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**The Law**  
of the  
**American Constitution**  
Its Origin and Development

By

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With Two Introductory Chapters

by

**Francis M. Burdick**  
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**G. P. Putnam's Sons**  
New York and London

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Charles K. Burdick  
—  
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TO THE MEMORY OF  
MY FATHER

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## PREFACE

THE American federal system is based upon the Constitution of the United States. That instrument was adopted to make "more perfect" the union which, having had its beginning in the common allegiance of the colonies to the British Crown during the war for independence, was welded closer by the necessity for common action, and found its first constitutional expression in the Articles of Confederation. Nineteen articles of amendment have been added to the Constitution in the hundred and thirty-four years since its adoption. It is hoped that in the first three chapters of this book a clear picture is given of the making of the Constitution, of the nature of the federal system which was set up, and of the principles which underlie the amending power.

The Constitution of the United States first of all establishes a national government, and sets off to it certain fields in which it shall be supreme, at the same time imposing upon it certain specific prohibitions and restrictions. It was, however, very far from the purpose of the framers of that instrument to do away with the separate States or to reduce them to mere administrative units. Yet the grants of powers to the national government did of necessity operate as limitations upon the previous sovereign powers of the States; and to these implied limitations were added others which are express. In the second part of this book, I have dealt with the national government in its executive, judicial, and legislative departments, discussing the powers which are granted to each of them, and the limitations which are placed upon their activities. In Part III are considered the restrictions placed upon the States, and the extent of the powers which may still be exercised by them.

It is believed that this is a logical method of treatment, and it is hoped that it will help to make clear the division of powers between the national and state governments under our federal system. No attempt has been made to treat of the powers of the States under their individual constitutions.

Among the most admirable features of the Constitution of the United States are its brevity, and the self-restraint shown by its authors in being content to lay down general principles of government, rather than attempting to deal in detail with the application of those principles. This has resulted of necessity in the development of a very large body of "unwritten" constitutional law—rules with regard to constitutional powers and limitations which cannot be found expressly set forth in the Constitution itself, but which have been held by the courts to result by reasonable implication from the express terms of that instrument. Such for example is the character of the law with regard to the powers of the President as Chief Executive, the power of the federal courts to annul congressional legislation, and the power of the national government to acquire and govern territories and to issue legal tender notes; with regard to the war powers of Congress, and the power of Congress to enact a body of police regulations under the commerce clause and the clause dealing with taxation; with regard to the meaning of the limitations put upon the national government in the Bill of Rights contained in the first eight amendments; and with regard to the limitations as to the impairment of contracts, as to due process of law, and as to the equal protection of the laws imposed upon the States. Naturally this book deals very largely with that body of constitutional law developed by judicial interpretation, and it has been my effort to make clear the nature and extent of that development.

This book makes no pretense of being a digest of all of the cases on constitutional law. It is believed, however, that the cases which have established or developed important constitutional principles are discussed and that sufficient

## PREFACE

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illustrative cases have been considered to make plain the various points which are dealt with. The records of the Constitutional Convention have been often referred to for the purpose of showing the history of various provisions in the Constitution, and frequent references have been made to treatises, to articles, and to notes in legal periodicals. Some comparisons are also drawn between our constitutional provisions and the provisions in the constitutions of the British Dominions.

My father, Francis M. Burdick, after his retirement from teaching, had had in plan the preparation of a book on the Constitution. I have used with very little alteration as the first two chapters of this book the only chapters completed by him. I have also in my possession the further notes which he had made, and acknowledge my indebtedness to them for a number of suggestions. I must, however, assume full responsibility for all of the chapters after the first two, since these are entirely the result of my independent labors. It is a very real satisfaction to have the last of my father's writing combined with my own in this volume, and to feel the mental companionship with him which comes from our having worked in the same field.

C. K. B.

CORNELL UNIVERSITY.

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APPENDIX  
[CONSTITUTION  
OF THE  
UNITED STATES OF AMERICA]<sup>\*</sup>

**WE THE PEOPLE** of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquillity, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this CONSTITUTION for the United States of America.

ARTICLE I

**SECTION 1.** All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

**SECTION 2.** [1.] The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature.

<sup>\*</sup> This copy of the Constitution (through Amendment XVII), together with the footnotes, is reprinted from the appendix to Hall's *Cases on Constitutional Law*, with the courteous permission of the publishers, the West Publishing Company. American History Leaflet No. 8, from which the text of the Constitution was largely taken by Dean Hall, was prepared by Professor Albert B. Hart and Professor Edward Channing of Harvard, and is published by Simmons-Peckham Co., Inc. The authors and publishers of the Leaflet have also consented to the use of the text of the Constitution in the form in which it is here published. The words and figures enclosed in brackets do not appear in the original manuscripts, and are inserted for convenience of reference.

