious, from the numerous and powerful sects existing in the United States, that there would be perpetual temptations to struggles for ascendency in the national councils, if any one might thereby found a permanent, and exclusive national establishment of its own; and religious persecutions might thus be introduced to an extent utterly subversive of the interests, and good order of the Republic. The most effectual mode of suppressing the evil was, in the view of the people, to strike down the temptations to its introduction.

§ 256. The next clause respects the liberty of speech, and of the press. That this amendment was intended to secure to every citizen an absolute right to speak, or write, or print, whatever he might please, without any responsibility, public or private, therefor, is a supposition too wild to be indulged by any reasonable man. That would be, to allow every citizen a right to destroy at his pleasure, the reputation, the peace, the property, and even the personal safety of every other citizen. A man might then, out of mere malice or revenge, accuse another of infamous crimes; might excite against him the indignation of all his fellow-citizens by the most atrocious calumnies; might disturb, nay, overturn his domestic peace, and embitter his domestic affections; might inflict the most distressing punishments upon the weak, the

timid and the innocent; might prejudice all the civil, political, and private rights of another; and might stir up sedition, rebellion, and even treason, against the Government itself, in the wantonness of his passions, or the corruptions of his heart. Civil society could not go on under such circumstances. Men would be obliged to resort to private vengeance to make up for the deficiencies of the law. It is plain, then, that this amendment imports no more, than that every man shall have a right to speak, write, and print his opinions upon any subject whatsoever, without any prior restraint, so always that he does not injure any other person in his rights, property, or personal reputation; and so always that he does not thereby disturb the public peace, or attempt to subvert the Government. It is in fact designed to guard against those abuses of power, by which in some foreign Governments men are not permitted to speak upon political subjects, or to write or publish any thing without the express license of the Government for that purpose.

§ 257. The remaining clause secures 'the right of the 'people peaceably to assemble and petition for a redress of 'grievances,' a right inestimable in itself, but often prohibited in foreign Governments, under the pretence of preventing insurrections, and dangerous conspiracies against the Government.

§ 258. The next amendment is — 'A well regulated Mi- 'litia being necessary to the security of a free State, the 'right of the people to keep and bear arms shall not be in- 'fringed.' One of the ordinary modes, by which tyrants accomplish their purposes without resistance, is by disarming the people, and making it an offence to keep arms, and by substituting a regular army in the stead of a resort to the Militia. The friends of a free Government cannot be too watchful, to overcome tthe dangerous tendency of the public mind to sacrifice to mere private convenience this powerful check upon the designs of ambitious men.

§ 259. The next amendment is — 'No soldier shall in 'time of peace be quartered in any house without the con- 'sent of the owner; nor in time of war, but in a manner to 'be prescribed by law.' This provision speaks for itself. In arbitrary times it has not been unusual to billet soldiers upon private citizens, without the slightest regard to their rights, or comfort.

§ 260. The next amendment is — 'The enumeration in 'the Constitution of certain rights shall not be construed to 'deny, or disparage others retained by the People.' The object of this clause is to get rid of a very common but perverse misapplication of a known maxim, that an affirmation of a power in particular cases implies a negation of it in all other cases; and so, vice versa, a negation of a power in some cases implies an affirmation of it in all others. The maxim, when rightly understood, is perfectly sound and safe; but it has often been abused to purposes injurious to the rights of the People.

§ 261. The next and last amendment, which has not been already considered, is — '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.' This amendment follows out the object of the preceding; and is merely an affirmation of a rule of construction of the Constitution, which upon any just reasoning must have existed without it. Still it is important as a security against two opposite tendencies of opinion, each equally subversive of the true import of the Constitution. The one is, to *imply* all powers, which may be useful to the National Government, which are not *expressly prohibited;* and the other is, to deny all powers to the National Government, which are not *expressly granted.* We have already seen that there are many implied powers necessarily resulting from the nature of the express powers; and it is as clear, that no power can properly arise by implication from a mere prohibition.

The Government of the United States is one of limited powers; and no authority exists beyond the prescribed limits. Whatever powers are not granted necessarily belong to the States, or to the people of the States, if they have not been confided by them to the States.

CHAPTER XXXVIII.

Concluding Remarks.