[2.] No Person shall be a Representative who shall not have attained to the Age of twenty-five Years, and been seven Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State in which he shall be chosen.

[3.] Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three fifths of all other Persons.<sup>1</sup> The actual Enumeration shall be made within three Years after the first Meeting of the Congress of the United States, and within every subsequent Term of ten Years, in such Manner as they shall by Law direct. The Number of Representatives shall not exceed one for every thirty Thousand, but each State shall have at Least one Representative; and until such enumeration shall be made, the State of New Hampshire shall be entitled to chuse three, Massachusetts eight, Rhode-Island and Providence Plantations one, Connecticut five, New York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

[4.] When vacancies happen in the Representation from any State, the Executive Authority thereof shall issue Writs of Election to fill such Vacancies.

[5.] The House of Representatives shall chuse their Speaker and other Officers; and shall have the sole Power of Impeachment.

SECTION 3. [1.] The Senate of the United States shall be composed of two Senators from each State, chosen by the Legislature thereof, for six Years; and each Senator shall have one Vote. [Superseded by Amend. XVII.]

[2.] Immediately after they shall be assembled in Consequence of the first Election, they shall be divided as equally as may be into three classes. The Seats of the

<sup>1</sup> See Amend. XIV, sec. 2.

Senators of the first Class shall be vacated at the Expiration of the second Year, of the second Class at the Expiration of the fourth Year, and of the third Class at the Expiration of the sixth Year, so that one third may be chosen every second Year; and if Vacancies happen by Resignation, or otherwise, during the Recess of the Legislature of any State, the Executive thereof may make temporary Appointment until the next Meeting of the Legislature, which shall then fill such Vacancies.

[3.] No Person shall be a Senator who shall not have attained to the Age of thirty Years, and been nine Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State for which he shall be chosen.

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

[5.] The Senate shall chuse their other Officers, and also a President pro tempore, in the Absence of the Vice President, or when he shall exercise the Office of President of the United States.

[6.] The Senate shall have the sole Power to try all Impeachments. When sitting for that purpose, they shall be on Oath or Affirmation. When the President of the United States is tried, the Chief Justice shall preside: And no Person shall be convicted without the Concurrence of two thirds of the Members present.

[7.] Judgment in Cases of Impeachment shall not extend further than to removal from Office, and disqualification to hold and enjoy any Office of honor, Trust or Profit under the United States: but the Party convicted shall nevertheless be liable and subject to Indictment, Trial, Judgment and Punishment, according to Law.

SECTION 4. [1.] The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators.

[2.] The Congress shall assemble at least once in every Year, and such meeting shall be on the first Monday in December, unless they shall by Law appoint a different Day.

SECTION 5. [1.] Each House shall be the Judge of the Elections, Returns and Qualifications of its own Members, and a Majority of each shall constitute a Quorum to do Business; but a smaller Number may adjourn from day to day, and may be authorized to compel the attendance of absent Members, in such Manner, and under such Penalties as each House may provide.

[2.] Each House may determine the Rules of its Proceedings, punish its Members for Disorderly Behaviour, and, with the Concurrence of two thirds, expel a Member.

[3.] Each House shall keep a Journal of its Proceedings, and from time to time publish the same, excepting such Parts as may in their Judgment require Secrecy; and the Yeas and Nays of the Members of either House on any question shall, at the Desire of one fifth of those Present, be entered on the Journal.

[4.] Neither House, during the Session of Congress, shall, without the Consent of the other, adjourn for more than three days, nor to any other Place than that in which the two Houses shall be sitting.

SECTION 6. [1.] The Senators and Representatives shall receive a Compensation for their Services, to be ascertained by Law, and paid out of the Treasury of the United States. They shall in all Cases, except Treason, Felony and Breach of the Peace, be privileged from Arrest during their Attendance at the same; and for any Speech or Debate in either House, they shall not be questioned in any other Place.

[2.] No Senator or Representative shall, during the Time for which he was elected, be appointed to any civil Office under the Authority of the United States, which shall have been created, or the Emoluments whereof shall have been increased during such time; and no Person holding any Office under the United States, shall be a member of either House during his Continuance in Office.

SECTION 7. [1.] All Bills for raising Revenue shall originate in the House of Representatives; but the Senate may propose or concur with Amendments as on other Bills.

[2.] Every Bill which shall have passed the House of Representatives and the Senate shall, before it 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 Objections, to the other House, by which it shall likewise be reconsidered, and if approved by two thirds of that House, it shall become a Law. But in all such Cases the Votes of both Houses shall be determined by Yeas and Nays, and the Names of the Persons voting for and against the Bill shall be entered on the Journal of each House respectively. If any Bill shall not be returned by the President within ten Days (Sundays excepted) after it shall have been presented to him, the same shall be a Law, in like Manner as if he had signed it, unless the Congress by their Adjournment prevent its Return, in which Case it shall not be a Law.

[3.] Every Order, Resolution, or Vote to which the Concurrence of the Senate and House of Representatives may be necessary (except on a question of Adjournment) shall be presented to the President of the United States; and before the same shall take Effect, shall be approved by him, or being disapproved by him, shall be repassed by two thirds of the Senate and House of Representatives, according to the Rules and Limitations prescribed in the Case of a Bill.

SECTION 8. The Congress shall have Power [1.] To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States;

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

[3.] To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes;

[4.] To establish an uniform Rule of Naturalization, and uniform Laws on the subject of Bankruptcies throughout the United States;

[5.] To coin Money, regulate the Value thereof, and of foreign coin, and fix the Standard of Weights and Measures;

[6.] To provide for the Punishment of counterfeiting the Securities and current Coin of the United States;

[7.] To establish Post Offices and post Roads;

[8.] To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries;

[9.] To constitute Tribunals inferior to the supreme Court;

[10.] To define and punish Piracies and Felonies committed on the high Seas, and Offences against the Law of Nations;

[11.] To declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water;

[12.] To raise and support Armies, but no Appropriation of Money to that Use shall be for a longer Term than two Years;

[13.] To Provide and maintain a Navy;

[14.] To make Rules for the Government and Regulation of the land and naval Forces;

[15.] To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions;

[16.] To provide for organizing, arming, and disciplining, the Militia, and for governing such Part of them as may be employed in the Service of the United States, reserving to the States respectively, the Appointment of the Officers, and the Authority of training the Militia according to the discipline prescribed by Congress;

[17.] To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles

square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the same shall be, for the Erection of Forts, Magazines, Arsenals, dock Yards, and other needful Buildings:—And

[18.] To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

SECTION 9. [1.] The Migration or Importation of such Persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the Year one thousand eight hundred and eight, but a Tax or duty may be imposed on such Importation, not exceeding ten dollars for each Person.

[2.] The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it.

[3.] No Bill of Attainder or ex post facto Law shall be passed.

[4.] No Capitation, or other direct Tax shall be laid unless in Proportion to the Census or Enumeration herein before directed to be taken.

[5.] No Tax or Duty shall be laid on Articles exported from any State.

[6.] No Preference shall be given by any Regulation of Commerce or Revenue to the Ports of one State over those of another; nor shall Vessels bound to, or from, one State, be obliged to enter, clear, or pay Duties in another.

[7.] No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law; and a regular Statement and Account of the Receipts and Expenditures of all public Money shall be published from time to time.

[8.] No Title of Nobility shall be granted by the United States: And no Person holding any Office of Profit or Trust

under them, shall, without the Consent of the Congress, accept of any Present, Emolument, Office, or Title, of any kind whatever, from any King, Prince, or foreign State.

SECTION 10. [1.] No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility.

[2.] No State shall, without the Consent of the Congress, lay any Imposts or Duties on Imports or Exports, except what may be absolutely necessary for executing its inspection Laws: and the net Produce of all Duties and Imposts, laid by any State on Imports or Exports, shall be for the Use of the Treasury of the United States; and all such Laws shall be subject to the Revision and Controul of the Congress.

[3.] No State shall, without the Consent of Congress, lay any Duty of Tonnage, keep Troops, or Ships of War in time of Peace, enter into any Agreement or Compact with another State, or with a foreign Power, or engage in War, unless actually invaded, or in such imminent Danger as will not admit of delay.

## ARTICLE II

SECTION 1. [1.] The Executive Power shall be vested in a President of the United States of America. He shall hold his Office during the Term of four Years, and, together with the Vice President, chosen for the same Term, be elected, as follows:

[2.] Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress: but no Senator or Representative, or Person holding an Office of Trust or Profit under the United States, shall be appointed an Elector.