§ 262. We have now reviewed all the provisions of the original Constitution of the United States, and all the amendments, which have been incorporated into it. And, here, the task originally proposed in these commentaries is brought to a close. Many reflections naturally crowd upon the mind at such a moment; many grateful recollections of the past; and many anxious thoughts of the future. The past is secure. It is unalterable. The seal of eternity is upon it. The wisdom, which it has displayed, and the blessings, which it has bestowed, cannot be obscured; neither can they be debased by human folly, or by human infirmity. The future is that, which may well awaken the most earnest solicitude, both for the virtue and the permanence of our republic. The fate of other republics, their rise, their progress, their decline, and their fall, are written but too legibly on the pages of history, if, indeed, they were not continually before us in the startling fragments of their ruins. They have perished; and perished by their own hands. Prosperity has enervated them; corruption has debased them; and a venal populace has consummated their destruction. Alternately the prey of military chieftains at home, and of ambitious invaders from abroad, they have been sometimes cheated out of their liberties by servile demagogues; sometimes betrayed

into a surrender of them by false patriots; and sometimes they have willingly sold them for a price to the despot, who has bidden highest for his victims. They have disregarded the warning voice of their best statesmen; and have persecuted, and driven from office their truest friends. They have listened to the fawning sycophant, and the base caluminator of the wise and the good. They have reverenced power more in its high abuses and summary movements, than in its calm and constitutional energy, when it dispensed blessings with an unseen, but liberal hand. They have surrendered to faction, what belonged to the country. Patronage and party, the triumph of a leader, and the discontents of a day, have outweighed all solid principles and institutions of Government. Such are the melancholy lessons of the past history of republics down to our own.

§ 263. It is not my design to detain the reader, by any elaborate reflections addressed to his judgment, either by way of admonition or of encouragement. But it may not be wholly without use to glance at one or two considerations, upon which our meditations cannot be too frequently indulged.

§ 264. In the first place, it cannot escape our notice, how exceedingly difficult it is to settle the foundations of any Government upon principles, which do not admit of controversy or question. The very elements, out of which it is to be built, are susceptible of infinite modifications; and theory too often deludes us by the attractive simplicity of its plans, and imagination by the visionary perfection of its speculations. In theory, a Government may promise the most perfect harmony of operations in all its various combinations. In practice, the whole machinery may be perpetually retarded, or thrown out of order by accidental mal-adjustments. In theory, a Government may seem deficient in unity of design and symmetry of parts; and yet, in practice, it may work with astonishing accuracy and force for the general welfare.

Whatever, then, has been found to work well in experience, should be rarely hazarded upon conjectural improvements. Time, and long and steady operation are indispensable to the perfection of all social institutions. To be of any value, they must become cemented with the habits, the feelings, and the pursuits of the people. Every change discomposes for a while the whole arrangements of the system. What is safe is not always expedient; what is new is often pregnant with unforseen evils, and imaginary good.

§ 265. In the next place, the slightest attention to the history of the national Constitution must satisfy every reflecting mind, how many difficulties attended its formation and adoption, from real or imaginary differences of interests, sectional feelings, and local institutions. It is an attempt to create a national sovereignty, and yet to preserve the State sovereignties; though it is impossible to assign definite boundaries in all cases to the powers of each. The influence of the disturbing causes, which, more than once in the Convention, were on the point of breaking up the Union, have since immeasurably increased in concentration and vigor. The very inequalities of a Government, confessedly founded in a compromise, were then felt with a strong sensibility; and every new source of discontent, whether accidental or permanent, has since added increased activity to the painful sense of these inequalities. The North cannot but perceive, that it has yielded to the South a superiority of Representatives, already amounting to twenty-five, beyond its due proportion; and the South imagines, that, with all this preponderance in representation, the other parts of the Union enjoy a more perfect protection of their interests, than its own. The West feels its growing power and weight in the Union; and the Atlantic States begin to learn, that the sceptre must one day depart from them. If, under these circumstances, the Union should once be broken up, it is impossible, that a new Constitution should ever be formed, embracing the

whole Territory. We shall be divided into several nations or confederacies, rivals in power and interest, too proud to brook injury, and too close to make retaliation distant or ineffectual. Our very animosities will, like those of all other kindred nations, become more deadly, because our lineage, laws, and language are the same. Let the history of the Grecian and Italian republics warn us of our dangers. The National Constitution is our last, and our only security. United we stand; divided we fall.

§ 266. If this Work shall but inspire the rising generation with a more ardent love of their country, an unquenchable thirst for liberty, and a profound reverence for the Constitution and the Union, then it will have accomplished all, that its author ought to desire. Let the American youth never forget, that they possess a noble inheritance, bought by the toils, and sufferings, and blood of their ancestors; and capable, if wisely improved, and faithfully guarded, of transmitting to their latest posterity all the substantial blessings of life, the peaceful enjoyment of liberty, property, religion, and independence. The structure has been erected by architects of consummate skill and fidelity; its foundations are solid; its compartments are beautiful, as well as useful; its arrangements are full of wisdom and order; and its defences are impregnable from without. It has been reared for immortality, if the work of man may justly aspire to such a title. It may, nevertheless, perish in an hour by the folly, or corruption, or negligence of its only Keepers, THE PEOPLE. Republics are created by the virtue, public spirit, and intelligence of the citizens. They fall, when the wise are banished from the public councils, because they dare to be honest, and the profligate are rewarded, because they flatter the people, in order to betray them.

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