[3.] The Electors shall meet in their respective States, and vote by Ballot for two Persons, of whom one at least shall not be an Inhabitant of the same State with themselves. And they shall make a List of all the Persons voted for, and of the Number of Votes for each; which List they shall sign and certify, and transmit sealed to the Seat of the Government of the United States, directed to the President of the Senate. The President of the Senate shall, in the Presence of the Senate and House of Representatives, open all the Certificates, and the Votes shall then be counted. The Person having the greatest number of Votes shall be the President, if such Number be a Majority of the whole number of Electors appointed; and if there be more than one who have such Majority, and have an equal Number of Votes, then the House of Representatives shall immediately chuse by Ballot one of them for President; and if no Person have a Majority, then from the five highest on the List the said House shall in like Manner chuse the President. But in chusing the President, the Votes shall be taken by States, the Representation from each State having one Vote; A quorum for this Purpose shall consist of a Member or Members from two thirds of the States, and a Majority of all the States shall be necessary to a Choice. In every Case, after the Choice of the President, the Person having the greatest Number of Votes of the Electors shall be the Vice President. But if there should remain two or more who have equal Votes, the Senate shall chuse from them by Ballot the Vice President.<sup>1</sup>

[4.] The Congress may determine the Time of chusing the Electors, and the Day on which they shall give their Votes; which Day shall be the same throughout the United States.

[5.] No Person except a natural born Citizen, or a Citizen of the United States, at the time of the Adoption of this Constitution, shall be eligible to the Office of President; neither shall any Person be eligible to that Office who shall not have attained to the Age of thirty five Years, and been fourteen Years a Resident within the United States.

<sup>1</sup> This paragraph was superseded by Amend. XII.

[6.] In Case of the Removal of the President from Office, or of his Death, Resignation, or Inability to discharge the Powers and Duties of the said Office, the Same shall devolve on the Vice President, and the Congress may by Law provide for the Case of Removal, Death, Resignation, or Inability, both of the President and Vice President, declaring what Officer shall then act as President, and such Officer shall act accordingly, until the Disability be removed, or a President shall be elected.

[7.] The President shall, at stated Times, receive for his Services, a Compensation, which shall neither be increased nor diminished during the Period for which he shall have been elected, and he shall not receive within that Period any other Emolument from the United States, or any of them.

[8.] Before he enter on the Execution of his Office, he shall take the following Oath or Affirmation:—"I do solemnly swear (or affirm) that I will faithfully execute the Office of President of the United States, and will to the best of my Ability, preserve, protect and defend the Constitution of the United States."

SECTION 2. [1.] The President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States; he may require the Opinion, in writing, of the principal Officer in each of the executive Departments, upon any Subject relating to the Duties of their respective Offices, and he shall have Power to grant Reprieves and Pardons for Offences against the United States, except in Cases of Impeachment.

[2.] He shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur; and he shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law;

but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.

[3.] The President shall have Power to fill up all Vacancies that may happen during the Recess of the Senate, by granting Commissions which shall expire at the End of their next Session.

SECTION 3. He shall from time to time give to the Congress Information of the State of the Union, and recommend to their Consideration such Measures as he shall judge necessary and expedient; he may, on extraordinary Occasions, convene both Houses, or either of them, and in Case of Disagreement between them, with Respect to the Time of Adjournment, he may adjourn them to such Time as he shall think proper; he shall receive Ambassadors and other public Ministers; he shall take Care that the Laws be faithfully executed, and shall Commission all the Officers of the United States.

SECTION 4. The President, Vice President and all civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors.

### ARTICLE III

SECTION 1. The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.

SECTION 2. [1.] The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;—to all Cases affecting

Ambassadors, other public Ministers and Consuls;—to all Cases of admiralty and maritime Jurisdiction;—to Controversies to which the United States shall be a Party;—to Controversies between two or more States;—between a State and Citizens of another State;†—between Citizens of different States,—between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

[2.] In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such exceptions, and under such Regulations as the Congress shall make.

[3.] The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed.

SECTION 3. [1.] Treason against the United States, shall consist only in levying War against them, or in adhering to their Enemies, giving them Aid and Comfort. No Person shall be convicted of Treason unless on the Testimony of two Witnesses to the same overt Act, or on Confession in open Court.

[2.] The Congress shall have Power to declare the Punishment of Treason, but no Attainder of Treason shall work Corruption of Blood, or Forfeiture except during the Life of the Person attainted.

## ARTICLE IV

SECTION 1. Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Pro-

† See Amend. XI.

ceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.

**SECTION 2.** [1.] The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.

[2.] A Person charged in any State with Treason, Felony, or other Crime, who shall flee from Justice, and be found in another State, shall on Demand of the executive Authority of the State from which he fled, be delivered up, to be removed to the State having jurisdiction of the Crime.

[3.] No Person held to Service or Labour in one State, under the Laws thereof, escaping into another, shall, in Consequence of any Law or Regulation therein, be discharged from such Service or Labour, but shall be delivered up on Claim of the Party to whom such Service or Labour may be due.

**SECTION 3.** [1.] New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the Jurisdiction of any other State; nor any State be formed by the Junction of two or more States, or Parts of States, without the Consent of the Legislatures of the States concerned as well as of the Congress.

[2.] The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; and nothing in this Constitution shall be so construed as to Prejudice any Claims of the United States, or of any particular State.

**SECTION 4.** The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic Violence.

## ARTICLE V

The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes, as Part of this Constitution, when ratified by the Legislatures of three fourths of the several States, or by Conventions in three fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress; Provided that no Amendment which may be made prior to the Year One thousand eight hundred and eight shall in any Manner affect the first and fourth Clauses in the Ninth Section of the first Article; and that no State, without its Consent, shall be deprived of its equal Suffrage in the Senate.

## ARTICLE VI

[1.] All Debts contracted and Engagements entered into, before the Adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the Confederation.

[2.] This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

[3.] The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution; but no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States.

# THE CONSTITUTION

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## ARTICLE VII

The Ratification of the Conventions of nine States, shall be sufficient for the Establishment of this Constitution between the States so ratifying the same.<sup>1</sup>

[Note of the draughtsman as to interlineations in the text of the manuscript.]

Attest

WILLIAM JACKSON  
*Secretary*

done in Convention by the Unanimous Consent of the States present the Seventeenth Day of September in the Year of our Lord one thousand seven hundred and Eighty seven and of the Independence of the United States of America the Twelfth In Witness whereof We have hereunto subscribed our names.

GO WASHINGTON—

*Presidl and deputy from Virginia.*

*Delaware*

{ GEO: READ  
GUNNING BEDFORD JUN  
JOHN DICKINSON  
RICHARD BASSETT  
JACO: BROOM

*New Hampshire*

{ JOHN LANGDON  
NICHOLAS GILMAN

*Massachusetts*

{ NATHANIEL GORHAM  
RUFUS KING

<sup>1</sup> The States ratified the Constitution in the following order:

Delaware. . . . .	December 7, 1787	delegates on April 28, 1788. See 2
Pennsylvania. . . . .	December 12, 1787	Doc. Hist. Const., 104, 121.)
New Jersey. . . . .	December 18, 1787	South Carolina . . . . . May 23, 1788
Georgia. . . . .	January 2, 1788	New Hampshire. . . . . June 21, 1788
Connecticut. . . . .	January 9, 1788	Virginia. . . . . June 26, 1788
Massachusetts. . . . .	February 6, 1788	New York. . . . . July 26, 1788
Maryland. . . . .	April 26, 1788	North Carolina November 21, 1789
(Vote taken on April 26, but	Rhode Island. . . . .	May 29, 1790

official ratification signed by

By an act of September 13, 1788, the Congress of the Confederation appointed the first Wednesday in January next for the appointment of presidential electors in the States that had by then ratified the Constitution; the first Wednesday in February for the electors to assemble and vote for President; and the first Wednesday in March for commencing proceedings under the Constitution. On the latter date, March 4, 1789, the Constitution became legally operative, *Owens v. Speed* (1820) 5 Wheat. 420; though in fact the House of Representatives did not assemble, for want of a quorum, until April 1, and the Senate not until April 6; and President Washington was not inaugurated until April 30.

<i>Maryland</i>	<i>Connecticut</i>
{ JAMES MCHENRY DAN OF ST THOS. JENIFER DANL CARROLL	{ WM: SAML. JOHNSON ROGER SHERMAN
<i>Virginia</i>	<i>New York</i>
{ JOHN BLAIR JAMES MADISON JR.	ALEXANDER HAMILTON
<i>North Carolina</i>	<i>New Jersey</i>
{ WM. BLOUNT RICHD. DOBBS SPAIGHT HU WILLIAMSON	{ WIL: LIVINGSTON DAVID BREARLEY WM: PATERSON JONA: DAYTON
<i>South Carolina</i>	<i>Pennsylvania</i>
{ J. RUTLEDGE CHARLES COTESWORTH PINCKNEY CHARLES PINCKNEY PIERCE BUTLER	{ B FRANKLIN THOMAS MIFFLIN ROBT MORRIS GEO. CLYMER THOS FITZSIMONS JARED INGERSOLL JAMES WILSON GOUV MORRIS
<i>Georgia</i>	
{ WILLIAM FEW ABR BALDWIN	

ARTICLES in addition to and Amendment of the Constitution of the United States of America, proposed by Congress, and ratified by the Legislatures of the several States, pursuant to the fifth Article of the original Constitution.<sup>1</sup>

[ARTICLE I.]<sup>2</sup>

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the

<sup>1</sup> This heading appears only in the joint resolution submitting the first ten amendments. 1 Stat. 971.

In vol. ii of *Amer. Hist. Assn. Reports* (1896), is an elaborate essay by H. V. Ames upon Proposed Amendments to U. S. Constitution, 1789-1889, which contains a calendar of over 1,800 amendments proposed in Congress or the State Legislatures, with a history of the more important proposals.

<sup>2</sup> The first 10 amendments were proposed by Congress on September 25, 1789, when they passed the Senate [1 Ann. Cong. (1st Cong. 1st Sess.) 88], having previously passed the House on September 24 [*Id.*, 913.]



people peaceably to assemble, and to petition the Government for a redress of grievances.

[ARTICLE II.]

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

[ARTICLE III.]

No Soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner prescribed by law.

[ARTICLE IV.]

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

[ARTICLE V.]

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor

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They appear officially in 1 Stat. 97. The eleventh State (Virginia), there then being 14 in all, ratified them on December 15, 1791 [2 Doc. Hist. Const., 386-90].

Two other amendments proposed at the same time failed of ratification. One of these concerned the ratio of representation to population in the House, and the other forbade any change in the compensation of Senators and Representatives to become effective until after an intervening election of Representatives. The first was ratified by ten States and the second by six States [2 Doc. Hist. Const., 325-390].

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

[ARTICLE VI.]

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

[ARTICLE VII.]

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

[ARTICLE VIII.]

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

[ARTICLE IX.]

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

[ARTICLE X.]

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

[ARTICLE XI.]<sup>1</sup>

The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.

[ARTICLE XII.]<sup>2</sup>

The Electors shall meet in their respective states, and vote by ballot for President and Vice-President, one of whom, at least, shall not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President, and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate;—The President of

<sup>1</sup> The Eleventh Amendment was proposed by Congress on March 4, 1794, when it passed the House [4 Ann. Cong. (3rd Cong. 1st Sess.) 477], having previously passed the Senate on January 14 [*Id.*, 30, 31]. It appears officially in 1 Stat. 402. The ratifications of but six States appear among the official records printed in 2 Doc. Hist. Const., 392-407. The fifth of these (North Carolina) was on February 7, 1795. Three others were announced to Congress in a message by President Washington on January 8, 1795 [1 Mess. and Papers of Pres. 174]. Rhode Island ratified at the March session of its legislature, 1794 [R. I. Laws (March, 1794) 32]; New Hampshire on June 20, 1794 [N. H. Laws, 1785-1796, p. 501]; Georgia on November 29, 1794 [Dig. Georgia Laws, 1755-1800, p. 291]; and Delaware on January 22, 1795 [2 Del. Laws (Ed. 1797), 1199, 1200]. North Carolina was therefore the twelfth State (there then being 15 in all) and the amendment became effective on February 7, 1795. On January 8, 1798, President Adams stated in a message to Congress that the amendment had been adopted by three-fourths of the States (there being then 16 in all) and might now be declared a part of the Constitution [1 Mess. and Papers of Pres. 260].

<sup>2</sup> The Twelfth Amendment was proposed by Congress on December 8, 1803, when it passed the House [13 Ann. Cong. (8th Cong. 1st Sess.) 775, 776], having previously passed the Senate on December 2 [*Id.*, 209,

the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted;—The person having the greatest number of votes for President, shall be the President, if such number be a majority of the whole number of Electors appointed; and if no person have such majority, then from the persons having the highest numbers not exceeding three on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. And if the House of Representatives shall not choose a President whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice-President shall act as President, as in the case of the death or other constitutional disability of the President.—The Person having the greatest number of votes as Vice-President shall be the Vice-President, if such number be a

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210]. It appears officially in 2 Stat. 306. The ratifications of but 12 States appear among the official records printed in 2 Doc. Hist. Const., 411-450; and 5 Doc. Hist. Const., 480-491; the last of which were Georgia (May 19, 1804) and Tennessee (July 27, 1804). In addition, Kentucky ratified on December 27, 1803 [3 Littell, Ky. Stats. 149]. On June 15, 1804, the New Hampshire Legislature passed an act ratifying the amendment, which was vetoed by the governor and failed to pass again by two thirds vote then required by the state constitution for the enactment of laws over a veto. [Transcript of proceedings in New Hampshire House of Representatives, June 20, 1804, furnished by Secretary of State Pearson in September, 1913.] If this veto was ineffective (see Const. art. V; and H. V. Ames in 2 Am. Hist. Assn. Rep. 1896, 297, 298), New Hampshire was the thirteenth State to ratify and the amendment became operative on June 15, 1804. Otherwise, Tennessee was the last State needed, and the amendment dates from July 27, 1804. On September 25, 1804, Secretary of State Madison in a circular letter to the governors of the States declared it ratified by three fourths of the States, there then being 17 in all [2 Doc. Hist. Const., 451, note].

majority of the whole number of Electors appointed, and if no person have a majority, then from the two highest numbers on the list, the Senate shall choose the Vice-President; a quorum for the purpose shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice-President of the United States.

ARTICLE XIII.<sup>1</sup>

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

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A thirteenth amendment depriving of United States citizenship any citizen who should accept any title, office, or emolument from a foreign power, was proposed by Congress on May 1, 1810, when it passed the House [21 Ann. Cong. (11th Cong. 2d Sess.) 2050], having previously passed the Senate on April 27 [20 Ann. Cong. (11th Cong. 2d Sess.) 672]. It appears officially in 2 Stat. 613. It failed of adoption, being ratified by but 12 States up to December 10, 1812 [2 Miscell. Amer. State Papers, 477-479; 2 Doc. Hist. Const., 454-499], there then being 18 in all.

Another thirteenth amendment, forbidding any future amendment that should empower Congress to interfere with the domestic institutions of any State, was proposed by Congress on March 2, 1861, when it passed the Senate [Cong. Globe (36th Cong. 2d Sess.) 1403], having previously passed the House on February 28 [*Id.*, 1285]. It appears officially in 12 Stat. 251. It failed of adoption, being ratified by but three States: Ohio, May 13, 1861 [58 Laws Ohio, 190]; Maryland, January 10, 1862 [Laws Maryland (1861-62) 21]; Illinois, February 14, 1862 [2 Doc. Hist. Const., 518] (irregular, because by convention instead of by legislature as authorized by Congress).

<sup>1</sup> The Thirteenth Amendment was proposed by Congress on January 31, 1865, when it passed the House [Cong. Globe (38th Cong. 2d Sess.) 531], having previously passed the Senate on April 8, 1864 [*Id.*, (38th Cong. 1st Sess.) 1490]. It appears officially in 13 Stat. 567 under date of February 1, 1865. The twenty-seventh State (Georgia), there then being 36 in all, ratified it on December 9, 1865 [2 Doc. Hist. Const., 613]; and on December 18, 1865, it was certified by Secretary of State Seward to have become a part of the Constitution [13 Stat. 774]. In making

SECTION 2. Congress shall have power to enforce this article by appropriate legislation.<sup>1</sup>

#### ARTICLE XIV.<sup>2</sup>

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

SECTION 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress,

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this and subsequent certificates of like character the Secretary of State has acted under the authority of 3 Stat. 439, c. 80, sec. 2 (1818) [now R. S. U. S. sec. 205], which however attaches no legal effect to such certification.

<sup>1</sup> In the original manuscript this section does not appear as a separate paragraph [2 Doc. Hist. Const., 520].

<sup>2</sup> The Fourteenth Amendment was proposed by Congress on June 13, 1866, when it passed the House [Cong. Globe (39th Cong. 1st Sess.) 3148, 3149], having previously passed the Senate on June 8 [*Id.*, 3042]. It appears officially in 14 Stat. 358 under date of June 16, 1866. Two States (Ohio and New Jersey) which had ratified it withdrew their assent before three quarters of the States had ratified, occasioning grave doubt as to the validity of such action. Assuming this withdrawal to be ineffective, the twenty-eighth State (South Carolina), there then being 37 in all, ratified on July 9, 1868 [2 Doc. Hist. Const., 764]. If such withdrawal was effective, the twenty-eighth State (Georgia) ratified on July 21, 1868 [5 Doc. Hist. Const., 554-557]. On July 20, 1868, Secretary of State Seward certified that it had become a part of the Constitution if said withdrawals were ineffective [15 Stat. 708]. On July 21, 1868, Congress by joint resolution declared it a part of the Constitution and that it should be promulgated as such by the Secretary of State [15 Stat. 709-10]. On July 28, 1868, Secretary Seward certified it as such without reservation [15 Stat. 708-711].

the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

SECTION 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State Legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may, by a vote of two-thirds of each House, remove such disability.

SECTION 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

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

#### ARTICLE XV.<sup>1</sup>

SECTION 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or

<sup>1</sup> The Fifteenth Amendment was proposed by Congress on February 26, 1869, when it passed the Senate [Cong. Globe (40th Cong. 3rd Sess.) 1641], having previously passed the House on February 25 [*Id.*, 1563,

by any State on account of race, color, or previous condition of servitude.—

SECTION 2. The Congress shall have power to enforce this article by appropriate legislation.—

#### ARTICLE XVI.<sup>1</sup>

The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration.

#### ARTICLE XVII.<sup>2</sup>

[1.] The Senate of the United States shall be composed of two Senators from each State, elected by the people thereof, for six years; and each Senator shall have one vote. The electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislatures.

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1564]. It appears officially in 15 Stat. 346 under date of February 27. As in the case of the Fourteenth Amendment (see note above) one State (New York) withdrew its assent before three quarters of the States had ratified. If such withdrawal was ineffective, the twenty-eighth State (Iowa), there then being 37 in all, ratified on February 3, 1870 [2 Doc. Hist. Const., 877]. Otherwise the last State needed (Nebraska) ratified on February 17, 1870 [*Id.*, 879]. On March 30, 1870, Secretary of State Fish certified that it had become a part of the Constitution [16 Stat. 1131].

<sup>1</sup> The Sixteenth Amendment was proposed by Congress on July 12, 1909, when it passed the House [44 Cong. Rec. (61st Cong. 1st Sess.), 4390, 4440, 4441], having previously passed the Senate on July 5 [*Id.*, 4121]. It appears officially in 36 Stat. 184. The thirty-sixth and thirty-seventh States (Delaware and Wyoming), there then being 48 in all, ratified on February 3, 1913; and on February 25, 1913, Secretary of State Knox certified that it had become a part of the Constitution [37 Stat. 1785].

<sup>2</sup> The Seventeenth Amendment was proposed by Congress on May 13, 1912, when it passed the House [48 Cong. Rec. (62d Cong. 2d Sess.) 6367], having previously passed the Senate on June 12, 1911 [47 Cong. Rec. (62d Cong. 1st Sess.) 1925]. It appears officially in 37 Stat. 646. The thirty-sixth State (Wisconsin), there being 48 in all, ratified on May 9, 1913; and on May 31, 1913, it was certified by the Secretary of State Bryan to have become a part of the Constitution [38 Stat. 2049].



[2.] When vacancies happen in the representation of any State in the Senate, the executive authority of such State shall issue writs of election to fill such vacancies: *Provided*, That the legislature of any State may empower the executive thereof to make temporary appointments until the people fill the vacancies by election as the legislature may direct.

[3.] This amendment shall not be so construed as to affect the election or term of any Senator chosen before it becomes valid as part of the Constitution.

#### ARTICLE XVIII.<sup>1</sup>

SECTION 1. After one year from the ratification of this article the manufacture, sale, or transportation of intoxicating liquors within, the importation thereof into, or the exportation thereof from the United States and all territories subject to the jurisdiction thereof for beverage purposes is hereby prohibited.

SECTION 2. The Congress and the several States shall have concurrent power to enforce this article by appropriate legislation.

SECTION 3. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of the several States, as provided in the Constitution, within seven years from the date of the submission hereof to the States by the Congress.

#### ARTICLE XIX.<sup>2</sup>

The right of citizens to vote shall not be denied or abridged by the United States or by any State on account of sex.

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

<sup>1</sup> The resolution for the submission of this amendment was passed by Congress December 3, 1917. The amendment was declared adopted by Acting Secretary of State Polk on January 29, 1919, three fourths of the States having ratified it at that time [40 Stat. 1941].

<sup>2</sup> The resolution for the submission of this amendment was passed by Congress May 19, 1919. The amendment was declared adopted by Secretary of State Colby on August 26, 1920, three fourths of the States having ratified it at that time [41 Stat. 1823].

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